



JEMEZ EMERGENCY PROTECTION ORDER

REQUEST

FOR NONDISCRETIONARY CLOSURE OF FOREST ROAD 288 IN THE JEMEZ RANGER DISTRICT, SANTA FE NATIONAL FOREST, TO ALL MOTORIZED VEHICLES DUE TO CONSIDERABLE ADVERSE EFFECTS FROM MOTORIZED VEHICLES

Executive Orders 11644 and 11989

Sent via email and certified mail this date

June 1, 2010

Mr. Daniel J. Jiron,
Forest Supervisor
USDA Forest Service
Santa Fe National Forest
1474 Rodeo Road
Santa Fe, New Mexico 87505
djiron@fs.fed.us

Dear Mr. Jiron,

This Jemez Emergency Protection Order (“Protection Order”) is a request for the nondiscretionary closure of Forest Road 288 in the Jemez Ranger District, Santa Fe National Forest (SFNF) to all motorized vehicles due to considerable adverse effects from motor vehicles. The Center for Biological Diversity has long been concerned with motorized uses of this road. We joined a citizen petition to close this road, along with 26 other routes, March 30, 2009. That petition was denied, in part, because there were reportedly “few problems with this closure as the gate is strategically placed in a location difficult to get to.” *See* Forest Service 2009, Specific Comments in response to closure petition. We have been in contact with the Forest Service in the Jemez Ranger District related to ongoing concerns about this road throughout 2009.

On May 15, 2010, we presented recent evidence of violations of Forest Service Closure Order 10-147 at the New Mexico Department of Game and Fish OHV Board meeting at which Ruth Doyle and other Forest Service staff were present. The following week we were made aware of additional problems on Forest Road 288 including a broken Forest Service lock on a gate and evidence of unauthorized motor vehicle use (vehicles larger than 40 inches in width).

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We again ask for an immediate Forest Service closure order under Executive Order 11644, as amended by Executive Order 11989. The Santa Fe National Forest supervisor has a non-discretionary duty to immediately close motorized routes to off-road vehicles that are causing considerable adverse effects on soil, vegetation, wildlife, wildlife habitat, and cultural or historic resources until such time as the responsible official determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence. In the response to our closure petition on March 2009, the Forest Service did not refute our claims that considerable adverse effects were occurring on Forest Road 288, but rather relied upon the statement that few problems had occurred because of the strategically placed gate. Now, clearly, the reason for denying the portion of our March 30, 2009 petition asking for a closure of Forest Road 288 does not apply.

The preamble to Executive Order 11644 as amended, makes clear that it is the use of ORVs on public lands that are causing harm to public lands:

An estimated 5 million off-road recreational vehicles--motorcycles, minibikes, trial bikes, snowmobiles, dune-buggies, all-terrain vehicles, and others--are in use in the United States today, and their popularity continues to increase rapidly. The widespread use of such vehicles on the public lands--often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity--has demonstrated the need for a unified Federal policy toward the use of such vehicles on the public lands.

The text of the Executive Order makes clear that the duty to protect natural resources from the negative impacts of unmanaged ORVs is non-discretionary:

Section 1. *Purpose.* It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be **controlled and directed** so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

Sec. 9. *Special Protection of the Public Lands.* (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head **shall**, whenever he determines that the use of off-road vehicles **will cause or is causing** considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

Emphasis added. We therefore ask the Forest Service to immediately issue a closure order under the authority of Executive Order 11644 as amended by 11989. We incorporate by reference all sections of the Closure Petition submitted March 30, 2009 that relate to Forest Road 288, including but not limited to the following:



Ineffective closure of FR 288 to motorized use resulting in considerable resource damage.

Forest Road 288 begins at FR 289 (St. Peter's Dome Road) and ends at Los Utes Springs in upper Capulin Canyon. FR 288 was closed to motor vehicles less than 40 inches in width in 1992 from the gate in section 16 to Los Utes Springs pursuant to 36 C.F.R. 261.50, 261.54(a) and 261.55(b) (USDA/SFNF 1992). As the photos clearly show, this closure has not been enforced and significant damage is occurring as a result.

This Protection Order stipulates that FR 288 be closed to all motorized vehicles until adverse effects have been identified and eliminated and effective measures implemented to prevent recurrence of resource damage. FR 288 is within the Dome Inventoried Roadless Area and provides access to sensitive heritage sites and to a population of Rio Grande Cutthroat Trout in Capulin Canyon. Soil erosion caused by motorized vehicles in this area is severe. According to the SFNF Terrestrial Ecosystem Survey, FR 288 occurs on unstable soils where wheeled off-road vehicles cause severe erosion and significant loss of site productivity. FR 288 crosses the stream in Capulin Canyon 4 times resulting in significant degradation of water quality and aquatic habitat. FR 288 is also in Essential and Occupied Jemez Mountain Salamander habitat crucial for the long-term persistence of viable salamander populations. According to the New Mexico Endemic Salamander Team, FR 288 is causing habitat fragmentation, loss and degradation based on photographic evidence and increased use on designated routes (NMEST 2008:2). The upper portion of FR 288 is designated seasonally open to all vehicles in the SFNF Travel Management Plan Proposed Action. In addition, according to NMGFD a 604 acre wildlife impact zone is

created by FR 282 resulting in a high degree of habitat fragmentation that reduces habitat effectiveness for elk, deer, black bear and turkey.

3.4 total miles.

Additional information on Forest Road 288

Letter to NM OHV Board, read aloud at the May 15, 2010 meeting:

Dear Members of the New Mexico Off-Highway Vehicle Board,

I apologize for not appearing in person and appreciate your acceptance of this letter in my stead. I would like to ensure that the OHV Board is aware of an incident of vandalism and illegal ORV use in the Jemez Ranger District of the Santa Fe National Forest and ask for your assistance in resolving this problem.

In the Santa Fe National Forest, Forest Road 288 has been the site of repeated vandalism and illegal motorized uses for many years. This road is currently being illegally used by members of the ORV community and I am asking the New Mexico OHV Board to take immediate steps, in cooperation with New Mexico Department of Game and Fish law enforcement officers and the Forest Service, to effectively close both access points of this road and this area to illegal ORV uses.

Forest Road 288 is within the Dome Inventoried Roadless Area, providing access to important heritage sites and a population of Rio Grand cutthroat trout in Capulin Canyon. This road crosses the canyon 4 times.

According to the New Mexico Endemic Salamander Team, this road is within occupied Jemez mountain salamander habitat and is causing habitat fragmentation, loss and degradation.

According to the Terrestrial Ecosystem Survey, this road is on unstable soils and off-road vehicle uses have caused significant loss of soil productivity in the Los Utes area.

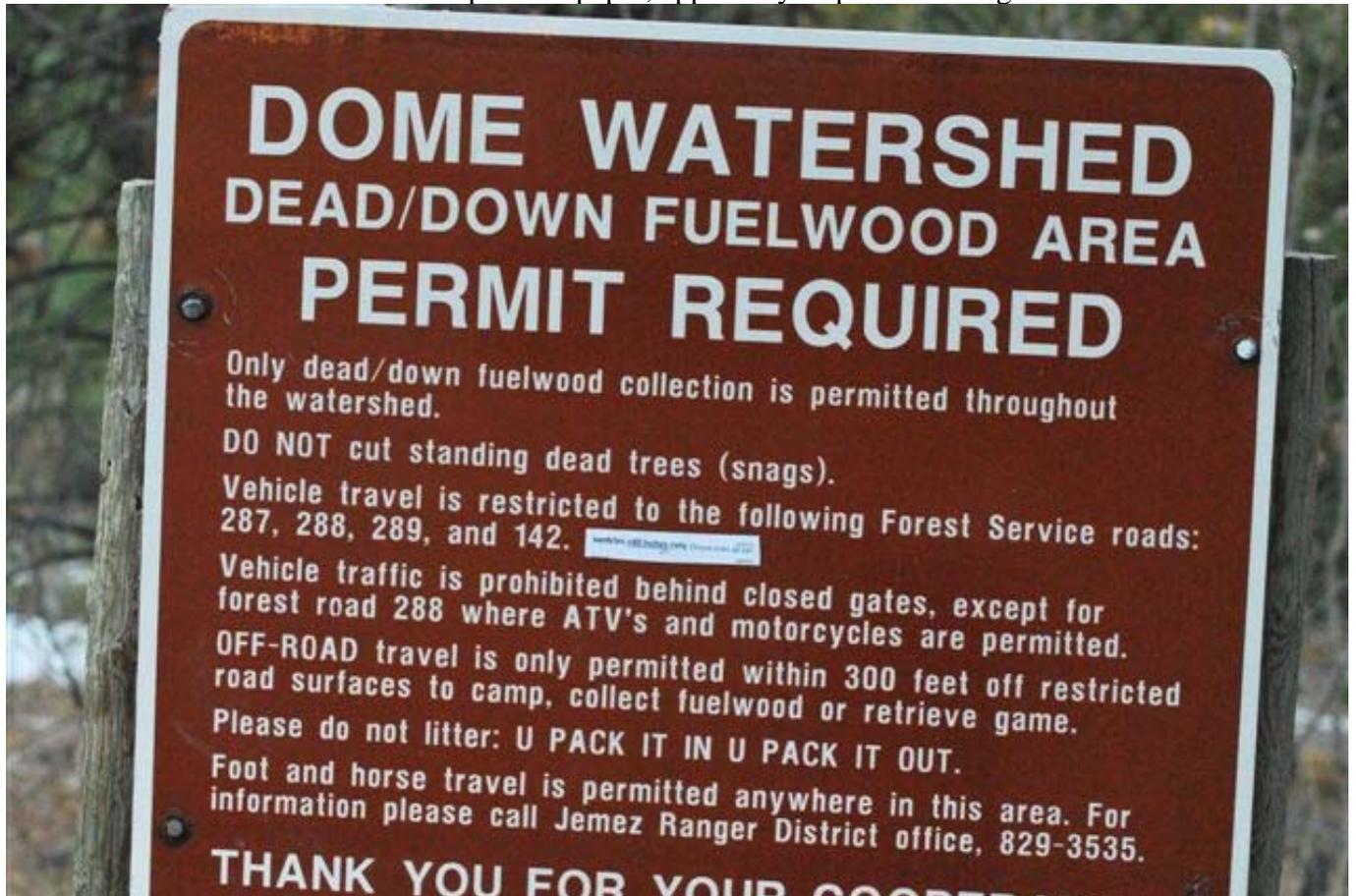
According to the New Mexico Department of Game and Fish, this road creates a 604 acre wildlife effect zone and a high degree of fragmentation, reducing habitat effectiveness for elk, deer, black bear and turkey.

In the fall of 2009, Sam Hitt, Kevin Stillman and I communicated with the Forest Service about the need to effectively close Forest Road 288 and to modify the sign on this road to reflect the current management decision to limit motorized uses to vehicles under 40 inches in width. At that time, Sam Hitt notified the Forest Service that despite a closed gate, there was a well-worn path around the gate that was clearly being used by vehicles larger than 40 inches wide.

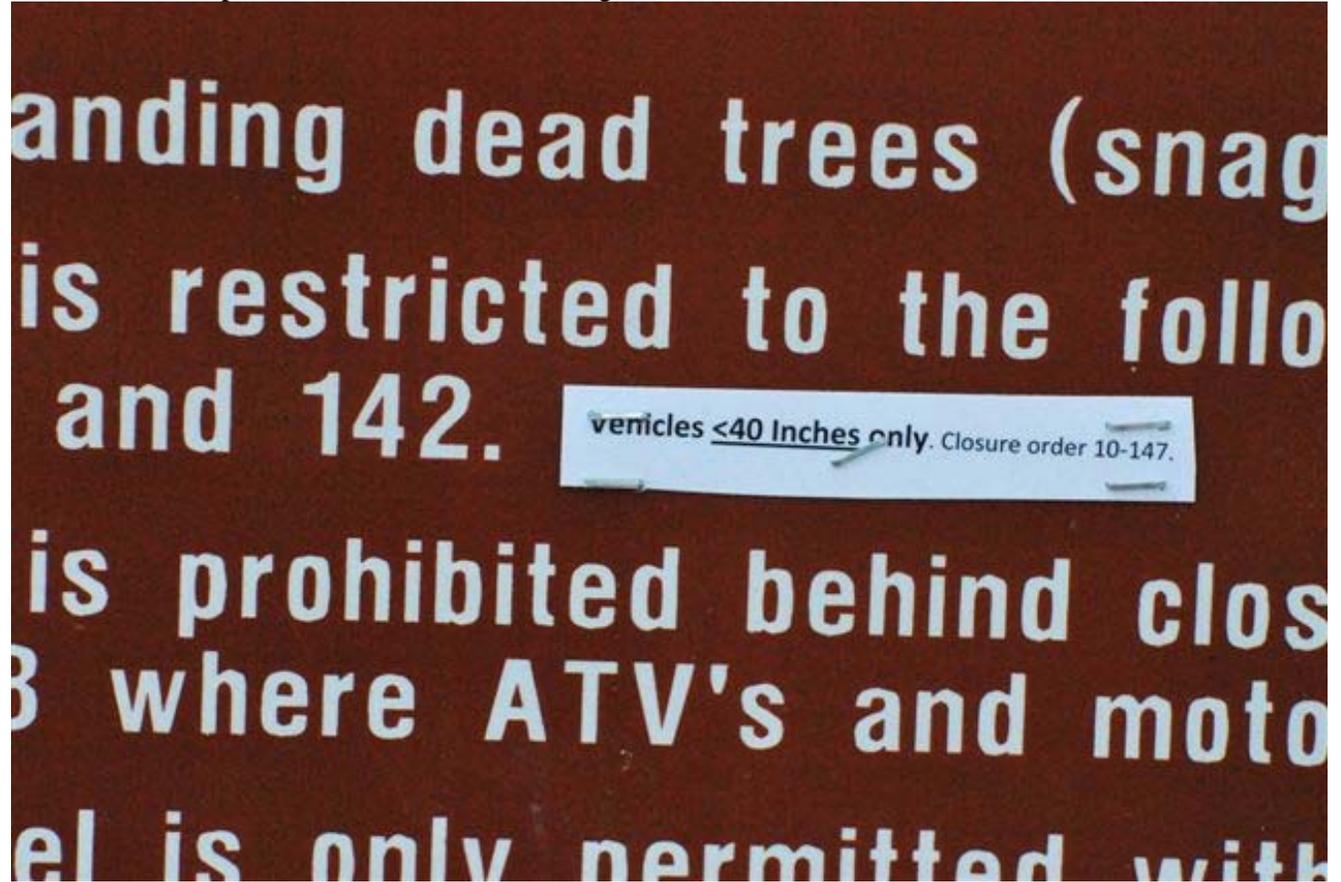
Mike Dechter, then the Project Planner for the Jemez and Cuba Ranger Districts of the Santa Fe National Forest, let us know that the Forest Service modified the sign and installed a post in the

ground to block vehicles over 40 inches wide. This is a picture of the sign, as modified by the Forest Service.

The modification consists of a small piece of paper, apparently stapled to the sign:



Here is a close up of the modification to the sign



In the winter months, Forest Road 289 is closed with a gate at the intersection of State Road 4, which serves to protect Forest Road 288 from illegal motorized uses and vandalism. However, as of May 2010, the gate at Forest Road 289 is open as a result of the winter travel restrictions being lifted. This has resulted in vandalism of the posts installed by the Forest Service in late 2009 and current, ongoing illegal ORV uses of Forest Road 288.

Here are two pictures of the recent vandalism:





I would like to suggest that the OHV Board, New Mexico Game and Fish and the Forest Service work cooperatively to implement a law enforcement strategy for this area. Part of this strategy should include a media campaign highlighting the need to comply with the few restrictions on ORVs that currently exist on Forest Service lands. This is especially important given the upcoming decision regarding travel management planning that will finally protect large areas of the Santa Fe National Forest from cross-country motorized uses. Voluntary compliance with the new rules will be key to successful implementation of the Travel Management Rule.

One of the first steps that can be taken is to install a Forest Service sign that includes the information on the “40 inches or less” restriction and meets Forest Service regulations. Clearly the piece of paper stapled to the existing sign is not effective.

Another suggestion I would like to offer is that if the motorized recreation community does not immediately begin to comply with the order restricting Forest Road 288 to vehicles 40 inches wide or less, or if vandalism of this gate or sign continues, the Forest Service implement a closure order for Forest Road 289 to all ATVs. In addition, the where Forest Road 288 comes out on FR 142 needs additional monitoring. Further, a regular schedule of monitoring and enforcement should be implemented to ensure the continued success of the closure.

Thank you for your time and consideration of this matter. It is extremely important to the Center for Biological Diversity and our more than 220,000 members and activists.

We look forward to your timely response.

/s/Cyndi Tuell

Pictures of erosion behind gate on Forest Road 288:



Broken Forest Service lock and open gate on Forest Road 288:





We look forward to your timely response to this closure petition.

Sincerely,

Cyndi C. Tuell

Cyndi Tuell
Southwest Conservation Advocate
Center for Biological Diversity