



United States
Department of
Agriculture

Forest
Service

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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
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