



United States
Department of
Agriculture

Forest
Service

Rocky
Mountain
Region

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File Code: 1570

Date: August 4, 2011

Michael Sladdin
Powder to the People
311 Independence Place
Aspen, CO 81611

Dear Mr. Sladdin,

On June 17, 2011, you filed a Notice of Appeal (NOA) on behalf of **Powder to the People** 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) public support and inadequacy of the response to comments.

ARO Cooksey recommended affirmation of the Forest Supervisor's decision on all issues. Requested relief to allow public access to the McFarlane's over snow road 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 however there is an opportunity to re-engage with the public regarding the winter travel portions of the decision. I affirm the Forest Supervisor's decision to implement Modified Alternative G with instruction to engage in further public involvement concerning the winter travel portion of the decision. I deny all requested relief.

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

Sincerely,

/s/ Randall Karstaedt

RANDALL KARSTAEDT

Appeal Deciding Officer

Acting Deputy Regional Forester, Resources

Enclosure

cc: Wendy Haskins

Scott Fitzwilliams

Cindy Dean



United States
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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 11-02-00-0034 (215)

To: Appeal Deciding Officer

As the designated Appeal Reviewing Officer, this is my recommendation on disposition of the appeal filed by the **Powder to the People** 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

"Powder to the People would like to see public access to the McFarlane's over-snow road, reflecting a compromise that was in effect for three winter seasons until 2008."

ISSUES AND DISCUSSION

The appellant raised several concerns, not all of which showed why Forest Supervisor Fitzwilliams' decision should be reversed in accordance with 36 CFR 215.14(b)(9) - *how the appellant believes the decision specifically violates law, regulation, or policy*. Therefore, only the first appeal issue that addresses how the appellant believes the Responsible Official's decision failed to consider the substantive comments is being discussed.

APPEAL ISSUE 1: PUBLIC SUPPORT.

APPEAL ISSUE 1b: INADEQUATE RESPONSE TO COMMENTS.

Appellant states: "The issue of public motorized access to the ski terrain off of Richmond Ridge has long been debated, and came to a head several years ago when Forest Service officers were hired and equipped with vehicles by the Aspen Skiing Co. to police the area and deter motorized travel on the over-snow roads used by Aspen Mountain Powder Tours, which has a special-use permit for the area.

Because the area has for decades been a place locals enjoyed, broad public support to continue that historical use was reflected in the two comment periods on the TMP... Unfortunately, none of the ideas brought forward by the general public were brought forward. In fact, public support was ignored in this case.

In reviewing the Response to Comments document included in the WRNF TMP CD, we find several of the responses lack a basis to deny motorized public access of the over-snow roads in the Richmond Ridge area... [These responses do] not acknowledge that the comments were overwhelmingly in favor of motorized winter activity."

In summary: The appellant alleges that public comments were not considered in the decision making process with regard to travel management in the Richmond Ridge area, and further states that the responses did not provide a basis for the continuing the existing management approach.

Rule:

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

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

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

Discussion:

The development of the Travel Management Plan (TMP) has been a long process. Beginning on August 27, 2002 a Notice of Intent to prepare an EIS and information concerning public participation were provided through public notice in the Federal Register and newspaper of record (/03_Scoping/05_NOI/WRNF_TMP_NOI_082702.pdf). The DEIS was prepared and a Notice of Availability was published July 28, 2006 (\07_DEIS\04_DEIS\notice of availability.pdf). The public had notice of and an opportunity to comment on the DEIS; comments were analyzed and a final report was published (/07_DEIS/05_Comments_Analysis/Comments_DEIS_For_Publishing/WRT_report_final_DEIS 1.doc).

A Supplemental DEIS (SDEIS) was prepared and a Notice of Availability was issued on November 7, 2008 (73 FR 66242). The SDEIS provided notice of and an opportunity for the public to comment on a new preferred alternative. A Summary of Public Comment was prepared March 2009 detailing responses received. There were four responses concerning Richmond Ridge as an over-the-snow road open to public motorized winter use and eleven responses supporting the TMP to restrict motorized vehicles (/08_SDEIS/05_Comments_Analysis/Comments_SDEIS_Working_originals/SDEIS_original_report.pdf). Powder to the People's comments (letter no. 508) and the responses are detailed in a spreadsheet in the administrative record (AspenSopris_Response_to_Comments_2009.xls).

Public comments suggesting the Richmond Ridge area should be open to motorized over-snow travel were considered, and the analysis of that action was included in Alternative B and C of the DEIS.

(/07_DEIS/05_Comments_Analysis/Comments_DEIS_Working_results/RD_Aspen_response_to_comments_final_DEIS1.xls). Many comments were received from the public concerning travel in this area, with many supporting a change for unrestricted winter motorized use, while several voiced the opposing view to leave current restrictions in place. As indicated in responses to comments found in the project record, this has been a controversial issue and it has been discussed and debated many times in the past decade with various individuals and groups. Management considerations in the area are complex, involving private landowners, county management and zoning issues, forest permitting and competing public interests.

Meetings and comments from elected officials were given consideration and were addressed in a fashion equal to that of other individuals and organizations. A letter from former Congressman John Salazar, along with a response letter from the Forest Service details the consideration given to the various components and the complexity of winter motorized access to the Richmond Ridge area (Salazar911ResponseLtr.pdf, letter2009FS_correspondence.doc).

The process used to track and analyze public comments was developed by the Forest Service Content Analysis Team (CAT). Comments were used to formulate public concern statements that attempt to concisely summarize and organize the full range of comments: what the Forest is being asked to do and why. The content analysis process used on this project was qualitative and did not treat input as a vote or survey. Rather, the goal was to ensure that the substance of every comment – what to do and why – was considered in the planning and decision process. Since respondents are self-selected, their comments may not represent general public sentiment (08_SDEIS/05_Comments_Analysis/Comments_SDEIS_CAT/CD/content/report.pdf). The report prepared by the CAT is 83 pages long and contains sections on natural resources management, transportation management, recreation management and demographics. The WRNF responded to those public concern statements in Attachment 3 of the FEIS (8_ResponseToComments_FEISAttachment3.pdf).

While language in the FEIS does not explicitly address all comments received, responses in the project record show that comments on Richmond Ridge were considered. The Content Analysis Team used a structured process to summarize comments. The WRNF responded to those summarized comments and included them in the project record. The Forest Service did consider all comments received during the decision making process. Numerous comments on the Richmond Ridge issue and the history of correspondence in the project record reveal a range of opinion and complexity concerning the management of the area.

Recommendation:

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

RECOMMENDATION

I recommend that the decision of the Forest Supervisor be affirmed 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 Grasslands

Appeal Number: 02-11-00-0034 (215)

Appellant: Michael Sladdin, Powder to the People (PTTP)

Date Received: June 15, 2011

Decision: White River Travel Management Plan

Decision Maker: Forest Supervisor, Scott Fitzwilliams, White River National Forest

APPEAL ISSUE 1: Public support

The issue of public motorized access to the ski terrain off of Richmond Ridge has long been debated, and came to a head several years ago when Forest Service officers were hired and equipped with vehicles by the Aspen Skiing Co. to police the area and deter motorized travel on the over-snow roads used by Aspen Mountain Powder Tours, which has a special-use permit for the area.

Because the area has for decades been a place locals enjoyed, broad public support to continue that historical use was reflected in the two comment periods on the TMP... Unfortunately, none of the ideas brought forward by the general public were brought forward. In fact, public support was ignored in this case.

APPEAL SUB-ISSUE 1b: Inadequate response to comments (there is no 1a identified in the appeal)

In reviewing the Response to Comments document included in the WRNF TMP CD, we find several of the responses lack a basis to deny motorized public access of the over-snow roads in the Richmond Ridge area... [These responses do] not acknowledge that the comments were overwhelmingly in favor of motorized winter activity.

APPEAL ISSUE 2: Elected officials' support

Powder to the People has over the last few years garnered the support of various elected officials, some of whom have urged the Forest Service to allow motorized public access to the area in question, to no avail. No elected officials have specifically spoken out against this idea. We believe it's irresponsible of the Forest Service to ignore elected officials, who are charged with reflecting the interests of the general public and whose jurisdiction is the area in question.

APPEAL ISSUE 3: Viability of Gentleman's Agreement

After policing began on Richmond Ridge in the 2004/2005 season, Powder to the People entered a series of negotiations with the Aspen Skiing Co. and the main private landowner in the area that resulted in the "Gentleman's Agreement," a "handshake" deal in which SkiCo allowed public motorized use on one of the three over-snow roads in the Powder Tours area. The agreement continued for three seasons, and was generally felt to have worked well for all parties. [In 2008], then District Ranger Irene Davidson revoked the Gentleman's Agreement with no warning or discussion with Powder to the People. (It had had her blessing prior to that.)

Since then, we have not been given any good reason why the Gentleman's Agreement could not be formalized in the TMP, as many of our supporters have urged.

APPEAL ISSUE 4: Due process issues & misunderstanding

During her roughly two-year tenure at the district, [Ranger Davidson] met with our group just one time and appeared to be prejudiced against our position without explanation or rationale. Contrary to what one of her staffers told us at the time, she granted Powder Tours a 10-year permit (prior to that they had to renew their permit annually), very clearly putting the interests of an outfitter over the general public.

APPEAL ISSUE 5: The Richmond Ridge plan

In April 2000, Pitkin County approved and recorded the Little Annie/Richmond Ridge/Pearl Pass Management Plan. The document was the culmination of a series of discussions and public meetings, including various user groups and led by the county and the Forest Service. The plan supports public self-policing snowmobile use in the Richmond Ridge area (modeled after the Shrine Pass area plan) and suggests that skier-snowmobile traffic be limited to the over-snow roads within the Powder Tours permit area.

We believe it is wrong of the TMP decision to not take into account the prescription for an area that was so carefully crafted by a collaboration headed by the Forest Service.

APPEAL ISSUE 6: No recognition of hybrid skiers/snowboarders

In his ROD, Mr. Fitzwilliams wrote: Since 1985, the WRNF has recognized that several changes made to the travel system warrant examining and decisions made in response to unauthorized routes. One significant change in resource use lies in the modes of travel that have become popular since the adoption of the 1985 travel management plan.”

While not a new mode of travel per se, the hybrid skier/snowboarder, one that uses motorized means to access skiing, is much more prevalent now than in 1995, and can only be expected to grow. Unfortunately the TMP does not recognize hybrid skiing/snowboarding in the Aspen/Sopris Ranger District. The McFarlane’s area on Richmond Ridge is ideal for such recognition because of its good skiing, nearby parking, and easy access from Aspen Mountain ski area. It is in a 7.1 Intermix area, which allows a multitude of uses and is by no means a pristine backcountry area. By not allowing public motorized use there, it pushes the hybrid skier further into areas that are not appropriate (such as wilderness or areas bordering on wilderness) and present issues of safety and access.

APPEAL ISSUE 7: Historical use/responsible use

The public has been accessing the east side of Richmond Ridge with snowmobiles and snowcats for decades... We believe that historical public use, which has proven itself to be by and large responsible use, should have been considered in the final TMP decision.

RELIEF REQUESTED

The mission of the Forest Service is: “Caring for the land and serving the public.” We appreciate you serving the public by considering this appeal as being one from the public, whom we feel we represent, and putting the public’s interests above that of a commercial interest that caters primarily to the wealthy, exclusive few.