



United States
Department of
Agriculture

Forest
Service

Rocky
Mountain
Region

740 Simms Street
Golden, CO 80401
Voice: 303-275-5350
TDD: 303-275-5367

File Code: 1570

Date: August 4, 2011

Brian Hawthorne
Blue Ribbon Coalition
4555 Burley Drive, Suite A
Pocatello, ID 83202

Dear Mr. Hawthorne,

On June 20, 2011, you filed a Notice of Appeal (NOA) on behalf of **Blue Ribbon Coalition** pursuant to 36 CFR 215. White River Forest Supervisor Scott Fitzwilliams signed the Record of Decision (ROD) approving Alternative G Modified of the White River Travel Management Final Environmental Impact Statement (FEIS) on March 17, 2011. Pursuant to 36 CFR 215.17 an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.18 - Formal review and disposition procedures. I have reviewed the appeal record, including your written NOA, the ROD, FEIS, SDEIS, DEIS and supporting documentation. I have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

FOREST ACTION BEING APPEALED

The White River National Forest (WRNF) travel planning effort is an extension of earlier planning processes to both update the WRNF travel management direction and to align the travel strategy on the Forest within the scope of the White River Forest Plan. Due to public input and the complexity of the subject matter, the decision was made to separate the two plans and develop the Travel Management Plan after the completion of the Forest Plan in 2002.

In November 2005, the National Travel Management Rule (36 CFR 212) was published revising regulations in response to the growing popularity and capability of off-highway vehicle use of the national forests and the effects of that use on the environment. Subpart B of the final Travel Management Rule requires designation of roads, trails, and areas for motor vehicle use.

The purpose of the Forest Supervisor's action is to implement the 2005 Travel Management Rule through selection of a designated road and trails system, allowable uses on those routes, and winter motorized travel uses by area or designated routes. Identified needs are to update the official designated transportation system, identify what is not part of the official travel system, and designate a travel system aligned with the need to balance social and resource demands.



The decision will:

- Designate the official White River National Forest system road and trail network.
- Designate 1,420 miles of road to be open to licensed vehicles of which 872 miles will be open to licensed and unlicensed vehicles.
- Designate 1,613 miles of road and trail to be open to licensed motorcycles of which 1,066 miles will be open to unlicensed motorcycles.
- Designate 1,023 miles of road and trail to be open to motorized vehicles less than 50" in width (ATVs).
- Allow mechanized (bicycle) travel on 2,172 miles of road and trail.
- Designate 3,373 miles of road and trail for horseback riding and 3,592 miles for hiking. The Forest is an open forest for horse and hike travel.
- Incorporate 225 miles of previously unauthorized routes into the travel system.
- Decommission 519 miles of system routes.
- Authorize those areas where motorized use over snow can occur in accordance with 36 CFR 212, Subpart C. There will be 695,723 acres of open areas for motorized use; 517,693 acres of restricted areas where motorized use over snow can occur on designated routes; and within restricted acres, 198 miles of over snow routes will be authorized.
- Exempt in the final travel order and motor vehicle use maps, use and occupancy of National Forest System lands and resources pursuant to a written authorization issued under federal law or regulation.
- Not allow off road travel for game retrieval.
- Allow off road parking for special uses such as forest product gathering when specified and issued by permit.
- Allow parking a motor vehicle on the side of the road up to 30 feet from the edge of the road surface for all uses other than dispersed camping or as specified by a permit.
- Allow off road camping and parking; it must not damage the land, vegetation or streams and no live trees may be cut.
- Allow access for permitted activities on National Forest System lands independent of general public access. Individuals or groups with special permits will be allowed to conduct their business according to the conditions outlined in their permits.

APPEAL REVIEWING OFFICER'S FINDINGS AND RECOMMENDATION

The Appeal Reviewing Officer, Richard Cooksey, Deputy Forest Supervisor Medicine-Bow/Routt National Forest, found that:

- Documentation in the record demonstrated compliance with applicable laws, regulations and policies in light of the appeal issues raised by the appellant: 1) decision lacks necessary analysis to justify site-specific actions; 2) the decision strays from the existing forest plan; 3) the EIS presents a legally flawed range of alternatives; 4) the purpose and need statement is legally insufficient and improperly narrows the range of alternatives and the decision space; 5) the decision to decommission all closed roads is improperly made in the EIS; 6) flawed response to comments; and 7) mixed use analysis is arbitrary and capricious.

- With regard to Appeal Issue 5) the decision to decommission unneeded roads and trails was supported by the record, but the Forest Supervisor erred in concluding that no further NEPA on the decommissioning and rehabilitation methods would be needed.

ARO Cooksey recommended affirmation of the Forest Supervisor's decision on all issues, with instruction to work with the public to identify the specific routes where further consideration or additional site-specific NEPA analysis may be needed and if a new decision or revised decision is necessary prior to decommissioning roads or trails as identified in Appeal Issue 5. Requested relief to 1) withdraw the decision; 2) remand the decision or specific elements of the decision for further analysis should be denied.

APPEAL DECISION

I agree with the ARO's analysis as presented in the enclosed letter. All appeal issues raised have been considered. I affirm the Forest Supervisor's decision to implement Alternative G Modified, along with the instruction pursuant to the ARO's recommendation on Appeal Issue 5. I deny requested relief to withdraw or remand the decision or specific elements of the decision for further analysis.

The project may be implemented on, but not before, the 15th business day following the date of this letter (36 CFR 215.9(b)). My decision constitutes the final administrative determination of the Department of Agriculture (36 CFR 215.18(c)).

Sincerely,

/s/ Randall Karstaedt

RANDALL KARSTAEDT

Appeal Deciding Officer

Acting Deputy Regional Forester, Resources

Enclosure

cc: Wendy Haskins

Scott Fitzwilliams

Cindy Dean



File Code: 1570-1

Date: August 3, 2011

Route To:

Subject: White River National Forest Travel Management Plan,
Appeal No. WR 11-02-00-0032 (215)

To: Appeal Deciding Officer

As the designated Appeal Reviewing Officer, this is my recommendation on disposition of the appeal filed by the **Blue Ribbon Coalition** under the regulations at 36 CFR 215. Forest Supervisor Scott Fitzwilliams signed the Record of Decision (ROD) for the White River National Forest (WRNF) Travel Management Plan on March 17, 2011, and a legal notice of the decision was published in the newspaper of record on May 4, 2011. My recommendation is based on the appeal and the decision documentation (36 CFR 215.18(a)).

BACKGROUND

The White River National Forest (WRNF) travel planning effort is an extension of earlier planning processes to both update the WRNF travel management direction and to align the travel strategy on the Forest within the scope of the White River Forest Plan (Forest Plan). Due to public input and the complexity of the subject matter, the decision was made to separate the two plans and develop the Travel Management Plan (TMP) after the completion of the Forest Plan. Information gathered during the initial effort was used in this decision. This TMP adheres to the 2002 Forest Plan and does not amend the Forest Plan (FEIS, Summary p. 2).

On August 27, 2002, the Forest Supervisor of the WRNF published a Notice of Intent in the Federal Register for a forest-wide TMP and invited public comment until October 31, 2002. The agency held six public meetings in September 2002 and open houses were held where many members of the public provided input.

In November 2005, the National Travel Management Rule (36 CFR 212) was published revising regulations in response to the growing popularity and capability of off-highway vehicle use of the national forests and the effects of that use on the environment. Subpart B of the final Travel Management Rule requires designation of roads, trails, and areas for motor vehicle use. Before December 9, 2008, the travel management regulations for Subpart B did not require the completion of Subpart A (identification of the minimum road system) prior to implementation of Subpart B's designations. The Travel Management Rule does not require the Forest Supervisor to reconsider prior decisions authorizing motor vehicle use on the existing National Forest Transportation System (NFTS).

On July 28, 2006, the WRNF prepared and released for a 90-day public comment period the White River National Forest Travel Management Plan Draft Environmental Impact Statement (DEIS). The DEIS examined three action alternatives along with the no-action alternative based on key issues identified during scoping.



The DEIS incorporated direction from 36 CFR 212 Subpart B of the 2005 Final Rule for Travel Management: Designation of Roads, Trails, and Areas for Motor Vehicle Use (travel rule). The WRNF staff members held meetings with individuals, interest groups, and government representatives during this time.

On November 7, 2008, the WRNF released the White River National Forest Travel Management Plan Supplemental Draft Environmental Impact Statement (SDEIS) for public review and comment. Based on the original alternatives in the DEIS, the ability to better incorporate travel rule direction, and response to public comments received, the deciding official identified the preferred alternative in the SDEIS. Staff members again met with individuals, interest groups, and government representatives. Comments on this plan were accepted until January 6, 2009.

On March 17, 2011, the Forest Supervisor signed a Record of Decision (ROD) for travel management pursuant to the travel rule on the WRNF.

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

RELIEF REQUESTED

“We request the following action regarding the Decision:

- (1) Withdraw the Decision;
- (2) Remand the Decision or specific elements of the Decision for further analysis;
- (3) Additional and/or ongoing action to (sic)
- (4) The right to fully participate in all appeals or additional procedures including informal disposition, oral presentation, any public meetings or other aspects of the appeal or ongoing travel planning process.”

ISSUES AND DISCUSSION

APPEAL ISSUE 1: THE DECISION LACKS NECESSARY ANALYSIS TO JUSTIFY SITE-SPECIFIC ACTIONS.

Appellant states: “The Plan lack legally required route-specific analysis. A travel planning process like this one necessitates detailed analysis of myriad factors for virtually every route. By way of illustration these factors might include soil, water, wildlife, vegetation and other physical resource impacts, as well as facilitation of human activities including vehicle focused recreation, vehicle access to facilitate other forms of recreation such as camping, hiking, hunting, fishing, backcountry skiing, and others, and nonmotorized recreation. Rather than provide this analysis, there is an incomplete and confusing table of outcomes posted (section A-2, Attachment 2) that attempts no more than a catalogue of results on individual routes. This strategy is legally deficient.”

Rule:

40 CFR 1502.16, Environmental Consequences - The environmental consequences section of an EIS will include the environmental impacts, including direct and indirect effects, of the alternatives, including the proposed action.

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map (MVUM).

FSM 7700 and FSH 7709.55 – Travel Management - Travel analysis (FSM 7712; FSH 7709.55, ch. 20) is used to ensure that road management decisions are based on consideration of environmental, social, and economic impacts.

FSM 1920 – The responsible official shall provide a forest transportation system that best achieves the desired conditions identified in the applicable land management plan.

Discussion:

The appellant contends that the White River Travel Management Plan (TMP) does not include a route-specific analysis to justify the site-specific actions made in the decision.

The WRNF is making a travel management decision pursuant to 36 CFR 212.50 Subpart B – Designation of Roads, Trails, and Areas for Motor Vehicle Use. The WRNF published their Notice of Intent for this TMP on August 27, 2002 and invited public comment until October 31, 2002 (/03_Scoping/05_NOI/WRNF_TMP_NOI_082702.pdf). This process began prior to finalization of new national regulations regarding travel management on national forests across the country, which was published on November 9, 2005. As such, the travel analysis in 36 CFR 212 Subpart A is not required (FSM 7712, FSH 7709.55, ch. 20). The WRNF has not yet conducted the analysis required by Subpart A for the Administration of the Forest Transportation System.

FSM 7712.1(5) specifies that a complete inventory of unauthorized routes is not required to conduct travel analysis. This is further explained in the preamble that accompanied the publication of this manual section in the Federal Register: *“As a practical matter, in areas where there are no restrictions on motor vehicle use, there is no way to conduct a complete inventory of user-created routes, since users of motor vehicles can create new routes while the inventory is underway”* 73 FS 74691 (December 9, 2008).

The results of the WRNF data collection and analysis established the starting point used for identifying site-specific opportunities and seasonal restrictions for each route (/14_District_Files). Each route was reviewed on a site-specific basis (/06_GIS/FEIS/analysis). In the FEIS, the Affected Environment and Environmental Consequences section in Chapter 3 describes each resource section for Key Indicators/Measures and direct and indirect effects of the transportation system (/09_FEIS/04_FEIS/final_FEIS/WRNF_TMP_FEIS_March2011.pdf, pg 46).

The designation of the WRNF roads and trails system began with taking stock in the current road network in the forest; an effort that was significantly aided with public comments. The WRNF undertook an extensive effort to spatially locate all of the NFTS (roads and trails), and the unauthorized routes which showed current or past motor vehicle use and which could be interpreted as travel ways for motor vehicles (/06_GIS and /14_District Files).

The WRNF then developed alternatives which designated roads and trails. Designation of routes was partially determined by the following criteria: need for the route, the route's importance in the overall network, the route's fit with the overall recreation management goals for an area, the route's fit with other management goals for an area, and the route's current condition.(FEIS, Chapter 2, Alternatives, pg 33)

The purpose of the TMP was to identify an official designated travel system with the goal of balancing the physical, biological, and social values associated with the WRNF (FEIS, p. 8). Each alternative analyzed in the FEIS represents a potential transportation system with a different combination of routes for the various uses. Attachment 2 of the FEIS includes a table documenting the rationale for designating each route. The FEIS discusses the effects of each alternative for the various resources; including soil, water, wildlife, vegetation and other physical resource impacts in the FEIS Chapter 3 (pp. 46-225). The effects analysis includes direct, indirect and cumulative effects. The effects of each route are not discussed individually but are included in the effects analysis of the total transportation system for each alternative. The administrative record contains more detailed analysis of the designated routes by alternative and resource area (/06_GIS/FEIS). This approach meets the purpose of the project, FEIS page 8. The FEIS Chapter 2 (p. 41, Table 2-6) includes a comparison of effects on key issues by alternative. The FEIS Chapter 2 also presents the alternatives in comparative form, defining the differences amongst the alternatives and providing a clear basis for choice among options for the decision maker.

I find the Forest made a reasonable effort to gather site specific information and use this information consistent with agency directives in designating roads, trails and areas for motor vehicle use.

Recommendation:

The WRNF developed and conducted route-specific analysis and designated roads, trails and areas for motor vehicle use in accordance with the travel management rule in 36 CFR Part 212, Subpart B. I recommend the Forest Supervisor's decision be affirmed on this issue.

APPEAL ISSUE 2: THE DECISION STRAYS FROM THE EXISTING FOREST PLAN.

Appellant states: "The Decision imposes vast non-motorized recreation classifications where the Forest Plan indicates motorized uses would be allowed. In reality, one or more forest plan amendments were required."

Rule:

16 USC 1604(i) - Projects and activities must be consistent with the applicable plan components. If a proposed use or project is not consistent with the applicable plan components, the responsible official may modify the project to make it consistent with the plan, reject the proposal or terminate the activity, or amend the plan contemporaneously with the approval of the project

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

Discussion:

The appellant contends that a Forest Plan amendment is necessary before designating non-motorized classifications in areas where the Forest Plan allows motorized use.

The Forest Supervisor made a decision to address user conflicts between motor vehicle use and existing or proposed recreational uses of NFS lands: *Forest managers need to determine the proper balance in the type, extent, and levels of forest transportation facilities and uses in order to address user conflicts and adequately protect resources (ROD, pg. 5).*

The WRNF identified which Management Areas in the Forest Plan would allow motorized, mechanized and non-motorized use (/05_Resources/09_Planning/ma_uses.doc).

The WRNF Forest Plan, Chapter 3, identifies the following Management Areas that allow motorized recreation: 1.32 (summer, no; winter, yes); 2.1 (decision by area); 3.1; 3.21; 3.31; 3.32 (summer, no; winter, yes); 3.4; 3.55; Category 4 prescriptions; Category 5 prescriptions; 5.5 (winter motorized use is restricted); Category 7 prescriptions; and Category 8 prescriptions (Forest Plan, Chapter 3). These Management Areas need not contain only motorized routes with no other routes, and their identification does not mean that all existing routes within these areas would be designated as authorized routes. [Colorado Off-Highway Vehicle Coalition v. USFS, 505 F.Supp.2d 808, 820-21 \(D. Colo. 2007\).](#)

Non-motorized use (but not all mechanized use) is allowed in all Management Areas, but there are some areas where non-motorized use is allowed but not emphasized during the summer including 3.31, 4.32, 5.12, 5.13, 5.4, and not emphasized in winter in 3.31 and 3.32 (/05_Resources/09_Planning/RegsPlus/ForestPlan/plan_ch3_final_012009.doc; and /05_Resources/09_Planning/ma_uses.doc).

Recommendation:

The selected alternative GM is consistent with the Forest Plan. The project does not require a Forest Plan amendment. I recommend that the Forest Supervisor's decision be affirmed on this issue.

APPEAL ISSUE 3: THE EIS PRESENTS A LEGALLY FLAWED RANGE OF ALTERNATIVES.

Appellant states: "The range of alternatives was truncated and compressed into an irrationally small range in violation of NEPA. NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to the preferred alternative. 40 CFR § 1502.14

"There are very few alternatives considered in detail, and minimal discussion explaining the selection of those few. Given the diverse history of use on the WRNF we were surprised and dismayed to see such a narrow range of alternatives presented in the EIS. Many viable alternatives were excluded from detailed analysis and meaningful public review."

Rule:

40 CFR 1502.14 - The agency shall rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

Discussion:

The development of the TMP to comply with 36 CFR 212 has been a long process. Beginning on August 27, 2002 alternative descriptions were published in the Notice of Intent (/03_Scoping/05_NOI/WRNF_TMP_NOI_082702.pdf). In addition to the No Action Alternative, which consisted of the current situation on the WRNF, three thematic descriptions of alternatives to be analyzed in the EIS included a 'Maximum' (emphasizing social and recreational needs), a 'Minimum' (emphasizing relatively less impact to resources), and 'Blended' (considering social, recreation, and resource needs equitably). The DEIS was released to the public for comment in June of 2006. Alternatives A (No Action), action alternatives B, C, D, and E were analyzed in detail and presented in the DEIS. The range of alternatives was based on the identification of significant public issues, management concerns, resource management opportunities, and plan decisions specific to Travel Management within the scope of the Forest Plan.

Several people commented that they had difficulty sorting through all the details that made up the action alternatives presented in the DEIS (/07_DEIS/05_Comments_Analysis/Comments_DEIS_For_Publishing/WRT_report_final_DEIS 1.doc). In response, the SDEIS was developed and presented to the public in September of 2008. The SDEIS provided an opportunity for the public to comment on a new preferred alternative that was created by blending components of the previously presented alternatives while addressing public comments and management implications due to the travel rule (/08_SDEIS/05_Comments_Analysis/Comments_SDEIS_Working_results/Prog/SDEIS_Programmatic_Report_responses_final.doc).

The WRNF developed a strategy to limit the number of alternatives to study in detail while obtaining a range of management options and providing a clear basis of choice. Significant issues and comments on preferences and general management direction were used to formulate alternative themes. Scoping comments were further categorized into concern areas such as: alpine protection, amount of decommissioning, maintenance costs, loop opportunities, access points, addition or elimination of unauthorized routes, social interaction of users, effects on watersheds and wildlife, spread of noxious weeds, separation of users, riparian and cultural resource protection, commodity access, special use access, and administrative access (/09_FEIS/04_FEIS/final_FEIS/CD/5_WRNF_TMP_FEIS_March2011.pdf, p. 31).

All of these concern areas were categorized into three key issues: volume and type of access, resolution of resource conflict, and protection of natural resources (/09_FEIS/04_FEIS/final_FEIS/CD/5_WRNF_TMP_FEIS_March2011.pdf, pp.22 and 31). These three issues were then used to form the action alternatives under consideration in the FEIS. The alternatives focused on optimizing recreation opportunities, providing for separation of recreation uses where possible, and emphasizing natural resources and habitat values while still providing for recreation.

These focused themes allowed for the range of alternatives to be presented (/09_FEIS/04_FEIS/final_FEIS/CD/5_WRNF_TMP_FEIS_March2011.pdf, p. 31).

In March 2011, the FEIS was published. From FEIS, Chapter 2, pp. 25-43: (The alternatives identified with an asterisk were carried forward in the FEIS as “alternatives considered in detail”.)

Alternative A*, No-Action, reflects the current condition.

Alternative C, responds to the issues of volume and type of recreation access. Alternative C focuses on accommodating recreation for more users where possible. It emphasizes shared use and optimization of available facilities, thus providing for a greater capacity for recreation across the forest.

Alternative D, responds to recreation user conflict issues. Alternative D emphasized reducing recreation conflicts among users and promoting a more sustainable recreation program in the long term.

Alternative E, responds to the issues of managing recreation use to reduce the impacts on natural resources and wildlife caused by recreation. Alternative E emphasized natural resource and habitat protection while still allowing recreation use.

Alternative F*, represents the original Alternative B in the DEIS, with corrections. Alternative F considers the minimum actions needed to bring the forest travel system into compliance with forest plan direction.

Alternative G*, incorporates elements of all the action alternatives presented in the DEIS, public input, and the latest regulations for travel management. This alternative strives to balance the public transportation needs, including recreation uses, with natural resource protection and enhancement. The alternative was designed to best meet the public desire to access and recreate on the national forest in a natural setting.

Alternative G Modified* (GM), is largely the same as Alternative G, but modified to respond to public and internal concerns. This alternative utilizes all the alternatives presented in the DEIS, SDEIS, public input, and incorporation of the latest regulations for travel management.

The selected Alternative GM has the least amount of designated roads and trails overall but more are available for mixed-use and ATV use than Alt G; adds unauthorized routes, where they enhance the system and decommissions those that do not; motorcycle single-track is similar to Alternatives A and F as the amount added to a network equaled the amount decommissioned or converted to non-motorized and lower than Alt G; provides the least amount mountain biking but adds unauthorized routes highly recommended by users that are part of popular networks and most ready (resource-wise) for use; provides the least amount of open motorized areas for winter use due mostly to a reduction of small parcels that were open by prescription, but do not connect to large enough areas to provide a quality snowmobile experience; provides the second to highest amount of winter motorized routes in restricted areas (/09_FEIS/04_FEIS/final_FEIS/CD/5_WRNF_TMP_FEIS_March2011.pdf, p. 42).

Recommendation:

The range of alternatives considered in the FEIS relating to travel management plan for motor vehicle use in the WRNF responded to the issues and public input. The range was reasonable and complied with the requirements of the National Environmental Policy Act (NEPA). The WRNF properly looked to its current system of trails, both designated and unauthorized routes, and decided which routes would be part of the travel system of motorized access in accordance with the National Environmental Policy Act of 1969, § 102(2)(C)(iii), 40 CFR § 1502.13. I find that the Forest Supervisor examined a reasonable range of alternatives and recommend that the Forest Supervisor's decision be affirmed on this issue.

APPEAL ISSUE 4: THE PURPOSE AND NEED STATEMENT IS LEGALLY INSUFFICIENT. THE PURPOSE AND NEED IMPROPERLY NARROWS THE RANGE OF ALTERNATIVES AND THE "DECISION SPACE."

Appellant states: "The Plan was presented in a confusing context, and, given the Forest Supervisor's accompanying letter, the Purpose and Need and the Decision Framework, must be viewed as a "closure" decision. It is obvious that the WRNF has focused nearly exclusively on protecting. The Travel Management Rule mandates each unit designate roads and trails that will "enhance opportunities for motorized recreation experiences on National Forest System lands" (70 Fed. Reg. 68264). Mandated direction to provide for products and services, the agency's strategic goals, the documented popularity of motorized recreation and numerous comments submitted in the early stages of the process seems to have been "refracted" in such a way as to drive the decision toward elimination of motorized uses in all of the Alternatives."

Rule:

40 CFR 1502.13, Purpose and Need - The purpose and need statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

36 CFR 212.55 - In designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, consider effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration.

Discussion:

The National Travel Management Rule published on November 9, 2005 intended that National Forests should provide access for both motorized and nonmotorized users in a manner that is environmentally sustainable over the long term. The rule was passed in recognition of the fact that unregulated cross-country motor vehicle use was no longer appropriate given the proliferation of user-created routes, the environmental damage, safety issues, and user conflicts (70 FR 68271). *"The Department believes that a well-planned, well-designed system of designated roads, trails, and areas, developed in coordination with Federal, State, local, and tribal governments and with public involvement, offers better opportunities for sustainable long-term recreational motor vehicle use..."* Moreover, the NFS is not reserved for the exclusive use of any one group, nor must every use be accommodated on every acre. It is entirely appropriate for different areas of the National Forests to provide different opportunities for recreation (70 FR 68266).

The TMP for the WRNF not only incorporates direction from the Travel Management Rule, but also sets direction for all travel to meet Forest Plan direction and management goals (FEIS, Chap 3, Affected Environment, pg 68). The action to update the official designated transportation system responds to the goals, objectives, standards, and guidelines outlined in the Forest Plan, and it helps move the WRNF toward desired conditions described in that plan. The TMP was developed in accordance with the Forest Plan and the laws and regulations that govern forest management (FEIS, P&N, pg 8).

The WRNF looked to its current system of trails on the ground, both designated and unauthorized routes, and made a decision on what routes would be part of a rational system of motorized access into the future and under what conditions (ROD, Decision Rationale, pgs 22-24).

For the selected alternative (GM) there are 1,420 miles of road open to licensed vehicles and of those, 872 miles are open to licensed and unlicensed vehicles. There is a total of 1,613 miles of road and trail open to licensed motorcycles and of those 1,066 miles are open to unlicensed motorcycles. There is a total of 1,023 miles of road and trail open to motorized vehicles less than 50 inches in width (ATV's). Mechanized (bicycle) travel is allowed on 2,172 miles of road and trail. While the WRNF is an open forest for horse and hike travel, there are 3,373 miles of road and trail for horseback riding and 3,592 for hiking. This represents the total miles of opportunity for each use across the forest. Most routes allow more than one use (ROD, pg 18).

The selected alternative GM has the least amount of designated roads and trails overall but more are available for mixed-use and ATV use than Alt G; alternative GM adds unauthorized routes where they enhance the travel system and decommissions those that do not; motorcycle single-track is similar to Alternatives A and F as the amount added to a network equaled the amount decommissioned or converted to non-motorized, and a lower amount than Alt G; alternative GM provides the least amount of mountain biking but adds unauthorized routes highly recommended by users that are part of popular networks and most ready (resource-wise) for use; alternative GM provides the least amount of open motorized areas for winter use due mostly to a reduction of small parcels that were open by prescription, but do not connect to large enough areas to provide a quality snowmobile experience; alternative GM provides the second to highest amount of winter motorized routes in restricted areas. (FEIS, page 42)

Recommendation:

The purpose and need for action considered in the FEIS relating to a TMP for motor vehicle use in the WRNF was adequate under National Environmental Policy Act (NEPA); the Forest properly looked to its current system of trails, both designated and unauthorized routes, and decided which routes would be part of the travel system of motorized access in accordance with the National Environmental Policy Act of 1969, § 102(2)(C)(iii), 40 CFR § 1502.13. I recommend that the Forest Supervisor's decision be affirmed on this issue.

APPEAL ISSUE 5: THE DECISION TO DECOMMISSION ALL CLOSED ROADS IS IMPROPERLY MADE IN THIS EIS.

Appellant states: "The decision to decommission closed routes was not thoroughly discussed in the scoping or the DEIS. Moreover, site specific ground disturbing impacts associated with decommissioning were not evaluated in the FEIS. Individual decommissioning methods require site specific NEPA analysis, particularly where they include ground disturbing methods. The agency cannot announce a categorical decision to decommission encompassing thousands of miles of routes along with a "suite of methods" to be applied in some future, indefinite array of projects to accomplish that outcome. Separate analysis of decommissioning efforts is necessary to bring the concerns and needs of non-recreational users to the attention of the public, and Forest managers."

Rule:

FSM 7715.78 states, if unauthorized routes are not designated, motor vehicle use on these routes is prohibited (36 CFR 261.13). Consider addressing restoration and decommissioning of unauthorized routes when making travel management decisions.

40 CFR 1502.16 - The environmental consequences section of an EIS will include the environmental impacts, including direct and indirect effects, of the alternatives, including the proposed action.

Discussion:

One of the objectives of travel management planning is to identify a transportation system (roads and trails) that is truly necessary and to decommission the remaining system roads and trails that are no longer needed. It is also important to decommission unauthorized roads that are not incorporated through the travel management planning process (FEIS, pg. 133). One of the decisions to be made with TMP is determining which routes will be decommissioned and rehabilitated (FEIS, p. 30). One of the objective strategies in the Forest Plan is to decommission 22 miles of unneeded road per year. The Travel Plan will identify specific system roads that meet the criteria for decommissioning (03_Scoping/05_NOI/WRNF_TMP_NOI_082702.pdf, pg. 54997).

The ROD (p. 4) and FEIS (p. 9) identify that all unauthorized roads and trails will be designated for elimination through landscape rehabilitation and decommissioning. Any newly discovered unauthorized routes will also be decommissioned (FEIS, p. 33). The Forest considered whether roads are needed for continued use, other use, or should be decommissioned, and is consistent with FSM 7715.78.

The decision to decommission some existing routes on the forest was disclosed and discussed throughout this EIS process and every action alternative involved decommissioning existing roads on the forest. (DEIS pp. 2, 28-31, Chapter 3) Decommissioning roads was a decision to be made in the Notice of Intent for the TMP (WRNF TMP NOI, 8/27/02, p. 54997). There is extensive discussion of decommissioning roads in the FEIS. Decommissioning can be accomplished through various methods such as physically obliterating the route, recontouring, scarifying, seeding, blocking the route entrance, or slashing in the route with logs and rocks.

The FEIS lists a suite of methods that can be used to accomplish this task; ranging from blocking the entrance, scattering boughs on the roadbed, scarifying, seeding, and water barring, to removing fills and culverts, reestablishing drainage-ways, pulling back shoulders, and recontouring the slopes for full obliteration (FEIS, pp. 26, 30).

Many factors go into the amount of work needed for decommissioning a route. Some routes may have already been decommissioned, although those efforts may not have been effective, and further treatment may be necessary. FEIS Chapter 2 (page 40) provides a summary table of the miles of roads and trails to be decommissioned. Alternative GM has the greatest miles of routes to be removed from the transportation system (1,551 miles), followed by Alternative G (1,483 miles), and then Alternative F which would remove 1,279 miles. Alternative A identified 341 miles for decommissioning.

The FEIS asserts (p. 30) that no further NEPA will be required for decommissioning roads and trails because it is covered under this FEIS analysis. Decommissioning and rehabilitation methods include confirmation from specialists that activities enhance and protect resources (FEIS, p. 30). Additional site specific recommendations, including biological and archeological clearances, may be required to identify the best methods to bring roads and trails to standard or decommission and rehabilitate them (ROD, p. 12). The project record includes information on which roads and trails will be decommissioned (Attachment 2 FEIS), but does not describe which decommissioning method will be used for each specific route.

The assumption that decommissioning will allow routes to return to a natural state similar to surrounding areas was applied in the effects analysis in each resource section in the FEIS Chapter 3 (FEIS p. 46). Road and trail decommissioning was discussed in the relevant resource sections throughout Chapter 3 of the FEIS (FEIS pp. 50-215) and in the analysis (/06_GIS/SDEIS/analyses_SDEIS). Many resource sections in the FEIS Chapter 3 used the miles of roads or trails decommissioned as a metric to measure the effects of the alternatives on key indicators. Chapter 2 of the FEIS (pp. 42-43, table 2-6) includes a comparison of effects of land and resource protection, including decommissioning, by alternative. The effects of decommissioning each route are not discussed individually, but are included in the effects analysis of the total miles to be decommissioned in each alternative (/06_GIS/SDEIS/analyses_SDEIS). Some decommissioning activities listed could include ground disturbing activities (e.g., pulling culverts, recontouring slopes).

In accordance with FSM 7715.78, the responsible official reviewed the road system and identified roads that are no longer needed and, therefore, could be decommissioned or designated for other uses, such as for trails. The previous documentation presented specifics from that decommissioning identification process and provided specifics on which roads were to be decommissioned. Therefore, the decision to identify which roads should be decommissioned is appropriate under the analysis (/06_GIS/SDEIS/maps_tables/SDEIS).

Recommendation:

I find that the decision to decommission unneeded roads and trails is supported by the record, but that the Forest Supervisor erred in concluding that no further NEPA on the decommissioning and rehabilitation methods would be needed. In the ROD on page 12 the Forest Supervisor notes, "The additional examinations are not to revisit the decision as to whether the road or trail should exist or not, rather they will focus on the best methods to meet resource needs and plan objectives."

I recommend the Forest Supervisor's decision be affirmed on this issue, with instruction to consider additional site-specific NEPA analysis, as appropriate, prior to decommissioning roads or trails.

APPEAL ISSUE 6: FLAWED RESPONSE TO COMMENTS.

Appellant states: "The FEIS does not comply with NEPA's requirement to evaluate and respond to comments as required by 40 CFR 1503.4. Comments were separated from the context in which it was submitted which led to inadequate response to the comment as a whole. This flawed approach to responding to comments prevented commentors from identifying whether their comments were considered."

Rule:

(40 CFR 1503.4) – An agency preparing a final environmental impact statement shall assess and consider comments individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

1. Modify alternatives including the proposed action.
2. Develop and evaluate alternatives not previously given serious consideration by the agency.
3. Supplement, improve, or modify its analysis.
4. Make factual corrections.
5. Explain why comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position.

All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

Discussion:

The WRNF received a significant number of comments on the TMP (09_FEIS/04_FEIS/final_FEIS/CD/8_ResponseToComments_FEISAttachement3.pdf). Planning information from the initial effort to update travel management in 1999, including site-specific comments, was reviewed. FEIS page 20 summarizes the public involvement process (09_FEIS/04_FEIS/final_FEIS/CD/5_WRNF_TMP_FEIS_March2011.pdf).

There were 1,447 comment letters, e-mails, and faxes received on the proposed TMP and DEIS, covering over 3,958 expressions of concern, during the public comment period in 2006. In response to public comments, a modified alternative published in a SDEIS was published on November 7, 2008. This document generated an additional 713 comment letters, e-mails, and faxes, with a total of 2,996 identified comments or expressions of concern. Federal regulations under 36 CFR 1503.3 allows the agency to consider comments collectively, and given the volume of comments received, the WRNF chose to address the comments with a Content Analysis Team (CAT).

The goal of the content analysis process used for this project was to ensure that the substance of every comment—what to do and why—was considered in the planning and decision process

(/08_SDEIS/05_Comments_Analysis/Comments_SDEIS_CAT/CD/content/Site-Specific Comments.xls). The process used to track and analyze these comments was developed by the Forest Service CAT. Comments were used to formulate public concern statements that attempt to concisely summarize and organize the full range of comments: what the Forest is being asked to do and why.

(08_SDEIS/05_Comments_Analysis/Comments_SDEIS_CAT/CD/content/report.pdf). The report prepared by the CAT is 83 pages long and contains sections on natural resources management, transportation management, recreation management and demographics. The WRNF responded to those public concern statements in Attachment 3 of the FEIS (8_ResponseToComments_FEISAttachment3.pdf).

Recommendation: The CAT used a structured process to summarize comments. The WRNF responded to those summarized comments and included them in the project record. I recommend the Forest Supervisor's decision be affirmed on this issue.

APPEAL ISSUE 7: MIXED USE ANALYSIS IS ARBITRARY AND CAPRICIOUS.

Appellant states: "Numerous route closures or changes in management status are driven by the irrational conclusions of a "mixed use analysis" whereby the Forest allegedly determined that safety risks necessitated the change in status. This analysis failed to comply with numerous requirements of NEPA and the APA, including citation to reference material, identification and justification of the methodologies uses, and related technical requirements. The mixed use restrictions of the Decision are arbitrary and capricious and should be set aside and further studied through a valid analysis."

Rule:

36 CFR 212.55 - When designating National Forest System trails and areas on National Forest System Lands, the responsible official shall consider conflicts among different classes of motor vehicle uses.

FSH 7709.55(30.3) - Where the responsible official proposes to depart from state traffic law or change current travel management direction by authorizing motorized mixed use on a National Forest System (NFS) road where it would otherwise be prohibited, that decision must be informed by engineering analysis conducted by a qualified engineer. Engineering analysis should include a technical evaluation of road conditions and traffic and an analysis of potential mitigation measures regarding motorized mixed use. Depending on the complexity of the situation, the analysis may range from documenting engineering judgment to a comprehensive engineering report that addresses many factors related to motorized mixed use, including mitigation. The analysis should be presented to the responsible official for a decision.

Discussion:

When all of the following conditions exist, a qualified engineer may document engineering judgment that an engineering report is not needed to designate a road for motorized mixed use if: The proposed designation is consistent with state and local law, the road being considered for designation currently has motorized mixed use, or there is no documented crash history involving motorized mixed use on the road or similar roads in the vicinity. All Mixed Use Judgments conducted between 2006 and 2008 are found in the record under the Engineering Reports.

When an engineering report is not required, one page is generally sufficient to document engineering judgment (FSH 7709.55 (31)).

The FEIS (p. 15) states that the WRNF conducted mixed-use studies on NFS roads designed to handle passenger cars. These roads include the major arteries across the forest. These studies reflect which roads would be safer for allowing licensed and unlicensed vehicles to utilize the same route. The project record includes documentation of engineering judgments for motorized mixed-use on NFS roads

(/05_Resources/04_Engineering_Transportation/TMP_Eng_motormixuse_0608: TMP_Eng_2006_report, TMP_Eng_2007_report, TMP_Eng_20072008_report). The deciding officer indicates that he considered the mixed-use safety studies and applied these into the selected alternative (ROD, p. 11).

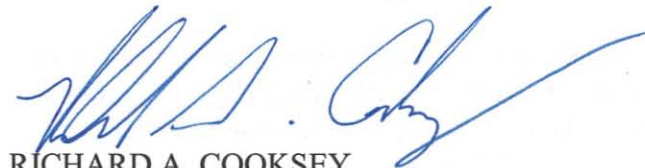
Mixed Use Analysis was only completed on Level 3, 4, 5 roads (FEIS pg 121-122). For ML 2 roads (four-wheel drive roads), the conditions are considered to be safe enough to allow for mixed motorized use (FEIS pg 121). Additionally, the FEIS pg. 121 stated "In the fall of 2009, four roads were re-evaluated for motorized mixed use in an effort to respond to public comments on the SDEIS." Considerations were made based on possible management options to improve safety to an acceptable level. These options, including additional signing, clearing, etc, show the Forest responding to public comment on this issue.

Recommendation:

I recommend that the Forest Supervisor's decision be affirmed on this issue. I find that the deciding officer properly considered and applied the relevant regulations and Forest Service policy in making his decision on mixed-use restrictions.

RECOMMENDATION

I recommend that the Forest Supervisor's March 17, 2011 decision be affirmed with the instructions outlined under Appeal Issue 5 and that the Appellant's request for relief be denied.



RICHARD A. COOKSEY
Appeal Reviewing Officer

Deputy Forest Supervisor
Medicine Bow-Routt National Forests
Thunder Basin National Grassland



June 20, 2011

Delivered via email to appeals-rocky-mountain-regional-office@fs.fed.us.

Appeal Deciding Officer
USDA Forest Service, Rocky Mountain Region,
ATTN: Appeal Deciding Officer
740 Simms St.
Golden, CO 80401

RE: Appeal from Record of Decision for White River National Forest Travel Management Plan dated March 17, 2011

Dear Appeal Deciding Officer:

Please accept this Notice of Appeal under 36 C.F.R. Part 215 from the Record of Decision and Final Environmental Impact Statement (FEIS) for the White River National Forest Travel Management Plan (collectively, the "Decision"), dated March 17, 2011. This appeal is presented on behalf of the BlueRibbon Coalition, Inc. Individual and/or organizational members of BlueRibbon Coalition (BRC) may submit their own appeal(s) from the Decision. This appeal and any such appeals must be independently evaluated and the agency must comply with applicable review procedures for all such appeals. Any communications regarding this appeal should be directed to Brian Hawthorne 208-237-1008 ext 102 and at brbrian@sharetrails.org.

LEGAL STANDARDS

As a preliminary matter, we wish to outline the applicable standard of judicial review as well as the standard which agency decision makers must consider during the administrative review process. We understand that executive-branch agency decisions are ultimately reviewable by the judiciary, which is empowered to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or found to be "without observance of procedure required by law."¹

The arbitrary and capricious review is the mechanism through which the courts can require basic fairness and reasonableness of agency decision making. The arbitrary and capricious standard is deferential and does not allow a reviewing court to substitute its judgment for that of the agency.²

¹5 U.S.C. § 706(2)(A) & (D), see also, *Bonnichsen v. United States*, 367 F.3d 864, 880 (9th Cir. 2004)

²*Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (citations omitted) (emphasis added).

The scope of review under the "arbitrary and capricious" standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made....Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies; we may not supply a reasoned basis for the agency's action that the agency itself has not given.

Even where an agency can arguably point to substantial evidence supporting its decision, the presence of contradictory evidence might render the decision arbitrary and capricious. Thus, "even though an agency decision may have been supported by substantial evidence, where other evidence in the record detracts from that relied upon by the agency we may properly find that the agency rule was arbitrary and capricious." ³

Even substantial evidence cannot properly support a decision if the information was not considered by the decision-maker at the proper stage of the process. Information cannot be presented as a post-hoc rationalization to justify a decision previously made.⁴ For the reasons identified below, The decision supported by this EIS, will violate these basic principles.

APPEAL ISSUES

1. The Decision Lacks Necessary Analysis to Justify Site-Specific Actions

The Plan Lacks Legally Required Route Specific Analysis. A travel planning process like this one necessitates detailed analysis of myriad factors for virtually every route. By way of illustration these factors might include soil, water, wildlife, vegetation and other physical resource impacts, as well as facilitation of human activities including vehicle-focused recreation, vehicle access to facilitate other forms of recreation such as camping, hiking, hunting, fishing, backcountry skiing, and others, and nonmotorized recreation. Rather than provide this analysis, there is an incomplete and confusing table of outcomes posted (section A-2, Attachment 2) that attempts no more than a catalogue of results on individual routes. This strategy is legally deficient.

2. The decision strays from the existing Forest Plan

Nothing in the Forest Plan contemplates the kinds of decisions made in the Decision. The Decision imposes vast non motorized recreation classifications where the Forest Plan indicates motorized uses would be allowed. In reality, one or more forest plan amendments were required by were not even attempted here. See, generally, *Lands Council v. Martin*, 529 F.3d 1219, 1227-1228 (9th Cir. 2008) (outlining procedural requirements for plan amendment).

3. The EIS presents a legally flawed range of Alternatives

³. *American Tunaboat Ass'n v. Baldrige*, 738 F.2d 1013, 1016 (9th Cir. 1984) (citing *Bowman Transport, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 284 (1974) (agency decision supported by substantial evidence may still be arbitrary and capricious)); see *Atchinson v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973) (where agency modifies or overrides precedents or policies, it has the "duty to explain its departure from prior norms").

⁴*Southwest Center for Biological Diversity v. U.S. Forest Service*, 100 F.3d 1443, 1450 (9th Cir. 1996).

The range of alternatives was truncated and compressed into an irrationally small range in violation of NEPA.

NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to the preferred alternative. 40 C.F.R. § 1502.14 (“agencies shall rigorously explore and objectively evaluate all reasonable alternatives.”) The alternatives section is considered the “heart” of the EIS and a NEPA analysis must “explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. A NEPA analysis is invalidated by “[t]he existence of a viable but unexamined alternative.” *Resources, Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993). An agency must perform a reasonably thorough analysis of the alternatives before it. “The ‘rule of reason’ guides both the choice of alternatives as well as the extent to which an agency must discuss each alternative.” *Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1326 (S.D. Cal. 1998) (citing *City of Carmel-by-the-Sea v. United States Dep’t of Transportation*, 123 F.3d 1142, 1154-55 (9th Cir. 1997)). The “rule of reason” is essentially a reasonableness test which is comparable to the arbitrary and capricious standard. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998) (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 377 n. 23 (1989)). “The discussion of alternatives ‘must go beyond mere assertions’ if it is to fulfill its vital role of ‘exposing the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government.’” *State of Alaska v. Andrus*, 580 F.2d 465, 475 (D.C. Cir. 1978), vacated in part on other grounds, *Western Oil & Gas Ass’n*, 439 U.S. 922 (1978) (quoting *NRDC v. Callaway*, 524 F.2d 79, 93-94 (2nd Cir. 1975)).

There are very few alternatives considered in detail, and minimal discussion explaining the selection of those few. Given the diverse history of use on the White River we were surprised and dismayed to see such a narrow range of alternatives presented in the EISs. Many viable alternatives were excluded from detailed analysis and meaningful public review.

4. The Purpose and Need Statement is Legally Insufficient. The Purpose and Need improperly narrows the range of Alternatives and the “decision space”:

The Plan was presented in a confusing context, and, given the Forest Supervisor’s accompanying letter, the Purpose and Need and the Decision Framework, must be viewed as a “closure” decision. This background inappropriately taints analysis through the omission of any “positive” aspects of providing for motorized recreational access.

The agency indefensibly pursued a unilateral emphasis on preservation here. In the purpose and need statement, the Forest articulated Need number 3: “To Designate a Travel System That Is Aligned With the Forest Service Mission, Including the Need to Manage the Land By Providing a System That Attempts to Balance Social and Resource Demands” (FEIS Chapter 1, Page 9)

BRC understands that most recreation management decisions are a balance between providing and protecting. It is obvious that the WRNF has focused nearly exclusively on protecting. Our members are concerned about the WRNF’s lack of consideration for the equally mandated direction to provide. In other words, this need has been formulated to diminish the part of the Forest Service’s Mission regarding providing and enhancing.

It seems important to note that the Travel Management Rule mandates each unit designate roads and trails that will “enhance opportunities for motorized recreation

experiences on National Forest System lands” (70 Fed.Reg. 68264, bold emphasis added).

Mandated direction to provide for products and services, the agency's strategic goals, the documented popularity of motorized recreation and numerous comments submitted in the early stages of the process seems to have been “refracted” in such a way as to drive the decision toward elimination of motorized uses in all of the Alternatives.

For example, when discussing the Decision Framework regarding recreation management the Decision presents a truly “unique” take on considering providing recreational opportunities:

In addition to safety and access, the rule also requires the responsible official to consider the provision of recreation opportunities. For example, it would not make sense to allow ATVs on a road that is part of or connected to a road that does not allow ATV use, especially if the portion that would allow ATVs is only ¼ mile long (for example), or does not lead to a destination.

(FEIS, Chapter 1, page 15) The point that seems to be lost is that closing a ¼ section of road to unlicensed vehicles (ATVs) may eliminate a loop riding experience or eliminate a connection from one trail to another. The approach you have taken is all oriented toward eliminating opportunity, even when discussing direction to provide opportunity. After reviewing the Decision, it appears that this is what has happened.

5. The decision to decommission all closed roads is improperly made in this EIS

We strongly object to the inclusion of mandatory direction to decommission closed roads in this Decision. The decision to decommission closed routes was not thoroughly discussed in the scoping or the DEIS. Moreover, site specific ground disturbing impacts associated with decommissioning were not evaluated in the FEIS.

Individual decommissioning methods require site specific NEPA analysis, particularly where they include ground disturbing methods. The agency cannot announce a categorical decision to decommission encompassing thousands of miles of routes along with a “suite of methods” to be applied in some future, indefinite array of projects to accomplish that outcome.

This project was scoped primarily as a recreational travel management plan that will mostly impact recreational users of the Forest. Other users were assured their access and activities could still continue under stipulations of their permit, lease or other. Separate analysis of decommissioning efforts is necessary to bring the concerns and needs of non-recreational users to the attention of the public, and Forest managers.

It is also important to note that few, if any, USFS travel planning projects got it right the first time. Indeed, many travel planning projects we are aware of have been amended within one or two years after completion, and many have been amended even before the plan has been completely implemented on the ground. It is quite likely that routes you are proposing for decommissioning will be necessary additions in future travel planning. This is especially true considering you are planning to revise your Forest Plan in the near future.

6. Flawed response to comments

The FEIS does not comply with NEPA's requirement to evaluate and respond to comments. The effort here violates not only the spirit of the law but the specific requirements of 40 CFR § 1503.4.

The response to comments section of the FEIS separates comments from the context in which they were originally submitted which led to inadequate response to the comment as a whole. These inadequate responses then accompanied the proposal through the agency's review process. This practice has unduly and unfairly limited the appropriate agency response and their ability to use the comments and their subsequent responses in making decisions. Many travel planning documents faithfully repeat individual comments, and specifically respond to them. This was not attempted here. The uniquely flawed approach responding to comments here prevented commenters from even identifying whether their comments were considered. Additionally, the agency essentially transformed comments en masse into themes which fit the predetermined answers or themes chosen by the agency.

7. Mixed use analysis is arbitrary and capricious

Numerous route closures or changes in management status are driven by the irrational conclusions of a "mixed use analysis" whereby the Forest allegedly determined that safety risks necessitated the change in status. This analysis failed to comply with numerous requirements of NEPA and the APA, including citation to reference material, identification and justification of the methodologies uses, and related technical requirements. On a more intuitive level, the inadequacy of the analysis is apparent from its basic premise: that a cadre of Forest engineers or other "experts" can reasonably conclude that uses which have historically occurred for decades in a recreational "crown jewel" of the Forest System are so unsafe as to require closure to one or more forms of use.

Where restrictions target nonlicensed OHVs (ie limit access to street legal vehicles) the changes are thinly disguised, but unjustified, efforts to reduce or eliminate use. There are many reasons why mixed use by street legal and unlicensed OHVs may be appropriate, including to provide for desirable or necessary loop riding opportunities, to facilitate use by certain vehicle types on the most appropriate routes (ie to prevent displacement of unlicensed OHVs to routes that truly do present safety risks), and to allow appropriate riding by families or other users and user groups who may not be able to fully participate using street legal OHVs.

The mixed use restrictions of the Decision are arbitrary and capricious and should be set aside and further studied through a valid analysis.

CONCLUSION

We request the following action regarding the Decision:

- (1) Withdraw the Decision;
- (2) Remand the Decision or specific elements of the Decision for further analysis;
- (3) Additional and/or ongoing action to
- (4) The right to fully participate in all appeals or additional procedures including informal disposition, oral presentation, any public meetings or other aspects of the appeal or ongoing travel planning process.



Brian Hawthorne
Public Lands Policy Director
BlueRibbon Coalition
208-237-1008