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Department of
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Forest
Service

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Subject: White River National Forest Travel Management Plan,
Appeal No. WR 11-02-00-0039 (215)

To: Appeal Deciding Officer

As the designated Appeal Reviewing Officer, this is my recommendation on disposition of the appeal filed by the **Colorado Snowmobile Association** under the regulations at 36 CFR 215. Forest Supervisor Scott Fitzwilliams signed the Record of Decision (ROD) for the White River National Forest (WRNF) on March 17, 2011, and a legal notice of the decision was published in the newspaper of record on May 4, 2011. My recommendation is based on the appeal and the decision documentation (36 CFR 215.18(a)).

BACKGROUND

The White River National Forest (WRNF) travel planning effort is an extension of earlier planning processes to both update the WRNF travel management direction and to align the travel strategy on the Forest within the scope of the White River Forest Plan (Forest Plan). Due to public input and the complexity of the subject matter, the decision was made to separate the two plans and develop the Travel Management Plan (TMP) after the completion of the Forest Plan. Information gathered during the initial effort was used in this decision. This TMP adheres to the 2002 Forest Plan and does not amend the Forest Plan (FEIS, Summary p. 2).

On August 27, 2002, the Forest Supervisor of the WRNF published a Notice of Intent in the Federal Register for a forest-wide TMP and invited public comment until October 31, 2002. The agency held six public meetings in September 2002 and open houses were held where many members of the public provided input.

In November 2005, the National Travel Management Rule (36 CFR 212) was published revising regulations in response to the growing popularity and capability of off-highway vehicle use of the national forests and the effects of that use on the environment. Subpart B of the final Travel Management Rule requires designation of roads, trails, and areas for motor vehicle use. Before December 9, 2008, the travel management regulations for Subpart B did not require the completion of Subpart A (identification of the minimum road system) prior to implementation of Subpart B's designations. The Travel Management Rule does not require the Forest Supervisor to reconsider prior decisions authorizing motor vehicle use on the existing National Forest Transportation System (NFTS).

On July 28, 2006, the WRNF prepared and released for a 90-day public comment period the White River National Forest Travel Management Plan Draft Environmental Impact Statement (DEIS). The DEIS examined three action alternatives along with the no-action alternative based



on key issues identified during scoping. The DEIS incorporated direction from 36 CFR 212 Subpart B of the 2005 Final Rule for Travel Management: Designation of Roads, Trails, and Areas for Motor Vehicle Use (travel rule). The WRNF staff members held meetings with individuals, interest groups, and government representatives during this time.

On November 7, 2008, the WRNF released the White River National Forest Travel Management Plan Supplemental Draft Environmental Impact Statement (SDEIS) for public review and comment. Based on the original alternatives in the DEIS, the ability to better incorporate travel rule direction, and response to public comments received, the deciding official identified the preferred alternative in the SDEIS. Staff members again met with individuals, interest groups, and government representatives. Comments on this plan were accepted until January 6, 2009.

On March 17, 2011, the Forest Supervisor signed a Record of Decision (ROD) for travel management pursuant to the travel rule on the WRNF.

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of the appeal. The record indicates that informal resolution was not reached.

RELIEF REQUESTED

CSA believes the Biological Assessment and Biological Opinion ("BA/BO") relied upon in the decision are: far from the best available science; clearly were not peer reviewed; and completely fail to address the positions of the Fish and Wildlife Service ("FWS") and the Forest Service ("FS") regarding snow compactions lack of impact on the lynx. The BA/BO further conflicts with the Southern Rockies Lynx Management decision regarding the science to be relied upon for lynx management. Additionally it fails to correctly summarize the Southern Rockies Lynx Amendment Decision and directly contradicts itself regarding proper management standards. CSA believes these documents must simply be thrown out and all biological analysis underlying the decision is clearly erroneous and not best available science.

As the amount of closures embarked upon between Alt G and adoption of Alt GM actually exceeds the amount of closures undertaken when comparing current management standards and Alt G, this necessitated additional economic impact review. In response to the significant expansion of closures of winter areas, all economic analysis work in the Draft Environmental Impact Statement ("DEIS") is completely dropped from the Final EIS. CSA believes this complete lack of analysis regarding the economic impact of closures is a violation of NEPA and the Multiple-Use Sustained-Yield Act.

Many of the closures undertaken between public comments on Alt G and adoption of Alt GM directly conflict with Land Resource Management Plan area designations for the area designed to protect and preserve motorized recreation. Many of these closures rely on erroneous analysis from a variety of sources as justification for the closure. This is simply improper and must be reversed.

ISSUES AND DISCUSSION

APPEAL ISSUE IA: THE BA/BO FAILS TO ADDRESS THE U.S. FISH AND WILDLIFE SERVICE NATIONAL POSITION.

Appellant states: The BA/BO must be given a strict level of review and analysis in these proceedings as the position asserted is completely inconsistent with current lynx research which was the basis of the Southern Rockies Lynx Management decision and both the Forest Service and Fish and Wildlife Services nationwide position regarding snow compactions lack of impact on the lynx.

Rule:

40 CFR 1502.21 Incorporation by Reference - Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described

40 CFR 1502.24 Methodology and Scientific Accuracy - Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.

Endangered Species Act of 1973, as amended (16 USC 1536)

Section 7(a)(2) - Federal Agency Actions and Consultations: "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical..."

Section 7(a)(3) of the ESA provides that: "Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species may be present in the area affected by his project and that implementation of such action will likely affect such species."

Section 7(c) - Biological Assessment: "If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, [the federal] agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action."

Section 7(b)(3)(A)- Opinion of Secretary: "the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat."

Forest Service Manual 2670.5 - Definitions

Biological Assessment. A "biological evaluation" conducted for major federal construction projects requiring an environmental impact statement, in accordance with legal requirements under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(c)). The purpose of the assessment and resulting document is to determine whether the proposed action is likely to affect an endangered, threatened, or proposed species.

Biological Opinion. An official report by the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Commerce, National Oceanic and Atmospheric

Administration Fisheries Service (NOAA Fisheries) issued in response to a formal Forest Service request for consultation or conference. It states whether an action is likely to result in jeopardy to a species or adverse modification of its critical habitat.

Forest Service Manual (FSM) 2671.44 - Determination of Effects on Listed or Proposed Species

1. Use the biological evaluation process to conduct and document the program and activities review necessary to ensure that any action authorized, funded, or carried out by the Forest Service is not likely to jeopardize the continued existence of any listed or proposed species or to result in the destruction or adverse modification of critical or proposed critical habitat.
2. Use the biological evaluation process, to make full use of internal biological expertise and informal consultation with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NOAA Fisheries) to reach supportable determinations of effect.

Discussion:

In accordance with ESA Section 7 consultation procedures, the WRNF prepared a Biological Assessment (BA) which was submitted to the U.S. Fish and Wildlife Service (FWS) for their review and concurrence. The FWS subsequently prepared their own Biological Opinion (BO) for the White River Travel Management Plan (TMP) dated November 18, 2010. The Forest Service has no jurisdiction over the Biological Opinion. In the Record of Decision (ROD) for the TMP on page 25 (WRNF_TMP_ROD_signed.pdf):

Informal consultation with the US Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.), was initiated by the Forest Service on September 22, 2010 for this project. On November 18, 2010, the USFWS issued a second-tier biological opinion (USFWS reference # ES/CO:FS/WRNF; Tails: 65413-2010-F-0013; 65413-2009-B-0008; ES/LK-6-CO-08-F-024-GJ007) under the first-tier Southern Rocky Mountains Lynx Amendment biological opinion that concurred with the determinations for all species except the Canada lynx, a Threatened Species.

The Forest Service Record of Decision for the Southern Rockies Lynx Amendment (usfs_srla_rod_2008.pdf) states on page 14 that;

"In their final listing rule (2000b) and remanded rule (2003), FWS concluded there is no evidence that competition exists that may exert a population-level impact on lynx, although adverse effects on individual lynx are possible depending on the situation (USDI Fish and Wildlife Service 2008).

Current research indicates that prohibiting snow-compacting activities or reducing dispersed recreation use would be unwarranted. At the same time, an alternative to drop all direction limiting snow compaction was not developed in detail, because snow compaction may affect individual lynx."

Thus, snow compaction has been recognized by both the Forest Service and the FWS as a possible cause of some adverse impacts to individual lynx.

The Forest Service Biological Assessment (BA) dated September 21, 2010 (TMP_revised_BA_final_09212010.docx) recognized this information on page 54 stating:

The 2008 biological opinion for the Southern Rockies Lynx Amendment (SRLA) provides for the possibility that winter competition between lynx and other predators and the potential tie to snow compaction may have adverse effects on individual lynx depending on specific conditions.

Page 56 of the TMP BA (TMP_REVISED_BA_FINAL_09212010.DOCX) further discussed the benefit to lynx of reduced snow compaction in light of information found in both the U.S Forest Service Southern Rockies Lynx Amendment (SRLA) and the U.S. Fish and Wildlife Service's 2008 Biological Opinion issued for it:

"Although lynx populations do not appear to be adversely affected by competing predators that may be provided with access into deep snow habitats by snow compaction routes, and human disturbance does not appear to modify lynx behavior or use of habitats ..., providing lynx with additional security and habitat effectiveness during the critical winter months would benefit individual lynx."

Recommendation:

I find that the BA appropriately considered the best available information in addressing the possible effects of snow compaction on individual lynx. The BA also documented consistency with the Southern Rockies Lynx Amendment and the associated 2008 BO prepared by FWS. Snow compaction was analyzed along with several other factors to support the determination of "may affect but is not likely to adversely affect the Canada lynx".

The FWS in their BO concluded that there would be adverse effects to lynx within the Camp Hale and Ten-Mile LAUs, but also determined that these effects would not rise to the level of take of lynx. This BO tiered to the BO for the Southern Rockies Lynx Amendment which provided an extensive discussion of the effects of winter dispersed recreation on lynx (usfws_srla_bo_2008.pdf, pages 58-60).

I recommend that the Forest Supervisor be affirmed on this point.

APPEAL ISSUE 1A1: MANAGEMENT OF WINTER HABITAT.

Appellant states: A cursory review of the BA prepared for the TMP reveals a significant number of charts and graphs allegedly addressing good management of winter habitat of the lynx... There is simply no peer reviewed science to support the course of analysis undertaken and these charts do not address the necessity or effectiveness of the proposed management plans in protecting the lynx and its habitat. Best available science regarding lynx management and habitats completely contradicts the necessity and effectiveness of the proposed plans and closures alleged to be for the protection of the lynx.

Rule:

See Appeal Issue 1a - Rule

Discussion:

Effects to lynx habitat are thoroughly discussed and illustrated throughout the BA, including the discussion on Winter Travel beginning in the BA on page 54 (TMP_revised_BA_final_09212010.docx). In accordance with Forest Service standards, the analysis was conducted or reviewed by a qualified biologist (FSM 2672.41; usfs_FSM2670_WO_2005.docx, and Regional Supplement 2600-2011-1 at 2670.45; usfs_FSM2670_R2_Supp_2009.docx). On page 24 of the Record of Decision (ROD) (WRNF_TMP_ROD_signed.pdf) the Forest Supervisor specifically states that;

"My conclusion is based on a review of the record that shows a thorough analysis using the best available science. The environmental analyses disclosed in the Final EIS identify the effects analysis methodologies, reference scientific sources which informed the analysis, and disclose limitations of the analysis."

Recommendation:

I recommend that the Forest Supervisor be affirmed on this point.

APPEAL ISSUE 1A2: THE BA/BO WAS NOT PUBLISHED FOR PUBLIC COMMENT.

Appellant states: The BA/BO was not published in a draft form and no public comment or peer review was undertaken on this document. Pursuant to the 2010 American Bar Association's Endangered Species Act handbook:

If requested, the Service and/or cooperating agencies in the consultation will issue a draft BiOp in order for the applicant and other interested parties to comment on information and conclusions contained therein.

No portion of the WRF TMP BA/BO was published for public comment or review...CSA is not aware of any independent peer review of this document outside the sole reference to the existence of the BA/BO in the decision.

Rule:

See Appeal Issue 1a – Rule

Section 7(a)(3) of the ESA provides that:

Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species may be present in the area affected by his project and that implementation of such action will likely affect such species.

The term "applicant" refers to "any person . . . who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action." (50 CFR 402.02).

Discussion:

The Biological Opinion (BO) for the Travel Management Plan (TMP) is a U.S. Fish and Wildlife Service (FWS) document prepared as part of formal consultation under Section 7 of the Endangered Species Act (ESA Section 7). The Forest Service has no jurisdiction over the Biological Opinion.

The BA is an internal document used to facilitate ESA Section 7 consultation with the FWS. It is prepared by qualified staff to "conduct and document the program and activities review necessary to ensure that any action authorized, funded, or carried out by the Forest Service is not likely to jeopardize the continued existence of any listed or proposed species or to result in the destruction or adverse modification of critical or proposed critical habitat."

Although there is no requirement for public review or comment, a draft BA was made available to the public as Appendix A to the Draft EIS on July 28, 2006 (TMP_DEIS_Appendices_062006_pub.doc). It was again made available on November 7, 2008 in the Supplemental Draft EIS (WRNF_TMP_SDEIS_App_091608cl.doc).

In the case of an agency action involving a permit or license, applicant status may be granted to the prospective authorized person. The applicant is entitled to participate in the consultation process, including submitting information for consideration in the Section 7 consultation process, being informed of and concurring on certain time extensions, and reviewing and providing comments on the draft BO. This consultation did not involve any applicants.

Recommendation:

There is no requirement for peer review or for public review and comment of Biological Assessments or Biological Opinions. However, the WRNF did provide a draft BA as an appendix to the DEIS and Supplemental DEIS. I recommend that the Forest Supervisor be affirmed on this point.

APPEAL ISSUE B: THE BA/BO (DECISION) WAS NOT BASED ON THE BEST AVAILABLE SCIENCE.

Appellant states: The BA/BO is fatally flawed as it does not even address current management guidelines of the FWS and the FS regarding snow compactions lack of impact on the lynx. Rather the BA/BO chooses to rely almost exclusively on the Ruggerio textbooks outdated hypothesis which the authors clearly state was only to serve as an interim position in their on-going work regarding lynx management and the text should only be relied upon as a hypothesis for management of the lynx until more targeted research is conducted. The BA also fails to address any published research by the text authors prepared after publication of the text 12 years ago.

Rule:

See Appeal Issue 1a - Rule

Discussion:

As previously stated, the Biological Opinion (BO) for the White River Travel Management Plan (TMP) is a U.S. Fish and Wildlife Service document prepared as part of formal consultation under Section 7 of the Endangered Species Act (ESA Section 7). The Forest Service has no

jurisdiction over the Biological Opinion. The BO (final_bo-11182010.pdf) does not rely almost exclusively on a single source as alleged by the appellant; rather, a variety sources relevant to snow compaction and competition are reviewed and discussed on pages 5-7, including the Kolbe paper referenced by the appellant. Furthermore, this BO tiers to the BO for the Southern Rockies Lynx Amendment (SRLA), which also extensively reviewed, considered and discussed the literature relevant to the effects of snow compaction on lynx (usfws_srla_bo_2008.pdf, pages 58-60). The 2008 BO specifically reviewed two recent studies of coyote movement in relation to compacted routes that had differing results.

The Forest Service BA (TMP_REVISED_BA_FINAL_09212010.docx, page 54) summarized concerns relative to snow compaction and acknowledged that a decline in lynx populations as a result of competition by coyotes has not been documented. The BA referenced the 2008 BO for the SRLA, which provides a thorough review of the literature. The BA itself cited a variety of sources of information to support the analysis and conclusions, including peer-reviewed literature, previous consultation documents, and personal communications and unpublished data from lynx experts in Colorado:

The BA (page 68-70) documented that the proposed action is consistent with Forest Plan objectives, standards, and guidelines that pertain to travel management as identified in the Southern Rockies Lynx Amendment (SRLA; USDA Forest Service 2008).

On page 24 of the TMP ROD (WRNF_TMP_ROD_signed.pdf) the Forest Supervisor specifically states that;

"My conclusion is based on a review of the record that shows a thorough analysis using the best available science. The environmental analyses disclosed in the Final EIS identify the effects analysis methodologies, reference scientific sources which informed the analysis, and disclose limitations of the analysis."

Recommendation:

I recommend that the Forest Supervisor be affirmed on this point.

APPEAL ISSUE 1C: The Biological Order ("BO") attempts to address the deficiencies of the BA by providing an analysis that directly contradicts the BA and falls woefully short of best available science.

Appellant states: CSA is referring to the letter dated November 18, 2010 to Scott Fitzwilliams from Susan Linner as the Biological Opinion ("BO")...At most the BO is a cover letter for the BA stating the BA is now the BO. CSA is unable to locate any other BO where the BO undertakes significant additional review of materials that are simply ignored in the BA. CSA is deeply concerned that several thresholds for impact to the lynx forwarded in the BO directly contradict the standards applied in analysis performed in the BA. CSA believes that such a contradictory proposition could never be classified as best available science or survive a peer review.

Rule:

See Appeal Issue 1a - Rule

Endangered Species Act Consultation Handbook: Procedures for Conducting Consultation and Conference Activities under Section 7 of the Endangered Species Act, March 1998, pages 3-12, 3-18, 3-19.

Discussion:

In the BO dated November 18, 2010 (final_bo_11182010.pdf), to Scott Fitzwilliams from Susan Linner (page 1), FWS acknowledged receipt of the BA (TMP_REVISED_BA_FINAL_09212010.DOCX) with the Forest Supervisor's request for concurrence with the "may affect, not likely to adversely affect" determinations for six listed species. FWS concurred with that determination of effect for five of the species, but did not concur with that determination for the lynx. Instead, FWS prepared a BO for the lynx. This BO was a second-tier BO under the 2008 programmatic BO for the Southern Rockies Lynx Amendment. There can be differences of opinion on the effects to a species, and the procedures in this event are outlined in the ESA Consultation Handbook (1998). In accordance with these procedures, FWS prepared and transmitted a BO to the Forest Service. Thus, Section 7 consultation was properly completed and considered in the decision-making process, as stated in the ROD (WRNF_TMP_ROD_signed.pdf, pages 25-26).

Recommendation:

The project should be affirmed on this issue

APPEAL ISSUE 1C1: SIZE OR AREA DISTINCTIONS FOR LAU'S.

Appellant states: CSA is unable to find any accurate size or area distinctions when comparing the size of areas used the 2007 Kolbe/Ruggerio study conclusions to the White River LAU areas. Rather an analysis of the areas finds the size relationship to be exactly the opposite of that asserted in the BO. The 2007 Kolbe/Ruggerio study area was:

"This area was about 1,800 km² and included state, federal, and private lands that supported intensive commercial forestry. An extensive road network associated with timber harvest and a high snowpack attracted private and commercial snowmobile operators during winter. The Bob Marshall and Mission Mountain Wilderness areas flank the east and west sides of the study area, respectively."

The BO determines the Ten Mile and Camp Hale LAU's are the only LAU's on the WRF in which the finding of "likely to adversely impact the lynx" is warranted. Given the Ten Mile LAU is only 57,107 acres and the Camp Hale LAU is only 68,236 acres (per Appendix B of the BA) and the 2007 Kolbe/Ruggerio study addressed 437,760 acres, CSA believes that any attempt to distinguish the Kolbe study from the White River LAU's based on a smaller size of the 2007 Kolbe/Ruggerio study area is totally arbitrary and erroneous. CSA also believes that such an arbitrary distinction of the Kolbe study's conclusions is wholly insufficient to address the WRF BA/BO failure to adopt this study's conclusions.

Rule:

See Appeal Issue 1a - Rule

Discussion:

We believe that FWS was not attempting to compare the size of Kolbe et al.'s study area in Montana to the two LAUs in Colorado. Rather, our interpretation was the FWS in the BO (final_bo_11182010.pdf, pages 6-9) was contrasting an area characterized by a large number of compacted routes to an area having large play areas affecting a large proportion of the LAU. The extent of snow compaction within the Ten Mile and Camp Hale LAUs led FWS to conclude that the proposed action would result in adverse effects to the lynx. However, these adverse effects were not believed to rise to the level of take and would not jeopardize the species. Therefore Section 7 consultation was concluded in compliance with the ESA.

Recommendation:

I recommend that the Forest Supervisor be affirmed on this point

APPEAL ISSUE 1C2: PREY AVAILABILITY.

Appellant states: The BO attempts to distinguish the 2007 Kolbe/Ruggerio study's scientific conclusions asserting a lack of research regarding prey availability in the 2007 Kolbe/Ruggerio study. Again this distinction completely lacks factual basis. The 2007 Kolbe/Ruggerio study notes the existence of snowshoe hares, red squirrel, blue grouse and red grouse in the study area (pg 1410) and then provides an extensive analysis of prey tracks in the study areas, kill sites in the study areas, and comparative food habits of the coyote and lynx and scat obtained from tagged animals to determine the availability of prey for each species. (pg 1412-1415) The arbitrary nature of any prey availability distinction is further exemplified by the numerous peer reviewed studies regarding snowshoe hares and red squirrels as food sources for the lynx that are readily available on the Forest Service's Research Station website. If the preparers of the BO/BA truly had scientifically based concern regarding these issues, these peer reviewed scientific works could have been easily relied to perform an analysis of this concern and bring the BA/BO hypothesis into conformity with subsequent scientific conclusions. For reasons that are unclear the resources of the Research Station were simply ignored. This is simply not best available science.

Rule:

See Appeal Issue 1a - Rule

Discussion:

As previously stated, the BO (final_bo_11182010.pdf) was prepared by FWS, not the Forest Service. We believe FWS in this section of their BO was pointing out various factors that may influence a competitive interaction. Various sources of literature were cited, including the Kolbe et al. article referenced by the appellant.

Recommendation:

I recommend that the Forest Supervisor be affirmed on this point.

APPEAL ISSUE 1C3: HABITAT FRAGMENTATION.

Appellant states: The BO continues with a rather lengthy 30,000 ft analysis of habitat fragmentation discussion that is alleged to be missing from the 2007 Kolbe/Ruggerio study. This discussion is based on a general study of possible habitat fragmentation in the Southern Rockies and its *possible* impact on predators and prey animals by Buskirk in 2000....

Despite the extensive habitat fragmentation analysis provided in the BA for summertime usage, no fragmentation impact issues from winter motorized recreation are even addressed in the BA...

CSA believes the clearly incorrect and arbitrary distinctions asserted in the BO are facially insufficient to differentiate the 2007 Kolbe/Ruggerio study from the White River conditions. The 2007 Kolbe/Ruggerio study conclusions have been found pivotal in the understanding of snow compaction and the lynx in other published BOs and have been adopted by multiple agencies as the national position of the agency regarding snow compactions impact on the lynx. CSA firmly believes that such an erroneous analysis is not the result of anything resembling good scientific methods and clearly should never be relied upon to satisfy best available science needed for Forest Service planning.

Rule:

See Appeal Issue 1a - Rule

Discussion:

As previously stated, the BO (FINAL_BO_11182010.PDF) was prepared by FWS, not the Forest Service. We believe FWS in this section of their BO was pointing out various factors that may influence a competitive interaction. Various sources of literature were cited; including the Kolbe et al. article referenced by the appellant. The BA addressed fragmentation in the Winter Travel section by analyzing habitat effectiveness of linkage zones that provide connectivity between LAUs (TMP_revised_BA_final_09212010.docx, pages 56-57, 62-66).

On page 24 of the ROD (WRNF_TMP_ROD_signed.pdf) the Forest Supervisor specifically states that;

"My conclusion is based on a review of the record that shows a thorough analysis using the best available science. The environmental analyses disclosed in the Final EIS identify the effects analysis methodologies, reference scientific sources which informed the analysis, and disclose limitations of the analysis."

Recommendation:

I recommend that the Forest Supervisor be affirmed on this point.

APPEAL ISSUE 1D: THE BA/BO FAILS TO ADDRESS RELEVANT FOREST SERVICE MANAGEMENT DECISIONS AND GUIDELINES.

Appellant states: To qualify as best available science for FS planning the BA/BO must also document that science underlying the analysis has been appropriately interpreted and applied. While not traditional science, the Southern Rockies Lynx Management is a decision that is clearly based on best available science and provided an analysis of all relevant science at the time. The Southern Rockies Lynx Management decision also found the 2007 Kolbe/Ruggerio

study pivotal in the analysis of snow compactions impact on the lynx, and loosened many of the proposed standards as a direct result of the preliminary findings of the Kolbe/Ruggerio study. The BO/BA for the Southern Rockies Lynx management decision explicitly stated:

"USFWS Remand Notice (Federal Register Vol. 69, No. 128, July 3, 2003) did not consider packed snowtrails to be a threat to lynx at this time. Recent published research in western Montana has provided evidence to support this contention (Kolbe 2005).... "

An accurate summary of the Southern Rockies Lynx Management Decision is critical to the BA/BO analysis of the TMP's impact on the lynx as this Decision provides the management baseline for lynx habitat in the White River under the White River's LRMP. Unfortunately the BA can't even accurately summarize Southern Rockies Lynx Management decision regarding winter recreation as is asserted on Page 78 of the BA:

The proposed action is consistent with Forest Plan objectives, standards, and guidelines that pertain to travel management as identified in the Southern Rockies Lynx Amendment (SRLA; USDA Forest Service 2008) as briefly summarized below.....

Guideline HU G 1 0: "Designated over-the-snow routes or designated play areas should not expand outside baseline areas of consistent snow compaction, unless designation serves to consolidate use and improve lynx habitat. This may be calculated on an LAU basis, or on a combination of immediately adjacent LAUs.

CSA has no idea what basis was relied to conclude the HU G10 guideline was directly applied in the Southern Rockies Lynx Management Decision, as the conclusion is clearly incorrect after a brief review of the decision. On page 14 of the Forest Service's Southern Rockies Lynx Management Decision, Regional Forester Rick Cables clearly applied a modified HU G10 standard as the baseline management standard for winter recreation as follows:

"I decided to include guideline HU G 10 in Alternative F-modified, which says that designated over-the-snow routes or play areas should not expand outside of the baseline areas of consistent snow compaction, unless it serves to consolidate use and improve lynx habitat. There may be some cases where expansion of over-the-snow routes would be warranted and acceptable, or where research indicates there would be no harm to lynx, and this guideline provides the flexibility to accommodate those situations." (Emphasis added).

Clearly, the modified HU G10 standard allows for net gains in acreage available for winter recreation, if there is research finding no harm to the lynx as a result of the increase. This management guideline is supported by best available science. The modified HU G10 guideline directly contradicts any assertion of a need for area closures based on protecting habitat for the lynx.

All other standards and guidelines defined by the Southern Rockies Lynx Management decision explicitly state that maintenance of lynx habitat is sufficient, which is completely in agreement with best available scientific research. Again CSA questions how such inaccuracies in transcribing simple statements could be relied upon as best available science, when a cursory

review reveals it is entirely possible the Southern Rockies Lynx management decision was not even fully reviewed as part of the BA/BO analysis. CSA believes such error in transcribing the decision which is the management baseline for the Forest mandates the BA/BO analysis be corrected to the applicable less restrictive standards of the Southern Rockies Lynx decision and analysis accurately performed.

Rule:

See Appeal Issue 1a - Rule

Discussion:

Both the WRNF's BA (TMP_revised_BA_final_09212010.docx) and the FWS's BO (FINAL_BO_11182010.PDF) referenced the information contained in the Southern Rockies Lynx Amendment and the BA and ROD (WRNF_TMP_ROD_signed.pdf) document consistency of Alternative GM with the SRLA.

In Attachment 1, The Selected Alternative of the Forest Service's Southern Rockies Lynx Management Decision (ROD; usfs_srla_rod_2008.pdf), Regional Forester Rick Cables clearly states where the Standards and Guidelines are to be applied:

Southern Rockies Lynx Amendment – Management Direction

The management direction applies to lynx habitat on the following National Forests in the Southern Rockies Lynx Amendment area:

Medicine Bow Routt National Forests (two separate Plans),
Arapaho-Roosevelt National Forests,
Grand Mesa, Uncompahgre and Gunnison National Forests,
Pike-San Isabel National Forests,
Rio Grande National Forest,
San Juan National Forest, and
White River National Forest.

GOAL 14

Conserve the Canada lynx.

ALL MANAGEMENT PRACTICES AND ACTIVITIES (ALL). The following objectives, standards, and guidelines apply to all management projects in lynx habitat in lynx analysis units (LAUs) in occupied habitat and in linkage areas, subject to valid existing rights. They do not apply to wildfire suppression, or to wildland fire use.

On page 1-8, the Regional Forester establishes Guideline HU G10

Guideline HU G10

Designated over-the-snow routes or designated play areas should not expand outside baseline areas of consistent snow compaction¹, unless designation serves to consolidate use and improve lynx habitat.

This may be calculated on an LAU basis, or on a combination of immediately adjacent LAUs.

This does not apply inside permitted ski area boundaries, to winter logging, to rerouting trails for public safety, to accessing private inholdings, or to access regulated by Guideline HU G12.

Use the same analysis boundaries for all actions subject to this guideline.

The BA (TMP_revised_BA_final_09212010.docx) does accurately summarize this Guideline as it pertains to travel management. The citation that the appellant uses is a part of the text for the Rationale for the Decision. The statement "*There may be some cases where expansion of over-the-snow routes would be warranted and acceptable, or where research indicates there would be no harm to lynx, and this guideline provides the flexibility to accommodate those situations*" is not a part of Guideline HU G10. It is a part of the discussion explaining the Regional Forester's reason for including HU G10, rather than applying a Standard, in his decision. As a Guideline, there is some flexibility assumed by definition. On page 5 of the ROD (usfs_srla_rod_2008.pdf), Guidelines are defined and their implementation described.

Guidelines are recommended management actions that will normally be taken to meet the objectives, but are not required.

Under this decision, standards are applied only to vegetation management activities that have the potential to directly affect snowshoe hare prey and thus may impact lynx at the population level. Other activities that may have possible adverse effects on individual lynx are subject to guidelines. Any deviations from guidelines would be considered only after analysis of site-specific conditions, and in compliance with Endangered Species Act Section 7 consultation requirements.

The BA (TMP_REVISED_BA_FINAL_09212010.DOCX) states that the Guideline will be followed, and did not propose any deviations.

Recommendation:

I recommend that the Forest Supervisor be affirmed on this issue.

APPEAL ISSUE 1E: THE CAMP HALE AND 10 MILE LAU CLOSURES ARE IRRECONCILABLE WITH LNYX MANAGEMENT WAIVER GIVEN FOR THE BRECKENRIDGE SKI AREA.

Appellant states: The actual necessity and underlying intent of the closures of public access to significant portions of the WRF based on lynx concerns is directly undermined by the Forest Service recent decision to permit a 550 acre expansion of Peak 6 at the Breckenridge Ski area. The Breckenridge expansion project was granted a complete waiver of applicable lynx management regulations less than 5 miles from the boundary of the areas to be closed in the Ten Mile LAU.

CSA cannot understand how the impact to the lynx can be so severe in one location as to mandate closures to winter recreation and then winter recreation are granted complete waivers of lynx regulations less than 5 miles away. CSA believes that such a conflict of opinions cannot be based on best available science which is completely unacceptable and must be reversed.

At no point is a possible impact to the lynx from this snow compaction ever meaningfully addressed in the draft EIS regarding the Breckenridge ski areas expansion on Peak 6. After no meaningful analysis, the Breckenridge expansion is then granted a complete waiver of applicable lynx management standards finding:

Rule:

See Appeal Issue 1a - Rule

Discussion:

On page 8 of the FEIS (WRNF_TMP_FEIS_March2011.pdf) the purpose of this analysis and decision states:

"The purpose of this initiative is to identify the transportation system with the goal of balancing the physical, biological, and social values associated with the White River National Forest."

In the ROD (WRNF_TMP_ROD_signed.pdf) on page 24, the Forest Supervisor states;

I recognized the need to allow the public to access and recreate on public lands. Our road and trail system is the primary way for people to enjoy the White River National Forest. Alternative GM provides for this need while minimizing impacts to natural resources. Thoughtful network design, the removal of unnecessary or resource damaging roads and trails, and the protection of resources were all key design elements of Alternative GM. I believe this alternative is the best choice from which the Forest Service can protect natural resources and provide public access and recreation opportunities across the forest.

Alternative GM contains the least amount of roads and trails and will result in the least amount of winter compaction among all alternatives. This alternative also adds some previously unauthorized routes to the system to provide forest users with reasonable access across the entire Forest. My decision reflects careful consideration of the environmental impacts over the long term. Alternative GM removes unauthorized and unnecessary roads and trails. By eliminating these routes, the Forest Service can actively rehabilitate these lands and allow the land to return to a more natural setting.

This illustrates the reasoning behind the need to provide a mix of uses, both motorized and non-motorized.

Additionally, on page 24 of the ROD, the Forest Supervisor specifically states that;

"My conclusion is based on a review of the record that shows a thorough analysis using the best available science. The environmental analyses disclosed in the Final EIS identify

the effects analysis methodologies, reference scientific sources which informed the analysis, and disclose limitations of the analysis."

The FEIS addressed ski areas, including the Breckenridge Ski area on page 24;

A number of designations and activities will not change in the travel management plan. These include:

Existing permitted use, including ski resort developed areas and infrastructure;

Management and development of the Breckenridge Ski Resort is subject to its own NEPA analysis and separate decision-making processes.

Recommendation:

The Forest Supervisor should be affirmed on this issue

APPEAL ISSUE 1F: THE BA/BO DOES NOT ACKNOWLEDGE THE LYNX MANAGEMENT STUDY ON VAIL PASS.

Appellant states: CSA must question the levels of actual review of lynx management activities utilized in the preparation of the BA/BO. The FS Rocky Mountain Research Station, in conjunction with the Ruggerio text authors, is currently performing extensive research regarding the relationship of winter recreation and the lynx on the Vail Pass area of the White River National Forest. The existence of this study or the possible implications to the BA/BO theories are not even addressed despite the work being performed by authors of the Ruggerio text which is relied upon as the sole research tool for the BA/BO. The on-going study directly targets the critical gaps in lynx research found in the Ruggerio text and is providing further support for the Kolbe study. Preliminary results are being compiled now but CSA representatives were able to discuss this study with Dr. John Squires who participated in authoring the Ruggerio text. Dr. Squires informed CSA representatives the study was finding a lower level of possible impact on the lynx from winter recreation than those found in the 2007 Kolbe/Ruggerio study. These communications were the result of a quick phone call from representatives of CSA to Mr. Squires. The failure to even acknowledge the existence of this study or perform preliminary investigations into its findings directly undermines any credibility asserted to exist in the BA/BO.

Rule:

See Appeal Issue 1a - Rule

Discussion:

The appellant is misinformed on this point; the BA (TMP_revised_BA_final_09212010.docx) does reference the Forest Service Rocky Mountain Research Station study in the Vail Pass area in several areas. Specifically, on page 16, under the Field Surveys heading it states:

"An exception to this new monitoring plan is in the Vail Pass area of the White River National Forest. A new lynx study was begun in 2010 by the White River National Forest, the Forest Service Rocky Mountain Research Station, and CDOW to learn about the effects of winter recreation on the movements and activity patterns of lynx in the

vicinity of Vail Pass and nearby developed ski areas (Vail, Beaver Creek, Breckenridge, Copper Mountain, and Ski Cooper). The study also will be investigating the use by lynx of habitats impacted by forest insect epidemics. Several lynx were trapped and fitted with GPS collars in 2010. The study will continue into 2011. A combination of CDOW radio tracking and local sightings have verified the presence of reintroduced lynx elsewhere on the White River National Forest since 1999."

The BA also references personal communication with Dr Squires. On page 75-76 under the Effects of the Proposed Action for the Species Evaluated -Winter Travel it incorporates the following information:

"As far as providing effective movement corridors and habitat connectivity, the Vail Pass linkage area is not likely conducive to lynx movements when high levels of winter recreation are occurring. Preliminary data from 2010 winter recreation use surveys on Vail Pass are showing that almost all winter recreation on Vail Pass occurs between the hours of 9:00 a.m. and 4:00 p.m. (Squires pers. comm. 2010). Outside of those hours, the Vail Pass linkage area would provide an effective movement corridor for lynx. The proposed reductions in winter snow play areas within LAUs and linkage areas would result in a considerable reduction in snow compaction within lynx habitat across the Forest. Although snow compaction has not been found to impact lynx populations, habitat effectiveness for lynx and lynx prey species would likely improve as deep soft snow conditions persist and human intrusion into winter lynx habitat substantially ceases in these areas."

The BA on pages 77-78 of the Effects of the Proposed Action for the Species Evaluated -Winter Travel (TMP_REVISED_BA_FINAL_09212010.DOCX) continues its discussion involving the Rocky Mountain Research Station and information provided by Dr. Squires:

"An important new lynx and winter recreation study was begun by the Forest Service Rocky Mountain Research Station (RMRS) with the White River National Forest and Colorado Division of Wildlife during the winter of 2009/2010. The study is thoroughly investigating actual winter recreation use and accompanying snow compaction, and lynx movements and use of the VPWRA area and lynx territories within and adjacent to it. The study will continue in 2010/2011. Until study results are analyzed and released, the following information is provided to assess winter travel routes and play areas within the LAUs contained within the VPWRA. For analysis on the Vail Pass and Tennessee Pass linkage zones, please see the previous discussion for these linkage zones in this biological assessment."

The VPWRA is located within portions of the Eagle Valley, Camp Hale, and Ten Mile LAUs. Looking at density of winter routes (both motorized and non-motorized) within each of these LAUs (BA Appendix B, pgs 113-120), the Ten Mile LAU would have 0.51 miles per square mile under the proposed action, the Eagle Valley LAU would have 0.60 miles/square mile, and the Camp Hale LAU would have 0.81 miles/square mile. These densities are well below the two miles per square mile density that has been suggested to be a level that may result in habitat fragmentation impacts for lynx (Ruediger et al. 2000).

Snow compaction caused by winter play areas is estimated at 12% of the Eagle Valley LAU, 17% of the Ten Mile LAU, and 41% of the Camp Hale LAU. Please note that the LAU snow compaction data includes all habitat types within LAUs, not just lynx habitat. If high levels of snow compaction may result in impacts to individual lynx as a result of predator competition for winter prey or poor prey habitat conditions, the snow compaction percentages in these three LAUs do not seem necessarily high.

If the intensive levels of winter recreation in VPWRA are influencing lynx use within a portion of the Eagle Valley, Camp Hale, and Ten Mile LAUs, it is possible that lynx use of winter foraging habitats and habitat connectivity would be compromised during the period of time when winter recreationists are present. The RMRS study is focusing on exactly these questions. Preliminary data from 2010 winter recreation use surveys are showing that almost all winter recreation in the VPWRA occurs between the hours of 9:00 a.m. and 4:00 p.m. (Squires pers. comm. 2010). Outside of those hours, lynx habitat within the VPWRA and habitat connectivity would be available for lynx.

From the BA, page 68:

Information from the Colorado Division of Wildlife (unpublished data) has shown that resident lynx are present within and adjacent to the VPWRA, and in fact have successfully reproduced. It appears that as busy as the VPWRA is, resident lynx are persisting and successfully reproducing. The conclusion based on current information is that the Eagle Valley, Camp Hale, and Ten Mile LAUs remain functional. The RMRS winter recreation and lynx study has successfully completed one year of research within the VPWRA and will continue in 2010/2011. The 2009/2010 study findings have not been fully analyzed yet, so research conclusions have not been made at this point. Once the study findings are available, they can be used to modify Forest Service management, including winter travel if necessary, to improve the conservation of lynx."

Recommendation:

The Forest Supervisor should be affirmed on this issue

APPEAL ISSUE 2A: THE DECISION FAILS TO ADDRESS ECONOMIC IMPACTS OF CLOSURES.

Appellant states: Alternative GM proposes to close all snowmobile access to the eastern third of the White River. CSA believes that these closures will have a significant economic impact to the communities around the closed areas and planning laws require these impacts to be taken into account when planning. CSA submits that this analysis has not occurred and these closures must be reversed.

CSA is unsure the basis for these closures as the public comments completely failed to address some of the areas and in other areas the comments were in favor of maintaining or expanding public access to the areas for motorized recreation. CSA also notes that no area to be closed in alternative G was reopened as a result of public comments and more areas, both in acreage and total number of areas, were closed after public comment on Alt G than were even proposed to be

closed between current usage and Alt G. Many of these areas were closed in direct violation of the LRMP area designation for the area further expanding the economic impact of the closures.

A review of the response to public comments portion of the Decision reveals a troubling course of conduct where the analysis of comments is to the direct detriment of those snowmobilers who are seeking a dispersed motorized experience within the vicinity of any major settlements that LRMP area designations are designed to provide and protect. The closure of all smaller open motorized areas on the eastern half of the forest will result in riders no longer being able to obtain the dispersed recreational experience provided by these areas. While forcing snowmobilers to utilize the Vail Pass Winter Recreation Area ("VPWRA") may be a neat and clean answer on paper, it completely overlooks the fact the VPWRA provides a very intensive winter recreation experience which is simply not preferred by a lot of snowmobilers. This desire for dispersed winter recreation was addressed and protected with the application of LRMP area management standards designed to protect and preserve snowmobile access in all areas now sought to be closed in the TMP. This is simply unacceptable to CSA.

On page 22 of the ROD, the Deciding Official clearly states:

"I am selecting Alternative GM because it best meets the purpose and need and represents the best balance of social, economic, and environmental interests and effects."

The DEIS did have limited analysis of the impacts of changing areas from the current management guidelines to those proposed in Alt G. Rather than expand or revise the economic impact research in the FEIS to address the significant expansions of closures of areas between Alt G and Alt GM, the entire economic impact analysis discussion is simply removed. The fact that more closures occurred between the release of Alt G and the final decision in Alt GM provided no economic analysis whatsoever. Given the history of economic impact analysis around the TMP, Alt GM has received no economic impact analysis. The complete failure to provide economic analysis is a clear violation of NEPA and the MUYSA.

Rule:

40 CFR 1502.16, Environmental Consequences - directs the analysis and discussion of impacts effects of the proposed action and the alternatives.

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.

40 CFR 1508.8, Effects - details the range of effects that must be considered, including social and economic.

40 CFR 1508.14, Human Environment - states that when "economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment."

40 CFR 1508.25, Scope - directs that the analysis include direct, indirect and cumulative impacts.

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

Discussion:

- **Analysis of Comments**

The appellant commented on the Draft Environmental Impact Statement on October 19, 2006 (Comment Letter Number WRT-476), and on the Supplemental Draft Environmental Impact Statement on January 3, 2009 (Comment Letter Number WRT-235); the comment about “open motorized areas” was in regard to the comparison of Alternative G with the other action alternatives:

“Page 41 – Table 2.5 Comparison of effects by alternative: The Indicator ‘volume available for use’ for Alternative G is not entirely accurate when it states “more winter motorized (volume) available as routes are designated.” While it is true new routes will be designated through restricted areas, nearly 66,000 acres of Open motorized areas would at the same time be converted to restricted areas. And since several of these new restricted areas would not have any routes designated within them, they essentially would change from open to closed areas. The net result is that there will overall be less volume available for motorized access under Alternative G.”

There was no reference in either letter about the Vail Pass Winter Recreation Area except as it related to funding trail management. No further comments from the appellant 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*, (8_ResponseToComments_FEISAttachment3.pdf, SDEIS_Programmatic_Report_responses_final.doc).

The process to develop a travel management plan followed the NEPA process entirely including considering comments from scoping, two formal comment periods, and several meetings with publics, interest groups, and government agencies (SDEIS_Programmatic_Report_responses_final.doc).

- **Socio-economic**

The socio-economic section was inadvertently omitted from the FEIS. However, the socio-economic discussion was included in the DEIS beginning on page 89 and in the SDEIS beginning on page 102. Consequently, the public was allowed opportunity to comment on these materials during the public review periods for the DEIS and the SDEIS (40 CFR 1503, Commenting). The comment periods for the DEIS and SDEIS were initiated via publications of Notices of Availability (NOA) in the Federal Register on July 28, 2006 and November 7, 2008, respectively.

Although the socio-economic section is missing from the documentation of the FEIS, a socio-economic report is included in the project record for the FEIS (09_FEIS/04_FEIS/working/WRNF_TMP_FEIS_ch3_social_drafr_061510.docx); this report contains similar information to that documented in the DEIS and SDEIS. The major content difference between the unpublished report and the previous versions included in the DEIS and SDEIS is that the unpublished report includes a brief discussion of Alternative GM. This unpublished socio-economic report for the FEIS states, "Changes were made to address issues raised during comment. These comments did not drive a large change from the direction the preferred alternative presented (p. 6)." In a response to comments, the Forest referred to the socio-economic section in Chapter 3, demonstrating their reliance on the unpublished socio-economic report the Forest expected to include in the FEIS. These statements demonstrate that the socio-economic analysis conducted earlier in the EIS process and the conclusions from that analysis did not change appreciably from the proposed FEIS language; there were no comments received during the review of the SDEIS that directly raised socio-economic concerns.

Recommendation:

I recommend the Forest Supervisor's decision be affirmed on this issue with instruction. Given that disclosure of the socio-economic effects was included in the two previous draft EIS's, it appears to me that its omission from the FEIS may have been inadvertent. An instruction for the Forest Supervisor would be to post the socio-economic section to their Forest website and provide to the appellant as an errata to the FEIS. I recommend that a letter be sent to everyone who commented on the FEIS notifying them of posting of the document on the website and offering to send the document upon request.

APPEAL ISSUE 2A1: ROADLESS AREAS ARE MANAGED IN VIOLATION OF THE FOREST PLAN (0039-SUB-ISSUE 2A1).

Sub-Issue 2A1A: Upper tier roadless/roadless/"capable and available for wilderness" area analyses (bottom of p. 23)

Appellant states: Based on the responses to public comments, significant portions of roadless areas appear to have been managed in violation of LRMP area designations. In several responses to comments from the FS, roadless area management standards are equated with designated wilderness areas standards, despite the area being clearly designated under a management category where motorized transportation is common.

Numerous comments submitted question the general accuracy of roadless maps created and assert roadless area standards are inaccurately applied on the forest. After a review of the response to comments, CSA agrees with this analysis. A review of the responses to various

public comments reveals an on-going course of conduct which clearly applies the roadless rule in violation of the Roadless Rule requirements and the White River Forest's LRMP.

The area designation of "roadless area capable and available for wilderness" does not exist as a stand-alone category in the WRF LRMP. CSA is unsure how an alleged area designation of "capable and available for wilderness" could be relied upon in any review of area usages outside a category one area in general and more specifically 1.2 Wilderness designation, where the desire to preclude motorized usage is clearly specified.

CSA is very concerned the theory of roadless area "capable and available for wilderness" which is limited to the management of areas designated by the LRMP management category 1.2- Recommended for Wilderness has been relied for illegal closures of areas managed outside these area designations. These illegal closures are now asserted to be valid under the existing management alternative of the TMP. Such an interpretation is a facial violation of the roadless rule and underlying LRMP area designations. The theory of "roadless area capable and available for wilderness" is cited 18 times as the basis for closures of areas not designated category 1.2 in the response to comments portion of the Decision. These responses all assert authority for such closure is provided under the LRMP, however the areas sought to be closed are managed under categories 3, 4 and 5 area designations, all of which specifically allow for dispersed motorized usage, sometimes at high levels, even with a roadless designation overlaid. CSA is completely unable to locate any authority in the LRMP to manage category 3, 4 and 5 areas in such a manner that prohibits motorized recreation.

The only site specific analysis of an areas viability for a "capable and available for wilderness" designation occurs in Appendix "C" of the LRMP, which inventoried all roadless areas. During the course of developing the LRMP, an inventory of all possible roadless areas viability for wilderness designation was conducted on the White River, as one of the alternatives proposed for the LRMP was to manage all roadless areas as wilderness. It should be noted that the alternative to manage all roadless areas as wilderness was NOT adopted and the decision not to adopt this alternative is controlling and must be honored in the development of the TMP. CSA believes this decision has not been honored.

Reliance on Appendix C as proper management authority is completely illegal as the inventory was not the decision document as clearly evidenced by conflicting area designations on the LRMP map and the numerous statements to this effect in the Appendix itself. CSA believes the numerous illegal assertions regarding this Appendix position as the decision document requiring closure of areas is more than simply a ministerial oversight but rather evidences as course of conduct of illegal management of roadless areas on the Forest which has not been addressed in any previous documents relied upon in the development of the TMP. Given the scope of erroneous application of roadless rule, CSA believes the limited amount of economic analysis provided relative to the TMP is facially insufficient as it is based on LRMP guidelines and not the actual management of these areas.

Rule:

16 USC 1604(i) - Projects and activities must be consistent with the applicable plan components. If a proposed use or project is not consistent with the applicable plan components, the responsible official may modify the project to make it consistent with the plan, reject the

proposal or terminate the activity, or amend the plan contemporaneously with the approval of the project

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

FSH 1909.12 – capability of a potential wilderness - the degree to which the area contains the basic characteristics that makes it suitable for Wilderness designation without regard to its availability or need as wilderness.

Discussion:

The FEIS states (WRNF_TMP_FEIS_March2011.pdf, p. 10) that the TMP will adhere to the Forest Plan, and that 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 decision is compliant with the Forest Plan and does not amend the Forest plan (WRNF_TMP_ROD_signed.pdf, p. 16). Courts have found that the Forest Service may choose not to designate motorized routes in a management area that allows or assumes motorized use and the decision not to designate does not require a Forest Plan amendment. Colorado Off-Highway Vehicle Coalition v. USFS, 505 F.Supp.2d 808, 820-21 (D. Colo. 2007).

The FEIS (WRNF_TMP_FEIS_March2011.pdf, p. 41) notes that all action alternatives except Alternative A (No Action) are consistent with the Forest Plan. The Forest identified which Management Areas in the Forest plan allow motorized, mechanized and non-motorized use (ma_uses.doc) to facilitate consistency with the Forest Plan. The decision was made to close some roads and trails to motorized use in Management Areas that allow motorized use, but there is no evidence that the decision changed the classes of motorized use allowed in any Management Area.

A similar discussion can be found in the September 2008 Supplemental Draft EIS (WRNF_TMP_SDEIS_2008.pdf) starting on page 94. In addition, the Response to Comments for the Supplemental EIS (8_ResponseToComments_FEISAttachment3.pdf) provided the following response on page 7 –

PC 16 Public Concern: The WRNF should analyze roadless areas in more detail:

Rules and regulations for the designation and management of inventoried roadless areas are outside the scope of the TMP. The WRNF TMP is compliant with current roadless direction. The WRNF TMP does not propose any new road or the adoption of any user-created roads in roadless areas. There are some motorized trails in some of the roadless areas that are proposed, some that have been traditionally used and some that lead to motorized networks.

Under current direction inventoried roadless areas are not closed to snowmobiles. Non-motorized winter areas are based on many factors including direction outlined in the Forest Plan, recreation management needs, and resource protection measures such as effects to wildlife.

And...on page 18 -

PC 40 Public Concern: The WRNF should/should not expand motorized uses:

Response PC 40: *The mapping of winter areas was based on input from users including the need to simplify the process. The base for the map began with the Forest Plan, not the 1985 map. Comments on the DEIS expressed confusion on the part of winter users, therefore a process to present only where motorized is allowed was used in the SDEIS. This is to reflect the decision to be made. The SDEIS alternative G was based on input from users, wildlife protection needs, as well as eliminating small areas where there was little or no access. For the FEIS the forest utilized the site-specific comment from winter motorized, winter non-motorized, user groups and individuals.*

Certain Management Areas in the Forest Plan allow motorized, mechanized and non-motorized use (/05_Resources/09_Planning/ma_uses.doc). The WRNF Forest Plan, Chapter 3 (plan_ch3_final_012009.doc), identifies the following Management Areas that allow motorized recreation:

- 1.32 (summer, no; winter, yes);
- 2.1 (decision by area);
- 3.1; 3.21; 3.31; 3.32 (summer, no; winter, yes);
- 3.4;
- 3.55;
- Category 4 prescriptions;
- Category 5 prescriptions; 5.5 (winter motorized use is restricted);
- Category 7 prescriptions; and
- Category 8 prescriptions

The Forest Plan, FEIS Appendix C (feis_appV3_c_roadless_final.pdf) *Roadless Area Management and Recommended Wilderness*, page C-4

Areas inventoried for Wilderness potential with the highest capability included the following: Black Lakes West, Derby, Spraddle Creek, Deep Creek, Homestake, Red Table, Treasure Mountain, Ute Pass, Acorn Creek and Big Ridge, and Adam Mountain. This is displayed in Table C-2.

The Forest Service has the option under the process outlined in §212 to establish where over-snow vehicles would be allowed, restricted, or prohibited. The White River National Forest has chosen to follow the process outlined in the rule through the travel management plan and subsequently will produce winter motor vehicle use maps to show where motorized winter use is allowed, restricted, or prohibited. (ROD, pg 30)

Winter motorized uses are reduced most in this alternative (GM); removing some small parcels that collectively reduce use in some areas and in restricted areas that generally emphasize wildlife habitat, motorized use is concentrated on routes thus wildlife is less impacted. (FEIS, Alt GM, pg 43)

For winter travel uses, the Forest Plan allocated more of the non-wilderness land base into management areas that contain strategies focusing on wildlife concerns and non-motorized

recreation. The Forest Plan also calls for designation of winter routes and play areas for certain management area strategies. For example, in the areas designated 5.5 forested landscape linkages, which include a total of 83,500 acres across the forest, winter travel is now restricted to designated routes and play areas. Winter motorized travel in wildlife winter range, in particular management area prescriptions 5.41, 5.42 and some of 5.43, continues to be restricted to designated routes and play areas only. Some previously "open to motorized use" areas were changed to "non-motorized" because of physical resource limitations such as steep terrain and dense timber that prevented motorized use from occurring. The Forest Plan showed a drop in total available acreage for winter motorized use from 1,197,000 acres to 941,000 acres. Much of the change came about due to better mapping capability and removal of extremely steep slopes or locations inaccessible to motorized use from the motorized acreage inventory. A limited number of those areas that were changed to non-motorized use in the Forest Plan revision were actually being used for winter motorized use. A few of the changes remain controversial with some forest users. (FEIS, Recreation, pgs 67-68)

The TMP does not amend the Forest Plan, so the TMP must comply with the direction in the Forest Plan as amended. The Travel Management Rule curtailed the options that the WRNF had in designating a travel system, setting out parameters that it must meet and considerations to balance. The balance of "social and resource demands" in the title of the Need outlined at FEIS at 9-10, refers to the balancing of: protection of natural resources (water quality, natural landscapes, and wildlife habitat) with demand for motorized and non-motorized forms of travel for recreation, tourism, hunting, fishing, and land management activities (timber and habitat improvements, forest product gathering, range allotment maintenance, vegetation treatments, power lines, radio and cell phone relay towers, natural gas development, private land in-holdings, and administrative activities).

Recommendation:

Most management area categories in the White River Forest Plan allow for snowmobile use. However, this does not require snowmobile use in those areas. Snowmobile use is generally allowed in roadless areas. However, for a variety of reasons, the Forest Supervisor chose to close or restrict snowmobile use in some roadless areas. In restricted areas, motorized routes may be designated in the future. Closed areas could also change in the future.

The Forest Supervisor's decision should be affirmed on this issue.

APPEAL ISSUE 2B: The TMP seeks to close the Spraddle Creek area in violation of the LRMP area designation relying on an illegal interpretation of Appendix "C" and moves the boundary to an unenforceable location.

Appellant States: CSA is vigorously opposed to any closures in the Spraddle Creek area as these closures are based on the illegal area designation of "roadless area capable and available for wilderness" that does not exist in the WRF LRMP. Snowmobile access to the Spraddle Creek area is now closed based exclusively on an illegal designation of the area as "capable and available for wilderness" and completely omitting the fact that snowmobile usage has always been permitted in roadless areas.

Most of the Spraddle Creek area is not even designated as any level of roadless and is easily accessible in the winter from other access points to the west of the Spraddle Creek area by riding

cross country. The closure of the Spraddle Creek area was opposed by CSA in comments on Alt G. The misdesignation of the area was not addressed as the basis for closure of this area in Alt G. In addition to relying on an illegal basis for the closure of this area, the TMP moves the boundary area for winter access from a clearly defined boundary to the middle of a field, which will be impossible to designate during winter usage.

Pursuant to the response to public comments section of the decision, winter access to the Spraddle Creek was closed for the following reason:

WRNF RESPONSE: The South Fork, Middle Fork and Spraddle Creek areas are located within the Spraddle Creek Roadless Area as identified by the White River National Forest Land and Resource Management Plan - 2002 Revision. This roadless area was determined to be capable and available for wilderness.

The illegal designation of the Spraddle Creek area as "capable and available for wilderness" directly conflicts with LRMP area management prescriptions. Pursuant to the LRMP the Spraddle creek area is managed under a 5.4 area designation which provides:

"Visitors can find *dispersed recreation opportunities including both motorized and non-motorized*, although they may also find that access is restricted, at times, through the use of seasonal or year-long road closures."

A review of the LRMP's summary of Category 5 area designations expands upon the decision to utilize these areas for dispersed motorized recreation. This summary explicitly provides in relevant part:

"These lands often display high levels of investment, use, activity, facility density, and vegetation manipulation evidence. Users expect to see other people and evidence of human activities. Facilities supporting the various resources are common. *Motorized transportation is common.*"

The LRMP also provides clear management requirements for the small portions of the Spraddle Creek area designated as roadless. The LRMP defines management of 5.4 areas also designated as roadless as follows:

"Inventoried Roadless Guideline. Minimize road construction in inventoried roadless areas, emphasizing temporary roads over permanent roads. Roads will only be constructed when necessary to meet management area objectives and only after other options have been examined for feasibility."

Under the New Colorado roadless rule provisions for upper tier designations, which has been prepared based on the direction of the Forest Plan, no area of the Spraddle Creek area is to be designated as upper tier, with the exception of a small area that is already closed to motorized access pursuant to a 1.2 area designation being applied.

A more thorough review of the analysis of this area in Appendix C reveals that only 874 acres of the 9460 acres reviewed in the Spraddle Creek area was found to be capable and available for wilderness further undermining any claim the area is properly designated as "roadless capable and available for wilderness." CSA notes that the 874 acre portion of the Spraddle Creek area is

already managed pursuant to an area 1.2 area designation and is completely beyond analysis in the TMP.

The arbitrary nature of the new boundary for the western side of the Spraddle Creek area is that summer motorized access remains open on FS 7-719.1 to the top of Bald Mountain and roads 7-786 and 7-720 also remain open in the area for summer access. These access methods completely undermine any assertion Spraddle creek area is accessible for winter recreation by means other than the single roadway nakedly alleged to be the sole means available for access. Cutting off access to the eastern areas will result in an area designation that is simply unenforceable, makes little sense and unnecessary.

Given the reliance on illegal area designations as the basis for closures of the Spraddle Creek area to winter recreation, these closures must be reversed.

Rule:

16 USC 1604(i) - Projects and activities must be consistent with the applicable plan components. If a proposed use or project is not consistent with the applicable plan components, the responsible official may modify the project to make it consistent with the plan, reject the proposal or terminate the activity, or amend the plan contemporaneously with the approval of the project

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

Discussion:

See discussion above under Appeal Issue 2A1

The Forest Plan, FEIS Appendix C (feis_appV3_c_roadless_final.pdf) *Roadless Area Management and Recommended Wilderness*, page C-4

Areas inventoried for Wilderness potential with the highest capability included the following: Black Lakes West, Derby, Spraddle Creek, Deep Creek, Homestake, Red Table, Treasure Mountain, Ute Pass, Acorn Creek and Big Ridge, and Adam Mountain. This is displayed in Table C-2.

In responding to comments, the Eagle-Holy Cross Ranger District responded to comment no. 12856 (letter no. 3048) and no. 12671 (letter no. 2761) (EHX_Response_to_Comments_2009.xls):

The South Fork, Middle Fork and Spraddle Creek areas are located within the Spraddle Creek Roadless Area as identified by the White River National Forest Land and Resource Management Plan - 2002 Revision. This roadless area was determined to be capable and available for wilderness. The majority of the restricted area is not rideable due to terrain and timber. The only winter route into the restricted area is the Spraddle Creek Road, which is a cherry stem into the roadless area. Any play areas off of the Road would be in

the Roadless Area. In addition, the summer travel management plan for the area is to decommission the road above Spraddle Creek Ranch. Thus in the future, a travel route would not exist. The road to the trailhead is not always plowed in the winter, making it difficult to get a trailer to the trailhead. The preferred alternative would remove approximately 2.8 miles of current snowmobile trails. Based on the limited amount of snowmobile terrain, the final alternative will not be modified.

Courts have found that the Forest Service may choose not to designate motorized routes in a management area that allows or assumes motorized use and the decision not to designate does not require a Forest Plan amendment. Colorado Off-Highway Vehicle Coalition v. USFS, 505 F.Supp.2d 808, 820-21 (D. Colo. 2007).

Recommendation:

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

APPEAL ISSUE 2C.1: Area specific - Pennsylvania Gulch area to Boreas Pass

For purposes of this section CSA is referring to Pennsylvania Gulch as the area generally south and east of Breckenridge running east of Route 9 to Boreas Pass and associated fingers to the north. These areas are currently designated "Open Motorized" area. Under Alternative G this area was to remain an 'Open Motorized' area but the area designation was changed to "Motorized Access- Restricted Routes only" under Alternative GM. There are no routes designated in the area for usage.

Pursuant to the response to public comments winter access to the Pennsylvania Gulch area was closed for the following reasons:

"... in the final Travel Management alternative GM, the large open motorized area that runs from the southern flanks of Bald Mountain, through Indiana Gulch, and south into Pennsylvania Gulch will be designated as a non-motorized zone based on safety, access, terrain, and natural resources issues. Specifically, the area has no clear geographic or topographic boundaries, steep wooded hillsides, wetland and riparian areas and also has high natural resource values and challenging, difficult to manage terrain. In addition, open motorized use in this area may encourage unauthorized access into the restricted areas south of Pennsylvania Gulch."

CSA notes the lack of geographic or topographic boundaries existed when Alt G was developed, and could have been addressed in Alt G. Rather than allow meaningful comments on the issue in the comments, any viable concerns were ignored in Alt G and the area was closed after comments... This is simply unacceptable.

CSA also notes that any assertions of attempts to post any restrictions in this area are simply not reasonable...It has been CSA's experience that people will comply with area restrictions if they know what they are. There is simply no reasonable way for most people to determine what the restrictions are in this area. As a result CSA believes any signage concerns are not a valid reason for closure of the area.

Riparian issues are also cited as a possible concern requiring the closure of the Pennsylvania Gulch area. Such a non-specific concern for riparian issues is not supported by Best Available Science from the FS Research Station, as these Research Station's studies conclude there is no harmful impact on air quality or water runoff quality as a result of snowmobiling.

Closure of the Pennsylvania Gulch area also directly conflicts with the LRMP area designation which clearly states usage of the area is to preserve motorized winter recreation. Area designations under category 3.31 provide:

"Theme

Backcountry motorized recreation areas are managed to provide summer motorized recreation on roads and trails and winter motorized recreation throughout the area in a natural-appearing landscape.

Management area description

These areas are generally greater than 2,500 acres in size and may contain primitive roads and a motorized trail system. They are managed to provide a variety of uncrowded, motorized recreation opportunities in a natural or natural-appearing setting. Skiers should expect to encounter over-the-snow vehicles."

The Pennsylvania Gulch area was reviewed in Appendix C of the LRMP on page C-50. Again the LRMP decision was made to protect motorized winter recreation in this area over any capability and availability for wilderness designation. CSA believes that this decision must be honored in the development of the TMP by the area remaining open.

Rule:

16 USC 1604(i) - Projects and activities must be consistent with the applicable plan components. If a proposed use or project is not consistent with the applicable plan components, the responsible official may modify the project to make it consistent with the plan, reject the proposal or terminate the activity, or amend the plan contemporaneously with the approval of the project

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

36 CFR 212.55 - In designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, consider effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration.

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

Discussion:

In responding to comments on the SDEIS, the Dillon Ranger District responded to comment no. 14183 (letter no. 2888) (Dillon_TMP_Response_to_Comments_2009.xls):

... in the final Travel Management alternative GM, the large open motorized area that runs from the southern flanks of Bald Mountain, through Indiana Gulch, and south into Pennsylvania Gulch will be designated as a non-motorized zone based on safety, access, terrain, and natural resources issues. Specifically, the area has no clear geographic or topographic boundaries, steep wooded hillsides, wetland and riparian areas and also has high natural resource values and challenging, difficult to manage terrain. In addition, open motorized use in this area may encourage unauthorized access into the restricted areas south of Pennsylvania Gulch.

And... In responding to comments on the SDEIS, the Dillon Ranger District responded to comment no. 11945 (letter no. 2909) (Dillon_TMP_Response_to_Comments_2009.xls):

The Forest Service does not groom any trails in the Indiana Gulch road area. The groomed non-motorized trail is on non-federal land. In the final Travel Management alternative GM, the large open motorized area that runs from the southern flanks of Bald Mountain, through Indiana Gulch, and south into Pennsylvania Gulch will be designated as a non-motorized zone based on safety, access, terrain, and natural resources issues. Specifically, the area has no clear geographic or topographic boundaries, steep wooded hillsides, wetland and riparian areas and also has high natural resource values and challenging, difficult to manage terrain. In addition, open motorized use in this area may encourage unauthorized access into the restricted areas south of Pennsylvania Gulch

Courts have found that the Forest Service may choose not to designate motorized routes in a management area that allows or assumes motorized use and the decision not to designate does not require a Forest Plan amendment. Colorado Off-Highway Vehicle Coalition v. USFS, 505 F.Supp.2d 808, 820-21 (D. Colo. 2007).

Recommendation:

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

APPEAL ISSUE 2C.2: Area Specific- Homestake

For purposes of this section CSA is referring to Homestake as the pie shaped piece west of Route 24, south of FS 705 and north of the Wurts Ditch area. The Homestake area is currently designated as an "Open Motorized" area. Under Alternative G this area was to remain an "Open Motorized" area. However under Alternative GM the area designation was changed to "Restricted - Motorized Routes Only." No provisions are provided for motorized routes in the area.

CSA is not able to glean from the response to public comments why this area would be closed. In the response to comments Homestake winter usage is only addressed as:

"The final alternative has been modified to use Forest Road 705 as the west boundary for the open snowmobile."

The only viable theory can forward for the closure of the Homestake area is that a mapping error was made in the modification of the map addressed in the comments...If this is the case this oversight must be corrected and access to the area restored.

Again this area is addressed under the Appendix C of the LMRP. Despite the analysis of the area as possibly being capable and available for wilderness in the appendix the decision was made in the LMRP to manage this area pursuant to 5.4 LRMP area designation which provides that motorized recreation is common in these areas. This decision must be honored with the development of the TMP. As such open motorized access must be restored to this area.

Rule:

16 USC 1604(i) - Projects and activities must be consistent with the applicable plan components. If a proposed use or project is not consistent with the applicable plan components, the responsible official may modify the project to make it consistent with the plan, reject the proposal or terminate the activity, or amend the plan contemporaneously with the approval of the project

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

36 CFR 212.55 - In designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, consider effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration.

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

Discussion:

See discussion above under Appeal Issue 2A1

The Forest Plan, FEIS Appendix C (feis_appV3_c_roadless_final.pdf) *Roadless Area Management and Recommended Wilderness*, page C-4

Areas inventoried for Wilderness potential with the highest capability included the following: Black Lakes West, Derby, Spraddle Creek, Deep Creek, Homestake, Red Table, Treasure Mountain, Ute Pass, Acorn Creek and Big Ridge, and Adam Mountain. This is displayed in Table C-2.

In responding to comments, the Eagle-Holy Cross Ranger District responded to comment no. 14550 and 14604 (letter no. 2999) (EHX_Response_to_Comments_2009.xls):

- *Forest Road 611.1A is being closed under the preferred alternative as it is a short spur with no demonstrated need to be left open. The final alternative will not be modified to change the type of access to this area.*
- *The final alternative has been modified to use Forest Road 705 as the west boundary for the open snowmobile area.*

Comment no. 13440 (letter no. 3047)

- *Based on this comment, the lack of suitable terrain in Yoder Gulch and with no outlet, and past snowmobile intrusions into the Holy Cross Wilderness above the road, the current open area (green) will be changed to a restricted area (pink) in the final alternative and the No Name-Wurts Ditch Road will be the designated route through the area.*

Courts have found that the Forest Service may choose not to designate motorized routes in a management area that allows or assumes motorized use and the decision not to designate does not require a Forest Plan amendment. Colorado Off-Highway Vehicle Coalition v. USFS, 505 F.Supp.2d 808, 820-21 (D. Colo. 2007).

Recommendation:

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

APPEAL ISSUE 2C.3: Area Specific- Sheep Mountain- Area 1

CSA is referring to Sheep Mountain as the area straddling the Eagle and Summit county borders to the southwest of Copper Mountain and to the east of Camp Hale. The Sheep Mountain area is currently designated as an "Open Motorized" area. Under Alternatives G and GM this area designation is changed from "Open Motorized" to "Restricted - motorized routes only" without the designation of routes in the area. The only basis for closure of this area specified in the response to comments addresses summer usage which is:

"The Johnson Creek Trail crosses land owned by Pitkin County Open Space and Trails land that is closed to motorized use. It is also in a restricted motorized area. The FS hopes to designate an official and sustainable motorized loop system between Triangle Peak and Kobey Park."

CSA believes that this analysis simply makes no sense as the Sheep Mountain area is easily accessible from the Camp Hale area which remains open for winter motorized usage. This area is also designated under an LMRP classification designed to protect and preserve motorized access. Area designation 3.32 is defined as follows in the LRMP:

"Backcountry, non-motorized recreation areas are managed to provide recreation opportunities in a natural-appearing landscape. Summer use is non-motorized. Over-the snows vehicles are allowed during the snow season."

As such any closure of this area would be a direct violation of the LRMP provisions in place to protect and preserve motorized winter usage.

CSA believes that the closure may be due to faulty analysis of lynx management provided by the BA/BO as this area is within Camp Hale LAU as this area is less than 5 miles from the Peak 6 Breckenridge expansion that has been provided a complete waiver of applicable lynx management provisions. CSA has to believe that this area has been closed to allow the Forest Service to provide a waiver to the Breckenridge Ski area expansion of Peak 6. This is completely unacceptable and the area must be reopened to Open Motorized usage standards.

Rule:

Endangered Species Act of 1973, as amended (16 USC 1536)

Section 7(a)(2) - Federal Agency Actions and Consultations: "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical..."

Section 7(a)(3) of the ESA provides that: "Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species may be present in the area affected by his project and that implementation of such action will likely affect such species."

Section 7(c) – Biological Assessment: "If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, *[the federal]* agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action."

Section 7(b)(3)(A)- Opinion of Secretary: "the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat."

16 USC 1604(i) - Projects and activities must be consistent with the applicable plan components. If a proposed use or project is not consistent with the applicable plan components, the responsible official may modify the project to make it consistent with the plan, reject the proposal or terminate the activity, or amend the plan contemporaneously with the approval of the project

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

36 CFR 212.55 - In designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, consider effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration.

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

Discussion:

See discussion above under Appeal Issue 2A1

The Aldrich Lakes, Camp Hale, Fryingpan North, and Quartzite Lynx Analysis Units (LAUs) would result in small net increases in winter motorized routes. Looking at densities of winter motorized travel routes, the four LAUs would show a 0.01-0.03 miles/square mile change from the 2002 baseline condition. The largest changes would occur in the following LAUs which show more than a 20% net reduction in winter motorized travel routes/densities under the proposed action: Blue River (100%), Snake River (68%), Swan River (50%), Ten Mile (50%), Holy Cross (49%), Battlement Mesa (35%), and Crystal East (24%). (Biological Assessment, pg. 61)

The ROD (WRNF_TMP_ROD_signed.pdf) on page 25 states:

Informal consultation with the US Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.), was initiated by the Forest Service on September 22, 2010 for this project. On November 18, 2010, the USFWS issued a second-tier biological opinion (USFWS reference # ES/CO:FS/WRNF; Tails: 65413-2010-F-0013; 65413-2009-B-0008; ES/LK-6-CO-08-F-024-GJ007) under the first-tier Southern Rocky Mountains Lynx Amendment biological opinion that concurred with the determinations for all species except the Canada lynx, a Threatened Species.

The USFWS informed the Forest Service of an adverse affect finding on the Canada lynx for this project due to current conditions in the Camp Hale and Ten Mile Lynx Analysis Units (LAUs), primarily because of existing and continuing winter snow compaction occurring as a result of winter recreation in the Vail Pass Winter Recreation Area (VPWRA), Vail Ski Area, and Copper Mountain Resort (ski area). Although this travel management decision does not include proposed changes to winter travel routes and snowplay areas in the VPWRA or the ski areas, and does propose to reduce snow compaction in both the Camp Hale and Ten Mile LAUs, the USFWS concluded that existing conditions warrant a “May Affect, Likely to Adversely Affect” determination for the Canada lynx. The second tier biological opinion stated that the adverse effects do not rise to the level of take for Canada lynx.

The FEIS addressed ski areas, including the Breckenridge Ski area on page 24;

A number of designations and activities will not change in the travel management plan. These include: Existing permitted use, including ski resort developed areas and infrastructure;

Management and development of the Breckenridge Ski Resort is subject to its own NEPA analysis and separate decision-making processes.

Courts have found that the Forest Service may choose not to designate motorized routes in a management area that allows or assumes motorized use and the decision not to designate does not require a Forest Plan amendment. Colorado Off-Highway Vehicle Coalition v. USFS, 505 F.Supp.2d 808, 820-21 (D. Colo. 2007).

Recommendation:

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

APPEAL ISSUE 2C.4: Area Specific Eastern Ten Mile- Area 2

CSA is referring to the area to the east of Route 9, directly south of the Breckenridge ski area and running to the Forest Boundary. These areas are currently designated "Open Motorized" areas but under Alternatives G and GM these areas are to be changed to "Restricted Motorized Routes only" without the designation of available routes. The closure of these areas directly contradicts with area designation under the LRMP designed to protect and preserve snowmobiling and these areas must be reopened.

The Eastern Ten Mile area is managed under LRMP area designations 3.31 and 4.3. LRMP area management standard 3.31 is defined as:

"They are managed to provide a variety of uncrowded, motorized recreation opportunities in a natural or natural-appearing setting. Skiers should expect to encounter over-the-snow vehicles.

The closure of this area to snowmobiling directly conflicts with the LRMP designation of the area pursuant to an area designation of 4.3 Dispersed Recreation which provides:

"Dispersed recreational opportunities include viewing scenery and wildlife, dispersed camping, picnicking, fishing, snowmobiling, cross-country skiing, and mountain biking. Opportunities for solitude are limited."

CSA believes that attempts under the TMP to close of any area designated 3.31 or 4.3 under the LRMP to be a facial violation of the LRMP designations that explicitly provide for the protection and preservation of snowmobiling in the areas.

Rule:

16 USC 1604(i) - Projects and activities must be consistent with the applicable plan components. If a proposed use or project is not consistent with the applicable plan components, the responsible official may modify the project to make it consistent with the plan, reject the proposal or terminate the activity, or amend the plan contemporaneously with the approval of the project

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

36 CFR 212.55 - In designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, consider effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration.

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

Discussion:

This issue statement from the appellant is confusing. Our assumption is that they are referring to areas designated as “open motorized” for snowmobiles currently, but are proposed to be “restricted motorized only” without designation of available routes for areas south of Breckenridge and west of Highway 9 identified as Management Area 3.31 or 4.3 in the Forest Plan.

Courts have found that the Forest Service may choose not to designate motorized routes in a management area that allows or assumes motorized use and the decision not to designate does not require a Forest Plan amendment. Colorado Off-Highway Vehicle Coalition v. USFS, 505 F.Supp.2d 808, 820-21 (D. Colo. 2007).

In reviewing the Forest Plan Management Area prescriptions the area the appellant is referring to includes Spruce Creek and Crystal Creek in management area 4.3, and the area east of Quandry Peak includes McCullough Gulch and Blue Lakes in management area 3.31.

In responding to comments about Crystal, Mt. Helan, McCullough and Monte Cristo, the Dillon Ranger District responded to comment no. 33 and comment no. 11 (letter no. 3) (Dillon_TMP_Response_to_Comments_2009.xls):

There is not enough terrain to make this a viable snowmobile area. There is heavy non-motorized use on the road. It will be closed to snowmobiles to reduce user conflicts and to provide for safety.

In responding to comments about Mayflower Gulch and Blue Lakes, the Dillon Ranger District responded to comment no. 13183 (letter no. 341), comment no. 13148 (letter no. 377) and comment no. 13840 (letter no. 316) (Dillon_TMP_Response_to_Comments_2009.xls):

The Mayflower Gulch Road is closed to motorized use because there is a high amount of concentrated non-motorized use and the area is too small to manage for a snowmobile area (limited terrain). The Blue Lakes Road is also small with limited terrain.

Recommendation:

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

APPEAL ISSUE 2C.6: Area Specific - Richmond Ridge / Aspen (Appellant miss-numbered their issues)

This area is currently designated Open Motorized and under Alt G and Alt GM the area designation was proposed to change to "Restricted- Motorized Routes only" without the designation of any routes in the area. CSA simply has no idea what basis was relied upon for the closure of these areas as the underlying analysis of the Forest Service completely lacks any basis in fact and is clearly erroneous.

WRNF RESPONSE: "The phrase "Remain Open to ... "assumes that it is currently open to public motorized use. This is a misconception that has persisted. The comment is noted and understood."

CSA strongly believes that such a cursory level of analysis of usage of such a contested area by the Forest Service on a clearly erroneous basis is simply offensive. Significant areas in and around Richmond Ridge area are listed as open to winter recreational usage under Alternative A designations.

Rule:

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

36 CFR 212.55 - In designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, consider effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration.

36 CFR 212.55 (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).

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

Discussion:

The 'Forest Road and Trail Designation' section of the ROD states: "*Of these roads and trails, most are open to the public. Some are under special-use permit and restricted to use by the permit holder. These permits have been granted under previous decisions (ROD, p. 17).*"

Page 119 of the FEIS states: "*Other special use permits for road use and access can be issued for outfitter and guide operations. Approximately 197 additional miles of road and 14 miles of trail are currently managed under the special use permit system on the forest.*"

The 'Special Areas and Permits' sections of both the ROD and the FEIS state: "*Access for permitted activities (such as outfitter and guide operations) on National Forest System lands is independent of general public access. Individuals or groups with special permits are allowed to conduct their business according to conditions outlined in their permits. If a permit does not stipulate exemptions to the forest's general travel regulations, the general travel regulations will apply* (ROD, p. 21; FEIS, pp. 29-30)." That same section of the ROD goes on to state: "*Special use permits may be issued for specific uses and access needs across the forest*" (p. 21).

In responding to comments, the Aspen-Sopris Ranger District responded to comment no. 3 (letter no. 63) (AspenSopris_Response_to_Comments_2009.xls):

The management of Richmond Ridge has been a controversial issue for over 30 years. The east side of the ridge has been closed to motorized use except by permit since at least 1992. Regardless of the final decision for this area, collaboration and cooperation amongst the County, private landowners, interest groups and the FS will need to continue and possibly increase.

And... comment no. 4 (letter no. 467)

The FS will continue to work with Pitkin County where applicable on Richmond Ridge regardless of what the final decision is for this area. The FS does have consistent use data for Richmond Ridge that can be used to establish baseline use numbers, though it would be difficult to have much control over how many people decide to use the area.

Recommendation:

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

APPEAL ISSUE 2C.7: Area Specific- Minturn

Currently the entire Minturn area is designated as "Open motorized". Under Alt G there was a significant reduction in the size of the open motorized area and this reduction was carried through into Alt GM. CSA remains vigorously opposed to this alteration.

Pursuant to LRMP designations, the ENTIRE Minturn area was to be managed under a 5.4 Floral & Fauna Habitat designation which provides:

"Visitors can find dispersed recreation opportunities including both motorized and non-motorized, although they may also find that access is restricted, at times, through the use of seasonal or year-long road closures." LRMP Pg 3-55

A review of the LRMP's summary of Category 5 area designations expands upon the decision to utilize these areas for dispersed motorized recreation. This summary explicitly provides in relevant part:

"These lands often display high levels of investment, use, activity, facility density, and vegetation manipulation evidence. Users expect to see other people and evidence of human activities. Facilities supporting the various resources are common. *Motorized transportation is common.*"

CSA notes that the Minturn area was analyzed on page C-56 of Appendix C of the LMRP regarding its capability and availability for wilderness. The Appendix proposed that management of the Minturn area be divided in exactly the manner and along the same boundaries now sought to be implemented in the TMP. CSA believes that this is not a coincidence given the numerous other decisions for area closures that rely on this document as the basis for the decision. Again CSA stresses the Appendix was not the decision document for management.

Rule:

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

36 CFR 212.55 - In designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, consider effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration.

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

16 USC 1604(i) - Projects and activities must be consistent with the applicable plan components. If a proposed use or project is not consistent with the applicable plan components, the responsible official may modify the project to make it consistent with the plan, reject the proposal or terminate the activity, or amend the plan contemporaneously with the approval of the project

Discussion:

See discussion above under Appeal Issue 2A1

Courts have found that the Forest Service may choose not to designate motorized routes in a management area that allows or assumes motorized use and the decision not to designate does not require a Forest Plan amendment. Colorado Off-Highway Vehicle Coalition v. USFS, 505 F.Supp.2d 808, 820-21 (D. Colo. 2007).

For winter travel uses, the forest plan allocated more of the non-wilderness land base into management areas that contain strategies focusing on wildlife concerns and non-motorized recreation. The forest plan also calls for designation of winter routes and play areas for certain management area strategies. For example, in the areas designated 5.5 forested landscape

linkages, which include a total of 83,500 acres across the forest, winter travel is now restricted to designated routes and play areas. Winter motorized travel in wildlife winter range, in particular management area prescriptions 5.41, 5.42 and some of 5.43, continues to be restricted to designated routes and play areas only. Some previously "open to motorized use" areas were changed to "non-motorized" because of physical resource limitations such as steep terrain and dense timber that prevented motorized use from occurring. The forest plan showed a drop in total available acreage for winter motorized use from 1,197,000 acres to 941,000 acres. Much of the change came about due to better mapping capability and removal of extremely steep slopes or locations inaccessible to motorized use from the motorized acreage inventory. A limited number of those areas that were changed to non-motorized use in the forest plan revision were actually being used for winter motorized use. A few of the changes remain controversial with some forest users. (FEIS, Recreation, pgs 67-68)

In responding to comments, the Eagle-Holy Cross Ranger District responded to comment no. 12855 (letter no. 3048) (EHX_Response_to_Comments_2009.xls):

Alternative G proposes to close the Grouse Creek area to snowmobiles and to designate the Meadow Mountain area instead. This will lead to some separation of use. Also the Grouse Creek Trailhead is small and does not provide adequate trailer parking as compared to the Meadow Mountain Trailhead.

Recommendation:

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

APPEAL ISSUE 2C.8: Area Specific- Miners Creek

For purposes of this section CSA is referring to Frisco area behind the school generally adjacent to Bills Ranch and Rainbow Lakes on the Dillon Ranger District. This area is currently designated Open Motorized and was to remain Open Motorized under Alt G. This area's designation was changed from Open Motorized to Restricted motorized routes only in Alt GM. No routes are designated in the area.

The closure of this area to snowmobiling directly conflicts with the LRMP designation of the area pursuant to an area designation of 4.3 Dispersed Recreation which provides:

"Dispersed recreational opportunities include viewing scenery and wildlife, dispersed camping, picnicking, fishing, **snowmobiling**, cross-country skiing, and mountain biking. Opportunities for solitude are limited."

CSA believes that the closure of the Miners Creek area must be reversed as it is based on the clearly erroneous analysis of the area asserted in comments. The closure of the area also directly conflicts with the LRMP management requirement to protect usage of the area for snowmobile usage.

Rule:

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

36 CFR 212.55 - In designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, consider effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration.

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

Discussion:

Courts have found that the Forest Service may choose not to designate motorized routes in a management area that allows or assumes motorized use and the decision not to designate does not require a Forest Plan amendment. Colorado Off-Highway Vehicle Coalition v. USFS, 505 F.Supp.2d 808, 820-21 (D. Colo. 2007).

In responding to comments, the Dillon Ranger District responded to comment no. 14062 (letter no. 3027) (Dillon_TMP_Response_to_Comments_2009.xls):

In the final Travel Management alternative GM, the large open motorized area that runs from the southern flanks of Bald Mountain, through Indiana Gulch, and south into Pennsylvania Gulch will be designated as a non-motorized zone based on safety, access, terrain, and natural resources issues. Specifically, the area has no clear geographic or topographic boundaries, steep wooded hillsides, wetland and riparian areas and also has high natural resource values and challenging, difficult to manage terrain [for winter motorized]. In addition, open [winter] motorized use in this area may encourage unauthorized access into the restricted areas south of Pennsylvania Gulch.

A restricted motorized use designation for the winter would be unmanageable. The Miners Creek Road could not be a designated route because it is not groomed and the road profile is not discernable in many locations, therefore, snowmobile riders would not be able to tell if they were on the designated route. Education of motorized users will be accomplished with maps. It will be their responsibility to only ride in areas open to that use.

Recommendation:

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

APPEAL ISSUE 2C.9: Area Specific - Avon access corridor

CSA is referring to the finger of open motorized area running generally north a short distance west of Nottingham Gulch to the northeast of Avon. As noted in CSA's comments this area provides important access from Avon to the Red and White riding area and must remain designated as Open for motorized use. Members of the Holy Cross Powder Hounds in the Avon

area use this area for their access and are interested in signing and grooming a route through this popular access point.

Upon a cursory exploration of the issue by the Holy Cross Powder Hounds, the Club found that the landowner is a motorized enthusiast that has no objections to the use of the roadway for public access. Additionally the landowner wishes that the area remain open to motorized usage and is willing to execute right of way documents to provide public access to the Forest Service in order to maintain the access to the areas. As such CSA believes that the access MUST remain open until such time as the right of way can be finalized and public access continued. No one in the Power Hounds was aware this was the basis for closure of the area prior to the response to comments document being released.

Based on the clear standard permitting motorized usage across the small sliver of elk & deer management area and the landowners tentative interest in executing a right of way permitting public access CSA strongly believes the area should remain open until such time as permanent access can be formally memorialized.

Rule:

36 CFR Part 212, Subpart B - Subpart B describes the requirements for designating roads, trails, and areas for motor vehicle use and for identifying designated roads, trails, and areas on a motor vehicle use map.

36 CFR 212.55 - In designating NFS roads, NFS trails, and areas on NFS lands for motor vehicle use, consider effects on NFS natural and cultural resources, public safety, provision of recreation opportunities, access needs, conflicts among uses of NFS lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated, and availability of resources for maintenance and administration.

36 CFR 212, Subpart C – *Use by over-snow vehicles* - If the responsible official proposes restrictions or prohibitions on use by over-snow vehicles under this subpart, the requirements governing designation of NFS roads, NFS trails, and areas on NFS lands in §§ 212.52, 212.53, 212.54, 212.55, 212.56, and 212.57 shall apply to establishment of those restrictions or prohibitions.

Discussion:

System routes are roads and trails that are inventoried and designated as a road or trail under Forest Service ownership and jurisdiction. Other designated roads and trails may be on National Forest System lands, but their easement or jurisdiction belongs to another entity such as county, private individual, state, or other federal agency (WRNF_TMP_FEIS_March2011.pdf, p. 33).

In the 2005 Travel Management Rule (TravelManagementRule110905.pdf)(70 FR 68266):

Many private landowners allow recreational use of their lands, including use by OHVs. Some private landowners provide managed facilities for OHV enthusiasts. In some cases, trails on private land are part of a network including NFS lands. The Forest Service often works with private landowners to secure public rights-of-way for trails providing access to the National Forests.

And, in 70 FR page 68276:

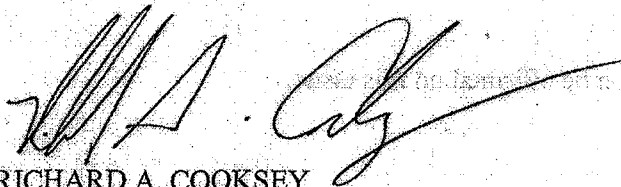
Some private roads are not forest roads, temporary roads, or unauthorized roads. These roads may be included in a forest transportation atlas but are not NFS roads and will not be subject to designation under this final rule.

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 with the instructions outlined under Appeal Issues 2A, and that the Appellant's request for relief be denied.

A handwritten signature in black ink, appearing to read 'R.A. Cooksey', is written over a faint, illegible stamp.

RICHARD A. COOKSEY
Appeal Reviewing Officer
Deputy Forest Supervisor, Medicine Bow-Routt National Forests