

**PETITION OF GOVERNOR BILL RICHARDSON  
FOR STATE SPECIFIC RULEMAKING TO PROTECT  
ROADLESS AREAS IN NEW MEXICO**

**May 31, 2006**

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## PETITION CONTENTS<sup>1</sup>

### **1. The location and description of the particular lands for which the petition is being made, including maps and other appropriate resources in sufficient detail to enable consideration of the petition**

The State of New Mexico (State) includes in our petition the approximately 1.6 million acres of inventoried roadless areas within the National Forest System, as identified in the various Forest Plans for National Forests and Grasslands within the State of New Mexico. National forests and grasslands in the State are Carson, Santa Fe, Cibola, Gila, Lincoln, and Coronado, illustrated on a map in Appendix A. All total, these national forests include 9,327,000 acres of public land of which 1,597,000 acres, or 17 percent, are inventoried roadless areas. These inventoried roadless areas are published in the Forest Service Roadless Area Conservation Final Environmental Impact Statement (FEIS) and are illustrated in maps in Appendix A (USFS 2000).

As further discussed in section 2 below, the State of New Mexico formally recommends that the Valle Vidal, located in the Carson National Forest, be added to the existing 1.6 million acres of inventoried roadless area in the State. The 101,285-acre Valle Vidal was not considered in the original roadless inventories but is worthy of roadless designation. A map illustrating the location of the Valle Vidal and inventoried roadless areas adjacent to it is provided in Appendix A.

Therefore, the total acreage included in New Mexico's petition is approximately 1,698,285 acres.

### **2. The particular management requirements recommended for the lands and any exceptions**

Upon careful review of all available data and public comment, the State of New Mexico formally petitions Secretary of Agriculture Mike Johanns to protect all 1.6 million acres of inventoried roadless areas contained within national forests and grasslands in the State. For the reasons discussed below, we also seek the inclusion of the Valle Vidal as an inventoried roadless area covered through this petition. The National Forest Service took ownership and began managing the Valle Vidal in 1982. The Forest Plan for the Carson National Forest, within whose boundaries the Valle Vidal lies, was adopted in 1986 but did not include the Valle Vidal, and subsequent amendments to the plan also have not included the Valle Vidal. As a result, the roadless values of the area were not evaluated in either the Forest Plan or Roadless Area Review and Evaluation inventories completed in

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<sup>1</sup> **Please note**, in further pursuit of protection for New Mexico's inventoried roadless areas, the New Mexico attorney general has joined with the California attorney general and the states of Oregon and Washington in litigation seeking to enjoin the repeal of the 2001 Rule and its replacement with the State petitions process. The submittal of this petition in no way indicates acquiescence in that process; rather, it underscores New Mexico's determination to use all available means to conserve existing inventoried roadless areas as well as the Valle Vidal for their watershed, hunting and fishing, recreation, and other roadless values.

1973 or 1979 (i.e., RARE I and RARE II). Based on New Mexico's evaluation of the natural and cultural resources and "classified" roads located in the Valle Vidal, we firmly believe that this area would have been identified as an inventoried roadless area. The unique values and characteristics of the Valle Vidal are too numerous to address within the format of this petition; however, a few notable facts are provided.

Valle Vidal's waters are only the second in the State of New Mexico to be designated by the New Mexico Water Quality Control Commission as Outstanding National Resource Waters. Waters designated as "outstanding" must be part of an excellent trout fishery, provide exceptional recreation or ecological value, or contain quality water that meets or exceeds standards for aquatic species and other wildlife. Waters in the Valle Vidal meet all of these criteria. The Valle Vidal is also home to the largest elk herd in New Mexico, subsequently providing outstanding outdoor recreation opportunities (e.g., hunting and wildlife viewing).

Inclusion of the 101,285-acre Valle Vidal as a roadless area would ensure that the "vision" for this crown jewel of our public lands is realized. In part, this vision, outlined in the ongoing proposed "Carson National Forest Plan Amendment for the Valle Vidal," provides for "the maintenance or restoration of diverse, resilient, biological communities," with habitats managed primarily for native plants, fish, and wildlife.

In short, we seek prohibitions on temporary and permanent road construction and most forms of commercial timber harvest within inventoried roadless areas and the Valle Vidal. The specifics of our petition are stated below:

**Section I: Prohibition on road construction and road reconstruction in inventoried roadless areas.**

- (a) A road may not be constructed or reconstructed in inventoried roadless areas of the National Forest System, except as provided in paragraph (b).
- (b) Notwithstanding the prohibition in paragraph (a) of this section, a road may be constructed or reconstructed in an inventoried roadless area if the Responsible Official determines that one of the following circumstances exists:
  - (1) A road is needed to protect public health and safety in cases of an imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property;
  - (2) A road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA, Section 311 of the Clean Water Act, or the Oil Pollution Act;
  - (3) A road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty;

- (4) Road realignment is needed to prevent irreparable resource damage that arises from the design, location, use, or deterioration of a classified road and that cannot be mitigated by road maintenance. Road realignment may occur under this paragraph only if the road is deemed essential for public or private access, natural resource management, or public health and safety;
- (5) Road reconstruction is needed to implement a road safety improvement project on a classified road determined to be hazardous on the basis of accident experience or accident potential on that road;
- (6) The Secretary of Agriculture determines that a Federal Aid Highway project, authorized pursuant to Title 23 of the United States Code, is in the public interest or is consistent with the purposes for which the land was reserved or acquired and no other reasonable and prudent alternative exists; or
- (7) A road is needed in conjunction with the continuation, extension, or renewal of a mineral lease on lands that are under lease by the Secretary of the Interior as of May 31, 2006, or for a new lease issued immediately upon expiration of an existing lease. Such road construction or reconstruction must be conducted in a manner that minimizes effects on surface resources, prevents unnecessary or unreasonable surface disturbance, and complies with all applicable lease requirements, land and resource management plan direction, regulations, and laws. Roads constructed or reconstructed pursuant to this paragraph must be obliterated when no longer needed for the purposes of the lease or upon termination or expiration of the lease, whichever is sooner.

(c) Maintenance of classified roads is permissible in inventoried roadless areas.

**Section II: Prohibition on timber cutting, sale, or removal in inventoried roadless areas.**

- (a) Timber may not be cut, sold, or removed in inventoried roadless areas of the National Forest System, except as provided in paragraph (b) of this section.
- (b) Notwithstanding the prohibition in paragraph (a) of this section, timber may be cut, sold, or removed in inventoried roadless areas if the Responsible Official determines that one of the following circumstances exists. The cutting, sale, or removal of timber in these areas is expected to be infrequent.
  - (1) The cutting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve one or more of the roadless area characteristics defined in section 3 of this petition.
    - (i) To improve threatened, endangered, proposed, or sensitive species habitat; or

- (ii) To maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects, within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period;
- (2) The cutting, sale, or removal of timber is incidental to the implementation of a management activity not otherwise prohibited by this petition;
- (3) The cutting, sale, or removal of timber is needed and appropriate for personal or administrative use; or
- (4) Roadless characteristics have been substantially altered in a portion of an inventoried roadless area due to the construction of a classified road and subsequent timber harvest. Both the road construction and subsequent timber harvest must have occurred after the area was designated an inventoried roadless area and prior to May 31, 2006. Timber may be cut, sold, or removed only in the substantially altered portion of the inventoried roadless area.

The provisions above do not revoke, suspend, or modify any permit, contract, or other legal instrument authorizing the occupancy and use of National Forest System land issued prior to May 31, 2006.

This petition does not revoke, suspend, or modify any project or activity decision made prior to May 31, 2006.

This petition does not apply to specific areas where mapping erroneously included National Forest System-classified roads that existed at the time of the roadless area inventory. In short, the petition seeks to maintain the status quo for existing access to New Mexico's National Forests. National Forest System roads that meet the criteria above must be identified in an individual forest's current transportation plan for continued management for motor vehicle use. Reconstruction of such roads will be allowed so long as access has been promised through forest plans, regulations, or laws.

For the purpose of this petition, the following definitions apply:

**Inventoried roadless areas:** Areas identified in a set of inventoried roadless area maps, contained in Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000, which are held at the Forest Service's national headquarters office, or any subsequent update or revision of those maps.

**Responsible official:** The Forest Service line officer with the authority and responsibility to make decisions regarding protection and management of inventoried roadless areas pursuant to this subpart.

**Road:** A motor vehicle travel way over 50 inches wide, unless designated and managed as a trail. A road may be classified, unclassified, or temporary.

Classified road: A road wholly or partially within or adjacent to National Forest System lands that is determined to be needed for long-term motor vehicle access, including state roads, county roads, privately owned roads, National Forest System roads, and other roads authorized by the Forest Service.

Unclassified road: A road on National Forest System lands that is not managed as part of the forest transportation system, such as unplanned roads, abandoned travel ways, and off-road vehicle tracks that have not been designated and managed as a trail; and those roads that were once under permit or other authorization and were not decommissioned upon the termination of the authorization.

Temporary road: A road authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the forest transportation system and not necessary for long-term resource management.

Road construction: An activity that results in the addition of forest-classified or temporary road miles.

Road maintenance: The ongoing upkeep of a road necessary to retain or restore the road to the approved road management objective.

Road reconstruction: An activity that results in improvement or realignment of an existing classified road, defined as follows:

Road improvement: An activity that results in an increase of an existing road's traffic service level, expansion of its capacity, or a change in its original design function.

Road realignment: An activity that results in a new location of an existing road or portions of an existing road and treatment of the old roadway.

The provisions of this petition, along with supporting rationale, were made in a September 7, 2004, letter from the State of New Mexico's Energy, Minerals and Natural Resources Department (EMNRD) Cabinet Secretary Joanna Prukop to Secretary of Agriculture Ann Veneman. Through our review of the record (e.g., available data and public comment), the State strongly believes that the existing inventoried roadless areas and the Valle Vidal should remain roadless for the many social and ecological values that they possess. The 1.6 million acres of inventoried roadless areas constitute about 17 percent of all the National Forest land in New Mexico. Among other benefits, the data clearly shows that the inventoried roadless areas in New Mexico provide critical habitat for fish and wildlife, protect public drinking water sources, provide unique recreation opportunities (e.g., hunting, fishing, hiking), and preserve traditional cultural properties and sacred sites.

In summary, the State has determined that prohibiting new road construction and most forms of commercial timber harvest in both the 1.6 million acres of existing inventoried roadless areas and the Valle Vidal is in the best interest of current and future generations of New Mexico citizens.

### **3. The circumstances and needs addressed by this petition include:**

#### ***A. Conserving roadless area values and characteristics***

The general prohibition on new road construction within New Mexico's 1.6 million acres of inventoried roadless areas and the Valle Vidal would conserve roadless area values and characteristics over the long-term. Among other values and characteristics, these roadless areas protect watershed health, increase and conserve biodiversity, provide opportunities for outdoor recreation and personal renewal, establish a legacy of natural areas for use by future generations, and protect unique natural and cultural features.

Population growth in New Mexico, coupled with a historically strong natural heritage and tourism economy, are likely to result in additional pressure on the State's roadless areas. Population projections from 2000 to 2030 for New Mexico estimate a 15.4 percent increase; for the western United States, this percent increase is 35.2 percent (U.S. Census Bureau 2005). In 2001, 8.9 percent of the visitors to New Mexico came with the primary objective of engaging in outdoor recreation (Narbutas 2003). The New Mexico roadless areas provide its citizens and regional and international visitors with opportunities to enjoy outstanding dispersed recreation opportunities such as hiking, camping, wildlife viewing, hunting, fishing, cross-country skiing, and canoeing. "Roadless areas in New Mexico, including Wilderness areas, provide some of the highest quality elk hunting opportunities and provide habitat that sustain elk populations for surrounding areas" (NMDGF 2006a). While inventoried roadless areas in the State may have many wilderness-like attributes, unlike in wilderness, the use of mountain bikes and other forms of mechanized travel is often allowed. The vitality of New Mexico's travel and tourism industry, as well as our State's natural and cultural heritage, depends on the preservation of roadless areas. "Some state that intact roadless areas are a vital component of the true American or western experience..." (NMDGF 2006a).

Only 17 percent of National Forest land in New Mexico still qualifies as roadless, well below the national average of 31 percent. Without a strong policy prohibiting new road construction in roadless areas in the State, "user made" or "unclassified roads" could proliferate in these areas. It is estimated that more than 60,000 miles of unauthorized or "unclassified roads" already exist on National Forests throughout the United States (NMDGF 2006a). Recent evidence suggests that permanent and even temporary road construction and reconstruction, particularly in many unroaded areas, has caused substantial ecological impacts including stream sedimentation, introduction of exotic plants, fragmentation of wildlife habitat, landslides, impacts to water, and barriers to fish (NMDGF 2006a). "Effects from roads may persist for decades and may cause lasting degradation to sensitive ecosystems" (USFS 1999).



“Nearly everything about New Mexico's diverse Native American people is legendary, from their distinct lifestyles and traditions to their beliefs and architecture to their arts and food. In fact, there isn't one corner of the state that isn't influenced by Native American history and culture” (New Mexico Magazine 2006). Due to the strong Native American presence in the State, a large number of traditional cultural properties (places, sites, structures, art, or objects that have played an important role in the cultural history of a group) and sacred sites (places having special religious significance to a group) are likely to exist on roadless areas. Traditional cultural properties and sacred sites may be eligible for protection under the National Historic Preservation Act; however, many of them have not yet been inventoried, especially those that occur in inventoried roadless areas in New Mexico.

Inventoried roadless areas may offer other locally identified unique characteristics and values. Examples include uncommon geological formations, which are valued for their scientific and scenic qualities, and unique wetland complexes like those in the Valle Vidal that were recently noted as the best intact wetlands in the Rockies. Unique social, cultural, or historical characteristics may also depend on the roadless character of the landscape. Examples include ceremonial sites, places for local events, areas prized for collection of non-timber forest products, or exceptional hunting and fishing opportunities.

The management approach outline in section 2 above would allow these values and characteristics to be maintained while providing for human health and safety, forest ecosystem management, access to private and State property, and meeting treaty obligations.

### ***B. Protecting human health and safety***

Roadless areas protect human health and safety by minimizing ground-disturbing activities that cause vehicle emissions, reduce visibility and air quality, and/or diminish water quality. Healthy watersheds catch, store, and safely release water over time, protecting downstream communities from flooding; providing clean water for domestic, agricultural, and industrial uses; and helping to maintain an abundant and healthy fish and wildlife population. The Forest Service estimates that only 40% of its inventoried roads are fully maintained to the safety and environmental standards for which they were designed (NMDGF 2006a). In New Mexico, there is currently a \$273 million maintenance backlog on Forest Service roads, and of the 24,800 miles of Forest Service roads in New Mexico, only 4,240 miles, or 17%, receive annual maintenance (NMDGF 2006a).

National Forest System lands contain watersheds that are important sources of public drinking water. According to the Forest Service, inventoried roadless areas within the National Forest System contain all or portions of 354 municipal watersheds contributing drinking water to millions of citizens (USFS 1999). Maintaining these areas in a relatively undisturbed condition saves downstream communities millions of dollars in water filtration costs. Careful management of these watersheds is crucial to New Mexico's maintaining the flow and affordability of clean water to a growing State population.

Many of the roadless areas in the State fall within “water supply” watersheds. New Mexico’s roadless areas occur within watersheds that serve tens of thousands of people. The Santa Fe River watershed is one of many such watersheds that provide New Mexico communities with clean water for municipal use. This watershed provides Santa Fe, the State’s capital city with a population of 62,203, with nearly 40 percent of its water resources (Steelman and Kunkel 2004). Portions of the headwaters and upper reaches of this river are found within or adjacent to roadless areas, which protect the watershed from degradation. “In New Mexico, inventoried roadless areas are components of the headwaters for most of the state’s major rivers, including the Pecos, Gila, Canadian and Chama Rivers...” (NMDGF 2006a).

Our petition provides exceptions for the construction and reconstruction of roads in inventoried roadless areas to protect public health and safety. Some notable exceptions include protecting public human health and safety in cases of imminent threat of flood, fire, or other catastrophic events or to improve a road that is determined to be hazardous or unsafe for travel.

### ***C. Reducing hazardous fuels and restoring essential wildlife habitat***

Many fire ecologists believe that unroaded areas have less potential for larger, higher intensity, more severe forest fires than roaded areas (NMDGF 2006a); this conclusion is based on several factors. Fire suppression has been focused more in roaded than unroaded areas, allowing more fuels to accumulate in the roaded areas. In some areas, past logging practices have left many acres with additional dead and downed woody material on the ground. Also, timber stands are generally more dense in roaded than unroaded areas, particularly in logged areas that have regenerated; these regenerated stands are often highly susceptible to forest fires (USFS 1999). In addition, analysis conducted by the Forest Service has determined that inventoried roadless areas throughout the United States would not be a fuel treatment priority for 20 years because of the remote locations of these areas. “The need for treatment within millions of acres of wildland urban interface areas to protect human lives and property would be much higher” (NMDGF 2006a).

New Mexico supports proactive forest management in inventoried roadless areas to improve fire regime conditions so that wildland fires are less intense and fire effects are less severe. In New Mexico, EMNRD’s 2005 comments on the Proposed Forest Plan Amendment for the Valle Vidal supported the Carson National Forest’s proposal to use naturally ignited fires for fire use to achieve resource benefits and to allow fire to play its natural role to the extent possible. Furthermore, the management approach in section 2 provides a reasoned approach to managing hazardous fuels and potential wildfires in roadless areas. These criteria, in part, allow for road construction and reconstruction to maintain or restore the characteristic of ecosystem composition and structure, such as reducing the risk of uncharacteristic wildfire effects.

Roadless areas are more likely than roaded areas to support greater ecosystem health, including the diversity of native and desired nonnative plant and animal communities,

due to the absence of disturbances caused by roads and accompanying activities. Inventoried roadless areas also conserve native biodiversity by serving as a bulwark against the spread of nonnative invasive species.

Roadless areas in New Mexico function as biological strongholds and refuges for many species dependent on large, undisturbed areas of land. Of the nation's species currently listed as threatened, endangered, or proposed for listing under the Endangered Species Act, approximately 25 percent of animal species and 13 percent of plant species are likely to have habitat within inventoried roadless areas on National Forest System lands. In the Forest Service's Southwestern Region 3, 57 percent of threatened, endangered, and proposed species under the federal Endangered Species Act and 54 percent of the Forest Service sensitive species are dependent on habitat within or affected by inventoried roadless areas (NMDGF 2006a).

This petition provides exceptions for the construction and reconstruction of roads located in inventoried roadless areas to improve threatened, endangered, proposed, or sensitive species habitat.

***D. Maintaining existing facilities and access to public and private property***

This petition guarantees all existing rights of access to New Mexico's National Forest inventoried roadless areas. Existing access either by foot or vehicle are completely unaffected by management provisions within this petition. Our petition does not affect roads needed pursuant to reserved or outstanding rights or as provided for by statute or treaty. Maintenance of classified roads within inventoried roadless areas is also permissible.

***E. Technical corrections to existing maps such as boundary adjustments to remove existing roaded areas***

As discussed in section 2, our petition provides management direction for addressing "classified roads" in existing inventoried roadless areas that were accidentally omitted during the original inventory. Using geographical information system (GIS) data that the Forest Service provided, we determined the extent of "classified" roads within both inventoried roadless areas and the Valle Vidal. In summary, this analysis of Forest Service GIS data yielded 1,018 miles of "classified" roads within all inventoried roadless areas and 173 miles of "classified" roads in Valle Vidal.

As prescribed in our petition, roadless area boundaries shall not be changed where these roads exist, but the roads may continue to be maintained and reconstructed to meet existing uses as described in Forest Plans. We expect to work through any discrepancies between our data and that of the Forest Service through rulemaking.

#### **4. Description of how the recommended management requirements identified in section 2 of this petition differ from existing United States Forest Service land management plans or policies related to inventoried roadless area management, and how they would comply with applicable laws and regulations**

Existing access to inventoried roadless areas either by foot, jeep, or off-highway vehicle would be completely unaffected by our petition. New Mexico has about 1.6 million acres of inventoried roadless areas, which represents 17 percent of the total acres of Forest Service land in the State. Information included in the FEIS and listed on the U.S. Forest Service Roadless Rule website ([www.roadless.fs.fed.us](http://www.roadless.fs.fed.us)) identifies 1,101,000 acres currently allocated to a prescription that does not allow road construction and reconstruction, and 430,000 acres allocated to a prescription that allows road construction and reconstruction. In addition, 66,000 acres of inventoried roadless areas in the State are recommended for wilderness designation.

In New Mexico, Forest Plans were last revised between 1985 and 1987 and are scheduled for revision again in 2007. An exception is the Coronado National Forest, which is located primarily in Arizona: this forest began its plan revision in January 2006. Management prescriptions within Forest Plans for the Carson, Coronado, Gila, and Santa Fe National Forests do not conflict with the 2001 Ruling.

Our petition would prohibit timber cutting, sale, or removal in inventoried roadless areas, except under limited conditions. Under the existing *Cibola National Forest Land and Resource Management Plan* (USFS 1985), portions of the Mount Taylor (6,355 acres), Datil (13,957 acres), and Madre Mountain (19,839) inventoried roadless areas would be managed with an emphasis on timber production; however, no commercial sales or road building are planned for these areas.

The Lincoln National Forest had a timber sale planned within inventoried roadless areas between 2000 and 2004. Timber extraction would have used existing roads within inventoried roadless areas and caused the construction of an additional 2.0 miles of temporary roads to facilitate the harvest. The Forest Service reported that a total of 1.63 million board feet of planned timber sales were targeted in inventoried roadless areas between 2000 and 2004 in New Mexico. Again, our petition would restrict road building and commercial timber harvesting activities in inventoried roadless areas, except under certain circumstances.

As New Mexico does not rely on its inventoried roadless areas as sources of wood fiber, we anticipate the general prohibition on timber cutting would have few negative social or economic impacts. In 2001, the Forest Service estimated a loss of only two jobs associated with planned timber sales in inventoried roadless areas. Moreover, for the past six years, the Forest Service has suspended road construction and timber harvest in inventoried roadless areas. It is exceedingly unlikely that this proposal would affect management of timber resources in inventoried roadless areas.

## **5. Description of how the recommended management requirements compare to State or local land and resource management plans**

The lead agencies in New Mexico responsible for protecting natural resources and making them accessible to our citizens include EMNRD and the New Mexico Department of Game and Fish (NMDGF). The goals of the EMNRD include growing healthy, sustainable forests and managing them for a variety of users and ecologically sound uses and improving the State Park system into a nationwide leader that protects New Mexico's natural, cultural, and recreational resources for posterity.

There is an inventoried roadless area within the Lincoln National Forest that is adjacent to the Oliver Lee Memorial State Park. In 2006, the Director of EMNRD, State Parks Division, issued a declaration concerning potential impacts to the Oliver Lee Memorial State Park if road construction is permitted on the adjacent inventoried roadless area (Appendix C). In this declaration, the Director identified areas of concern related to road building within the Lincoln National Forest inventoried roadless area. These concerns include the impact of roads on natural, cultural, and aesthetic resources and the development or use of resources that a new road implies.

In the declaration, the Director states that “[r]oad construction in a national forest is frequently a preliminary step for resource development and utilization. Such potential utilization raises several resource management issues that could directly impact Oliver Lee Memorial State Park.... Of particular concern would be any proposed development on the watershed in the Lincoln National Forest portions of Dog Canyon, which would affect the springs in the lower canyon riparian areas ....”

The NMDGF provides extensive, on-going programs to manage wildlife habitat, restore and manage populations, provide outreach programs and information materials, conserve at-risk species, develop regulations, and provide necessary law enforcement to ensure all of these resources remain healthy and available. In the *New Mexico Comprehensive Wildlife Conservation Strategy* (NMDGF 2006b), the Department of Game and Fish contends that roads contribute significantly to habitat loss and fragmentation, reduction of useable deer and elk habitat, direct wildlife mortality, increased noise and visual disturbance for wildlife, and increased poaching.

In 2006, the NMDGF Deputy Director issued a declaration concerning the significant impacts that roads in National Forests in New Mexico have on wildlife populations and wildlife habitat (Appendix D). Of specific concern is the potential impact of new road development in inventoried roadless areas on properties that the NMDGF manages. Several of the properties managed by the Department are in proximity to inventoried roadless areas on National Forests. In the declaration, the Director states “[o]ne of the key management actions on these properties is closure to public vehicle use or limiting vehicle use to restricted areas in order to reduce impacts to wildlife and wildlife habitat.... Any new road development on USFS land adjacent to these areas could deter or prevent their continued ability to provide secure, effective habitat.”

New Mexico prepared a State Water Plan in 2003 at the Governor's direction. This plan offers a blueprint for the State to both conserve and increase the supply of water in the twenty-first century. Primary goals within this plan include protecting, maintaining, and enhancing the quality of the State's waters and promoting river riparian and watershed restoration that focuses on protecting water supply and improving water quality. The State recognizes that protecting and enhancing both the quality and quantity of water is critical to sustaining the State's residential population, business, and agriculture for present and future generations and that "[o]nce water becomes contaminated, it is extremely expensive to restore to its original quality, and in many cases restoration is not possible at any cost" (NMISC 2003).

Roads can cause reductions in water quality and have long been recognized as the primary human-caused source of soil and water disturbances in forested environments (NMDGF 2006a). "Roads contribute more sediment to streams than any other land management activity" (NMDGF 2006a). Municipalities in New Mexico that rely on water for consumption from inventoried roadless areas on National Forests include Albuquerque, Santa Fe, and Taos. The management approach described in section 2 would provide a sound policy for accomplishing the goals of the State Water Plan.

Two other plans in the State that would benefit from the management approach described in section 2 include the New Mexico Non-Native Phreatophyte/Watershed Management Plan and the New Mexico Forest and Watershed Health Plan. In part, the visions for these plans include restoring ecosystem health and the resiliency of natural processes (e.g., wildfire) through the application of landscape-scale management actions. More specifically, the Non-Native Phreatophyte/Watershed Management Plan focuses on eradicating invasive plant species (e.g., tamarisk) in riparian areas. It is estimated that 500,000 acres of New Mexico's five principle watersheds are infested with invasive plant species (NMDA 2005). "Continued road building in National Forests poses the greatest risk for increased spread of non-native invasive species due to the disturbance associated with roads. Continued construction would allow a corresponding increase in the adverse ecological effects associated with establishment of invasive species, such as habitat alteration, replacement of native species, and alteration of ecosystem processes" (NMDGF 2006a).

New Mexico's petition for full protection of inventoried roadless areas is consistent with our State policies. In addition, local land-use plans do not cover management of federal lands, so inconsistencies with local plans are not expected.

## **6. Effect on fish and wildlife that inhabit the inventoried roadless areas**

In 2006, as part of developing this recommendation, the Governor commissioned NMDGF to describe the positive and negative effects to both fish and wildlife and fishing and hunting associated with this proposal. That report is provided in Appendix B, and excerpts from it are incorporated in appropriate sections of the petition.

Inventoried roadless areas provide large, relatively undisturbed blocks of important habitat for a variety of terrestrial and aquatic wildlife and plants, including hundreds of threatened, endangered, and sensitive species. In addition to their ecological contributions to healthy watersheds, many inventoried roadless areas function as biological strongholds and refuges for a number of species and play a key role in maintaining native plant and animal communities and biological diversity. Inventoried roadless areas are crucial to the recovery of rare fish and wildlife species in New Mexico such as Rio Grande cutthroat trout. “New Mexico’s two native trout species, the Rio Grand cutthroat trout and Gila trout, are both found primarily in high elevation wilderness or roadless area strongholds” (NMDGF 2006a). Species richness and native biodiversity are more likely to be effectively conserved in larger undisturbed landscapes, such as inventoried roadless areas.

As human-caused fragmentation increases, the amount of core wildlife habitat decreases. Roads adversely impact wildlife by increasing habitat loss and fragmentation, introducing competitors and predators and facilitating poaching (NMDGF 2006b). This fragmentation results in decreased connectivity of wildlife habitat and wildlife movement, isolating some species and increasing the risk of local extirpations or extinctions. Inventoried roadless areas serve as habitat for threatened, endangered, and sensitive species and as biological strongholds. For example, 220 species that are listed as threatened, endangered, or proposed for listing under the Endangered Species Act and 1,930 sensitive species identified by the Forest Service rely on habitat within inventoried roadless areas. As noted under paragraph 3(c) in the Forest Service’s Southwestern Region 3, 57 percent of threatened, endangered, and proposed species under the federal Endangered Species Act and 54 percent of the Forest Service sensitive species are dependent on habitat within or affected by inventoried roadless areas (NMDGF 2006a).

Inventoried roadless areas provide unique, high-quality hunting and fishing opportunities. “This is because they serve as core habitat areas for game animals and cold-water fish” (NMDGF 2006a). According to the Bureau of Land Management, Gunnison Field Office, elk use declines in areas adjacent to roads for distances from a quarter of a mile to 1.8 miles. It states that, as road and off-road vehicle trail densities increase in an area, the elk habitat’s quality and size decline significantly, eventually affecting the elk populations’ quality and size. Without continued protection of roadless status on inventoried roadless areas, elk populations are likely to decrease in these areas and within the Valle Vidal, which is home to the largest elk herd in New Mexico.

The impact of new road construction in roadless areas on elk and other wildlife species would also affect the hunting and wildlife viewing economies of New Mexico. In 2001,

671,000 people spent more than \$558 million on wildlife viewing, and 45% of residents older than 16 participated in wildlife-associated recreation in New Mexico (NMDGF 2006a). In 2001, retail sales associated with hunting in the State totaled \$196,004,211, which generated 4,057 jobs and \$3,082,134 in State income taxes (IAFWA 2002). “Total wildlife expenditures in New Mexico in 2001, including in-and out-of-state permits for hunting, fishing, and trapping, exceeded 1 billion dollars” (NMDGF 2006a).

In the *New Mexico Comprehensive Wildlife Conservation Strategy* (NMDGF 2006b), the Department of Game and Fish suggests that key areas upon which to focus conservation efforts in New Mexico may include areas in the boot heel region of southwestern New Mexico. Within the State’s boot heel, there is an inventoried roadless area within the New Mexico portion of the Coronado National Forest. Here, the Peloncillo Mountains are one of twelve widely scattered mountain ranges or "sky islands" that rise dramatically from the desert floor and support plant communities as biologically diverse as those encountered on a trip from Mexico to Canada (New Mexico Wilderness Alliance 2006). In this area, many Sonoran and Sierra Madrean species reach their eastern limit, Chihuahuan and Great Plains species reach their western limit, and Mexican species reach their northern limit. In addition, the Peloncillo Mountains serve as a wildlife corridor for rare and wide-ranging species, such as jaguar.

Last, as discussed under paragraph 5, the Oliver Lee Memorial State Park is adjacent to an inventoried roadless area in the Lincoln National Forest, which would have been protected from road construction under the 2001 Rule. The Park is set against the west-facing escarpment of the Sacramento Mountains in southern New Mexico and includes part of Dog Canyon. Dog Canyon is one of the primary park attractions and home to a variety of plants and animals. In addition, Dog Canyon has flowing water year-round. In his declaration, the Director of the EMNRD, State Parks Division, stated that “[a]ny road building activities on the adjacent properties could have adverse effects on the park’s visitation and management of these (*sic*) resources.”

## **7. Public involvement efforts the State of New Mexico has taken during the development of the petition**

New Mexico’s requests to the United States Department of Agriculture for additional resources to convene a public process in developing this petition went unheeded. Governor Bill Richardson sent two letters to Secretary of Agriculture Mike Johanns on August 10, 2005, and February 3, 2006, formally requesting funds to implement the process required for a state-specific rulemaking petition and to engage the people of New Mexico in this process. Furthermore, New Mexico EMNRD Cabinet Secretary Joanna Prukop sent a letter to Forest Service Regional Director Harv Forsgren on November 22, 2005, making a similar request. In spite of these formal requests not resulting in funding being provided and in spite of the fact that the substantive provisions of the 2005 roadless rule do not require *any* public involvement, New Mexico engaged in a collaborative effort to make decisions concerning the management of inventoried roadless areas in the State. Our intention is to expand on these efforts through the notice and comment provisions of a subsequent rulemaking.



On both a national and State level, the 2001 Rule was thoroughly examined and enthusiastically supported by the American public. The 2001 Rule was finalized after years of scientific study, 600 public hearings (including 22 local hearings in New Mexico), and a record 1.6 million comments supporting the Rule. The result of these public hearings in New Mexico was more than 20,000 comments, with about 95 percent favoring continued protection (i.e., prohibiting new road construction) of the existing roadless areas in National Forests in New Mexico.

As part of developing this petition, New Mexico continued this collaborative effort by working with State and local agencies, tribes, organizations, and the public. The EMNRD and NMDGF held a hearing in Albuquerque on April 26, 2006, to both educate the public about the petition and to receive input. In addition, EMNRD accepted comments from all interested parties until May 1, 2006. The public hearing and the solicitation of comments were advertised in a display ad in the Albuquerque Journal, the statewide newspaper. In addition, a press release was sent to newspapers throughout the State, and notice was posted on EMNRD and NMDGF's websites. The results of this public hearing and open comment period were EMNRD receiving a total of 870 submittals (e.g., emails, faxes, letters). Consistent with the comments submitted for the 2001 Rule, about 95 percent favored continued protection of roadless status on the 1.6 million acres of inventoried roadless areas in New Mexico.

Common themes in support of the continued protection of the roadless status included adding the Valle Vidal as an inventoried roadless area and that such protection is good for the environment, economy, and culture of New Mexico. The five percent opposing protection of the roadless status supported multiple-use management (e.g., ATV use, timber and mineral extraction) in the inventoried roadless areas and questioned the accuracy of the inventoried roadless area maps. Off-highway vehicle users were present at the public hearing. EMNRD and NMDGF assured them that no changes would result in their access as a result of the petition.

To solicit additional input from State and local agencies, tribes, and organizations, EMNRD requested comments through a letter-writing campaign. EMNRD sent this letter to counties that include roadless areas and municipalities located near roadless areas. Counties included Bernalillo, Catron, Chavez, Cibola, Colfax, Eddy, Grant, Hildago, Lincoln, Los Alamos, McKinley, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Socorro, Taos, Torrance, and Valencia; while municipalities included Alamogordo, Angel Fire, Bayard, Capitan, Chama, Cimarron, Cloudcroft, Corrizozo, Cuba, Eagle Nest, Espanola, Grants, Jemez Springs, Las Vegas, Magdalena, Milan, Pecos, Questa, Reserve, Red River, Roy, Ruidoso, Ruidoso Downs, Santa Fe, Silver City, Socorro, Taos, and Taos Ski Valley.

In addition, the letter was sent to all tribes and pueblos in New Mexico. Additional contacts were made with industry groups such as the Forest Guardians, a community forestry organization, which supports the Governor's position. The New Mexico Oil and Gas Association also expressed support for continuing the protections of the 2001 Rule.

A total of 80 letters were sent to both governmental and nongovernmental entities to get their input on the petition. Again, consistent with previous outreach efforts, the overwhelming majority of governmental and nongovernmental entities supported protection of roadless status for environmental, economic, and cultural reasons.

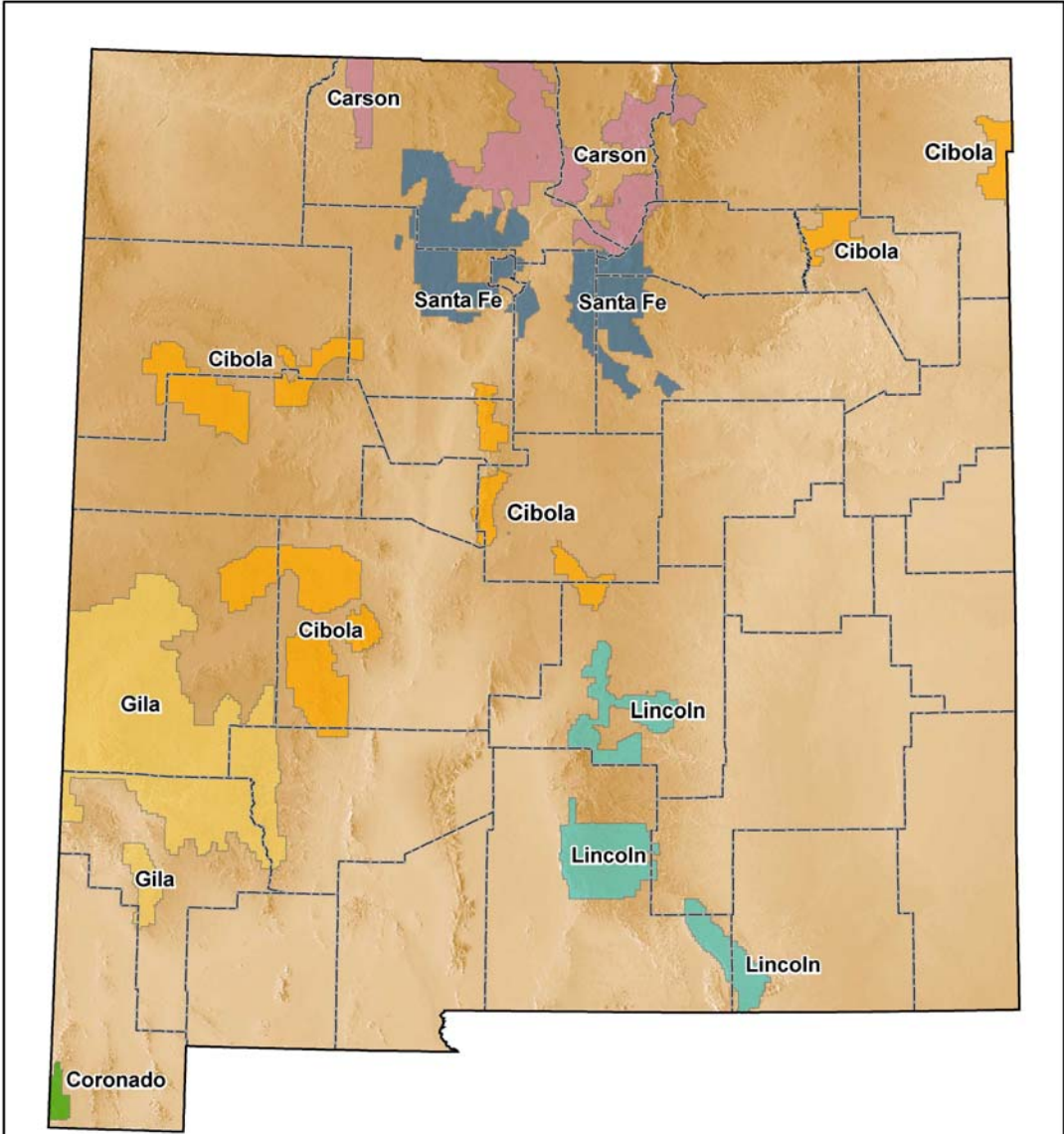
**8. Statement indicating the State of New Mexico's willingness to participate as a cooperating agency in any environmental analysis for rulemaking.**

The State of New Mexico commits to working with the United States Department of Agriculture-Forest Service as a cooperating agency in promulgating a final rule to implement this petition's provisions.

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## Appendix A

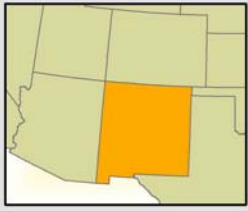


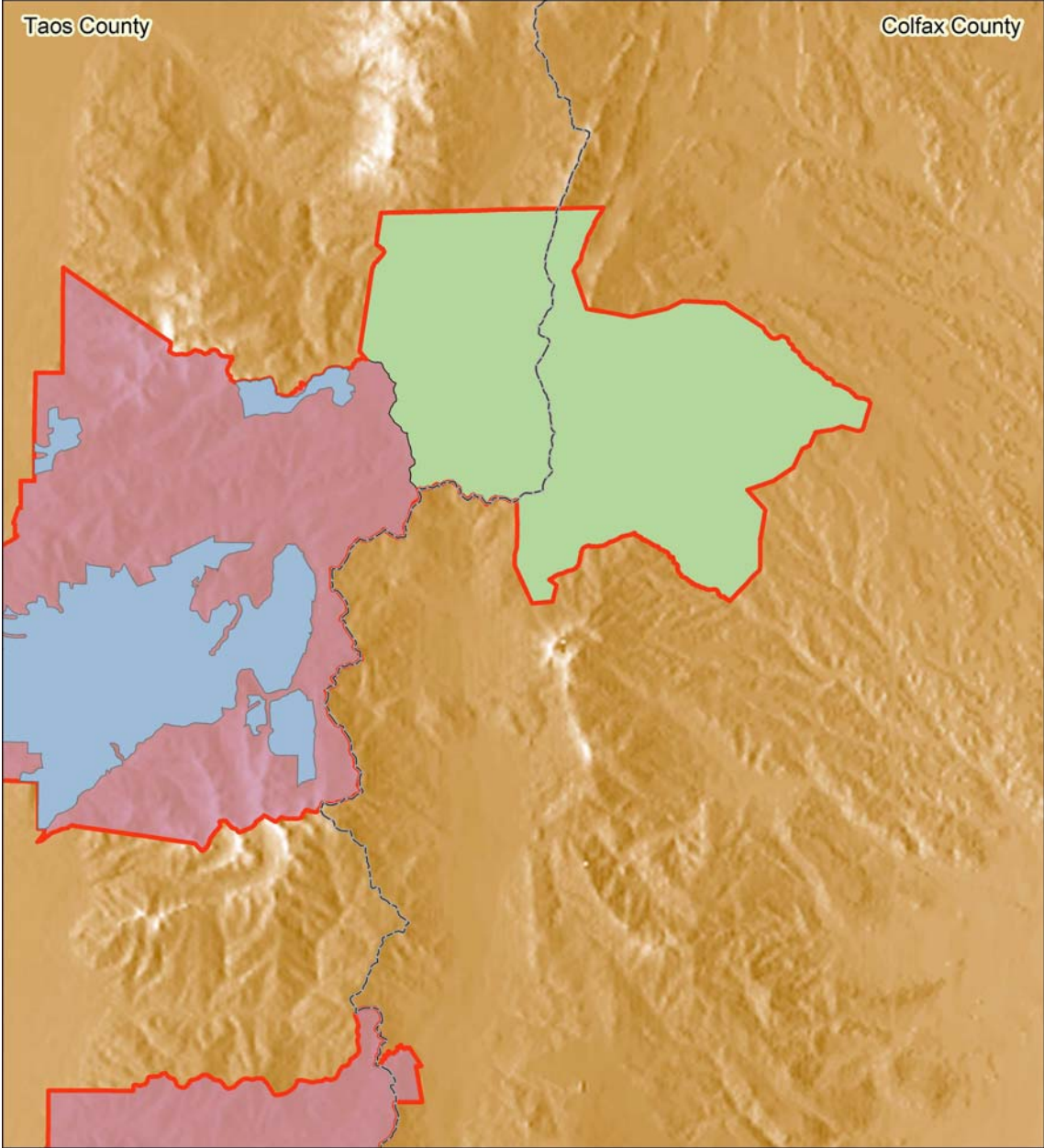
**National Forests and Grasslands of New Mexico**

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Kilometers

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Miles





**Carson National Forest's Valle Vidal**

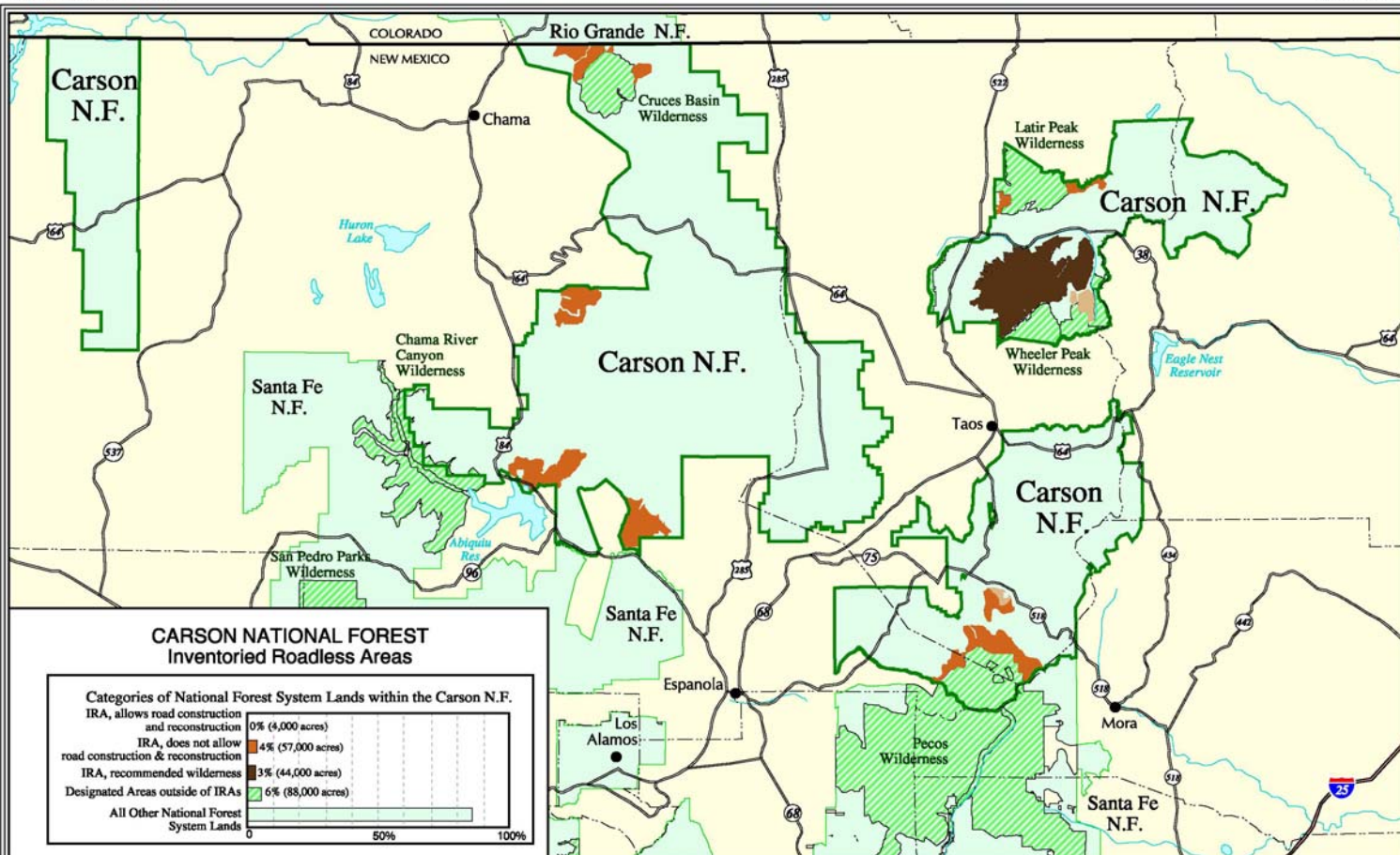
-  Inventoried Roadless Area
-  Valle Vidal Area
-  Carson National Forest
-  County Boundary

1:375,000

Kilometers  
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Miles  
0 2.5 5 7.5 10





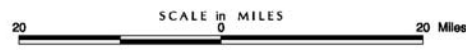
**CARSON NATIONAL FOREST  
Inventoried Roadless Areas**

Categories of National Forest System Lands within the Carson N.F.	
IRA, allows road construction and reconstruction	0% (4,000 acres)
IRA, does not allow road construction & reconstruction	4% (57,000 acres)
IRA, recommended wilderness	3% (44,000 acres)
Designated Areas outside of IRAs	6% (88,000 acres)
All Other National Forest System Lands	

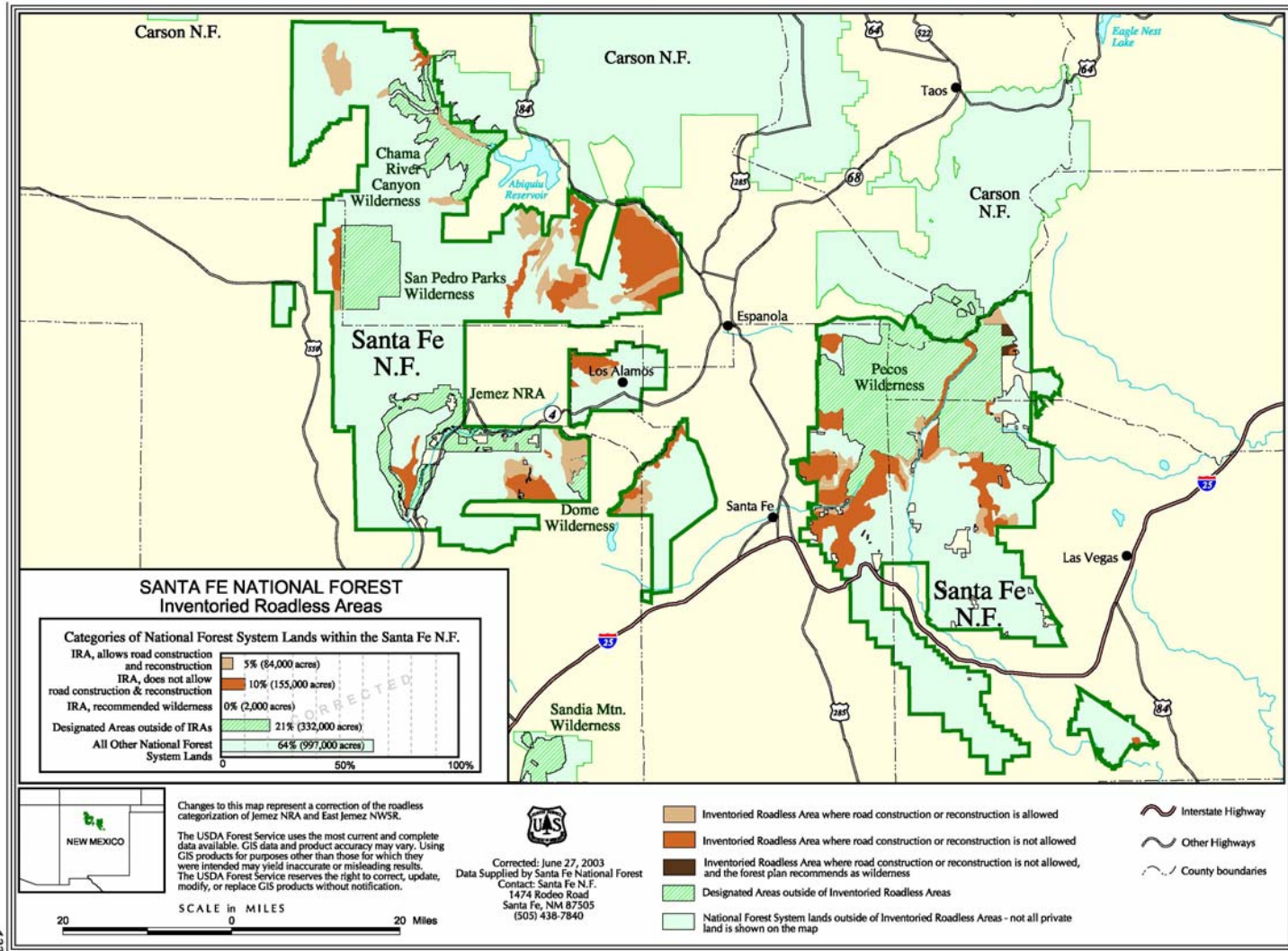


The USDA Forest Service uses the most current and complete data available. GIS data and product accuracy may vary. Using GIS products for purposes other than those for which they were intended may yield inaccurate or misleading results. The USDA Forest Service reserves the right to correct, update, modify, or replace GIS products without notification.

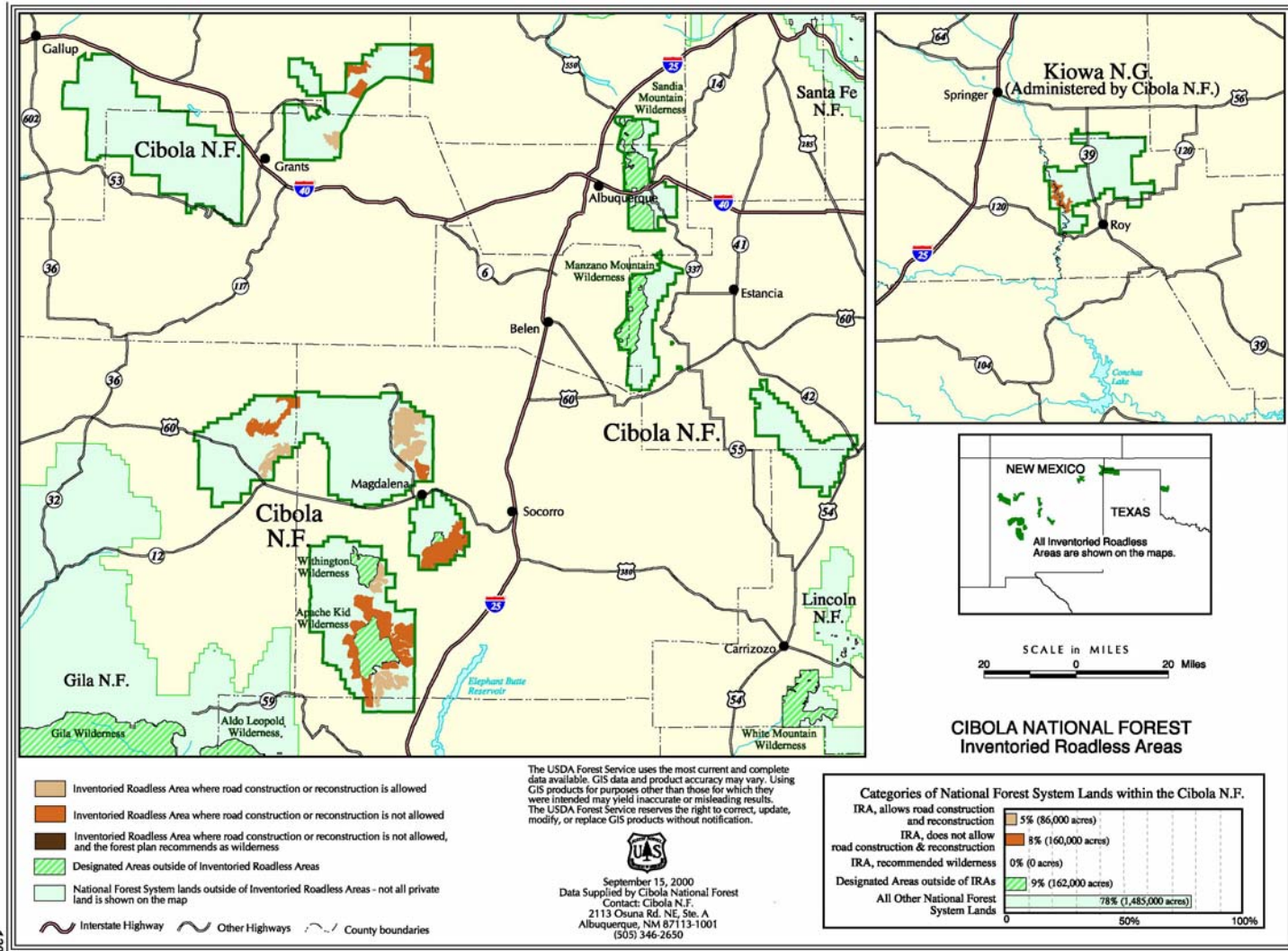
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Data Supplied by Carson National Forest  
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208 Cruz Alta Road  
Taos, NM 87571  
(505) 758-6200

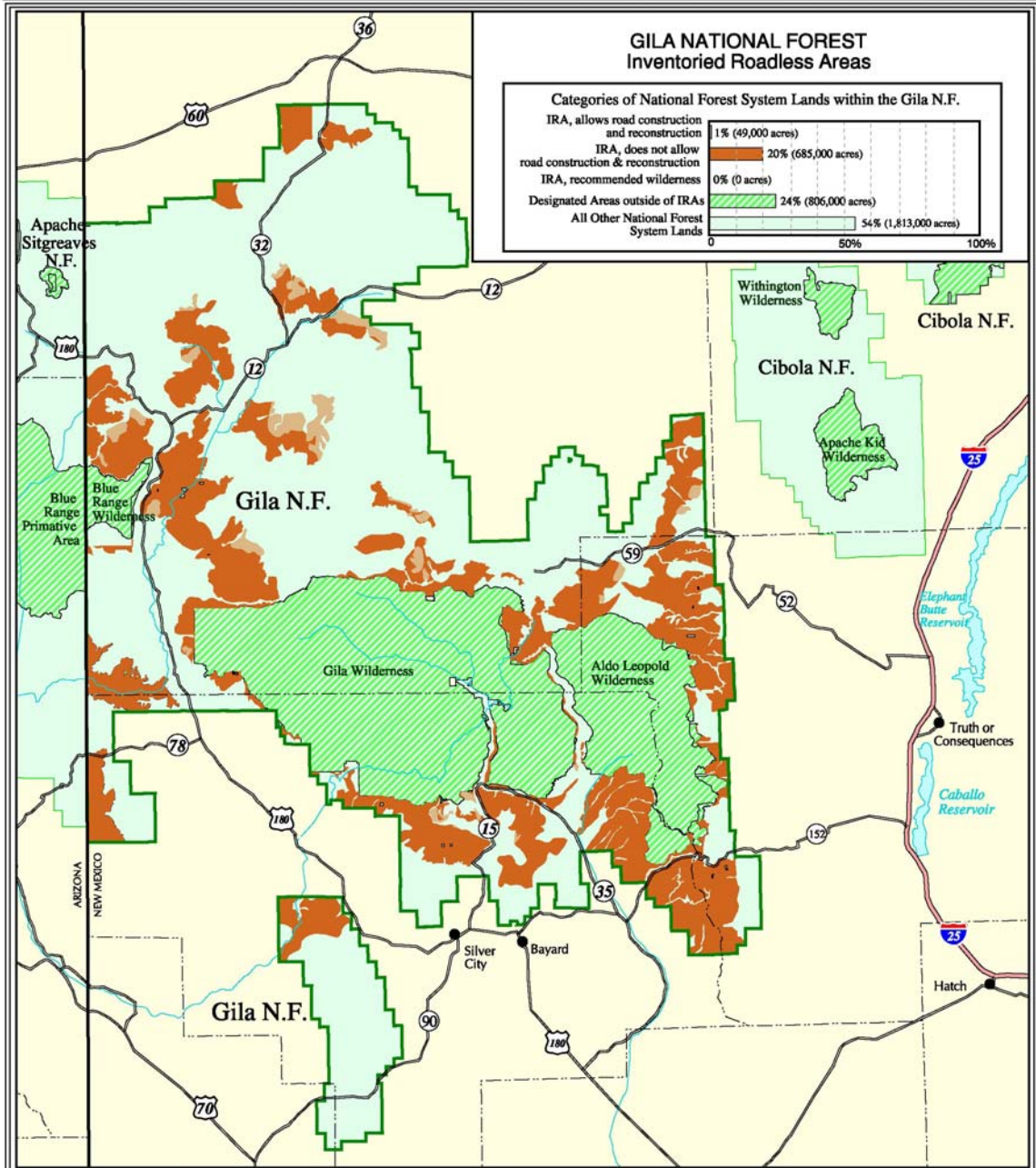


- Inventoried Roadless Area where road construction or reconstruction is allowed
- Inventoried Roadless Area where road construction or reconstruction is not allowed
- Inventoried Roadless Area where road construction or reconstruction is not allowed, and the forest plan recommends as wilderness
- Designated Areas outside of Inventoried Roadless Areas
- National Forest System lands outside of Inventoried Roadless Areas - not all private land is shown on the map
- Interstate Highway
- Other Highways
- County boundaries



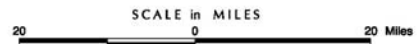






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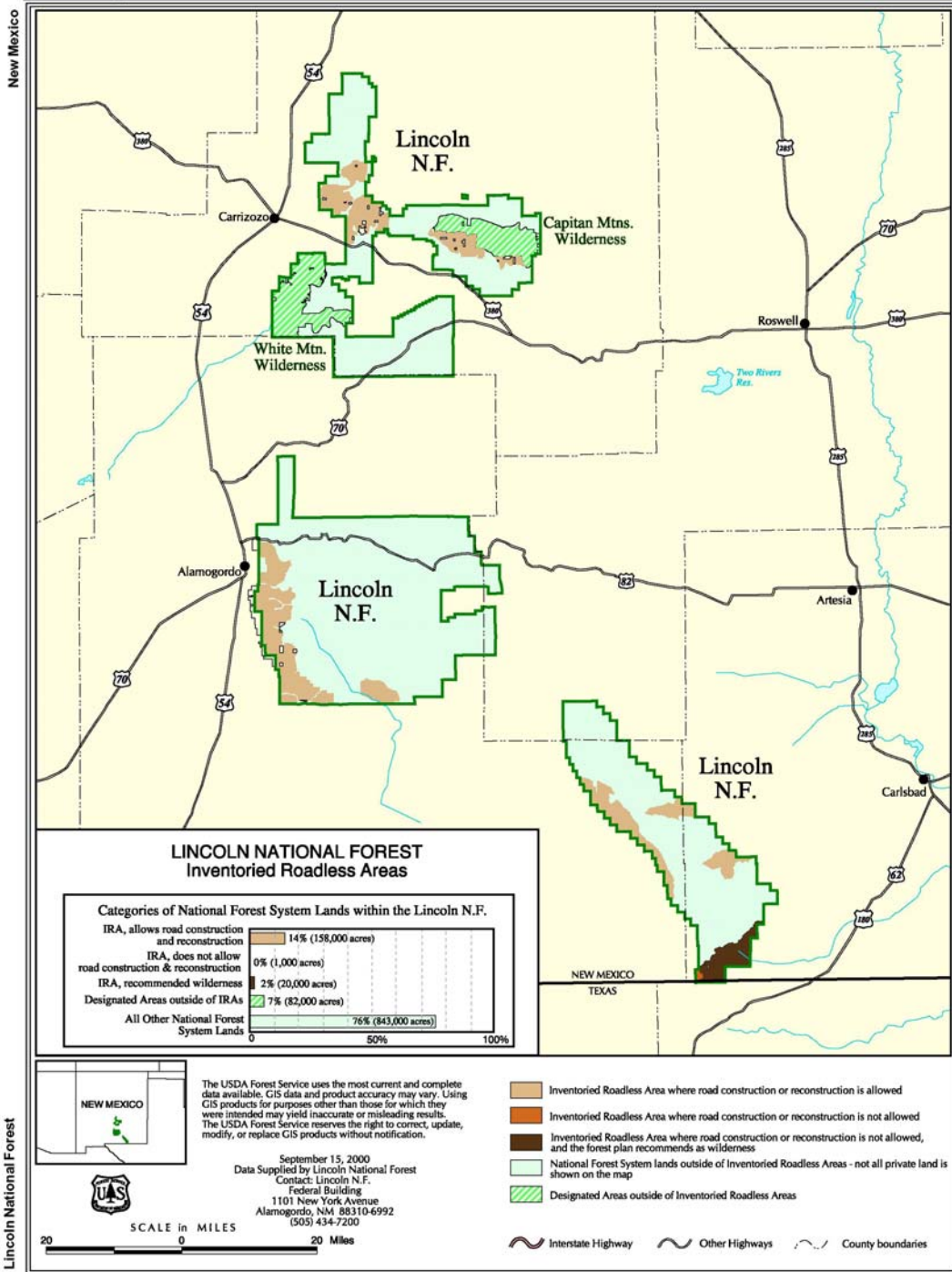
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(505) 388-8201



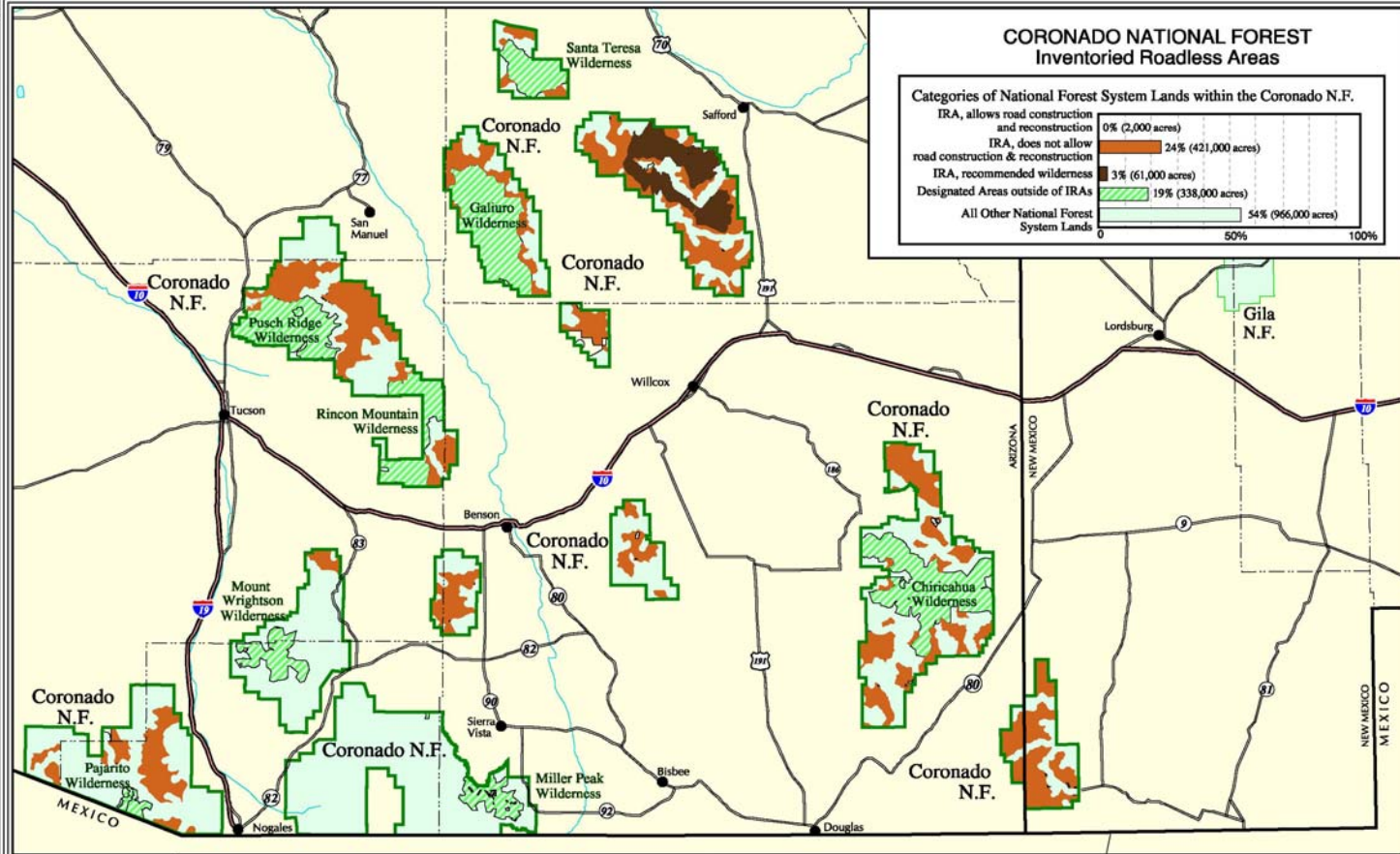
- Inventoried Roadless Area where road construction or reconstruction is allowed
  - Inventoried Roadless Area where road construction or reconstruction is not allowed, and the forest plan recommends as wilderness
  - Designated Areas outside of Inventoried Roadless Areas
  - National Forest System lands outside of Inventoried Roadless Areas - not all private land is shown on the map
- Interstate Highway    Other Highways    County boundaries

New Mexico

Gila National Forest



Lincoln National Forest



### CORONADO NATIONAL FOREST Inventoried Roadless Areas

Categories of National Forest System Lands within the Coronado N.F.

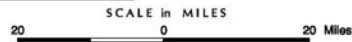
IRA, allows road construction and reconstruction	0% (2,000 acres)
IRA, does not allow road construction & reconstruction	24% (421,000 acres)
IRA, recommended wilderness	3% (61,000 acres)
Designated Areas outside of IRAs	19% (338,000 acres)
All Other National Forest System Lands	54% (966,000 acres)



The USDA Forest Service uses the most current and complete data available. GIS data and product accuracy may vary. Using GIS products for purposes other than those for which they were intended may yield inaccurate or misleading results. The USDA Forest Service reserves the right to correct, update, modify, or replace GIS products without notification.



September 15, 2000  
Data Supplied by Coronado National Forest  
Contact: Coronado N.F.  
300 W. Congress  
Tucson, AZ 85701  
(520) 670-4352



- Inventoried Roadless Area where road construction or reconstruction is allowed
- Inventoried Roadless Area where road construction or reconstruction is not allowed
- Inventoried Roadless Area where road construction or reconstruction is not allowed, and the forest plan recommends as wilderness
- Designated Areas outside of Inventoried Roadless Areas
- National Forest System lands outside of Inventoried Roadless Areas - not all private land is shown on the map
- Interstate Highway
- Other Highways
- County boundaries

## Appendix B

## Appendix C

## DECLARATION OF DAVID SIMON

I, David Simon, declare under penalty of perjury under the laws of the United States, that the following is true and correct:

1. I am Director of the State Parks Division of the New Mexico Energy, Minerals and Natural Resources Department, having been appointed to that position in January 2003. I hold a Bachelor of Arts degree in American Studies and Environmental Studies from Yale University (1985) and a Master of Business Administration from the University of New Mexico (2004). Prior to my appointment as State Parks Director, I served as Assistant Commissioner for Education and Special Projects with the New Mexico State Land Office. I also spent 16 years with the National Parks Conservation Association, focusing on protection and enhancement of the National Park System and related issues such as biodiversity and wildlife, air pollution, wilderness, water resources, cultural site protection, research and ecotourism.

2. The Oliver Lee Memorial State Park (“the park” or “OLMSP”) is owned by the State of New Mexico and administered by my division. OLMSP is set against the west-facing escarpment of the Sacramento Mountains in southern New Mexico and includes part of Dog Canyon, one of the deep ravines that slice the escarpment. Dog Canyon is home to a variety of plants and animals, along with year-round flowing water and cultural resources from habitation through many centuries by Native American peoples. The park is adjacent to an inventoried roadless area in Lincoln National Forest (“LNF”), as indicated on the map attached hereto as Exhibit \_\_\_\_\_, which would have been protected from road construction under the 2001 Roadless Rule. However, under the current management plan for LNF, road construction is permitted.

3. The potential impacts on OLMSP from road building or other development activities in the LNF inventoried roadless area adjacent to the park fall into four areas of concern: the impact on natural resources, the impact on cultural resources, the impact on aesthetic resources and the development or utilization of resources that a new road implies.

4. The western escarpment of the Sacramento Mountain in the LNF is home to many rare and endemic plants several of which are endangered in New Mexico. Any roads or development that would isolate species populations within OLMSP from other populations could affect the viability and sustainability of the isolated population. This would hold true for animal species, as well. Species of known concern are Sacramento prickly poppy *Argemone pleiacantha* subsp. *pinnatisecta*, Sacramento foxtail cactus *Escobaria villardii*, Giant helleborine orchid *Epipactis gigantea* and Alamo penstemon *Penstemon alamosensis*. A complete listing of plants and animals of concern is maintained by the Energy, Minerals and Natural Resources Department, Forestry Division and the New Mexico Department of Game and Fish.

5. The cultural resources of OLMSP and the adjacent LNF are diverse and many layered, extending from Paleo-Indian through historic Mescalero Apache to early pioneer

settlement time periods. Such resources could be put at risk by road building and development.

6. Although land aesthetics are often overlooked, this could be one of the major concerns for OLMSP. Many visitors come to hike the Dog Canyon National Recreation Trail, which begins on OLMSP but continues extensively into the LNF. Any road construction that impacts the backcountry experience would be detrimental to the visitor's enjoyment of this trail. These impacts could include, but not be limited to, the presence of motorized vehicles and human disturbance, as well as noise pollution and intrusions on the visual quality of the area. Also, pollution and dust from road traffic could impair local and regional air quality and the crystalline atmosphere of the canyon's vistas. Road construction also creates opportunities for invasive species that often are unsightly and out-compete native vegetation. This could be a major concern in Dog Canyon, which is relatively pristine compared to other areas.

7. Road construction in a national forest is frequently a preliminary step for resource development and utilization, as well as increased human activity. Such potential utilization raises several resource management issues that could directly impact OLMSP. Grazing permits, private land development in the LNF, logging or municipal water right allotments, all have the potential of adversely affecting OLMSP and its adjacent properties. Of particular concern to OLMSP would be any proposed development on the watershed in the LNF portions of Dog Canyon, which would affect the springs in the lower canyon riparian areas and within the park.

8. Road construction in a national forest frequently increases public access and human activity. Easier public access frequently exacerbates resource management problems and law enforcement problems, such as litter, site disturbance, and disruptive behavior, which can include illegal and criminal behavior. All of these impacts could potentially impact OLMSP and its visitors who move between OLMSP and LNF.

9. Although OLMSP is known for its cultural and historic resources, the real beauty lies in its pristine and diverse desert and riparian habitats, which were and are the draw for human occupancy and current park visitation. Any road building activities on the adjacent properties could have adverse effects on the park's visitation and management of these resources.

Executed this \_\_\_\_\_ day of February 2006 at Santa Fe, New Mexico.

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DAVID SIMON



## Appendix D

## DECLARATION OF TOD W. STEVENSON

I, Tod W. Stevenson, declare under penalty of perjury under the laws of the United States that the following is true and correct.

1. I am Deputy Director of the New Mexico Department of Game and Fish (“DGF” or “Department”). I hold a Bachelor of Science degree in Biology and have been involved with wildlife management for 28 ½ years with DGF.

2. Beginning very early in my career, it became apparent that roads on National Forest Lands were having and continue to have significant impacts on the wildlife population and wildlife habitat. In the Carson National Forest for instance many U.S. Forest Service (“USFS”) lands were heavily logged during the 1900’s. Roads were constructed throughout the forest in order to remove the timber resources. Up until the late 1970’s, many of the forest areas were closed during much of the year to vehicle access due to road conditions and inclement weather. This began to rapidly change with the availability and affordability of 4 wheel drive vehicles and was exacerbated by the development and availability of snowmobiles and “All Terrain Vehicles” (ATV’s). Today roads that were once closed for several months out of the year are used for recreational and other purposes 365 days per year. Additionally many of the roads that the USFS has attempted to close over the years with a variety of techniques have continued to be used due to limited resources for enforcement.

3. DGF has conducted significant research within the state and extensively reviewed literature to analyze the effects of roads on wildlife and wildlife habitat. The preponderance of literature demonstrates adverse impacts of increased road densities on wildlife and both terrestrial and aquatic habitats. Numerous research papers describe (1) landscape scale adverse impacts of roads to fish and other aquatic species due to various landscape alterations caused by road building; (2) adverse impacts of roads on aquatic and terrestrial habitats from fragmentation or disruption of migration corridors; (3) adverse impacts to terrestrial wildlife species from mortality, alteration of reproductive behavior and success, and reduction or elimination of habitat effectiveness; and (4) adverse impacts of roads on habitats by acting as a dispersal mechanism for non-native and invasive species. We find these impacts occurring in New Mexico as described in the following paragraphs.

4. Most USFS roads are permanently removing approximately 14 acres of habitat per mile, resulting in a staggering loss of habitat within the National Forests in New Mexico. To cite just one example, on the Rio Grande Grant, we found that the road density was approximately 10 miles of road per square mile of land, thereby resulting in habitat loss of 140 acres per square mile (approximately 20% of the land mass, given that 1 square mile equals 640 acres). There are similar examples throughout the national forests within New Mexico. Because a number of historically closed roads were becoming consistently used by various types of vehicles including standard size 4 wheel drives and ATV’s due to the inability of the Forest Service to enforce road closures, our calculations included those roads in order to accurately assess habitat loss.

5. DGF is facing a statewide challenge regarding deer management. Mule deer populations across the state have decreased significantly over the past 20 years. The Department and State Game Commission have instituted several restrictions on deer hunting on public land in order to reduce the total number of deer harvested. Vehicle and human activities in these public land areas are not restricted and thereby create disturbance and potentially ineffective habitat for a variety of species during this critical timeframe. Roads in general cause habitat fragmentation, loss of actual habitat and a loss of secure habitats within the state of New Mexico and have likely contributed to the decline in the deer population. Roadless areas within the national forests currently provide some level of habitat security, and the Department would be very concerned about loss of these areas or any proposals that would include significant new road construction or use of effectively closed roads.

6. Additionally, DGF is actively trying to restore populations of native fish on USFS system properties throughout the state. Much of the habitat for these species has been impacted by a variety of activities. One of the primary causes of habitat degradation is erosion caused by roads and grazing in and adjacent to the riparian areas. On a statewide basis the USFS is struggling to complete adequate maintenance on existing roads to minimize erosion. This problem will be compounded if new road construction is permitted in inventoried roadless areas.

7. The Department is also concerned about properties it manages, which are owned by the State Game Commission. The Game Commission has the authority to acquire land for the purpose of propagation, preservation, protection and management of game, birds, fish and wildlife of the state of New Mexico. Many of the properties owned by the Commission are in proximity to existing inventoried roadless areas. One of the key management actions on these properties is closure to public vehicle use or limiting vehicle use to restricted areas in order to reduce impacts to wildlife and wildlife habitat within Commission-owned properties. Any new road development on USFS land adjacent to these areas could deter or prevent their continued ability to provide secure, effective habitat.

8. Finally, the Game Commission has adopted rules that require hunters, fisherman and trappers who conduct those activities on public land (*i.e.*, United States Forest Service and Bureau of Land Management) to purchase a \$5 Habitat Improvement Stamp. The monies generated from these stamps are provided to the USFS and BLM to conduct habitat improvement activities on their properties. From 1986-2004 DGF provided \$7,880,860 to the USFS and BLM. Approximately 60 % of the funds were provided to the USFS to conduct wildlife habitat improvement projects on USFS properties. Thus, DGF has a vested interest in assuring that USFS lands are properly managed in order to provide habitat for a variety of wildlife species in the state of New Mexico. The Department is very concerned about the loss of and fragmentation of additional properties within the National Forest system that could be caused by the loss of current roadless areas and the construction of new roads. We are also concerned that

habitat improvement projects in and adjacent to the roadless areas will become less effective if additional roads are constructed.

Executed this 22nd day of February 2006 at Albuquerque, New Mexico.

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TOD W. STEVENSON