

Over the years ALAA and others have asked their members to “contact your Congressman” or “write comments” for various subjects. Some time ago someone came forward and said, “if you don’t give me a sample I can copy or modify, I’m probably not going to do it because I don’t want to appear stupid.

We have told you that Congress has mandated both the U.S. Forest Service and BLM to produce a travel management plan for each parcel of public land. We asked you to sit through boring meetings and try to make sense of what is being said by government employees... Below is a short primer on what to look for and how to make sense of these meetings and comment periods that follows.

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How NEPA Works (very short version): The national forests are not allowed to just close roads and trails by claiming it’s because of the Travel Management Rule. They still have to follow NEPA regulations, which require that closure decisions must be based on a rational and complete analysis which is fully disclosed to the public. That analysis is presented in an Environmental Impact Statement (EIS) or the shorter version, the Environmental Assessment (EA). They can’t just do this ‘any old way they please’. The details of how the EIS or EA must be done are in the Code of Federal Regulations, and these have the force of law. When someone sues the BLM or Forest Service, they are usually claiming the agency violated one or more of these regulations, which means they are breaking the law. Remember, any sort of lawsuit must be based on a claim that a law has been broken.

Knowledge is Power: When you understand how these pieces fit together, you’ll have the tools to make the Forest Service and BLM follow their own rules and federal laws. You will NEVER hear the Forest Service or BLM explain any of this in a public meeting. When the public doesn’t understand how to fight back, the agencies are free to break the laws and do whatever they want. Unfortunately, the buck stops on our desk: NEPA puts the burden of watchdog on the public. There is no internal governmental review or congressional oversight that prevents the agencies from breaking these laws. If we don’t make them behave, no one else will. You will find that most local FS and BLM staff do not understand the rules and laws that govern what they do.

Why the No Action Alternative is the Heart of the EIS/EA: The regulations say the EIS or EA analysis must be done by comparing various options (called ‘alternatives’) to the current state of things (called the No Action Alternative in an EIS, or ‘Existing Condition’ in some EA’s). The cornerstone of the analysis is the No Action Alternative, because by law it must be used as the basis for comparisons. The EIS or EA must disclose the magnitude and effects of what the FS is proposing to change, and that must

be done by comparing the options (alternatives) to the baseline (No Action Alternative, or Existing Condition).

SIDEBAR: The CFR Both the FS and BLM must follow the Code of Federal Regulations. They do the details of the process a bit differently, but the basics are the same. The Code of Federal Regulations (CFR) applies to both of them. The Travel Management Rule (TMR) is only in the National Forests, it's a USFS rule. It is NOT a law. The TMR is subservient to the CFR. The CFR is divided in chapters called 'Titles'. The part of the CFR that applies to NEPA, it is Title 40, Part 1500. The BLM and FS also each have their own sections in the CFR that address NEPA regulations. Title 36 covers Parks and the USFS. Title 43 covers the D.O.I. and BLM. The 'ecfr' (electronic CFR) is at <http://www.ecfr.gov/cgi-bin/ECFR?SID=c17fb90a7b80fcd7453cb039537f8b56&page=browse>

The easiest way for the FS (or BLM) to hide the extent of road closures, is by showing a deceptive 'Existing Condition' or 'No Action Alternative' in the EIS or EA. We have read dozens of travel management EISs and EAs, and this is by far the most common tactic used to deceive the public. In a nutshell, here is how it works: Let's say your forest has 2,000 miles of roads and trails. The Forest Service will say the No Action Alternative, or Existing Condition, is 1,000 miles. Then they write 3 or more alternatives. Just to frame an example, let's say one alternative leaves 600 miles open, another leaves 800 miles open, and the last leaves only 400 miles open. The Forest Service will claim that leaving 600 miles open means 60% remains open, but that's because they are counting only 600 miles out of 1,000 miles. (And so forth, 400 miles open will be claimed as 40% open). You know that they are leaving only 600 miles open out of 2,000 miles. That means that they are closing 70%, not 40% as they claim. They are not telling the truth. (These EIS's and EA's usually have maps that only show what is being left open, not what is being closed. On a 1.5 million acre forest or BLM field office, it is difficult to compare these to real maps, to see what is being closed.)

In our example, the 1,000 miles they 'swept under the rug' are ALL CLOSED BY DEFAULT. Here's how that works. The NEPA regulations say that only the roads and trails that were included in the EIS or EA can be designated. The Travel Management Rule says any road or trail not designated is closed by default. See where this goes? The easiest way to deceive the public and close huge amounts of road and trail and to HIDE THAT, is to keep those miles OUT of the EIS or EA. This is how the NEPA regulations 'interact' with the Travel Management Rule. Those 1,000 miles of roads and trails excluded from the No Action Alternative won't be in any of the other alternatives either. Those 1,000 miles don't appear anyplace in the EIS/EA. Result: they can't be designated (NEPA) and will be closed by default (Travel Management Rule). Do you think the Forest Service didn't intentionally write the Travel Management Rule to

accomplish this? You need to consider if you are being tragically naïve. The USFS top managers in Washington are not idiots.

First Place to Look For Fraud, the No Action Alternative and Existing Condition:

These will be in the first two chapters. Easy to find these, use the word-search function in the PDF file of the EIS or EA. We have yet to see one with an honest No Action Alternative. When we challenge this with comments or appeals, the Forest Service throws back a blast of 'smoke and mirrors' about how they are allowed to choose what can be in the No Action Alternative. Once your appeal is rejected, the only way to fight this is to take them to court. We firmly believe they cannot manipulate NEPA regulations, but only a judge can decide that.

Deception in Action: The two largest forests in NM, the Santa Fe and the massive Gila (3.3 million acres) both used the same false No Action Alternative. Their EIS's both say 'we chose to define the No Action Alternative as our best estimate of where people drive now.' Huh? This is like claiming a golf course has only 5 holes if only 5 holes are being played at 7 am on a Monday. The No Action Alternative and 'Existing Condition' are the sum total of roads and trails, NOT the agency's 'guess' about which ones get the most use.

Here's how this deception translates into legal points:

-First law-breaking: they made an illegal pre-NEPA decision to keep existing legal, SYSTEM roads out of the No Action Alternative. They are not allowed to make undisclosed decisions outside of the EIS/EA. If they chose only some roads and trails to be included, that obviously required some decision process for what to keep in and leave out.

-Second law-breaking: they do not present the true Existing Condition, as required.

-Third law-breaking: corrupt analysis. All the comparisons and conclusions in the EIS are false, because they are based on rigged numbers. (false analysis)

-Fourth law-breaking: hiding the true extent of closures from the public. (failure to disclose)

-Fifth law-breaking: Failure to analyze the true impact that the closures will have on the public and on the local economy (yes, those are required parts of the analysis. If they hide 30% of the closures, they have under-stated by 30% how much recreation is being lost.)

How bad was it? The Santa Fe excluded 23% of their OWN system roads, and the Gila excluded 27% of their own roads. I'm not talking about the so-called 'unauthorized' or user-created roads. I mean their OWN roads that are in their INFRA database and transportation atlases. And then they cut down from there in the alternatives.

Result: everywhere in their EIS's where the Santa Fe and Gila are comparing the alternatives, it's a lie. For example, they'll say an alternative leaves 60% of the roads open. But it is not really a 40% closure, it's more like a 65% closure that leaves only 35% open, because the No Action Alternative is false, and rigged to be artificially low.

The even deeper deception: The Santa Fe claimed that 15% of the roads are not being used, and excluded 15% of all the system roads based on that. But in our digging in the project record, we found that the '15%' figure was based on one field survey of only 18 segments of ML-1 roads (roads that are closed to the public, for administrative use only). In that field survey, the roads engineer explicitly says that 15% is only a statistical calculation, and warns against using this figure across the forest. And what do they do? Exactly what the engineer said NOT to do. This ploy was used to eliminate over a thousand miles of roads. Which ones did they take out? Easy to see when you look at the maps. They closed roads near wilderness, roads near and in Inventoried roadless areas, roads that were the only route across large areas, and roads that were critical for connectivity. Not only did they close over 70% of the forest system roads, they closed them methodically to butcher the network. Instead of loops, we have lots of unconnected dead ends off a few main routes. Do you think that was a coincidence? They have deliberately made travel in the forest difficult and inconvenient. They have also created large blocks of land with no motorized use allowed.

The Larger Plan: The massive road closures against motorized use in the Santa Fe National Forest are creating large areas where there is no motorized use. This is setting the stage for future expansions of wilderness designations and roadless areas. Travel Management closures are just Step 1 of an even bigger lock out. The Santa Fe NF started a 'reforestation' planning project last year. This object of this project is allegedly to improve forest health. It includes obliterating (destroying) roads. In other words, they are so anti-access that they immediately started pursuing road obliteration, before the Travel Management decision was even made! When we called "Foul" on them for this, they scrambled to backtrack and change the wording. But make no mistake, the long term plan is to remove roads from the land in order to inhibit and reduce where and how the public can access the forest lands.