



Coalition for the Valle Vidal
P.O. Box 238
Taos, New Mexico 87571
505.758.3874 phone | 505.758.7345 fax

*******Via Hand Delivery*******

February 15, 2005

Mr. Martin Chavez
Forest Supervisor
Carson National Forest
Taos, New Mexico 87571

RE: FOREST PLANNING IN THE VALLE VIDAL UNIT

Dear Mr. Chavez:

The Coalition for the Valle Vidal – representing over 3,000 individuals and 99 businesses, organizations and local governments including the Villages of Cimarron, Eagle Nest, the Taos Town Council and the Taos County Commission – respectfully submits this letter, attached pre-scoping comments, and report, *The Local Impacts of Natural Gas Development in the Valle Vidal, New Mexico*, authored by Dr. Thomas Michael Powers of the University of Montana, for the Forest Service’s consideration.

Based on our November 8, 2004 meeting, it is clear that a considerable amount of internal agency planning activity has been underway for quite some time. Specifically, you and your staff indicated that the Forest Service was defining the proposed action and desired future conditions of the Valle Vidal. As part of that process, it was noted that the Forest Service was soliciting responses – now, before formal scoping for the National Environmental Protection Act is begun – to three questions: (1) What are people’s experiences in the Valle Vidal?; (2) How do people value the Valle Vidal?; (3) What do people want to happen in the Valle Vidal?

The attached comments respond to these questions and express certain concerns with the Forest Planning process. If you have any questions, please do not hesitate to contact us.

Sincerely,

Brian Shields
Executive Director, Amigos Bravos

Jim O’Donnell
Outreach Coordinator, Coalition for the Valle Vidal

Erik Schlenker-Goodrich
Attorney, Western Environmental Law Center

PRE-SCOPING COMMENTS OF THE COALITION FOR THE VALLE VIDAL

I. The Coalition's Core Values

Early last year, the Coalition held several meetings wherein we sought to articulate the intrinsic importance of the Valle Vidal to the Coalition and, from a broader perspective, all Americans. The product of those meetings was a set of “Core Values” that we believe should serve as a foundation of the Forest Service’s management of the Valle Vidal and any desired future conditions, management objectives and guidelines, suitability and unsuitability determinations, and adaptive management processes established for this precious public resource.

Our core values reflect how we collectively share, experience, and value the Valle Vidal. The Valle Vidal is a basis of our culture and history, reflecting our evolution as a community living within a stunning landscape. We acknowledge this reality each time we hike, camp, fish, hunt, ski, watch wildlife, raise livestock, ride horses, paint, photograph, or otherwise experience the Valle Vidal. To degrade any of the constituent parts would degrade the whole. Thus, while protection of the individual resources of the Valle Vidal – e.g., water, wildlife, forage – is important, it is the delicate *connection* between the resources and the creation of a whole fabric – a synergistic entirety – that is most critical. CBM leasing, development, and production would permanently degrade and impair that entirety.

Subsequent to completing these Core Values, we asked local communities, organizations, and businesses to give them a good look, and, if they agreed with them, to sign-on to our efforts. As a result of our efforts, well over 99 communities, organizations, and businesses have signed-onto the Core Values and can proudly call themselves members of the Coalition for the Valle Vidal. The signatories to our Core Values are identified in the attached document. Additionally, we initiated a grassroots effort to solicit the public’s views as to how they feel about the management of the Valle Vidal, asking the people to look at the core values, one by one, agree or disagree with them, and to provide, if they so desired, a personal response that we would then forward to the Forest Service. The results of that effort are being submitted to the Forest Service as they come in.

The Core Values are as follows:

The Valle Vidal of New Mexico is a national treasure, beloved by sportsmen, ranchers, outfitters and guides, local business, concerned citizens, outdoor enthusiasts, and conservation groups. In accord with the Valle Vidal's inherent beauty and value, we believe the following:

- 1. The Valle Vidal's watersheds are of paramount value, and its waters the lifeblood of the land's wildlife and our communities;**
- 2. The Valle Vidal is a vital resource to a sustainable future for northern New Mexico's rural and agricultural communities;**

3. **The Valle Vidal provides unique recreational and sporting opportunities for families, hunters, anglers, boy scouts, and other outdoor enthusiasts;**
4. **The Valle Vidal provides a home for abundant wildlife populations, and holds intrinsic ecological importance and scenic beauty;**
5. **The Valle Vidal should be managed for the benefit of the people – all of the people.**

Based on these values, we believe that it is a grave mistake to exploit this special place for the principal benefit of the energy industry. Consequently, the Valle Vidal should be closed to energy leasing and development, and thereby protected for the benefit of present and future generations of all Americans.

These Core Values reflect the Forest Service’s duty to manage the Valle Vidal for its “unique combination of wildland resources....”¹ Indeed, as promised at the dedication of the Valle Vidal in 1985, “Max Peterson, chief of the Forest Service, [said that] the Forest Service would manage the unit to protect its *prime* resource – its wildlife.”²

We note that economics are an inescapable factor in Forest Service planning and the public’s perception of the wisdom of agency decisions. In our view, the debate over oil and gas development has often been speciously presented as one of “jobs versus the environment.” However, recent economic studies have suggested that the extraction of resources from our public wildlands may, in fact, not be a wise economic decision in either the short or long term. See, e.g., The Sonoran Institute, *Prosperity in the 21st Century West* (2004) (available at www.sonoran.org/programs/prosperity.html).

Recognizing the place-based factors that play into economic analysis, and consistent with our Core Values, the Coalition for the Valle Vidal therefore commissioned an independent and objective economic analysis to better understand the interplay between land management and economics. The revealing report, *The Local Economic Impacts of Natural Gas Development in the Valle Vidal of New Mexico*, authored by Dr. Thomas Michael Powers, a Professor and Chair of the Economics Department at the University of Montana, is attached for your consideration and inclusion in the formal administrative record for the Valle Vidal Forest Planning and any subsequent planning and decision-making processes undertaken for the Valle Vidal.

¹ Multiple Use Area Guide – Valle Vidal Management Unit (1982) (Quoting item three in the Decision Notice for Acquisition of the Valle Vidal).

² Valle Vidal Assessment Process Opens, Public Response Sought, The Taos News, Thursday March 19, 1992 [emphasis added].

Notably, these Core Values, and the Forest Service's management emphasis in the Valle Vidal must be understood relative to contemporary ecological thinking – i.e., ecosystem management – which we believe is a predicate to the formation of economically sustainable communities that evidence a high quality of life. Accordingly, the Valle Vidal's management must emphasize the *restoration* of ecological structure, function, and composition and the Valle Vidal's consequent role in providing landscape connectivity in the region. This can be done by emphasizing high quality habitat, low-impact recreation, watershed protection and restoration (both ground and surface water), and visual resources. Once restored, the Valle Vidal's ecological structure, function, and composition – and role in providing landscape connectivity – must be *protected*.

Inherent to ecosystem management is the need to take a conservative approach and err on the side of protecting the ecosystem to preserve ecological structure, function, and composition. In common parlance, this is referred to as the “precautionary principle” of conservation biology, which states that precautionary measures should be taken when a certain activity or inactivity threatens to harm human health or the environment, even when science has not fully established cause and effect relationships (Meffe et al. 1994, Noss and Cooperrider 1994).³ The precautionary principle acknowledges the complexity of dynamic natural systems and the effects of human activities through the common sense principle that it is easier to prevent harm to the land than to attempt to repair it later.

Implementation of ecosystem management requires a front-end NEPA analysis of the landscape's ecosystem structure, function, and integrity at multiple temporal and spatial scales, and an analysis of disturbance regimes. Without such a requisite analysis, the efficacy of any management framework is intrinsically suspect as it invites *post hoc* analysis and can be undermined by agency bureaucratic momentum to proceed with a course of action – even if that course of action is merely a broad management framework that does not itself dictate specific decision or resource commitments. This is because the framework affects agency resource allocations, budget prioritization, selection of possible projects and activities, and, in general, functions as a ‘lens’ through which all management is viewed.

Some specific recommendations in line with this overarching emphasis are as follows:

- **Wildlife habitat:** The Valle Vidal must be managed to produce very high quality wildlife habitat, with emphasis on elk, for viewing and hunting. Additionally, the Forest Service must also ensure the diversity and viability of other native species. Seasonal closures (e.g., east side elk winter range) must continue to protect the security of critical habitats.
- **Aquatic and Riparian habitats:** The Valle Vidal must provide high quality aquatic habitat with emphasis on Rio Grande Cutthroat trout and other native species. Riparian habitats must be restored to natural conditions, including native shrub cover. Special attention should

³ Meffe, G.K., and C.R. Carroll. 1994. Principles of Conservation Biology. Sinauer Associates, Inc., Sunderland, MA; Noss, R.F., and A. Cooperrider. 1994. Saving Nature's Legacy: Protecting and Restoring Biodiversity. Island Press, Washington, DC.

be afforded to McCrystal and Ponil Creeks, both of which are eligible for protection under the Wild and Scenic Rivers Act.

- **Water:** The Valle Vidal must provide high quality surface and ground water and restore and maintain hydrological cycles (e.g., ground/surface connectivity). Healthy forest and rangeland ecosystems, along with minimal road densities, will maximize the quantity of surface and ground water recharge produced by the Valle Vidal.
- **Recreation:** The Valle Vidal must offer high quality wildlife viewing, hunting, fishing, camping, hiking, horseback riding, and nordic skiing.
- **Scenic:** The high quality visual scenic character of the Unit must be maintained with the sights of human activity and impacts minimized. There must be an absolute minimum of roads and all non-essential roads (including administrative) should be closed.
- **Solitude:** Sights and sounds of human activity, especially motorized and industrial activity, must be minimized. The Valle Vidal must be a peaceful, scenic place to visit and spend time, and it must provide the type of solitude necessary for spiritual rejuvenation.
- **Ecosystems:** The Valle Vidal must have healthy, fully functional ecosystems capable of supporting all plant and animal species which naturally occurred on the unit. Fire is essential to healthy natural ecosystems and must be part of the management direction.
- **Community stability and lifestyles:** Through management emphasis of its natural character and values, the Valle Vidal should provide long-term stable economic and life-style support for local communities. It should not foster the boom-and-bust type economy typical of heavy logging and industrial development. Livestock grazing is traditional on the Valle Vidal and an important part of local community lifestyles. Grazing in moderation and with careful management can be consistent with the wildlife and ecosystem objectives.
- **Withdraw from mineral entry:** The management direction described above is fundamentally incompatible with oil and gas development. Industrial development would preclude the wildlife emphasis the Forest Service agreed to in accepting the donation and promised by the Chief of the Forest Service. Furthermore, if the area is leased, production could continue for decades, thereby effectively precluding the public from enjoying the Valle Vidal during that time period and, consequently, irrevocably altering – for the worse – the Valle Vidal’s place within our communities. Moreover, once production ends, we are highly skeptical of the Forest Service and industry’s ability to restore the Valle Vidal: reclamation efforts by federal agencies have not demonstrated an ability to actually restore ecological structure, function, and composition to pre-disturbance regimes. The entire Valle Vidal Unit should therefore be designated as unsuitable for minerals development and formally withdrawn from mineral entry.

II. Concerns About the Forest Planning Process

We applaud the emphasis that the Forest Service is placing on public participation. Actively engaging the public is essential to ensure that the decision-making process for the Valle Vidal is open, transparent, science-based, and credible. We do note our concern that the decision-making process for the Valle Vidal is a ‘done deal’ in that the Forest Service may be forced to commit the Valle Vidal to oil and gas leasing and development given the involvement of the White House Task Force on Energy Project Streamlining.

We trust the Forest Service’s statement that this is not the case. However, in the words of former President Ronald Reagan, “trust, but verify.” We therefore feel that it is incumbent upon the Forest Service to continue to reach out to the public and alleviate the public’s concerns over the involvement of a distant bureaucracy in Washington, D.C. that has little understanding of the cultural and ecological dynamics in the area and little understanding of the value that the Valle Vidal holds for the people.

Along the same vein, we are concerned about the Forest Service’s release of final Forest Planning Regulations, purportedly promulgated in accord with the National Forest Management Act. *See* 70 Fed. Reg. 1023 (January 5, 2004) (final Forest Planning rule); *see also* 60 Fed. Reg. 1022 (Removal of 2000 Forest Planning rule); 1062 (January 5, 2004) (Notice re: Forest Plan categorical exclusions). We are curious to see whether and how the Forest Service implements these regulations in the context of the Valle Vidal, and reserve our right to comment on how the Forest Service does so. At this juncture, we simply note that our concerns over the regulations – and concerns over Forest Planning generally – center on the legality of the regulations, both on their face, and as-applied. Overall, these new Forest Planning regulations appear to be little more than a “paper tiger” with few teeth, weakening the public’s ability to hold the Forest Service accountable for its actions, and ultimately impeding the Forest Service’s ability to protect the Valle Vidal for current and future generations.

At this time, we note the following specific concerns:

- **Categorically excluding Forest Plans from NEPA:** We believe that the Forest Service must prepare an Environmental Impact Statement pursuant to NEPA for the Valle Vidal Forest Plan Amendment. We disagree with the Forest Service’s (specifically, it’s D.C. based headquarters) general criticism of the NEPA process as creating only a prediction at a single point of time; we feel that NEPA affords the agency sufficient flexibility to create adaptive analyses and that the Forest Service’s criticism is not predicated in deficiencies inherent to NEPA, but, rather, deficiencies in the Forest Service’s implementation and understanding of NEPA. In other words, NEPA is not broken; the agency’s analytical methodology is broken.

That said, we note that the Forest Service – at our November 8, 2004 meeting and at the recent Taos Open House – specifically indicated that they would prepare an EIS regardless of the outcome of the Forest Planning regulation revision process. We intend to hold the Forest Service to its word.

- **The “aspirational” nature of Forest Plans:** We believe that the Forest Service is reducing the ability of the public to hold the agency accountable for its actions. It is one thing to provide the agency with flexible management tools designed to adapt to changing conditions, circumstances, and information. It is entirely another thing to render the Forest Plan unenforceable by giving it no “teeth.” In our view, even though a Forest Plan does not generally dictate site-specific decisions, a Forest Plan nonetheless has – as it should – a definitive and profound effect on the agency’s priorities, thinking, and overall management.

The Forest Plan should therefore establish a framework that ensures that the agency can be held accountable for the overall management direction of the Valle Vidal. In many instances, site-specific decisions, because of their limited scope, may obfuscate problems on National Forest lands and lead to what is often referred to as the “tyranny of small decisions.” A Forest Plan should be designed and implemented such that it can be used to hold the Forest Service accountable for its comprehensive management actions – not simply a single action isolated in place and time.

- **Public Involvement.** While the public involvement provisions of the new Forest Planning regulations appear, on their surface, innocuous, the fact that the Forest Service is now decoupling the Forest Plan process from the NEPA process is troubling. If the Forest Service chooses not to prepare a NEPA analysis, the public will no longer be afforded objective environmental analysis prepared in accordance with NEPA and CEQ regulations. Instead, the public will be forced to rely on amorphously defined and constrained “evaluations” prepared during the Forest Plan process. The public can only trust the Forest Planning process if it knows that the Forest Service is operating consistent with objective and legally enforceable constraints. The new Forest Planning process does not impose such constraints. This could be especially troublesome in the context of management alternatives or, as the new Forest Planning regulations term them, “options.” We question how the public can effectively assist the Forest Service in creating a proposed plan without the benefit of a front-end range of alternatives whose impacts have been objectively assessed in accordance with NEPA. *See* 40 C.F.R. § 1502.14 (detailing alternatives requirement). Crafting a proposed plan (i.e., “option”), and then preparing an amorphously defined “evaluation,” without the benefit of other objectively-analyzed alternatives, is a recipe for unscientific management and is of, at best, suspect ability to achieve the desired outcome. At bottom, the Forest Planning regulations create a process that does not sharply define the issues and present the agency and the public with a clear basis for choice. *Id.*
- **Wildlife protection.** The new Forest Planning regulations eliminate the requirement that the Forest Service ensure the viability of wildlife species. The new Forest Planning regulations instead adopt a two-level approach to sustaining ecosystem diversity and species conservation that is of only dubious ability to actually protect wildlife. Moreover, the regulations, although speciously couched as scientifically credible, actually reflect the agency’s multitude of efforts to shield itself from accountability by rendering management unenforceable. Pursuant to the Forest Planning regulation’s approach, we feel that the Forest Service could create diluted and unenforceable desired future conditions, objectives, and guidelines that would create merely the illusion of sustainability while, on the ground, wildlife would suffer degradation – degradation that the public would be unaware of.

The new Forest Planning regulations are particularly troublesome given our acute awareness of the Federal Government's ability to use agency decision-making processes, especially early in the process, to 'stack the deck' against community-based efforts to protect natural and cultural resources from the threats posed by oil and gas development in the Rocky Mountain West. When federal agency's 'stack the deck' in such a manner they prejudice issues and decisions in a fashion that "creates a subtle, but nevertheless real, inertial presumption in favor of" oil and gas development. *National Wildlife Federation v. Morton*, 393 F.Supp. 1286, 1292 (D.D.C. 1975) (striking down regulations pertaining to off-road vehicle management because such regulations were inconsistent with overarching legal authority). In such situations, the deference owed to federal agencies is diminished and the decision reached by the agency is therefore more likely illegal. *Davis v. Mineta*, 302 F.3d 1104, 1112-1113 (10th Cir. 2002) (finding that the "record establishes here that the defendants prejudged the NEPA issues" and that "[t]his prejudgment diminishes the deference owed to the federal defendants").

Accordingly, ensuring the credibility and neutrality of the Forest Planning process from the start is essential given the fact that the decisions made at this stage profoundly affect each subsequent stage and decision. Arbitrarily constraining the scope of issues, decisions, alternatives, and analysis for the Forest Planning process before the agency first obtains public input during the formal scoping process is, in our view, somewhat suspect. Thus, while we understand the Forest Service's need to move forward with the Forest Planning process by collecting information and formulating a plan of action on how to proceed with the planning process, and applaud the Forest Service's efforts to involve the public, the Forest Service must nonetheless: (1) remain fully open to public input that has yet to be formally solicited during formal scoping; (2) ensure that the Forest Planning process is credible and predicated upon objective, science-based analysis and decision-making; (3) carefully implement the new Forest Planning regulations with an eye to ensuring that the agency's statutory mandates – which take legal precedence over the agency's regulations in the event of conflict – are complied with.
