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Department of
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Forest
Service

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Route To:

Subject: White River National Forest Travel Management Plan,
Appeal No. WR 11-02-00-0035 (215)

To: Appeal Deciding Officer

As the designated Appeal Reviewing Officer, this is my recommendation on disposition of the appeal filed by the **Wilderness Workshop** 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

Appellant respectfully requests the Forest Service Appeal Reviewing Officer to set aside the Decision and direct Forest Supervisor Scott Fitzwilliams to immediately make the changes sought in this appeal.

Issue A Minimum road system: The undersigned organizations request that the Forest Service remove all references in the FEIS stating or implying that the forest has completed the "minimum road system" identification.

Issue B Site-specific minimization criteria: Appellants respectfully requests the Forest Service to complete a supplemental EIS for all routes where it has not yet analyzed and disclosed on the record whether designation will satisfy the minimization criteria, most particularly on, but not restricted to, formerly non-system, unauthorized routes made part of the official system by this decision. If the minimization criteria are not satisfied, the Forest Service should remove these trails or areas from the MVUM.

Issue C Dispersed Camping: Appellants urge the USFS to continue to allow dispersed camping generally but to restrict off-route motor vehicle travel for the purposes of dispersed camping according to a combination of the following options, as dictated by natural and cultural resource and public safety concerns:

- Forest visitors may park a motor vehicle within one vehicle length from the edge of the road surface when it is safe to do so and without causing damage to the USFS resources, and/or
- Motor vehicles may access designated campsites via designated spur routes that are signed for such use and demarcated on a travel management map.

At a minimum, the Forest Service must reverse its motorized-assisted dispersed camping exemption to the prohibition on unrestricted open travel within 300 ft. of a designated route and complete a standalone dispersed camping plan to analyze and examine alternatives that would address the inadequacies outlined above and to publicly assess the options and *site-specific* environmental effects of designating motorized dispersed camping corridors, parking, or specific sites and spurs across the White River NF. In the interim, the FS must clearly indicate to the public what and where dispersed motorized camping activities are permitted and prohibited across the forest erring on the side of resource protection while and until this issue is addressed through the appropriate site-specific NEPA process.

ISSUES AND DISCUSSION

APPEAL ISSUE A: THE FOREST SERVICE VIOLATED THE 2001/2005 ROADS RULE AND THE TRAVEL MANAGEMENT RULE.

Appellant states:

Issue A: The Forest Service violated the 2001 Roads Rule and Subpart A of the Travel Management Rule.

While we appreciate that the WRNF recognizes its obligation to complete travel analysis and identify the minimum road system under 36 C.F.R. § 212.5(b), the fact remains that the Forest Service did not complete the “science-based” travel analysis required to derive its minimum road system. While the WRNF’s environmental review required by NEPA was grounded in science, this process is different from the “science based analysis” outlined in the Roads Rule and agency guidance that is required when identifying the minimum road system. Given that there are important distinctions between these two analyses, we ask that any statements or inferences made in the FEIS that this process was “travel analysis” or that Alternative E represents the minimum road system be deleted.

Sub-Issue Ai: The “minimal road and trail” system in Alternative E is arbitrary and capricious because it does not comply with the regulatory requirements found in 36 C.F.R. § 212.5(b)(1).

The minimum road system must comply with the 2001 Roads Rule, which is now subpart A of the Travel Management Rule and has been re-affirmed in the Appropriations Act of 2009, 155 Cong. Rec. H2089-01 at H2110. (Feb. 23, 2009)...Unfortunately, statements in the FEIS (p. 18, Chapter 1) and the DEIS erroneously suggest that the agency has completed this process through its TMP. Though this reference is oblique, it suggests that the Forest somehow believes it has completed Subpart A (212.5(b)) simply by *maybe* having thought about a “minimal” system in an alternative, when in fact the actual required products of Subpart A (TAP report, MRS and map of MRS, etc.) have yet to be produced.

Because the agency has not completed the requirements of Subpart A, those statements should be removed from the FEIS.

The WRNF indicates in its FEIS that Alternative E in the DEIS represents a “minimal road and trail” system. The WRNF defines “minimal road and trial” system as “a system that is needed to access public lands” and is directly under the heading and regulatory definition for a “minimum road system.” It is therefore logical to conclude that the WRNF believes that Alternative E satisfies the requirements of 36 C.F.R. §212.5(b)(1) and represents the “minimum road system” for the forest. Alternative E in the DEIS neither complies with the requirements of

the regulatory definition of an MRS, nor was it founded on a “science based analysis at the appropriate scale.”

[t]he regulation establishes substantive requirements for a “minimum road system,” and the record must reflect that the Forest Service determined the road system identified meets each of these requirements...In determining and adopting the minimum road system, the Forest Service “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”

Sub-Issue Aii: Subpart A requires the completion of specific products, which the WRNF has not yet produced.

A route-by-route assessment of the whole system and an identification of the minimum road system should have preceded the development of alternatives in this travel management plan and any decisions to designate individual routes and to determine a minimum road system.¹ The FEIS contains no list of routes that the Forest Service identified as the minimum road system. The minimum road system is not something the agency can merely stumble upon; rather it must be the result of a thoughtful, science-based risk/benefit analysis of each route on the Forest. We think the Forest Service has made large strides in this process towards designating a transportation system that is much less redundant and more ecologically sound than the existing system. However, no alternative analyzed in this FEIS can legally be called the “minimum road system” because it is not founded upon the requisite science-based travel analysis or comply with other obligations in the regulation or agency guidance. We believe that a future travel analysis, that evaluates each system road, even those that were designated as part of this travel plan, will further move the Forest towards this goal of an ecologically sound and fiscally responsible road system.

Rule:

36 CFR 212.5(b)(1) Road System – Identification of Road System (Subpart A)

(b) Road system—(1) Identification of road system. For each national forest, national grassland, experimental forest, and any other units of the National Forest System (§ 212.1), the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands. In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

Forest Service Manual 7700 – Travel Management Planning; Chapter 7710 – Travel Planning; FSM 7712 – TRAVEL ANALYSIS

Travel analysis assesses the current forest transportation system and identifies issues and assesses benefits, problems, and risks to inform decisions related to identification of the minimum road system per 36 CFR Part 212.5(b)(1) and designation of roads, trails and areas for motor vehicle use per 36 CFR Part 212.51. Travel analysis is not a decision-making process.

Rather, travel analysis informs decisions relating to administration of the forest transportation system and helps to identify proposals for changes in travel management direction (ex. 01).

1. Use travel analysis (FSH 7709.55, ch. 20) to inform decisions related to identification of the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands per 36 CFR 212.5(b)(1) and to inform decisions related to the designation of roads, trails, and areas for motor vehicle use per 36 CFR 212.51, provided that travel analysis is not required to inform decisions related to the designation of roads, trails, and areas for those administrative units and ranger districts that have issued a proposed action as of January 8, 2009.

2. Travel analysis for purposes of identification of the minimum road system is separate from travel analysis for purposes of designation of roads, trails, and areas for motor vehicle use. Travel analysis for both purposes may be conducted concurrently or separately.

Federal Register / Vol. 73, No. 237 / p. 74701 / Tuesday, December 9, 2008 / Notices

7712, paragraph 1—Clarified that travel analysis is not required to inform decisions related to the designation of roads, trails, and areas for those administrative units and ranger districts that have issued a proposed action as of the effective date of these directives.

Discussion:

Travel analysis as required in 36 CFR 212 Subpart A to identify the minimum road system was not required to precede the designation of the forest's authorized roads, trails, and areas because the White River National Forest's (WRNF) proposed action for this analysis was initiated before January 8, 2009. (73 FR 74689, December 9, 2008) The proposed action for the White River National Forest Travel Management Plan (TMP) was published in the Federal Register on August 27, 2002 (67 F.R. 54996).

Identification of the minimum road system and designation of routes and areas for motor vehicle use are based on different regulations and have different requirements and purposes. Travel analysis assesses the current forest transportation system and identifies issues and assesses benefits, problems, and risks to inform decisions related to identification of the minimum road system per 36 CFR 212.5(b)(1) – **Subpart A**; and designation of roads, trails and areas for motor vehicle use per 36 CFR 212.51 – **Subpart B**. Travel analysis is not a decision-making process. Rather, travel analysis informs decisions relating to administration of the forest transportation system and helps to identify proposals for changes in travel management direction.

The regulations and directives for identification of the minimum road system were published on January 12, 2001 (66 FR. 3216), before promulgation of the travel management rule on November 9, 2005 (70 FR 68264).

Identification of the minimum road system focuses on the need for roads in the forest transportation system, whereas designation of routes and areas addresses appropriate motor vehicle use on routes in the forest transportation system and in areas on NFS lands. Thus, the designation process, rather than identification of the minimum road system, determines where and when motor vehicles may be operated.

Despite the fact that no Travel Analysis document was required for the TMP, the WRNF nevertheless conducted an analysis to inform the designation process. The FEIS pg. 18 stated

The minimal road system is a system that is needed to access public lands. The intent is for the Forest Service to look at what access is needed for administration, utilization (including recreation) and the protection of NFS lands. This does not mean identifying the most non-motorized areas the forest can provide, rather it is identifying the system needed for accessing the variety of uses that occur on National Forest System lands.

The White River National Forest examined alternatives for the road system to address access needs. Alternative E in the Draft Environmental Impact Statement provided a minimal road and trail alternative for examination. Alternative G considered the elements needed to access the land. The preferred alternative also showed a reduction in miles of road from current conditions. The preferred alternative considered what is needed for access, what can be converted to needed trails, and what is no longer needed and thus can be rehabilitated. (FEIS, p.18)

Using the term **minimal** when describing alternatives may be confusing as a descriptor given the formal definition of 'Minimum Road System' as defined in 36 CFR 212.5(b)(1). However, it is clear the forest did not intend to formalize a Minimum Road System document in this FEIS. The FEIS did not state that this was a document to identify the Subpart A minimum road system, and the appellant should not infer that it is such. The proposed action for the project was developed prior to January 8, 2009 and therefore there is not a legal requirement to perform a minimum road system analysis prior to designating the authorized roads, trails, and areas under Subpart B (73 FR 74689).

The Forest Service's directives implementing the travel management rule underscore the distinction between the requirement to identify the minimum road system in 36 CFR Part 212, Subpart A, and the requirement to designate roads, trails, and areas for motor vehicle use in 36 CFR Part 212, Subpart B. Specifically, FSM 7712, paragraph 2, states: "*Travel analysis for purposes of identification of the minimum road system is separate from travel analysis for purposes of designation of roads, trails, and areas for motor vehicle use. Travel analysis for both purposes may be conducted concurrently or separately.*"

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

APPEAL ISSUE B: THE FOREST SERVICE VIOLATED EXECUTIVE ORDER 11644 AND THE TRAVEL MANAGEMENT RULE.

Issue B: The Forest Service violated Executive Order 11644 and the Travel Management Rule by not minimizing the effects of its trail designations on natural resources and by not demonstrating on the record how the designations minimized effects.

(See appeal p. 12-16 for discussion of specific route designations appellant takes issue with.)

Appellant states: The WRNF designated trails for motor vehicle use without applying criteria required by executive orders and the 2005 Travel Management Rule (TMR). Section 3 of Executive Order 11644 requires federal agencies to develop regulations ensuring that the designation of trails and areas for use by off-road vehicles shall:

- 1) Minimize damage to soil, watershed, vegetation or other resources of the public lands;

- 2) Minimize harassment of wildlife or significant disruption of wildlife;
- 3) Minimize conflicts between off-road vehicle use and other existing or proposed recreational use of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors;

The TMR requires the responsible official to designate a system of roads, trails and areas “by vehicle class and, if appropriate, by time of year.” 36 C.F.R. § 212.51(a). In designating roads, trails and areas, the responsible official is required to consider generally the:

...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**.

Id. § 212.55(a) (emphasis added). In addition, to the general criteria described above, the TMR carries forward the language from the Executive Order, requiring minimization of damage to soil, watershed, vegetation, and other forest resources in trail and area designations (see indented list above for complete list of resources to be protected under this section). 36 C.F.R. § 212.55(b).

The Forest Service erred in designating unauthorized and other motorized trails for motor vehicle use, as well as corridor areas for off-route motorized dispersed camping, in its ROD when it had not adhered to the minimization criteria and when it did not demonstrate adherence to the criteria on the record. Recent court decisions involving the TMR and parallel BLM travel management regulations that implement the same Executive Orders confirm that a failure to show specifically how the minimization criteria were applied in route designation decisions is fatal to a decision implementing the regulations and Orders. *Idaho Conservation League v. Guzman*, 2011 WL 447456 (D. Idaho Feb. 4, 2011); *Ctr. for Biological Diversity v. BLM*, 2009 U.S. Dist. LEXIS 90016, No. C06-4884-SI, Opinion and Order at 28 (N.D. Cal. Sept. 28, 2009) (finding BLM failed to demonstrate that minimization criteria were in fact applied when OHV routes were designated”).

The Forest Service violated Executive Order 11644 and the Travel Management Rule by not minimizing the effects of its trail designations on natural resources and by not demonstrating on the record how the designations minimized effects.

A failure to show specifically how the minimization criteria were applied in route designation decisions is fatal to a decision implementing the regulations and Orders.

Further, the failure to take a hard look at whether the agency’s actions will comply with applicable legal authority and the site-specific effects of individual motorized trail designations is a violation of NEPA, as is explained further below. Each motorized trail and motorized dispersed camping corridor designation requires a detailed analysis of the effect of that designation on the resources described in the minimization criteria of the executive orders and TMR, as well as other issues raised by staff and the public during comment periods. If the location of the trail does not minimize damage to natural resources, the agency cannot designate it.

Below, we point out several route-specific examples of how the Forest Service failed to minimize—or at least demonstrate on the record that it had minimized—the effects of off-highway vehicles to natural resources and between recreationists as required by the Executive Orders and 36 C.F.R. § 212.55(b). This should not be viewed as an exhaustive list of the routes for which the Forest Service did not demonstrate compliance with the minimization criteria—in fact, it is merely a handful. After all, it is fundamentally the *agency's* duty to “show its work” on the record, not the public's. That said, throughout commenting we pointed out natural resource and user conflicts caused by these and many other routes, as well as motorized dispersed camping corridors, which the Forest Service should have taken into consideration in its analysis. (See *appeal p. 12-16 for discussion of specific route designations appellant takes issue with.*)

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.

(b) *Specific criteria for designation of trails and areas.* In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing: (1) Damage to soil, watershed, vegetation, and other forest resources; (2) Harassment of wildlife and significant disruption of wildlife habitats; (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and (4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands. In addition, the responsible official shall consider: (5) Compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors.

Executive Order 11644 - Use of off-road vehicles on the public lands

Sec. 3. Zones of Use. (a) Each respective agency head shall develop and issue regulations and administrative instructions, within six months of the date of this order, to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of all public lands shall be completed. Those regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands. The regulations shall further require that the designation of such areas and trails shall be in accordance with the following--

- (1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

Discussion:

The appellant alleges the Forest has failed to comply with E.O. 11644 and the Travel Management Rule by not designating routes to minimize harm to watersheds, wildlife populations and habitat, and other resources; by not designating routes to minimize conflicts between motor vehicle use and other existing or proposed recreational uses.

The Travel Management Rule requires the Forest Service to consider effects, with the objective of minimizing impacts to the listed resources in the designation of trails and areas. As stated in the preamble to the final travel management rule:

The Department believes this language is consistent with E.O. 11644 and better expresses its intent. It is the intent of E.O. 11644 that motor vehicle use of trails and areas on Federal lands be managed to address environmental and other impacts, but that motor vehicle use on Federal lands continue in appropriate locations. An extreme interpretation of "minimize" would preclude any use at all, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect the full context of E.O. 11644 or other laws and policies related to multiple uses of NFS lands. Neither E.O. 11644, nor these other laws and policies, establish the primacy of any particular use of trails and areas over any other. The Department believes "shall consider, with the objective of minimizing," will assure that environmental impacts are properly taken into account, without categorically precluding motor vehicle use. 70 FR 68281 (Nov. 9, 2005).

The process outlined in IDT meetings describes the methodology the Forest used in designating roads and trails. Using an interdisciplinary effort ensured all criteria were considered during the designation process. At the direction of the responsible official, designations considered the criteria on an individual road basis and for the transportation system as a whole. (IDT meeting notes, ROD, p.29)

This document looks at the impacts of the travel system on recreation, administrative access needs, wildlife, and natural resources, among other considerations.

The objectives of the travel management plan are to: Identify resource solutions to impacts resulting from the transportation system, including routes identified for rehabilitation. (FEIS, p.10, Proposed Action)

The tables in FEIS, Attachment 2, detail the site-specific travel management decisions for each route on the White River National Forest. The intent of these tables is to disclose the Travel Management Plan decision by route. Individual travel routes are identified by number, and many by name, and are listed according to the ranger district in which they are located. (FEIS Attachment 2 – Introduction)

A review of the individual, site-specific routes listed by the appellant show that those specific routes, along with all routes, were included in tables that were used to analyze the criteria evaluated in designating roads and trails.

(3_TMP_Final_Plan_RouteListing_FEISAttachment2.pdf;
06_GIS\SDEIS\maps_tables\SDEIS\summaries G_Summer_Routes_full_table.xls;
06_GIS\SDEIS\reason_codes2009.doc; 14_District_Files; 06_GIS/FEIS/analysis)

The Forest conducted an extensive route inventory and evaluated potential uses and resource concerns for each route (TMP_Aspen_DEIS_roads_All_Alts_040704.xls and similar documents for roads and trails, by alternative). These evaluations were used to build the alternatives and document the rationale for including or eliminating routes in the alternatives and final decision.

(6_RoutesByAlternative_FEISAttachment1.pdf;
3_TMP_Final_Plan_RouteListing_FEISAttachment2.pdf)

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

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

The responsible official considered, with the objective of minimizing, harm to watersheds, wildlife populations and habitat, and other resources and conflicts between motor vehicle use and other existing or proposed recreational uses and found that the best approach to minimizing and mitigating these effects would be a site-specific solution targeted to the particular impact and the particular area. (FEIS, p. 48, 57, 109, 123, 219) The responsible official fully discussed the rationale for his decision to provide a mix of recreational opportunities while minimizing harm to watersheds, wildlife, and other resources and conflicts between motorized and non-motorized uses in the White River National Forest (ROD, pp. 22-24). Therefore, the ROD is consistent with E.O. 11644 and the travel management rule.

Recommendation:

The WRNF developed and conducted route-specific analysis and designated roads, trails and areas for motor vehicle use in accordance with the Travel Management Rule in 36 CFR Part 212, Subpart B. I recommend that the Forest Supervisor's decision be affirmed on this issue.

WILDERNESS WORKSHOP – APPEAL ISSUE C – DISPERSED CAMPING

APPEAL ISSUE Ci. The motorized dispersed camping designations violate the Travel Management Rule.

Appellant States: [A]ll Forest Service travel management guidance reinforces the requirement that the authorization of off-route motorized access to dispersed camping is to be a designation used sparingly, as opposed to a blanket exception to the general prohibition on cross-country travel. Further, Region 2 expressly directed forests to work towards designating individual spur routes and dispersed camp sites in their travel planning efforts, identifying places where unacceptable resource damage was occurring along the way. In addition, the White River NF had ample opportunity to comply with these goals and directions as the goals and directions were issued many years before the TMP was finalized.

Unfortunately, the WRNF failed to follow the consistent and universal direction to use the motor vehicle-assisted dispersed camping exemption “sparingly” and “on a route by route basis.” Instead, the agency authorized the use of motor vehicles 300 feet off designated routes for dispersed camping “for most of the forest”, and disregarded the need to comply with the 2005 Travel Management Rule.

This unsparing use of the exemption for vehicle-assisted dispersed camping corridors across virtually every motor vehicle route of the White River NF violates the Travel Management Rule.

Rule:

White River National Forest Land and Resource Management Plan - 2002 Revision

36 CFR 212.50 - Purpose, scope, and definitions.

(b) *Scope.* The responsible official may incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use under this subpart.

36 CFR 212.51 - Designation of roads, trails, and areas.

(b) *Motor vehicle use for dispersed camping or big game retrieval.* In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain forest roads or trails where motor vehicle use is allowed, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.

Forest Service Manual 7700 – Travel Management Planning; Chapter 7710 – Travel Planning; Section 7715.74 – Motor Vehicle Use for Big Game Retrieval and Dispersed Camping

1. The responsible official may include in a designation the limited use of motor vehicles within a specified distance of certain forest roads and forest trails where motor vehicle use is allowed, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal (big game retrieval).

2. The authority in FSM 7715.74, paragraph 1, should be used sparingly to avoid undermining the purposes of the travel management rule and to promote consistency in its implementation.

3. To promote consistency, the Regional Forester should coordinate designations pursuant to FSM 7715.74, paragraph 1, within states and among adjoining administrative units.

4. Prior to including in a designation the limited use of motor vehicles within a specified distance of state and county roads for dispersed camping and big game retrieval, the responsible official shall obtain written concurrence from the public road authority with jurisdiction over those routes.

5. Consider designating routes, including existing terminal facilities (FSM 7716.1), to dispersed camping sites, instead of authorizing off-route motor vehicle use.

6. Dates for motor vehicle use for big game retrieval should be coordinated with the state agency responsible for setting hunting seasons.

7703.11 – General Considerations In Designating Roads, Trails, and Areas

4. Designation of roads and trails may include the limited use of motor vehicles within a specified distance of certain forest roads and trails solely for the purposes of big game retrieval or dispersed camping. Apply the provision for big game retrieval and dispersed camping sparingly, after conducting travel analysis and appropriate site-specific environmental analysis and public involvement.

Discussion:

The White River National Forest 2002 Land and Resource Management Plan (Forest Plan) specifies that the forest will permit motor vehicle travel up to 300 feet from designated travel ways for direct access to campsites, parking, firewood cutting, or gathering forest products provided that minimal resource damage occurs and such access is not otherwise prohibited (2002 Forest Plan - Travel System Infrastructure Standard 5, p. 2-39). It further specifies camping will be prohibited within 100 feet of lakes and streams and system trails, unless exceptions are justified by terrain or specific design that protects the riparian and aquatic ecosystems (2002 Forest Plan - General Recreation Standard 1, p. 2-34). The FEIS for the 2002 Forest Plan analyzed the effects of dispersed camping. In that FEIS, forest staff analyzed the effects on soil from dispersed camping and found that the effects on soils are minimal either because any one spot is rarely used or because a few small areas see more intensive use but are localized. (WRNF Plan 2002 FEIS, p. 3-

17) Forest staff additionally wrote in that FEIS that areas impacted by frequent use by dispersed campers will be rehabilitated by breaking up and seeding, by fencing off for temporary recovery of the ground, or closing the impacted site (WRNF Plan 2002 FEIS, p. 3-47). Finally, dispersed camping sites were to be inventoried and monitored under the 2002 Forest Plan (WRNF Plan 2002 FEIS, p. 3-418).

The Travel Management Final Environmental Impact Statement (FEIS) contains several references to this topic:

- This FEIS is an extension of earlier work to update travel management guidance in compliance with the White River National Forest Land and Resource Management Plan, 2002 Revision, as amended (forest plan). (FEIS, p. 4)
- The travel management plan carries forward forest plan direction for determination of travel opportunities. (Proposed Action, FEIS, p.10)
- This travel management planning process began as a component of the forest plan. The travel management plan will adhere to the forest plan. As established since its inception, this travel management plan will not amend the forest plan; it will comply with the forest plan. The forest plan went through an intensive NEPA process, resulting in a final plan and record of decision. This travel management plan is not the mechanism to change that decision, but a mechanism to help meet the forest plan's desired conditions. Therefore, the action alternatives do not vary in forest-wide direction as established in the forest plan; however, they do vary in mileage and acreages allocated to each type of use. The forest plan defines a set of goals, objectives, strategies, standards, and guidelines that provide the forest-wide direction for managing the White River National Forest and its resources. (FEIS, p. 11)
- There are some routes that have special orders restricting any off-road travel and only allow dispersed camping in designated sites (FEIS, p. 16-17).
- The travel management plan carries forward forest plan direction and establishes the baseline for travel across the forest (FEIS, p.20).

The White River National Forest also addressed the concern in the Response to Comments – FEIS Attachment 3 as follows:

PC 52 Public Concern: The WRNF should restrict dispersed camping to designated sites only, 300' feet from a motorized road is too much

Response PC 52: The Travel Management Rule allows the deciding official the option for designating motor vehicle use for dispersed camping and game retrieval. 36 CFR 212.53(b) states *"In designating routes the deciding official may include in the designation the limited use of motor vehicles within a certain specified distance of certain forest roads or trails where motor vehicle use is allowed...solely for purposes of dispersed camping or retrieval of a downed big game animal..."*. The WRNF LRMP allows for 300 feet from a designated road for dispersed camping. The WRNF has begun a separate process to inventory dispersed camping sites to provide information to line officers about dispersed camping across the forest. Currently there are some areas where dispersed camping is restricted to designated sites. The inventory will help managers decide where dispersed camping could still be allowed within 300 feet of a road (or other specified distance) or whether an area should be restricted to designated sites. Changes to current conditions would be informed through the proper regulatory procedures (FEIS, Attachment 3, p. Programmatic-20).

In addition, the Record of Decision (ROD) states: For most of the forest, dispersed camping with a motor vehicle can occur 300 feet from a designated road. Camping is prohibited within 100 feet of lakes and streams and system trails, unless exceptions are justified by terrain or specific design that protects the riparian and aquatic ecosystems. There are some places on the forest where dispersed camping can only occur in designated sites. This direction is part of the forest plan and compliant with the travel rule (ROD, p. 22).

An April 16, 2007 letter from Deputy Regional Forester Greg Griffith titled Regional Consistency Standards for Travel Management Planning states "Based on local concerns and conditions, units can allow travel with a motor vehicle up to, but not more than, 300 feet from centerline of specifically designated roads for the purposes of dispersed camping and/or game retrieval. Factors or information to consider in making decisions about the distance allowed for off road motor vehicle use for dispersed camping and/or game retrieval should include the forest plan direction, existing forest orders, and specifically the possibility of site-specific environmental damage."

Under 36 CFR 212.51(b), the forest has discretion to decide whether and where to allow motor vehicles use in association with dispersed camping. The analysis of public safety of and resource damage caused by use of motor vehicles in association with dispersed camping in the White River National Forest, per the requirements in 36 CFR 212.51(b), and the impact of the decision on demand for dispersed camping is in the Environmental Impact Statements (FEIS, p. 16, 44, 93).

Recommendation:

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

APPEAL ISSUE Cii - The motorized dispersed camping designations violate the NEPA.

Appellant states: NEPA requires federal agencies to assess the direct, indirect, and cumulative environmental impacts of proposed actions, taking a "hard look" at environmental consequences, and performing an analysis commensurate with the scale of the action at issue. 40 C.F.R. §§ 1502.2 (b), 1508.8.

A fundamental prerequisite to a "hard look" and site specific analysis of the effects of the WRNF's dispersed motorized camping policy would be a comprehensive and detailed inventory of the full width of the dispersed camping corridor and all possible impacts from dispersed camping sites and the user-created spur routes used to access them. Yet the WRNF does not have such an inventory making it impossible for such a "hard look" to occur.

In Chapter 3 of the FEIS, Affected Environment and Environmental Effects, the public would reasonably expect to see a discussion of the existing or potential impacts from allowing a 300 foot unrestricted cross-country corridor for dispersed camping along more than 1,600 miles of roads. However, this chapter scarcely mentions dispersed camping, limiting discussion to a summary of what the Forest Service is proposing under each alternative. We cannot find the "site-specific environmental analysis" required by the agency's own travel planning directives or any analysis that would satisfy the basic "hard look" requirement of NEPA to support a decision allowing unrestricted motorized travel for a 600-foot corridor (300 ft. on either side) of nearly all of an approximate 1416 mile public motorized system.

Rule:

White River National Forest Land and Resource Management Plan - 2002 Revision

36 CFR 212.50 - Purpose, scope, and definitions.

(b) *Scope*. The responsible official may incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use under this subpart.

36 CFR 212.51 - Designation of roads, trails, and areas.

(b) *Motor vehicle use for dispersed camping or big game retrieval*. In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain forest roads or trails where motor vehicle use is allowed, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal.

Discussion:

The White River National Forest 2002 Land and Resource Management Plan (Forest Plan) specifies that the forest will permit motor vehicle travel up to 300 feet from designated travel ways for direct access to campsites, parking, firewood cutting, or gathering forest products provided that minimal resource damage occurs and such access is not otherwise prohibited (2002 Amended Forest Plan - Travel System Infrastructure Standard 5, p. 2-39). It further specifies camping will be prohibited within 100 feet of lakes and streams and system trails, unless exceptions are justified by terrain or specific design that protects the riparian and aquatic ecosystems (2002 Amended Forest Plan - General Recreation Standard 1, p. 2-34).

The decision to allow motorized access for dispersed camping within 300 feet of designated travel ways was made with the issuance of the Record of Decision for the Forest Plan. Under 36 CFR 212.51(b), the forest has discretion to decide whether and where to allow motor vehicles use in association with dispersed camping. The analysis of public safety of and resource damage caused by use of motor vehicles in association with dispersed camping in the White River National Forest, per the requirements in 36 CFR 212.51(b), and the impact of the decision on demand for dispersed camping is in the Environmental Impact Statements (FEIS, p. 16, 44, 93).

Recommendation:

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

APPEAL ISSUE Ciii - Forest Service failed to consider a reasonable range of alternatives.

Appellant States: The White River NF analyzed three action alternatives in the FEIS. They were F, G, and G-Modified. Under the regulatory elements common to all alternatives, the motorized dispersed camping policy was that:

Off road parking for dispersed camping is within 300 feet from any road open for motorized use or in designated sites as determined by the responsible official.

Parking a motor vehicle on the side of the road is allowed up to 30 feet from the edge of the road surface for all uses other than dispersed camping or as specified by a permit.

Off road camping and parking must not damage the land, vegetation, or streams and no live trees may be cut (FSM 2355.30, 36 CFR 212).

The Forest Service failed to consider a reasonable range of alternatives because it illegally eliminated from detailed study an alternative that would preclude a 300-foot motorized dispersed camping corridor along designated roads, but would instead institute a parking rule for dispersed camping and designate appropriate spur routes to popular dispersed campsites. Further, the Forest Service failed to consider a reasonable range of alternatives because it did not examine alternatives that would apply its motorized dispersed camping policy and designation of these motorized dispersed camping corridor to a *range of specific* routes. For instance, instead of designating corridors along its over 1,600 miles of final motorized routes, it could designate corridors along *certain* routes that would add up to 0%, 10%, 30%, and 50% of the transportation system.

Rule:

36 CFR 212.50 - Purpose, scope, and definitions.

(b) *Scope*. The responsible official may incorporate previous administrative decisions regarding travel management made under other authorities, including designations and prohibitions of motor vehicle use, in designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use under this subpart.

Discussion:

The appellants contend that the Forest failed to address dispersed camping as an issue amongst a range of alternatives. The Forest Service is required to examine reasonable alternatives to the proposed action. An alternative should meet the purpose and need of the project (36 CFR 220.5). The purpose and need as stated in the Record of Decision (pp. 3-5) is as follows:

- Update the Official Designated Transportation System on the White River National Forest.
- Identify What Is Not Part of the Official Designated Travel System on the White River National Forest and be Able to Restore Lands Back to Their Natural State.
- Designate a Travel System that is Aligned With the Forest Service Mission, Including the Need to Manage the Land by Providing a System that Attempts to Balance Social and Resource Demands

The purpose of the Travel Management Decision is not to establish a dispersed camping policy, but rather to improve travel management on the White River National Forest. The WRNF has presented an adequate range of alternatives to the overall objective of improving travel management and designating a travel system.

There were few public comments requesting curtailing of the 300 foot exemption for dispersed camping to travel off of designated routes. The White River National Forest addressed the concern in the Response to Comments – FEIS Attachment 3 as follows:

PC 52 Public Concern: The WRNF should restrict dispersed camping to designated sites only, 300' feet from a motorized road is too much

Response PC 52: The Travel Management Rule allows the deciding official the option for designating motor vehicle use for dispersed camping and game retrieval. 36 CFR 212.53(b) states *"In designating routes the deciding official may include in the designation the limited use of motor vehicles within a certain specified distance of certain forest roads or trails where motor vehicle use is allowed...solely for purposes of dispersed camping or retrieval of a downed big game animal..."*. The WRNF LRMP allows for 300 feet from a designated road for dispersed camping.

The WRNF has begun a process to inventory dispersed camping sites to provide information about dispersed camping across the forest. The inventory will help managers decide where dispersed camping could still be allowed within 300 feet of a road (or other specified distance) or whether an area should be restricted to designated sites.

In the ROD, page 24, the Forest Supervisor indicates there will be some flexibility in the future and that this decision is not a onetime consideration for designation of roads and trails: *"I have every intention of keeping this plan alive and relevant. We will conduct periodic reviews of the plan to determine if changes are needed. Undoubtedly there are specific issues that remain unresolved and will require a more site-specific review. I am committed to looking at additional roads or trails for inclusion into or removal from the system if it is warranted."*

Recommendation:

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

RECOMMENDATION

I recommend that the Forest Supervisor's March 17, 2011 decision be affirmed.



RICK COOKSEY
Appeal Reviewing Officer

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

