



File Code: 1570-1

Date: August 3, 2011

Route To:

Subject: White River National Forest Travel Management Plan,
Appeal No. WR 11-02-00-0033 (215)

To: Appeal Deciding Officer

As the designated Appeal Reviewing Officer, this is my recommendation on disposition of the appeal filed by the **Western Slope ATV Association** 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.

RELIEF REQUESTED

“The integration of all users on the subject road has been a successful plan to the present and should continue to allow all users to avail the use of the subject road. Please correct your error and allow the combined safe travel of all to continue.” Appellant refers to the Buford to New Castle Road, Forest Service Road 245.1.

ISSUES AND DISCUSSION

APPEAL ISSUE 1: Adequacy of the Response to Comments

Appellant states: We commented on the issue of closing the Buford/Newcastle Road to ATVs when the WR Travel Plan first announced it. You have made an error by ignoring our comment.

Rule:

40 CFR 1503.4 - Response to comments.

(b) 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:

Although the appellant did comment on the Draft Environmental Impact Statement on October 19, 2006 (Comment Letter Number WRT-429), the comment was general in nature and did not specifically reference the Buford/Newcastle Road. No further comments from the appellant in response to the Draft Environmental Impact Statement, the Supplemental Draft Environmental Impact Statement or the Final Environmental Impact Statement were found in the project record.

As stated in the *Response to Comments from the White River National Forest Travel Management Plan Supplemental Draft Environmental Impact Statement*, “Many comments were received on the first Draft EIS for the Travel Management Plan. Those comments calling for a response in terms of either explanation or further analysis are recorded as part of the Supplemental DEIS.” (p. 1). Comments received on this project were analyzed by a Content Analysis Team and were summarized.

Responses to appellant comments were not made unless they were specific in nature (*Response to Comments From the White River National Forest Travel Management Plan Supplemental Draft Environmental Impact Statement*, p. 2).

Although there is no evidence that the appellant made specific comment regarding the Buford/Newcastle Road, the White River National Forest did respond to comments from other individuals/groups that made specific comments. These responses are included in the *Response to Comments from the White River National Forest Travel Management Plan Supplemental Draft Environmental Impact Statement* (p. Rifle-1 – Rifle-6).

Recommendation:

Based on the above project record, I find that the Forest Supervisor reasonably responded to the comments raised by the Western Slope ATV Association and that his response is consistent with the regulatory requirements. I recommend the Forest Supervisor's decision be affirmed on this issue.

APPEAL ISSUE 2: Outdated travel analysis

Appellant states: "The White River National Forest travel planning effort was initiated in response to a demonstrated need outlined in the 1997 analysis of the management situation (AMS), and public interest during the forest planning process. The draft forest plan, released for public comment in August 1999, contained a detailed travel management plan. This outdated analysis does not now appropriately represent the modern day travel and use of the area to off-road vehicles."

Rule:

36 CFR 212.51(a) *General* - Motor vehicle use on National Forest System roads, on National Forest System trails, and in areas on National Forest System lands shall be designated by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or Ranger Districts of the National Forest System, provided that the following vehicles and uses are exempted from these designations:

- (1) Aircraft;
- (2) Watercraft;
- (3) Over-snow vehicles (see §212.81);
- (4) Limited administrative use by the Forest Service;
- (5) Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;
- (6) Authorized use of any combat or combat support vehicle for national defense purposes;
- (7) Law enforcement response to violations of law, including pursuit; and
- (8) Motor vehicle use that is specifically authorized under a written authorization issued under Federal law or regulations.

36 CFR 212.52 (a) *General* - The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions. Public notice with no further public involvement is sufficient if a National Forest or Ranger District has made previous administrative decisions, under other authorities and including public involvement, which restrict

motor vehicle use over the entire National Forest or Ranger District to designated routes and areas, and no change is proposed to these previous decisions and designations.

FSM 7712.1 (4) - Travel analysis should be based on the current inventory of NFS roads, NFS trails, and areas on NFS lands that are managed or proposed for motor vehicle use.

FSM 7712.1 (5) - A complete inventory of unauthorized routes is not required to conduct travel analysis.

Discussion:

The appellant questions the appropriateness of the earlier 1999 draft travel management plan which they allege does not reflect modern day travel and use. The Forest Service recognizes the fact that the 1999 draft does not reflect current needs. Specifically, the purpose and need discussion in the Draft Environmental Impact Statement (DEIS p. 7), Supplemental Draft Environmental Impact Statement (SDEIS p. 9-10), Final Environmental Impact Statement (FEIS p. 8-9) and the Record of Decision (ROD p.3-4) all discuss the need to update the existing travel plan that was developed in conjunction with the 1984 Forest Plan; the recognition of modes of travel that have become popular since the adoption of the 1985 travel management plan; unauthorized routes were nominated by both internal and external parties, and some were carried forward from old inventories.

The appellant also states that the analysis does not represent modern day travel and use, although the appellant fails to provide specifics for any of the missing information. A complete inventory of all unauthorized routes is not required to conduct the travel analysis process, which is guided by agency directives. Forest Service Manual (FSM) 7712.1(5) specifies that a complete inventory of unauthorized routes is not required to conduct travel analysis. This is further explained in the preamble that accompanied the publication of this manual section in the Federal Register (73 FR 74691, December 9, 2008)). As such, there is no requirement to inventory all "modern day travel".

Despite this, the WRNF undertook extensive effort to spatially locate all of the National Forest Transportation System (NFTS) and unauthorized routes. The affected environment and environmental consequences section of the FEIS states "The Forest Service has inventoried and mapped all existing roads and trails for consideration under White River National Forest jurisdiction. These include forest system roads and trails as well as unauthorized roads and trails. Sources included previous inventories, Forest Service field managers, and information submitted by the public. Inventory of winter use was aided by public input as well (FEIS, p. 46)."

Attachment 2 to the Final Environmental Impact Statement lists each route considered in the decision and the rationale for the decision on each route (p. A2-1 – A2-106). The ROD (p.5) explained the 1999 decision, in response to public comment, separating the Forest Plan analysis from the Travel Management Plan analysis.

Routes to be added were considered by personnel examining the need, resource conditions, and public input (FEIS p.9). Unauthorized user-created routes which showed current or past motor vehicle use and which could be interpreted as travel ways for motor vehicles were included in the Forest's analysis (/06_GIS and /14_District Files).

Recommendation:

I find the Forest made a reasonable effort to designate motor vehicle use consistent with the White River Forest Plan, present day needs, and current usage consistent with the requirements of the regulations.

The FEIS met the requirements of 36 CFR 212.51, 36 CFR 212.52, FSM 7712.1 (4) and FSM 7712.1 (5). I recommend the Forest Supervisor's decision be affirmed on this issue.

APPEAL ISSUE 3: Safety issues.

Appellant states: A precedent has already been set by the Grand Mesa Uncompahgre & Gunnison National Forest by allowing full size vehicles and ATVs to share Forest Road 121 on Grand Mesa for many years with absolutely no safety issues. Two more are Forest Road 402, Divide Road, in the Uncompahgre NF and Forest Road 265 beginning in the Grand Mesa NF and ending in the Gunnison NF. These Roads are all of the same classification as the Buford Newcastle Road and go for similar distances in miles or more. On FR 265 ATVs not only share the road with recreational traffic but with gas field traffic of all sizes and there have been NO SAFETY ISSUES.

Rule:

36 CFR 212.55 Criteria for designation of roads, trails, and areas.

(a) *General criteria for designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands.* 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.

(c) *Specific criteria for designation of roads.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System roads, the responsible official shall consider:

- (1) Speed, volume, composition, and distribution of traffic on roads; and
- (2) Compatibility of vehicle class with road geometry and road surfacing.

(d) *Rights of access.* In making designations pursuant to this subpart, the responsible official shall recognize:

- (1) Valid existing rights; and
- (2) The rights of use of National Forest System roads and National Forest System trails under §212.6(b).

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

Discussion:

When all of the following conditions exist, a qualified engineer may document engineering judgment that an engineering report is not needed to designate a road for motorized mixed use if: The proposed designation is consistent with state and local law, the road being considered for designation currently has motorized mixed use, or there is no documented crash history involving motorized mixed use on the road or similar roads in the vicinity. All mixed use judgments conducted between 2006 and 2008 are found in the TMP record under the Engineering Reports. When an engineering report is not required, one page is generally sufficient to document engineering judgment (FSH 7709.55 (31)).

The FEIS (pgs. 15 and 32) states that the WRNF conducted mixed-use studies on NFS roads designed to handle passenger cars (maintenance levels 3, 4 and 5). These roads include the major arteries across the forest. These studies reflect which roads would be safer for allowing licensed and unlicensed vehicles to utilize the same route. The project record includes documentation of engineering judgments for motorized mixed-use on NFS roads (/05_Resources/04_Engineering_Transportation/TMP_Eng_motormixuse_0608: TMP_Eng_2006_report, TMP_Eng_2007_report, TMP_Eng_20072008_report).

The Engineering Judgment conducted for the Buford-Newcastle road (TMP_Eng_bnc245_2006_0922.pdf) (and other roads) included management options for the deciding officer to consider when designating type of vehicle use on National Forest System roads. *Options that could be considered included:*

1. *West side OHV route from the snowmobile parking lot to the Bar H-L Road (NFSR 211) in Triangle Park. Parallel to NFSR 245, on the west side, are sections of the old road, possibly timber roads, or other existing routes available which could be connected to provide a route for OHV travel between these two locations. Making such a route a reality would take tremendous OHV pressure off road NFSR 245. It also might be feasible to connect many of the primitive camping areas along the route to such an OHV route.*
2. *East side route for OHVs from snowmobile parking to Triangle Park. Roads such as the Ogden Place Road (NFSR 820) and the Mansfield Road (NFSR 830) on the east side of NFSR 245 might be used in combination with other old roads to make a connection between the snowmobile parking area and Triangle Park.*

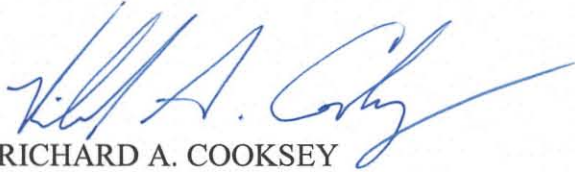
The Forest Supervisor indicates that he considered the mixed-use safety studies and applied these to the selected alternative (ROD, p. 11).

Recommendation:

I find that the deciding officer properly considered and applied the relevant regulations and Forest Service policy in making his decision on mixed-use restrictions. I recommend that 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 Grassland

