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USDA Forest Service, Rocky Mountain Region,
ATTN: Appeal Deciding Officer
740 Simms
Golden, CO 8040

RE: Appeal from Record of Decision for White River National Forest Travel Management Plan dated March 17, 2011

Dear Appeal Deciding Officer:

Please accept this Notice of Appeal under 36 C.F.R. Part 215 from the Record of Decision and Final Environmental Impact Statement (FEIS) for the White River National Forest Travel Management Plan (collectively, the "Decision"), dated March 17, 2011. This appeal is presented on behalf of the Holy Cross 4 Wheel Drive Club. Individual and/or organizational members of Holy Cross 4 Wheel Drive Club may submit their own appeal(s) from the Decision. This appeal and any such appeals must be independently evaluated and the agency must comply with applicable review procedures for all such appeals. Any communications regarding this appeal should be directed to Celestino Sandoval Jr. 719.486.3492 (h) or 970.471.5578 (c) e-mail tinos53@yahoo.com.

A. Introduction

The Holy Cross 4 Wheel Drive Club is a non profit organization based out of Lake and Eagle County in the state of Colorado. The club consists of over 50 memberships of family and single memberships.

The Holy Cross 4 Wheel Drive Club is committed to actively and effectively partner with the White River National Forest in the sustainable management of recreation, including motorized-assisted recreation. The Holy Cross 4 Wheel Drive Club has been in partnership with the Eagle/Holy Cross Ranger District since 1984. Since the inception of the partnership the Holy Cross 4 Wheel Drive Club has consistently maintained numerous 4x4 trails systems within the White River National Forest; enabling the public to enjoy the White River National Forest in a broad spectrum of activities including hiking, biking, fishing, four wheeling, hunting, camping and numerous other activities. Through our partnership we have been able to keep the roads open and accessible to everyone. By closing the roads and restricting motorized vehicle access the Forest Service has not only limited the use of these roads to the a large majority of the general public it has also created a hardship for the disabled, the young, and senior population who could not otherwise enjoy our National Forest without motorize assistance.

The Holy Cross 4 Wheel Drive Club believes the agency and its partners must work toward a collaborative solution that advances the simultaneous goals of sustainable, yet enjoyable use of the

Forest. The Decision is premised on an incorrect and unsupportable notion that the existing condition violates applicable law and Forest Plan direction and cannot be improved, or that impacts cannot be minimized or eliminated. To the contrary, the analysis shows designated uses are being supported, state water quality standards are being met, and water quality, habitat effectiveness is being improved. Moreover, we believe that visitor enjoyment can be even further improved through cooperative and logical management solution that will bring available resources

Sadly, the Decision reflects none of these goals. The Decision lacks a logical connection to the facts on the ground and violates applicable law. As advocates of responsible and effectively-managed vehicle-based recreation, we perceive little option but to ask for withdrawal of the Decision.

B. Interests of Appellant

The Holy Cross 4 Wheel Drive Club is committed to actively and effectively partner with the White River National Forest in the sustainable management of recreation, including motorized-assisted recreation. The Holy Cross 4 Wheel Drive Club has been in partnership with the Eagle/Holy Cross Ranger District since 1984 in the Adopt-A-Road program. The Holy Cross 4 Wheel Drive Club and its members and are immediately and directly affected by the decision.

C. Legal Standards

As a preliminary matter, we wish to outline the applicable standard of judicial review as well as the standard which agency decision makers must consider during the administrative review process. We understand that executive-branch agency decisions are ultimately reviewable by the judiciary, which is empowered to set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or found to be “without observance of procedure required by law.”¹

The arbitrary and capricious review is the mechanism through which the courts can require basic fairness and reasonableness of agency decision making. The arbitrary and capricious standard is deferential and does not allow a reviewing court to substitute its judgment for that of the agency.² The scope of review under the “arbitrary and capricious” standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made....Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies; we may not supply a reasoned basis for the agency’s action that the agency itself has not given.

Even where an agency can arguably point to substantial evidence supporting its decision, the presence of contradictory evidence might render the decision arbitrary and capricious. Thus, “even though an agency decision may have been supported by substantial evidence, where other evidence in the record detracts from that relied upon by the agency we may properly find that the agency rule

1 5 U.S.C. § 706(2)(A) & (D), see also, *Bonnichsen v. United States*, 367 F.3d 864, 880 (9th Cir. 2004)

2 *Motor Vehicle Mfrs. Ass’n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (citations omitted) (emphasis added).

was arbitrary and capricious.”³

Even substantial evidence cannot properly support a decision if the information was not considered by the decision-maker at the proper stage of the process. Information cannot be presented as a post-hoc rationalization to justify a decision previously made.⁴ For the reasons identified below, The decision supported by this EIS, particularly to close the specific routes listed under section D-1 of this Appeal, will violate these basic principles.

D. Appeal Issues

For any or all of the following reasons, we respectfully request that the decision of the Forest Supervisor be reversed and remanded to the Forest for proper consideration and further proceedings.

1. Specific Route Closures Under Appeal

The FEIS analysis is inadequate to support the ROD and we believe that an appropriate result is the remand of the FEIS and ROD to the agency for further analysis. However, in the interest of facilitating discussion and analysis of possible appeal resolution outcomes, we wish to identify the following route restrictions that are of the highest priority. Through subsequent analysis before or beyond the agency we hope to focus on the rationale for and alternatives to the following restrictions:

747.1 Wearyman
745.1 Lime Creek Jeep
728.1A Lime Creek Spur
728.1B Lime Creek Spur
721.1C Lime Creek Spur
755.1 Ranch Creek
758.1 Dennison
731.1 Taylor Gulch
731.1A Taylor Gulch Spur
731.1D Taylor Gulch Spur
731.1E Taylor Hill
731.1B Vance's Cabin

2. The Decision Lacks Necessary Analysis to Justify Site-Specific Actions

The FEIS lacks proper evidence necessary to make rational, let alone sound, management decisions. The Forest Service is imposing blanket closures on many widely used roads and trails without site-specific analysis.

When federal agencies evaluate technical issues or apply specialized expertise, NEPA requires them to rely on valid sources and to disclose the methodology, present hard data, cite by footnote or other specific method to technical references, and otherwise disclose and document any bases for expert

3. American Tunaboat Ass'n v. Baldrige, 738 F.2d 1013, 1016 (9th Cir. 1984) (citing Bowman Transport, Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 284 (1974) (agency decision supported by substantial evidence may still be arbitrary and capricious)); see Atchinson v. Wichita Board of Trade, 412 U.S. 800, 808 (1973) (where agency modifies or overrides precedents or policies, it has the “duty to explain its departure from prior norms”).

4 Southwest Center for Biological Diversity v. U.S. Forest Service, 100 F.3d 1443, 1450 (9th Cir. 1996).

opinion. NEPA does not envision undocumented narrative exposition, instead requiring that, "Agencies shall insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements. 42 U.S.C. § 4332(A); 40 C.F.R. § 1502.6. It is a violation of NEPA and the Council on Environmental Quality Regulations for an agency to "couch" technical analysis in vague citations. Specialized expertise often lies at the core of NEPA analysis and the agency must properly present and insure the professional integrity of any technical analysis. Siskiyou Regional Education Project v. Rose, 87 F.Supp.2d 1074, 1098 (D.Or. 1999) (quoting NRDC v. Duvall, 777 F.Supp. 1533, 1539 (E.D.Cal. 1991)) (internal citations omitted).

Other specific examples of unjustified or inadequately-supported conclusions include each of the routes identified in Section 1 above, for which the FEIS/ROD provides only undocumented and/or erroneous conclusions. Your FEIS (specifically in Attachment 1 and Attachment 2) simply lists your staff conclusions regarding site specific impacts without the legally required analysis.

Additionally, economic and socio-economic conclusions are not adequately documented in the FEIS. These topics can and must be analyzed according to the same standards identified above. The subject matter does not excuse conclusive or nonexistent analysis of these issues.

In making decisions in the FEIS, The Forest Service arbitrarily and capriciously relies on incomplete, invalid, or nonexistent analysis. The FEIS lacks the foundation necessary make critical, sound management decisions. It also defies the very purpose of NEPA by allowing the Forest Service to make management prescriptions based on the whims and fancies of its employees. The public relies on agencies to uphold professional and scientific integrity in all management decisions. The Forest Service has deprived the people of a valid NEPA process by not providing proper evidence for analysis of the issues.

3. The decision to decommission all closed roads is improperly made in this EIS

The Holy Cross 4 Wheel Drive Club strongly objects to the inclusion of mandatory direction to decommission closed roads in this Decision. The decision to decommission closed routes was not thoroughly discussed in the scoping or the DEIS. Moreover, site specific ground disturbing impacts associated with decommissioning was not evaluated in the FEIS.

This project was scoped primarily as a recreational travel management plan that will mostly impact recreational users of the Forest. Other users were assured their access and activities could still continue under stipulations of their permit, lease or other. Separate analysis of decommissioning efforts is necessary to bring the concerns and needs of non-recreational users to the attention of the public, and Forest managers.

It is also important to note that few, if any, USFS travel planning projects got it right the first time. Indeed, many travel planning projects we are aware of have been amended within one or two years after completion, and many have been amended even before the plan has been completely implemented on the ground. It is quite likely that routes you are proposing for decommissioning will be necessary additions in future travel planning. This is especially true considering you are planning to revise your Forest Plan in the near future.

E. Conclusion

When we spoke with the NSF about the closures

1. 758.1 Dennison- The reasoning was not justifiable by the FEIS. This road provides access for

hunting, camping and sightseeing. Without motorized access this limits each of these activities. This road is included in our Adopt-A-Road agreement and the Forest Service stated that this road would remain open to all motorized vehicles. This road provides access for hunting, camping and excellent sightseeing.

2. 745.1 Lime Creek Jeep, 728.1A Lime Creek Spur, 728.1B Lime Creek Spur, 721.1C Lime Creek Spur. When asked why the decision was made to close the road and its spurs the answer I received was "The road is dangerous because 4-wheel drive is required to navigate the road". This answer does not justify the closure. There are several other roads that have more extreme off-camber, natural obstacles including large rocks, boulder and water crossing to navigate the roads. Lime Creek and it's spurs are 4-wheel drive roads. This connects with 728.1 Timber Creek which connects to 709.1 Shrine Pass which creates a loop providing access to different roads, scenic view, hunting, fishing, camping and numerous other activities.
3. 755.1 Ranch Creek. When asked why the decision was made to close the road the answer I received was "The road is dangerous because 4-wheel drive is required to navigate the road and it is steep and more difficult to navigate". Yet this road is accessible by a Subaru. This road has been designated with a special use permit for access to the 10th Mountain Hut system specifically the Jackal Hut. The Forest Service has not had to do any maintenance to the road all maintenance has been performed by the Holy Cross 4 Wheel Drive Club members providing cleanup, tree removal, erosion control and installing a gate for seasonal closures. It is unjust to limit access to a public road to a select few individuals.
4. 731.1 Taylor Gulch, 731.1A Taylor Gulch Spur, 731.1D Taylor Gulch Spur, 731.1E Taylor Hill, 731.1B Vance's Cabin When asked why the decision was made to close the road the answer he could not give me an answer as to why it is slated to be closed. This road is in superior shape and requires minimum maintenance and is assessable by a 2 wheel drive vehicles and provides access to the White River National Forest for everyone. Providing extraordinary views, camping and hunting access.
5. 741.1 Wearyman Creek. This road creates a loop from the National Historic Site of Camp Hale to Redcliff and provides economic benefits to the Town of Redcliff with access to thousands of acres of prime hunting and camping locations.

After consultation with members of The Holy Cross 4 Wheel Drive Club, as well as other Forest users living in the area, and also with elected representatives of local communities, we believe the agency focused too much on the potential impacts of vehicle use and efforts to provide a non-motorized recreational experience, and not enough on a "common sense" travel management system, or the "whole cloth" of the agency's Travel Management Rule. We implore the agency to consider the "on-the-ground" implications of the Decision.

For example, the decision to close FSR 747.1 (Wearyman) and FSR 745.1 (Lime Creek Jeep) eliminates two very popular "loops." Loops are a key component in any travel management system.⁵ Eliminating these loops results in the public being afforded a "up an back" recreational experience, and causes two key problems; First is that "up and back" use often results in further environmental impacts because it is much more difficult to enforce and to stop illegal and cross country travel on a "up and back" experience. Second is that eliminating the "loop" substantially diminishes user enjoyment.

These examples are highlight our concerns about how the decision lacks proper evidence necessary to make rational, let alone sound, management decisions.

The Travel Management Rule directs the Forest to apply varied criteria in fashioning designated travel management systems, and to "consider effects on ...natural and cultural resources, public safety,

5 See <http://nohvcclibrary.forestry.uga.edu/mgtsub.html>

provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands..." and other factors. Id. at 68289 (newly designated 36 C.F.R. § 212.55(a)).

Instead, the decision focused exclusively on a natural resource centric set of themes and issues, and ignored the Travel Management Rule's mandatory direction to enhance positive user public experiences and benefits. The Decision rationalized this bias with phraseology such as "attempting to balance" or "resolving conflict" instead of "minimizing conflict", and "identifying resource solutions to impacts of the transportation system" in lieu of "identifying recreation use alternatives to impacts of the transportation system." The Decision failed to take a comprehensive look at enhancing a balanced set of recreation opportunities for all users.

Importantly, the Decision fails to take advantage of resources available to the agency to effectively minimize impacts. Speaking frankly here, it is difficult for all of our members not to view the Decision as a bitter disappointment, and even a betrayal of our agreement and for years of volunteer work to maintain and minimize impact on the roads in order to provide motor vehicle access for all to enjoy. We view these road closures as unjust and as a form of discrimination against those who could not otherwise access the areas without motorized assistance. For years the agency, under numerous Administrations and Chiefs, has spoken eloquently about the critical importance of "partnerships," especially insofar as managing recreational uses. Yet when "partnerships" (meaning resources available via organizations such as NAME, not to mention local governments) could be leveraged to address legitimate concerns regarding impacts to natural resources, it seems all that talk about "partnerships" was nothing more than lip service.

D. Relief Requested

The Holy Cross 4 Wheel Drive Club respectfully requests the Appeal Deciding Officer expeditiously grant any and all of the following relief from the Decision:

- (1) Withdraw the Decision;
- (2) Remand the Decision for further analysis; and
- (3) Withdraw existing "interim" closures of the OHV System so that use can resume in appropriate with lawfully-established terms and conditions.

We specifically request the opportunity for informal disposition, oral presentation, and or any procedural opportunities provided for or consistent with the applicable regulations.

Sincerely,

Celestino Sandoval Jr.
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