



United States  
Department of  
Agriculture

Forest  
Service

Rocky  
Mountain  
Region

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File Code: 1570

Date: August 4, 2011

Christopher Seldin  
Assistant County Attorney  
Pitkin County  
530 E. Main Street, Suite 302  
Aspen, CO 81611

Dear Mr. Seldin,

On June 19, 2011, you filed a Notice of Appeal (NOA) on behalf of **Pitkin County**, Colorado 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.

### **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) non-motorized routes within the Crystal River Valley; 2) parking demands for Kobey Park snowmobilers; 3) winter travel near county open spaces; and 4) Red Canyon and Dry Woody connection to Aspen Valley Ranch trail.
- With regard to Appeal Issue 4) the decision documented in FEIS Attachment 2 to decommission routes identified as Red Canyon trail 1-2189.1A and Dry Woody Creek trail 1-2188.1 needs to be

corrected. The record indicates that the Forest was not adding these routes as further study was warranted. The status of the routes should be updated when further study is completed.

ARO Cooksey recommended affirmation of the Forest Supervisor's decision on all issues, with instruction to update the route listing for Red Canyon trail and Dry Woody Creek trail as identified in Appeal Issue 4. Requested relief to amend the travel management plan in accordance with the requests made in the appellant's letter 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 4. I deny requested relief except for the recommended updates to the FEIS attachment associated with Red Canyon and Dry Woody Creek trails.

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



File Code: 1570-1

Date: August 3, 2011

Route To:

Subject: White River National Forest Travel Management Plan,  
Appeal No. WR 11-02-00-0037 (215)

To: Appeal Deciding Officer

As the designated Appeal Reviewing Officer, this is my recommendation on disposition of the appeal filed by **Pitkin County** under the regulations at 36 CFR 215. Forest Supervisor Scott Fitzwilliams signed the Record of Decision (ROD) for the White River National Forest (WRNF) 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 respectfully ask that you grant this appeal, and that the TMP be amended in accordance with the requests made in this letter.”

## **ISSUES AND DISCUSSION**

### **APPEAL ISSUE 1: NON-MOTORIZED ROUTES WITHIN THE CRYSTAL RIVER VALLEY.**

Appellant states: Pitkin County believes certain routes within the Crystal River Valley are important alignments for present and future non-motorized recreational use (the “Affected Routes”). A number of these routes, including those subject to this appeal, exist along the alignment of an historic wagon road for which the County holds an RS 2477 right of way. The ROD calls for most of the Affected Routes to be decommissioned and closed to public access.

Purporting to decommission these routes and close them to public access (or preclude their maintenance) is inconsistent with the County’s property rights in the Affected Routes. Until the parties’ respective property interests in the Affected Routes are adjudicated—or, preferably, resolved by an agreement between the Service and the County—these routes should remain designated for non-motorized public use in the TMP.

The Affected Routes that are subject to this appeal are located within the Sopris Ranger District, and are designated on the Travel Plan Map for that District as Forest Service Trails **3-1954W.1, 3-1966W.1, 3-1966W.2, 3-1966W.3, 3-310W.1F and 3-308.1A.**

The County reserves all rights to assert all available uses of the affected routes pursuant to RS 2477 and other applicable laws.



**Rule:**

36 CFR 212.1 - Roads or trails for which a state, county, or local public road authority holds a legally documented right-of-way are not NFS roads or NFS trails.

36 CFR 212.51(a) - The travel management rule exempts from designations only those rights-of-way that are legally documented.

36 CFR 212.55(d) – The travel management rule recognizes valid existing rights.

FSM 7703.3 provides an administrative framework for meeting the requirement of recognizing valid existing rights by providing guidance on documenting jurisdiction, transferring jurisdiction, and exercising jurisdiction over forest roads.

FSM 7718.3 - Use of a road or trail that is authorized by a legally documented right-of-way held by a state, county, or other local public road authority. The exemption for legally documented rights-of-way held by State, county, or other local public road authorities covers rights-of-way under RS 2477 that have been adjudicated through the Federal court system or otherwise formally established.

Revised Statute (RS) 2477 - Section 8 of the Act of July 26, 1866, 14 Stat. 253, Revised Statute 2477, 43 U.S.C. 932, repealed by the Act of October 21, 1976, (Federal Lands and Policy Management Act, FLPMA) and 90 Stat. 2793, (RS 2477).

**Discussion:**

Pitkin County (County) is concerned about the WRNF including the routes within the Crystal River Valley along the historic wagon road (for which the County claims they hold RS 2477 rights) in the decision for decommissioning, and would like the WRNF to retain those routes for non-motorized public use in the TMP.

According to information found in the administrative record, the following routes were identified for decommissioning: 3-1954W.1, 3-1966W.1, 3-1966W.2, 3-1966W.3 (/05\_Resources/09\_Planning/TMI/completed\_spreadsheets/Changes/Sopris\_Roads\_02\_23\_10\_version.xlsx). The other two routes, 3-310W.1F and 3-308.1A (Redstone Campground), were being retained by the WRNF as part of the travel management system.

There is a presumption that on federal lands, ownership and management authority of routes lie with the federal government. Numerous courts have held that the Forest Service has authority under the Property Clause of the United States Constitution and the agency's Organic Act (16 U.S.C. 551) to regulate reasonable use of roads and trails on NFS lands, including roads authorized by an RS 2477 right-of-way, even if these roads may be the subject of claims for public highway rights-of-way that may prove valid in the future (and become legally documented in accordance with federal law).

Application of the travel management rule to these roads and trails is reasonable, given the purpose of the rule to protect resources and manage conflicts among uses (70 FR 68265, 11/9/2005), and the inability of the Forest Service to adjudicate title to any RS 2477 claims that may be asserted (73 FR 74694; *Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735 (10<sup>th</sup> Cir. 2005)).

Thus, for purposes of the travel management rule, there is a presumption that Forest Service designations for motor vehicle use govern on NFS lands, unless a local public road authority submits legal documentation for an RS 2477 right-of-way. A county is not entitled to exercise unilateral management authority based on a mere claim for an RS 2477 right-of-way. The county must carry the burden of proof of title in a court of law or obtain some other recognition of the right-of-way under federal law.

The Forest Service does not have authority to adjudicate title in an RS2477 road to the County during the travel management planning process (73 FR 74694; *Southern Utah Wilderness alliance v Bureau of Land Management*, 425 F.3d 735 (10<sup>th</sup> Cir. 2005) and the landownership of the County wagon road was not in the travel management EIS scope of decisions to be made (FEIS, pg 19). The FEIS (pg. 23-24) recognized that valid outstanding rights may exist on this road. If a valid outstanding right exists, the Forest Service will honor a valid outstanding right when it is subsequently determined that the specific facts surrounding any claim to such rights meet the criteria set forth in any respective statute granting such occupancy and use. The Forest Service may do this by making a non-binding administrative determination (NBD) as to the potential validity of the RS 2477 right of way. If the Forest Service identifies a potentially valid RS 2477 right-of-way claim through the NBD process, the agency will encourage the claimant to accept jurisdiction pursuant to an easement granted by the U.S. Department of Transportation (23 U.S.C. 317) or by the Forest Service under Section 2 of the National Forests Roads and Trails Act (16 U.S.C. 533) or to adjudicate the claim pursuant to the Quiet Title Act (28 U.S.C. 2409a).

There is documentation in the project record regarding the possible future analysis of the County's claim to an RS2477 right to the Crystal River trail  
(04\_Team\_Administration\02\_Communications\_Correspondence\groups\government\_agencies\PitkinCounty-WagonRd\_060311.docx):

“At this time the FS will not add any segments of trail along this corridor as system trails. These are not system routes nor will they be shown as system routes in the Final TMP as the entire system including necessary easements are not ripe for decision. Decommissioning of these routes would be more toward signing and blocking entrances, because of the historic value the trails themselves most would be left alone save any necessary resource protection measures if necessary. This will allow for future planning to occur.”

The deciding officer was aware of the claims made by the County and made the decision not to include these trails as Forest Service system trails, which would be inconsistent with the County's claims. The deciding officer also decided to decommission the trail by signing and blocking entrances to the trail; the decommission steps would be easily reversible should the County prevail in its RS2477 claims.

**Recommendation:**

The record demonstrates the fact that the County's assertion of a RS2477 valid existing right was recognized by the Forest Supervisor as a possible valid claim.

In the absence of proof offered by the County sufficient to satisfy the administrative needs of the Forest Service concerning the likely validity of this right, or the absence of a court decree, I find that that Forest Supervisor appropriately balanced the treatment of the Crystal River trail in the TMP decision.

However, I encourage the WRNF to work with the County on a NBD on the routes in question. If there is sufficient evidence to show that an RS 2477 right of way was created prior to forest reservation on the same alignment, and was not subsequently vacated or abandoned, the blockage and signage should come down and the WRNF should work with the County on how they would like to manage the right-of-way. I recommend the Forest Supervisor's decision be affirmed on this issue.

## **APPEAL ISSUE 2: PARKING DEMANDS FOR KOBAY PARK SNOWMOBILERS.**

Appellant states: The Travel Management Plan designates certain areas for winter recreational use without taking into account how recreationalists will, as a practical matter, access those public lands. The most obvious example of this is snowmobile use in the Kobey Park area.

Snowmobile users require parking areas designed to accommodate the trailers and large trucks that transport snowmobiles to the Forest. The Service has failed to provide such parking, and thus transfers the consequences of its winter management decision to the County. Moreover, Lenado Road itself is not in an acceptable condition for the high level of recreational vehicle use it receives.

The Forest Service seems content to designate Kobey Park for public access without making concrete efforts to address the obvious access concerns created by the designation.

### **Rule:**

36 CFR 212.53 – The responsible official shall coordinate with appropriate Federal, State, county and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System Trails, and areas on National Forest System lands pursuant to this subpart.

### **Discussion:**

The County is concerned with the agency's identification of winter motorized/snowmobile use in the Kobey Park area and the inability of the agency to provide adequate parking to accommodate trailers and large trucks that transport snowmobiles to the Forest.

The Forest received this concern as a comment on the SDEIS. The Forest responded that it has met with the County on this matter and explained that the road through Lenado is currently the only viable and reasonable access for snowmobiles and skiers to access Kobey Park area and Margy's Hut during the winter. The WRNF indicated in its Response to Comments that it will continue to work cooperatively with the County on these issues (8\_ResponseToComments\_FEISAttachement3.pdf pg. 49 (Aspen/Sopris 26)).

### **Recommendation:**

There is evidence in the record the Forest is working with the County on this issue. I recommend the Forest Supervisor's decision be affirmed on this issue.



### **APPEAL ISSUE 3: WINTER TRAVEL NEAR COUNTY OPEN SPACES.**

Appellant states: The County's Open Space and Trails program currently owns mining claims comprising an approximately 365-acre in-holding in the Kobey Park area, and a 160-acre parcel in the Sellars Park area. The Winter Management Plan has much of these County lands bordering or entirely within its "Open Motorized Access" zones. The Pitkin County Code prohibits motorized uses on its Open Space and Trails properties. Such inconsistencies in management of public lands in the backcountry would obviously create confusion among users and would be difficult to enforce.

Adjusting the boundaries for the proposed winter travel areas so that the County-owned in-holdings are removed from proximity to the "Open Motorized Areas" and located within either the "Restricted – Motorized Routes Only" or "Motorized Prohibited Areas" would resolve this problem. The specific locations of these in-holdings lend themselves to making such adjustments, as they are located in areas adjacent to either specified travel routes, or in areas that see little, if any, winter travel... We understand that precedent exists for creating buffer areas around Tenth Mountain Hut facilities, and request that the Service make the boundary adjustments requested here as well.

#### **Rule:**

36 CFR 212.53 – The responsible official shall coordinate with appropriate Federal, State, county and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System Trails, and areas on National Forest System lands pursuant to this subpart.

#### **Discussion:**

The County has raised concern about the WRNF winter management plan and the proximity of its "Open Motorized Access" zone to lands under the jurisdiction of the County that prohibit motorized use. They are concerned this may cause confusion among the motorized snowmobilers and would be difficult for the County to enforce.

The Forest received this concern as a comment on the SDEIS as letter number 467 (8\_ResponsesToComments\_FEISAttachment3.pdf). The Forest responded that they will work with the County to resolve these issues where appropriate. In the winter NFSR 528 receives little to no snowmobile traffic. The County may have to do some signage on their properties as well (8\_ResponseToComments\_FEISAttachment3.pdf pg. 49 (Aspen/Sopris-26)).

The documentation in the record suggests that the Forest Supervisor considered the comments in making a decision and intends to continue to work cooperatively with the County to resolve management issues in this area. NFSR 528 was not included in FEIS Attachment 2 (3\_TMP\_Final\_Plan\_routelisting\_FEISAttachment2.pdf) under either the winter or summer strategy.

#### **Recommendation:**

The Forest documented that it considered the County's comment in the final decision and intends to continue to work cooperatively with the County. I recommend the Forest Supervisor's decision be affirmed on this issue.

#### **APPEAL ISSUE 4: RED CANYON AND DRY WOODY CONNECTION TO ASPEN VALLEY RANCH TRAIL.**

Appellant states: For several years, Pitkin County has held a trail easement providing for recreational access through Aspen Valley Ranch to the public lands in Red Canyon and Dry Woody Creek. Negotiations with the landowner to settle litigation over a historic road alignment through AVR and into these areas<sup>1</sup> have recently resulted in a settlement that provides for improved public access to public lands for pedestrians, equestrians, and cyclists. This new trail alignment will provide a beautiful connection to the old road alignments that extends into the public lands in these areas. In turn, the existing roads and trails on the Forest in this location provide a more gradual means of non-motorized access into the public lands than is available on other access routes such as Triangle Peak Road. The County has invested significant resources into providing a means for the public to access public lands through AVR. It respectfully requests that the Forest not adopt a designation that would thwart the ability of cyclists and equestrians to make use of these areas.

#### **Rule:**

36 CFR 212.1 - Roads or trails for which a state, county, or local public road authority holds a legally documented right-of-way are not NFS roads or NFS trails.

36 CFR 212.53 – The responsible official shall coordinate with appropriate Federal, State, county and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System Trails, and areas on National Forest System lands pursuant to this subpart.

#### **Discussion:**

Pitkin County is concerned that they have had on-going negotiations with the landowner(s) in Aspen Valley Ranch with regard to public recreational access. They request the Forest not adopt a route designation that would thwart the ability of cyclists and equestrians to access public lands in that area.

The Forest received similar comments on the SDEIS regarding Red Canyon trail, 1-2189.1A and Dry Woody Creek trail, 1-2188.1. Documentation in the record indicates that the FS understands the ongoing easement issues between the County and landowner. The record indicates that the Forest was not adding the route to the designated/rehabilitated road system as further study is warranted (8\_ResponseToComments\_FEISAttachment3.pdf, pg. 25 (Aspen/Sopris-2)).

However, the route listing in FEIS Attachment 2 shows Red Canyon trail, 1-2189.1A, and Dry Woody Creek trail, 1-2188.1 as “closed to the public” under the summer strategy for decommissioning (3\_TMP\_Final\_Plan\_routelisting\_FEISAttachment2.pdf). It’s displayed as “not needed” on the spreadsheet for Aspen Ranger District (/05\_Resources/09\_Planning/TMI/completed\_spreadsheets/Changes/Aspen\_Changes.xlsx).

#### **Recommendation:**

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<sup>1</sup> The County has historic information indicating that RS 2477 rights of way exist into Red Canyon and Dry Woody; as with the Crystal, the County’s intention is only to provide for non-motorized use along these alignments, and we would seek a cooperative agreement with the Service to this effect here as well.

I recommend that the decision of the Forest Supervisor as documented in the FEIS Attachment 2 (3\_TMP\_Final\_Plan\_routelisting\_FEISAttachment2.pdf) be updated to reflect documentation in the record indicating that the agency is continuing to work with Pitkin County. The status of the route should be updated when further study is completed.

### **RECOMMENDATION**

I recommend that the Forest Supervisor's March 17, 2011 decision be affirmed with the instructions outlined under Appeal Issue 4, and that the Appellant's request for relief to amend the TMP be granted on that issue.



RICHARD A. COOKSEY  
Appeal Reviewing Officer

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

## PITKIN COUNTY ATTORNEY

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November 1, 2011

Via Email (without exhibits) to [appeals-rocky-mountain-regional-office@fs.fed.us](mailto:appeals-rocky-mountain-regional-office@fs.fed.us), and FedEx

Rick Cables, Regional Forester  
USDA Forest Service, Rocky Mountain Region  
740 Simms  
Golden, CO 80401

***Re: Appeal of White River National Forest Travel Management Plan Record of Decision***

Dear Mr. Cables:

Please accept this letter as Pitkin County's appeal of the White River National Forest Travel Management Plan ("TMP") Record of Decision ("ROD") pursuant to 36 CFR § 215.14. Pitkin County understands you to be the "Appeal Deciding Officer" for purposes of 36 CFR 215.8; if another official is discharging that role, we respectfully request that we be notified of that individual's identity, and ask that this appeal be forwarded accordingly. All communications concerning this appeal should be addressed to me at the address and telephone number listed above.

Pitkin County provided written comments regarding the draft TMP on January 6, 2009 and October 26, 2006, and thus is a proper appellant for purposes of 36 CFR § 215.13. Copies of those comments are attached to this appeal as Exhibits 1 and 2. The ROD was signed by Forest Supervisor Scott G. Fitzwilliams on March 17, 2011. The public notice commencing the time for this appeal was published in the Glenwood Springs Post Independent on May 4, 2011. Accordingly, this appeal is timely pursuant to 36 CFR § 215.15(a).

In its written comments, Pitkin County identified several different issues of significant concern to the County. Those issues are addressed sequentially in this appeal as follows: (I) Management designations of certain routes within the Crystal River Valley in the Sopris Ranger District; (II) Management of winter parking for Kobey Park snowmobilers; (III) Management of winter travel in the vicinity of County-owned inholdings within the WRNF in the areas of Kobey Park and Sellars Park; and (IV) Designation of routes connecting with Aspen Valley Ranch in the Woody Creek area.

The County appreciates its productive working relationship with the Service on a wide variety of issues in which we cooperate to advance the public interest. The following discussion is offered in the spirit of continuing to improve that relationship.

## **I. Non-Motorized Routes Within the Crystal River Valley**

The first issue on appeal concerns certain routes within the Crystal River Valley that the County believes are important alignments for present and future non-motorized recreational use (the “Affected Routes”). A number of these routes, including those subject to this appeal, exist along the alignment of an historic wagon road for which the County holds an R.S. 2477 right of way. The ROD calls for most of the Affected Routes to be decommissioned and closed to public access; two of them are designated for management pursuant to Special Use Permit, but the County does not understand this designation to contemplate general public access.

Purporting to decommission these routes and close them to public access (or preclude their maintenance) is inconsistent with the County’s property rights in the Affected Routes. Until the parties’ respective property interests in the Affected Routes are adjudicated—or, preferably, resolved by an agreement between the Service and the County—these routes should remain designated for non-motorized public use in the TMP.

### ***A. Identification of Affected Routes***

The Affected Routes that are subject to this appeal are located within the Sopris Ranger District, and are designated on the Travel Plan Map for that District as Forest Service Trails **3-1954W.1, 3-1966W.1, 3-1966W.2, 3-1966W.3, 3-310W.1F** and **3-308.1A**. As you can see from pages A2-20, A2-21, and A2-27 of Attachment 2 to the ROD (collectively attached hereto as Exhibit 3), all of these routes are designated for decommissioning and closure to the public other than 3-310W.1F and 3-308.1A. These latter two routes are designated for management by Special Use Permit, but the County has not been contacted concerning management pursuant to such a permit. This, coupled with the designation of route 3-310W.1F as a route not needed for administrative or recreational use, leads the County to conclude that it is not the permittee contemplated by the TMP and that public access is not contemplated along these routes.<sup>1</sup>

### ***B. Significance of Affected Routes***

As noted in the County’s EIS comments, the Affected Routes have been identified as potential alignments for the Crystal Trail, and potential tributaries to it. Route 3-308.1A is also part of an alignment that currently provides public access to the Filoha Meadows Open Space, one of the crown jewels of the County’s Open Space program.<sup>2</sup>

The Crystal Trail is itself a component of the proposed Crested Butte to Carbondale Trail (the “CB-CD Trail”). Pitkin County and its partners in the West Elk Scenic Byway Committee

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<sup>1</sup> With regard to Route 3-308.1A, there appears to be a conflict between the Travel Plan Map—which calls for this route to be managed pursuant to a special use permit—and Attachment 2, which simply designates it as available for Licensed Use by the general public, including all non-motorized uses. The County has no objection to the designation contained in Attachment 2, and therefore includes this route in the instant appeal only to the extent that the Travel Plan Map designates it for management pursuant to special use permit.

<sup>2</sup> Filoha Meadows already receives considerable use by the public and is the site of numerous guided naturalist tours by organizations such as the Roaring Fork Conservancy. As explained in footnote 1, therefore, the County assumes there was simply an error in the Travel Plan Map with regard to Route 3-308.1A, as the County and the Service have had numerous communications concerning public access to Filoha Meadows in the past.



continue to investigate the feasibility of the CB-CD Trail, which would connect Crested Butte and Carbondale via McClure and Kebler Passes.

### ***C. Current Use of Affected Routes***

Route 3-1966W.2 is the old alignment of McClure pass. It regularly receives foot travel both from summer hikers and winter snowshoers. It provides spectacular views as well as vigorous exercise due to its relatively steep grade. It was identified as a preferred alignment for the CB-CD trail.

Route 3-1966W.3 is commonly referred to as the Bear Creek Trail. This route is presently used by hikers and offers access to the top of Bear Creek falls, a spectacular drop that falls directly into the Crystal River off Highway 133. Although the old Road parallels Highway 133, it is isolated from that highway by topography, and offers incredible views of Chair Mountain. The old road is blocked from vehicular use by boulders on the southern end, where it crosses Highway 133 at grade. As such, it offers a rare walk on an easy gradient in the Crystal Valley. It would make a very natural and simple link in the proposed soft surface bike route from Redstone to Crested Butte.

Route 3-1966W.1 is a spur of the Bear Creek Trail that has also been long used by the public.

Route 1954W.1 is the portion of the old Road from the County's Filoha Meadows Open Space to Avalanche Creek. This route is walked as a connection between the two, and features historic rock walls against Elephant Butte that were built by Pitkin County in the late 1800s.

Route 3-310W-1F is the continuation of the old Road below Avalanche Creek and into the old Janeway Townsite. Several hundred people lived there during the late 1800s, as chronicled in the "Elk Mountain Odyssey." This is also used by hikers and walkers for access to the historic site, and is a very pleasant walk through a large meadow next to the Crystal River.

### ***D. County Ownership of Affected Routes***

The County's previous TMP comments identified plat surveys recorded in the Official Records of Pitkin County at Plat Book 1, Page 18 and Plat Book 1, Page 27. Those historic surveys are attached hereto as Exhibits 4-5; both locate a County wagon road extending along the Crystal River Valley (the "Road"). Whether these surveys represented construction drawings or as-built drawings is unclear at this time, but it is clear that they correspond with the location of an historic roadbed that in many areas is visible on the ground today. Attached to this Appeal as Exhibits 6 is a CD containing digital maps prepared by surveyor Mark Beckler that plot the alignment of the Road shown in the historic surveys on contemporary aerial photographic images.<sup>3</sup>

Historical documents on file with the Pitkin County Clerk and Recorder confirm the County's ownership of this historic Road alignment, and indicate that it was constructed between

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<sup>3</sup> To be clear, Route 3-1966.W.2 is not along the historic County Road alignment; instead, this route corresponds with the historic location of McClure Pass. The County is still investigating the historical establishment of this alignment.

1888 and 1890. *See* Ex. 7. These exhibits show that the County sent Road Viewers to establish the Road, expended funds to construct and maintain the Road, and sent a surveyor to survey it. The documents consistently refer to the Road as a County asset. Moreover, 1890 federal surveys from the General Land Office confirm the existence of the Road in many of the locations shown by Exhibits 4-5, including the locations of certain Affected Routes. *See* Ex. 8.

Because the Road was created and used prior to the withdrawal of the White River National Forest (and its precursors), the County acquired a right of way for the Road pursuant to R.S. 2477. *See Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735, 768 (10<sup>th</sup> Cir. 2005) (holding that state law principles provide measure for acceptance of R.S. 2477 right of way); *Sprague v. Stead*, 139 P. 544, 545-46 (Colo. 1914) (holding public use sufficient to accept offer of dedication made by R.S. 2477). While no longer used as an actual road, the Affected Routes have not been vacated or abandoned pursuant to Colorado law, and indeed continue to be utilized by the public for non-motorized purposes to the present day. Accordingly, the County retains title to the Affected Routes and authority to manage them for public purposes. Designating the Affected Routes for closure when the County intends to manage them for non-motorized purposes creates the potential for management conflicts between the two jurisdictions. While the Service's designation of use is not binding on the County, *see SUWA*, 425 F.3d at 757, the County brings this matter to the Service's attention in hopes of resolving it cooperatively.

### ***E. Conclusion***

We wish to emphasize that the County seeks public use of the Affected Routes only for non-motorized recreational purposes. Motorized use would be permitted only for official governmental purposes of the Service, the County, and emergency response or law enforcement agencies. The County is prepared to formalize an agreement with the Service to that effect; until such time, however, the County reserves all rights to assert all available uses of the Affected Routes pursuant to R.S. 2477 and other applicable laws. Nothing herein should be construed as a waiver or abandonment of such rights, including the right to a judicial declaration, in a quiet title action or otherwise, concerning the rights of the public and all interested parties in the affected routes.

## **II. Parking Demands for Kobey Park Snowmobilers**

The TMP designates certain areas for winter recreational use without taking into account how recreationalists will, as a practical matter, access those public lands. The most obvious example of this is snowmobile use in the Kobey Park area.

Snowmobile users require parking areas designed to accommodate the trailers and large trucks that transport snowmobiles to the Forest. The Service has failed to provide such parking, and thus transfers the consequences of its winter management decision to the County. The result has been tremendously contentious and lengthy proceedings at the County level concerning access and parking for snowmobilers, followed by litigation against *the County* that for all intents and purposes is aimed at thwarting the management decision of *the Service* to allow snowmobiling in this area. Two lawsuits related to this issue are currently pending against the

County; the County appreciates the Service's recent decision to join in one of those cases to advocate for its interests. But the legal proceedings will not resolve the management issue, and we believe concrete action by the Service to address these parking concerns is imperative.

Moreover, Lenado Road itself is not in an acceptable condition for the high level of recreational vehicle use it receives. What is essentially a single lane, dirt road with significant drop-offs should not be used by large numbers of people pulling sizeable trailers or driving large trucks. This situation is creating a safety hazard for Lenado residents and other motorists, and the County has no plans—much less funds—to improve the road. The Service needs to take a very hard look at this situation to identify other points of access to the Kobey Park area that would raise fewer conflicts and safety concerns, and to then provide appropriate parking at those locations.

In the past, the Service has claimed that the TMP is not an appropriate vehicle for addressing parking. This approach does not account for the clear impacts that the Service's management decisions are having on County infrastructure and operations. It is also ironic in light of the Service's decision to decommission the Affected Routes in the Crystal on the basis that further planning was necessary before continuing public access along those routes. The issues in Lenado are altogether more pressing, yet the Service seems content to designate Kobey Park for public access without making concrete efforts to address the obvious access concerns created by the designation. This matter urgently requires attention.

### **III. Winter Travel Near County Open Space Inholdings**

Over the years, the County has worked cooperatively with the Service to acquire and sterilize a number of private inholdings within the National Forest. Among these, the County's Open Space and Trails program currently owns mining claims comprising an approximately 365-acre in-holding in the Kobey Park area, and a 160-acre parcel in the Sellars Park area. The Winter Management Plan has much of these County lands bordering or entirely within its "Open Motorized Access" zones. The Pitkin County Code prohibits motorized uses on its Open Space and Trails properties. Such inconsistencies in management of public lands in the backcountry would obviously create confusion among users and would be difficult to enforce.

Adjusting the boundaries for the proposed winter travel areas so that the County-owned in-holdings are removed from proximity to the "Open Motorized Areas" and located within either the "Restricted – Motorized Routes Only" or Motorized Prohibited Areas" would resolve this problem. The specific locations of these in-holdings lend themselves to making such adjustments, as they are located in areas adjacent to either specified travel routes, or in areas that see little, if any, winter travel. The map included as Exhibit 9 depicts how the boundary for "Restricted – Motorized Routes Only" areas could be shifted to alleviate this conflict. We understand that precedent exists for creating buffer areas around Tenth Mountain Hut facilities, and request that the Service make the boundary adjustments requested here as well.

#### **IV. Red Canyon and Dry Woody Connections to Aspen Valley Ranch Trail**

For several years, Pitkin County has held a trail easement providing for recreational access through Aspen Valley Ranch to the public lands in Red Canyon and Dry Woody Creek. Negotiations with the landowner to settle litigation over a historic road alignment through AVR and into these areas<sup>4</sup> have recently resulted in a settlement that provides for improved public access to public lands for pedestrians, equestrians, and cyclists. This new trail alignment will provide a beautiful connection to the old road alignments that extends into the public lands in these areas. In turn, the existing roads and trails on the Forest in this location provide a more gradual means of non-motorized access into the public lands than is available on other access routes such as Triangle Peak Road. The County has invested significant resources into providing a means for the public to access public lands through AVR. It respectfully requests that the Forest not adopt a designation that would thwart the ability of cyclists and equestrians to make use of these areas.

#### **V. Conclusion**

The County appreciates both this opportunity to appeal, and its continuing partnership with the Service on our many areas of mutual interest. We respectfully ask that you grant this appeal, and that the TMP be amended in accordance with the requests made in this letter. We stand ready to work with your staff to implement the necessary management adjustments called for herein.

Very Truly Yours,

/s Christopher G. Seldin

Christopher G. Seldin  
Assistant County Attorney

Enclosures

cc (w/o attachments):

Pitkin County BOCC  
Dale Will  
G.R. Fielding  
Ellen Sassano

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<sup>4</sup> The County has historic information indicating that R.S. 2477 rights of way exist into Red Canyon and Dry Woody; as with the Crystal, the County's intention is only to provide for non-motorized use along these alignments, and we would seek a cooperative agreement with the Service to this effect here as well.