



File Code: 1570

Date: August 4, 2011

Celestino Sandoval, Jr.  
The Holy Cross 4 Wheel Drive Club  
95 Rafferty Drive  
Leadville, CO 80461

Dear Mr. Sandoval,

On June 20, 2011, you filed a Notice of Appeal (NOA) on behalf of **Holy Cross 4 Wheel Drive Club** 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 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, Part 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) specific route closures under appeal; 2) the decision lacks necessary analysis to justify site-specific actions; 3) the decision to decommission all closed roads is improperly made in the EIS; and 4) travel management rule.
- With regard to Appeal Issue 3) the decision to decommission closed 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 consider additional site-specific NEPA analysis as appropriate, prior to decommissioning roads or trails as identified in Appeal Issue 3. Requested relief to, 1) withdraw the decision; 2) remand the decision for further analysis; and 3) withdrawal of existing "interim" closures of the OHV system, 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 3. 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 15<sup>th</sup> 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



United States  
Department of  
Agriculture

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File Code: 1570-1

Date: August 3, 2011

Route To:

Subject: White River National Forest Travel Management Plan,  
Appeal No. WR 11-02-00-0040 (215)

To: Appeal Deciding Officer

As the designated Appeal Reviewing Officer, this is my recommendation on disposition of the appeal filed by the **Holy Cross 4 Wheel Drive Club** under the regulations at 36 CFR 215. Forest Supervisor Scott Fitzwilliams signed the Record of Decision (ROD) for the White River National Forest 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**

“The Holy Cross 4 Wheel Drive Club respectfully requests the Appeal Deciding Officer expeditiously grant any and all of the following relief from the Decision:

- (1) Withdraw the Decision;
- (2) Remand the Decision for further analysis; and
- (3) Withdraw existing “interim” closures of the OHV System so that use can resume in appropriate with lawfully-established terms and conditions.

We specifically request the opportunity for informal disposition, oral presentation, and or any procedural opportunities provided for or consistent with the applicable regulations.”

## **ISSUES AND DISCUSSION**

### **APPEAL ISSUE 1: SPECIFIC ROUTE CLOSURES UNDER APPEAL**

Appellant states: “The FEIS analysis is inadequate to support the ROD and we believe that an appropriate result is the remand of the FEIS and ROD to the agency for further analysis. [W]e wish to identify the following route restrictions that are of the highest priority...:

747.1 Wearyman	745.1 Lime Creek Jeep	728.1A Lime Creek Spur
728.1B Lime Creek Spur	728.1C Lime Creek Spur	755.1 Ranch Creek
758.1 Dennison	731.1 Taylor Gulch	731.1 A Taylor Gulch Spur
731.1D Taylor Gulch Spur	731.1E Taylor Hill	731.1B Vance’s Cabin”

### **Rule:**

36 CFR 212.55 - In designating National Forest System (NFS) roads, trails, and areas for motor vehicle use, the responsible official shall consider effects on NFS natural and cultural resources, public safety, provision of recreational 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 the availability of resources for that maintenance and administration.

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.

**Discussion:**

The appellant has identified several routes they are concerned about the WRNF defining the modes of travel to be more restrictive than what they are currently, or routes the WRNF has identified for closure and decommissioning.

The purpose of the TMP was to identify the transportation system for the WRNF which aligns the existing White River travel system with the revised Forest Plan and current law and regulation, with the goal of balancing the physical, biological, and social values associated with the WRNF (ROD, p. 3). Each action alternative analyzed in the FEIS represents a potential transportation system that would comply with the Forest Plan, with various combinations of routes for different modes of travel. Interdisciplinary Team analysis was compiled into a detailed table in Attachment 2 of the FEIS that includes documentation for the rationale for designating modes of travel for both summer and winter travel routes, as well as decisions for closing, decommissioning or rehabilitating each route

(/09\_FEIS/04\_FEIS/final\_FEIS/CD/3\_TMP\_Final\_Plan\_RouteListing\_FEISAttachment2.pdf and 05\_Resources/09\_Planning/TMI/completed\_spreadsheets).

The Forest also built off of the analysis that it conducted as part of the SDEIS and the DEIS. The Forest conducted an extensive route inventory and evaluated potential uses and resource concerns for each route (see e.g.,

14\_District\_Files\01\_Aspen\_Sopris\TMP\_Aspen\_DEIS\_roads\_All\_Alts\_040704.xls ). These evaluations were used to build the alternatives and document the rationale for including or eliminating routes in the alternatives and final decision.

(6\_RoutesByAlternative\_FEISAttachment1.pdf;

3\_TMP\_Final\_Plan\_RouteListing\_FEISAttachment2.pdf)

The specific routes in question were included in at least one alternative

(6\_RoutesByAlternative\_FEISAttachment1.pdf). The FEIS discusses the effects of each alternative to the various resources; including soil, water, wildlife, vegetation and other physical resource impacts; in Chapter 3 (pp. 46-225). The effects analysis includes direct, indirect and cumulative effects (40 CFR 1502.16).

I find that the environmental analysis performed complied with the requirements of NEPA and was adequate to allow an informed decision on whether to designate these routes and other routes as part of the travel management system for the WRNF.

**Recommendation:**

I recommend that the Forest Supervisor's decision be affirmed on this issue.

**APPEAL ISSUE 2: THE DECISION LACKS NECESSARY ANALYSIS TO JUSTIFY SITE-SPECIFIC ACTIONS**

Appellant states: "The FEIS lacks proper evidence necessary to make rational, let alone sound, management decisions. When federal agencies evaluate technical issues or apply specialized expertise, NEPA requires them to rely on valid sources and to disclose the methodology, present hard data, cite by footnote or other specific method to technical references, and otherwise disclose and document any bases for expert opinion.

The Forest Service is imposing blanket closures on many widely used roads and trails without site-specific analysis.... Specific examples of unjustified or inadequately-supported conclusions include each of the routes identified in Section 1 above, for which the FEIS/ROD provides only undocumented and/or erroneous conclusions. Your FEIS (specifically in Attachment 1 and Attachment 2) simply lists your staff conclusions regarding site specific impacts without the legally required analysis.

Additionally, economic and socio-economic conclusions are not adequately documented in the FEIS. These topics can and must be analyzed according to the same standards identified above. The subject matter does not excuse conclusive or nonexistent analysis of these issues.

**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.

FSM 7712.1 – A complete inventory of unauthorized routes is not required to conduct a travel analysis.

FSH 7709.55 – The starting point for travel analysis is the existing Forest transportation system in the area under consideration

**Discussion:**

The appellant has identified three areas of concern about the decisions for site-specific actions:

1. Lack of proper evidence to justify the decisions; 2. Blanket closures without site specific analysis; and 3. No documentation of economic and socio-economic conclusions.

- *Lack of proper evidence and blanket closures without site-specific analysis*

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.

- *Socio-economic*

The socio-economic section was inadvertently omitted from the FEIS. However, the socio-economic discussion was included in the DEIS beginning on page 89 and in the SDEIS beginning on page 102. Consequently, the public was allowed opportunity to comment on these materials during the public review periods for the DEIS and the SDEIS (40 CFR 1503, Commenting). The comment periods for the DEIS and SDEIS were initiated via publications of Notices of Availability (NOA) in the Federal Register on July 28, 2006 and November 7, 2008, respectively.

Although the socio-economic section is missing from the documentation of the FEIS, a socio-economic 'report' is included in the project record for the FEIS (09\_FEIS/04\_FEIS/working/WRNF\_TMP\_FEIS\_ch3\_social\_drafr\_061510.docx); this report contains similar information to that documented in the DEIS and SDEIS. The major content difference between the unpublished report and the previous versions included in the DEIS and SDEIS is that the unpublished report includes a brief discussion of Alternative GM. This unpublished socio-economic report for the FEIS states, "Changes were made to address issues raised during comment. These comments did not drive a large change from the direction the preferred alternative presented (p. 6)." In a response to comments, the Forest referred to the socio-economic section in Chapter 3, demonstrating their reliance on the unpublished socio-economic report the Forest expected to include in the FEIS. These statements demonstrate that the socio-economic analysis conducted earlier in the EIS process and the conclusions from that analysis did not change appreciably from the proposed FEIS language; there were no comments received during the review of the SDEIS that directly raised socio-economic concerns.



**Recommendation:**

The Forest developed and analyzed alternatives consistent with the purpose of the project and 40 CFR 1502.16. I recommend the Forest Supervisor's decision be affirmed on this issue with instruction. Given that disclosure of the socio-economic effects was included in the two previous draft EIS's, it appears to me that its omission from the FEIS may have been inadvertent. I instruct the Forest Supervisor to post the socio-economic section to their Forest website and provide to the appellant as an errata to the FEIS. I recommend that a letter be sent to everyone who commented on the FEIS notifying them of posting of the document on the website and offering to send the document upon request.

**APPEAL ISSUE 3: 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 was not evaluated in the FEIS."

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."

**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, 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.

**Discussion:**

The appellant has identified two areas of concern about the decisions to decommission all closed roads: 1. No disclosure to decommission closed routes in the scoping or the DEIS; 2. no site specific analysis for decommissioning.

- *No disclosure to decommission closed routes in the scoping or the DEIS*

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. (FEIS, p. 132) It is also important to consider decommissioning unauthorized roads that are not incorporated through the travel management planning process especially when use of the route causes resource damage, harasses wildlife, or endangers public safety (FEIS, p. 132). One of the six decisions to be made with this project is determining which routes will be decommissioned and rehabilitated (FEIS, p. 30). The record demonstrates that this was identified early on in the process (WRNF\_TMP\_NOI\_082702.pdf; scoping letter 2002; DEIS). 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 could be decommissioned. This is consistent with FSM 7715.78.

Pages 15 and 16 of the DEIS (Purpose and Need) addressed the provisions under 36 CFR §212.55. The White River National Forest presented various scenarios in the travel management plan for where motorized use may or may not be allowed.

*(1) Examination of unauthorized routes for inclusion into the designated travel system or whether to decommission these routes and system routes not needed for the travel system. Based on inventory efforts that included public input and involvement, the travel management plan will provide the foundation for decisions on these routes. Some are currently suitable for use and may be adopted. Others may not be if they do not meet the criteria outlined above. Factors include whether these routes serve a need and whether there are any resource impacts, and if so, how they should be mitigated. Also the forest has to consider whether it can afford the maintenance and administration of these routes if adopted. Although decommissioning has initial costs; once a route is decommissioned any resource impacts or administrative costs should essentially be eliminated.*

The access afforded under a special use permit may be different than the public access restrictions imposed in the travel management plan, depending on the terms of the special use permit.

- *No site-specific analysis for decommissioning was included in the FEIS.*

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 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). The project record includes information on which roads and trails will be decommissioned (3\_TMP\_Fianl\_Plan\_RouteListing\_FEISAttachment2.pdf) 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 Chapter 3 of the FEIS (FEIS p. 46). Road and trail decommissioning was discussed in the relevant resource sections throughout Chapter 3 of the FEIS (FEIS pp. 50, 51, 54, 55, 57, 59, 63, 64, 83, 98, 99, 100, 103, 104, 108, 109, 110, 111, 112, 113, 114, 117, 129, 130, 133, 134, 142, 143, 144, 155, 157, 158, 159, 200, 210, 212, 214, 215). Many resource sections in 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 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. Some decommissioning activities listed could include ground disturbing activities (e.g., pulling culverts, recontouring slopes).

**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. 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 4: TRAVEL MANAGEMENT RULE.**

Appellant states: "The Travel Management Rule directs the Forest to apply varied criteria in fashioning designated travel management systems, and to "consider effects on ...natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands..." and other factors. Id. at 68289 (newly designated 36 CFR § 212.55(a)).

"Instead, the decision focused exclusively on a natural resource centric set of themes and issues, and ignored the Travel Management Rule's mandatory direction to enhance positive user public experiences and benefits. The Decision rationalized this bias with phraseology such as "attempting to balance" or "resolving conflict" instead of "minimizing conflict", and "identifying resource solutions to impacts of the transportation system" in lieu of "identifying recreation use alternatives to impacts of the transportation system." The Decision failed to take a comprehensive look at enhancing a balanced set of recreation opportunities for all users."

"We view these road closures as unjust and as a form of discrimination against those who could not otherwise access the areas without motorized assistance."

**Rule:**

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

36 CFR 212.50(b) The responsible official may incorporate previous administrative decision regarding travel management made under other authorities..

**Discussion:**

The appellant has identified three areas of concern about the decision to select an alternative that meets the spirit of the Travel Management Rule: 1. Applying the criteria of 36 CFR 212.55; 2. Decision failed to take a comprehensive look at enhancing recreation opportunities for all users; and 3. These road closures are unjust and discriminates against those who could not otherwise access these areas without motorized assistance.

- *Applying the criteria of 36 CFR 212.55*

The WRNF updated the route inventory and presented alternatives for the travel management plan in the DEIS. Once the alternative themes were established, the alternatives were fully developed by the ranger district staffs who examined and proposed a management strategy for each road, trail (whether system or non-system), and winter use area, based on site-specific comments, on the ground knowledge, and discussions with the public (FEIS, p. 30).

The Forest conducted an extensive route inventory and evaluated potential uses and resource concerns for each route (TMP\_Aspen\_DEIS\_roads\_All\_Alts\_040704.xls and similar documents for roads and trails, by alternative). These evaluations were used to build the alternatives and document the rationale for including or eliminating routes in the alternatives and final decision. (6\_RoutesByAlternative\_FEISAttachment1.pdf; 3\_TMP\_Final\_Plan\_RouteListing\_FEISAttachment2.pdf)

The FEIS discusses the effects of each alternative to the various resources;

- Natural and cultural resources; including soil, water, wildlife, vegetation and other physical resource impacts; in Chapter 3 (pp. 46-225). The effects analysis includes direct, indirect and cumulative effects.
- Public safety discussion is included under the mixed use analysis of FEIS chapter 3 pages 121-122. Mixed use is defined as authorizing highway legal and non-highway legal motorized vehicles to use the same road. For Colorado, that equates to licensed and unlicensed vehicles (FEIS, pg 69).
- The analysis of effects on recreation opportunities begins on page 75 of the FEIS. A key indicator of the recreation effects analysis recreational capacity for each use by alternative (FEIS, p. 75). Chapter 2 of the FEIS (p. 41, Table 2-6) includes a comparison of effects on key issues by alternative, including volume of recreational use and separation of uses. Alternative C in the DEIS looked at maximizing recreational opportunities as the top priority (FEIS p. 70). Consideration of the appropriateness and quality of those opportunities was introduced as a component in Alternative D in the first draft as it related to reducing user conflict (FEIS p. 70).
- The WRNF examined alternatives for the road system to address access needs (FEIS, pg 70). Alternative E in the DEIS provided a minimal road and trail alternative for examination. Alternative G considered the elements needed to access the land. The preferred alternative (GM) also showed a reduction in miles of road from current conditions. The preferred alternative considered what is needed for access, what can be converted to needed trails, and what is no longer needed and thus can be rehabilitated (FEIS, pg 18).
- Conflicts among uses (FEIS, pg 72-75); No existing recreational opportunity is proposed to be eliminated from the forest. However, instead of trying to provide all opportunities in all locations possible, the forest will provide opportunities in appropriate locations and of sufficient quantity and quality to be sustainable, manageable, and remain as good visitor experiences (FEIS, pg 70).
- The adoption of unauthorized routes into the official travel system will require the forest to maintain these routes and thus adds to budgetary costs. Newly acquired facilities (adopted unauthorized routes) will be open to appropriate motorized or mechanized use



unless financing is not available for maintenance necessary to protect resources (FEIS, pgs 82-84).

- *Decision failed to take a comprehensive look at enhancing recreation opportunities for all users*

The analysis of effects on recreation opportunities begins on page 75 of the FEIS. A key indicator of the recreation effects analysis recreational capacity for each use by alternative (FEIS, p. 75). Chapter 2 of the FEIS (p. 41, Table 2-6) includes a comparison of effects on key issues by alternative, including volume of recreational use and separation of uses. Alternative C in the DEIS looked at maximizing recreational opportunities as the top priority (FEIS p. 70). Consideration of the appropriateness and quality of those opportunities was introduced as a component in Alternative D in the first draft as it related to reducing user conflict (FEIS p. 70).

- *These road closures are unjust and discriminate against those who could not otherwise access these areas without motorized assistance.*

A comment was received on the SDEIS regarding the issue of handicap access and the impacts of closures on those who wanted motorized access (SDEIS Summary of Public Comments, PC-36, Letter 179; 8\_Response to Comments\_FEISAttachment3.pdf, pg 14). While there is a need to provide access for people across the landscape, there is also a need to protect the landscape from the impacts that travel and people can cause. The footprint of a travel system can cause changes to the natural landscape that can cause additional sedimentation and fragmentation as more people access and utilize an area.

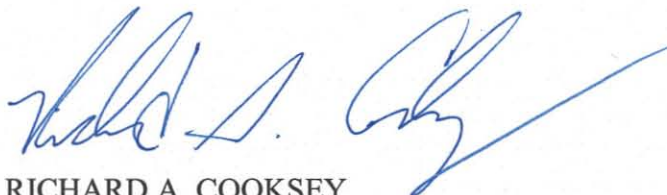
There is no legal requirement to allow people with disabilities to use motor vehicles on roads, on trails, and in areas that are closed to motor vehicle use. Restrictions on motor vehicle use that are applied consistently to everyone are not discriminatory. Generally, granting an exemption from designations for people with disabilities would not be consistent with the resource protection and other management objectives of designation decisions and would fundamentally alter the nature of the Forest Service's travel management program (29 U.S.C. 794; 7 CFR 15e.103).

**Recommendation:**

The Forest Supervisor appropriately examined and applied the criteria required by the regulation. I recommend that the Forest Supervisor be affirmed on this issue.

**RECOMMENDATION**

I recommend that the Forest Supervisor's March 17, 2011 decision be affirmed with the instructions outlined under Appeal Issue 3 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



Holy Cross 4 Wheel Drive Club  
95 Rafferty Drive  
Leadville, CO 80461  
719.486.3492

*Delivered via email and facsimile to appeals-rocky-mountain-regional-office@fs.fed.us. FAX: (303) 275-5154.*

USDA Forest Service, Rocky Mountain Region,  
ATTN: Appeal Deciding Officer  
740 Simms  
Golden, CO 8040

**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 Holy Cross 4 Wheel Drive Club. Individual and/or organizational members of Holy Cross 4 Wheel Drive Club 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 Celestino Sandoval Jr. 719.486.3492 (h) or 970.471.5578 (c) e-mail tinos53@yahoo.com.

**A. Introduction**

The Holy Cross 4 Wheel Drive Club is a non profit organization based out of Lake and Eagle County in the state of Colorado. The club consists of over 50 memberships of family and single memberships.

The Holy Cross 4 Wheel Drive Club is committed to actively and effectively partner with the White River National Forest in the sustainable management of recreation, including motorized-assisted recreation. The Holy Cross 4 Wheel Drive Club has been in partnership with the Eagle/Holy Cross Ranger District since 1984. Since the inception of the partnership the Holy Cross 4 Wheel Drive Club has consistently maintained numerous 4x4 trails systems within the White River National Forest; enabling the public to enjoy the White River National Forest in a broad spectrum of activities including hiking, biking, fishing, four wheeling, hunting, camping and numerous other activities. Through our partnership we have been able to keep the roads open and accessible to everyone. By closing the roads and restricting motorized vehicle access the Forest Service has not only limited the use of these roads to the a large majority of the general public it has also created a hardship for the disabled, the young, and senior population who could not otherwise enjoy our National Forest without motorize assistance.

The Holy Cross 4 Wheel Drive Club believes the agency and its partners must work toward a collaborative solution that advances the simultaneous goals of sustainable, yet enjoyable use of the

Forest. The Decision is premised on an incorrect and unsupportable notion that the existing condition violates applicable law and Forest Plan direction and cannot be improved, or that impacts cannot be minimized or eliminated. To the contrary, the analysis shows designated uses are being supported, state water quality standards are being met, and water quality, habitat effectiveness is being improved. Moreover, we believe that visitor enjoyment can be even further improved through cooperative and logical management solution that will bring available resources

Sadly, the Decision reflects none of these goals. The Decision lacks a logical connection to the facts on the ground and violates applicable law. As advocates of responsible and effectively-managed vehicle-based recreation, we perceive little option but to ask for withdrawal of the Decision.

## **B. Interests of Appellant**

The Holy Cross 4 Wheel Drive Club is committed to actively and effectively partner with the White River National Forest in the sustainable management of recreation, including motorized-assisted recreation. The Holy Cross 4 Wheel Drive Club has been in partnership with the Eagle/Holy Cross Ranger District since 1984 in the Adopt-A-Road program. The Holy Cross 4 Wheel Drive Club and its members are immediately and directly affected by the decision.

## **C. 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.”<sup>1</sup>

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.<sup>2</sup> 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

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1 5 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).

was arbitrary and capricious.”<sup>3</sup>

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.<sup>4</sup> For the reasons identified below, The decision supported by this EIS, particularly to close the specific routes listed under section D-1 of this Appeal, will violate these basic principles.

## **D. Appeal Issues**

For any or all of the following reasons, we respectfully request that the decision of the Forest Supervisor be reversed and remanded to the Forest for proper consideration and further proceedings.

### 1. Specific Route Closures Under Appeal

The FEIS analysis is inadequate to support the ROD and we believe that an appropriate result is the remand of the FEIS and ROD to the agency for further analysis. However, in the interest of facilitating discussion and analysis of possible appeal resolution outcomes, we wish to identify the following route restrictions that are of the highest priority. Through subsequent analysis before or beyond the agency we hope to focus on the rationale for and alternatives to the following restrictions:

747.1 Wearyman  
745.1 Lime Creek Jeep  
728.1A Lime Creek Spur  
728.1B Lime Creek Spur  
721.1C Lime Creek Spur  
755.1 Ranch Creek  
758.1 Dennison  
731.1 Taylor Gulch  
731.1A Taylor Gulch Spur  
731.1D Taylor Gulch Spur  
731.1E Taylor Hill  
731.1B Vance's Cabin

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

The FEIS lacks proper evidence necessary to make rational, let alone sound, management decisions. The Forest Service is imposing blanket closures on many widely used roads and trails without site-specific analysis.

When federal agencies evaluate technical issues or apply specialized expertise, NEPA requires them to rely on valid sources and to disclose the methodology, present hard data, cite by footnote or other specific method to technical references, and otherwise disclose and document any bases for expert

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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).

opinion. NEPA does not envision undocumented narrative exposition, instead requiring that, “Agencies shall insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements. 42 U.S.C. § 4332(A); 40 C.F.R. § 1502.6. It is a violation of NEPA and the Council on Environmental Quality Regulations for an agency to “couch” technical analysis in vague citations. Specialized expertise often lies at the core of NEPA analysis and the agency must properly present and insure the professional integrity of any technical analysis. Siskiyou Regional Education Project v. Rose, 87 F.Supp.2d 1074, 1098 (D.Or. 1999) (quoting NRDC v. Duvall, 777 F.Supp. 1533, 1539 (E.D.Cal. 1991)) (internal citations omitted).

Other specific examples of unjustified or inadequately-supported conclusions include each of the routes identified in Section 1 above, for which the FEIS/ROD provides only undocumented and/or erroneous conclusions. Your FEIS (specifically in Attachment 1 and Attachment 2) simply lists your staff conclusions regarding site specific impacts without the legally required analysis.

Additionally, economic and socio-economic conclusions are not adequately documented in the FEIS. These topics can and must be analyzed according to the same standards identified above. The subject matter does not excuse conclusive or nonexistent analysis of these issues.

In making decisions in the FEIS, The Forest Service arbitrarily and capriciously relies on incomplete, invalid, or nonexistent analysis. The FEIS lacks the foundation necessary make critical, sound management decisions. It also defies the very purpose of NEPA by allowing the Forest Service to make management prescriptions based on the whims and fancies of its employees. The public relies on agencies to uphold professional and scientific integrity in all management decisions. The Forest Service has deprived the people of a valid NEPA process by not providing proper evidence for analysis of the issues.

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

The Holy Cross 4 Wheel Drive Club strongly objects 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 was not evaluated in the FEIS.

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.

## **E. Conclusion**

When we spoke with the NSF about the closures

1. 758.1 Dennison- The reasoning was not justifiable by the FEIS. This road provides access for

hunting, camping and sightseeing. Without motorized access this limits each of these activities. This road is included in our Adopt-A-Road agreement and the Forest Service stated that this road would remain open to all motorized vehicles. This road provides access for hunting, camping and excellent sightseeing.

2. 745.1 Lime Creek Jeep, 728.1A Lime Creek Spur, 728.1B Lime Creek Spur, 721.1C Lime Creek Spur. When asked why the decision was made to close the road and its spurs the answer I received was "The road is dangerous because 4-wheel drive is required to navigate the road". This answer does not justify the closure. There are several other roads that have more extreme off-camber, natural obstacles including large rocks, boulder and water crossing to navigate the roads. Lime Creek and it's spurs are 4-wheel drive roads. This connects with 728.1 Timber Creek which connects to 709.1 Shrine Pass which creates a loop providing access to different roads, scenic view, hunting, fishing, camping and numerous other activities.
3. 755.1 Ranch Creek. When asked why the decision was made to close the road the answer I received was "The road is dangerous because 4-wheel drive is required to navigate the road and it is steep and more difficult to navigate". Yet this road is accessible by a Subaru. This road has been designated with a special use permit for access to the 10<sup>th</sup> Mountain Hut system specifically the Jackal Hut. The Forest Service has not had to do any maintenance to the road all maintenance has been performed by the Holy Cross 4 Wheel Drive Club members providing cleanup, tree removal, erosion control and installing a gate for seasonal closures. It is unjust to limit access to a public road to a select few individuals.
4. 731.1 Taylor Gulch, 731.1A Taylor Gulch Spur, 731.1D Taylor Gulch Spur, 731.1E Taylor Hill, 731.1B Vance's Cabin When asked why the decision was made to close the road the answer he could not give me an answer as to why it is slated to be closed. This road is in superior shape and requires minimum maintenance and is assessable by a 2 wheel drive vehicles and provides access to the White River National Forest for everyone. Providing extraordinary views, camping and hunting access.
5. 741.1 Wearyman Creek. This road creates a loop from the National Historic Site of Camp Hale to Redcliff and provides economic benefits to the Town of Redcliff with access to thousands of acres of prime hunting and camping locations.

After consultation with members of The Holy Cross 4 Wheel Drive Club, as well as other Forest users living in the area, and also with elected representatives of local communities, we believe the agency focused too much on the potential impacts of vehicle use and efforts to provide a non-motorized recreational experience, and not enough on a "common sense" travel management system, or the "whole cloth" of the agency's Travel Management Rule. We implore the agency to consider the "on-the-ground" implications of the Decision.

For example, the decision to close FSR 747.1 (Wearyman) and FSR 745.1 (Lime Creek Jeep) eliminates two very popular "loops." Loops are a key component in any travel management system.<sup>5</sup> Eliminating these loops results in the public being afforded a "up an back" recreational experience, and causes two key problems; First is that "up and back" use often results in further environmental impacts because it is much more difficult to enforce and to stop illegal and cross country travel on a "up and back" experience. Second is that eliminating the "loop" substantially diminishes user enjoyment.

These examples are highlight our concerns about how the decision lacks proper evidence necessary to make rational, let alone sound, management decisions.

The Travel Management Rule directs the Forest to apply varied criteria in fashioning designated travel management systems, and to "consider effects on ...natural and cultural resources, public safety,

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5 See <http://nohvcclibrary.forestry.uga.edu/mgtsub.html>



provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands..." and other factors. Id. at 68289 (newly designated 36 C.F.R. § 212.55(a)).

Instead, the decision focused exclusively on a natural resource centric set of themes and issues, and ignored the Travel Management Rule's mandatory direction to enhance positive user public experiences and benefits. The Decision rationalized this bias with phraseology such as "attempting to balance" or "resolving conflict" instead of "minimizing conflict", and "identifying resource solutions to impacts of the transportation system" in lieu of "identifying recreation use alternatives to impacts of the transportation system." The Decision failed to take a comprehensive look at enhancing a balanced set of recreation opportunities for all users.

Importantly, the Decision fails to take advantage of resources available to the agency to effectively minimize impacts. Speaking frankly here, it is difficult for all of our members not to view the Decision as a bitter disappointment, and even a betrayal of our agreement and for years of volunteer work to maintain and minimize impact on the roads in order to provide motor vehicle access for all to enjoy. We view these road closures as unjust and as a form of discrimination against those who could not otherwise access the areas without motorized assistance. For years the agency, under numerous Administrations and Chiefs, has spoken eloquently about the critical importance of "partnerships," especially insofar as managing recreational uses. Yet when "partnerships" (meaning resources available via organizations such as NAME, not to mention local governments) could be leveraged to address legitimate concerns regarding impacts to natural resources, it seems all that talk about "partnerships" was nothing more than lip service.

#### **D. Relief Requested**

The Holy Cross 4 Wheel Drive Club respectfully requests the Appeal Deciding Officer expeditiously grant any and all of the following relief from the Decision:

- (1) Withdraw the Decision;
- (2) Remand the Decision for further analysis; and
- (3) Withdraw existing "interim" closures of the OHV System so that use can resume in appropriate with lawfully-established terms and conditions.

We specifically request the opportunity for informal disposition, oral presentation, and or any procedural opportunities provided for or consistent with the applicable regulations.

Sincerely,

Celestino Sandoval Jr.  
President  
The Holy Cross 4 Wheel Drive Club  
95 Rafferty Drive  
Leadville, CO 80461