

Appeal Deciding Officer  
USDA Forest Service  
Rocky Mountain Region  
740 Simms, Golden, CO 80401  
[appeals-rocky-mountain-regional-office@fs.fed.us](mailto:appeals-rocky-mountain-regional-office@fs.fed.us)

Responsible Official.

Appeal of the Record  
of Decision for the White  
River National Forest  
Travel Management Plan,  
signed March 17, 2011.

**Submitted via Email - Return Receipt Requested**

## **List of Appellants**

Sloan Shoemaker (*Lead Appellant*)

Wilderness Workshop

PO Box 1442

Carbondale, CO 81623

970-963-3977

[sloan@wildernessworkshop.org](mailto:sloan@wildernessworkshop.org)

Kirk Cunningham

Rocky Mountain Chapter, Sierra Club

977 7th St.

Boulder CO 80302

303-939-8519

[kirk.cunningham@rmc.sierraclub.org](mailto:kirk.cunningham@rmc.sierraclub.org)

Suzanne Jones

Colorado Regional Office

The Wilderness Society

1660 Wynkoop St., Suite 850

Denver, CO 80202

303-650 5818 x 102

[Suzanne\\_jones@Appellants.org](mailto:Suzanne_jones@Appellants.org)

Paul Joyce

Colorado Wild

P.O. Box 2434

Durango, CO 81302

970-385-9833

[paul@coloradowild.org](mailto:paul@coloradowild.org)

### **Wilderness Workshop**

The Wilderness Workshop is a local place based conservation organization with a mission to protect the ecological integrity of the White River National Forest and surrounding public lands. WW has been involved with land management projects and decisions on the WRNF since 1964. WW has been engaged in the travel management planning process on behalf of our 1000 members since 1996, with activities including: field inventorying and data collection of routes, extensive route by route comments in Scoping and the DEIS, commenting on the SEIS, and finally reviewing and appealing the ROD and FEIS. WW and our members have a vested interest in the travel planning process to ensure a system that provides the appropriate amount of low impact access balanced with the protection of the WRNF's superlative wild country that makes the WRNF our nation's most visited national forest.

### **Rocky Mountain Chapter, Sierra Club**

The Rocky Mountain Chapter is the Colorado affiliate of the Sierra Club. We have approximately 18,000 members and are involved in a variety of issues bearing on protection of the environment, including, in this case, the management of public lands and their living and non-living resources.

### **The Wilderness Society**

TWS is a not-for-profit conservation organization that since 1935 has sought to protect wilderness and inspire Americans to care for our wild places. Of TWS more than 567,000 members and supporters, over 16,500 of them reside in Colorado and many of them live, work, and recreate in the White River National Forest. Our members have a vested interest in ensuring the continued integrity of wildlife, wildlife habitat, water, and other natural resources, as well as ensuring the availability of quiet recreation opportunities in a variety of landscapes on Forest Service lands.

**Colorado Wild**

Colorado Wild was formed in 1998 to protect, preserve, and restore the native plants and animals of the southern Rocky Mountains, focusing its efforts on habitat protection of Colorado's forested, roadless, public lands and other ecologically important areas.

**CERTIFICATION OF FILING**

This appeal was filed by electronic transmission to:  
[appeals-rocky-mountain-regional-office@fs.fed.us](mailto:appeals-rocky-mountain-regional-office@fs.fed.us)

ATTN:  
Appeals Deciding Officer  
USDA Forest Service  
Rocky Mountain Region  
740 Simms  
Golden, Colorado 80401

Dated this 20<sup>th</sup> Day of June 2011.

A handwritten signature in black ink, reading "Sloan Shoemaker". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Sloan Shoemaker

**APPELLANTS'  
NOTICE OF APPEAL AND STATEMENT  
OF REASONS**

**I. NOTICE OF APPEAL**

Notice is hereby given that, pursuant to the U.S.D.A. Forest Service Regulations at 36 CFR 215, Wilderness Workshop and the undersigned organizations appeal to the Appeal Deciding Officer, for relief from Forest Supervisor Scott Fitzwilliam's Record of Decision (ROD), signed on March 17, 2011, for the White River National Forest Motorized Travel Management Plan Final Environmental Impact Statement (FEIS).

This appeal is consistent with 36 CFR 215 and is based upon written comments submitted by Appellants during the scoping period, comments on the Draft Environmental Impact Statement (DEIS), and Supplemental DEIS. This appeal is consistent with 36 C.F.R. § 215.14 (Appeal Content) in that we are submitting substantial evidence of violations of law, regulation, and policy contained in the ROD and FEIS, requiring modification, remand or reversal of portions of said decision.

**II. STATEMENT OF POSITION**

Wilderness Workshop (WW) and the undersigned organizations (hereinafter collectively referred Appellants) respectfully appeal the March 17, 2011 ROD signed by White River National Forest (WRNF) Supervisor Scott Fitzwilliams. Appellants wish to acknowledge the Forest Service's considerable efforts to develop a comprehensive WRNF Travel Management Plan (TMP) that attempts to balance access to the Forest for diverse user with protection of the extraordinary resource that motivates users to visit the Forest. In fact, Appellants are generally quite pleased with the thoughtful and courageous decisions made in the ROD to design a travel management system that is both fiscally and ecologically sustainable. However, we have found within the FEIS and ROD several legal inadequacies that preclude us from lending our full support to the decision. The problems we've identified in the appeal are fairly narrow in scope and could/should be addressed without a remand of the full plan.

This appeal of the WRNF ROD and FEIS will show that important and timely comments and reasonable, feasible management alternatives provided by interested members of the public during the National Environmental Policy Act (NEPA) process were inadequately addressed by Forest officials. The Final Environmental Impact Statement for the ROD omit critical information, fail to incorporate required analysis, and fail to respond to public comments. Furthermore, the Forest selected an action alternative that fails to comply with multiple legal requirements to minimize impacts to resources and to non-motorized recreation.

**III. STATEMENT OF REASONS**

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

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

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

The minimum road system must comply with the 2001 Roads Rule, which is now subpart A of the Travel Management Rule and has been re-affirmed in the Appropriations Act of 2009, 155 Cong. Rec. H2089-01 at H2110. (Feb. 23, 2009).<sup>1</sup> The Washington Office also sent a memo to the field reaffirming the agency’s commitment to Subpart A and explaining the required products of that travel analysis process, including a Travel Analysis Report, identification of the minimum road system on a map, and identification of unneeded roads for decommissioning. See attachment. Unfortunately, statements in the FEIS (p. 18, Chapter 1) and the DEIS erroneously suggest that the agency has completed this process through its TMP. Though this reference is oblique, it suggests that the Forest somehow believes it has completed Subpart A (212.5(b)) simply by *maybe* having thought about a “minimal” system in an alternative, when in fact the actual required products of Subpart A (TAP report, MRS and map of MRS, etc.) have yet to be produced.

***Protection of National Forest System lands***

*36 CFR 212.5(b) states Identification of road system. For each national forest, national grassland, experimental forest, and any other units of the National Forest System (§ 212.1), the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands.*

The minimal road system is a system that is needed to access public lands. The intent is for the Forest Service to look at what access is needed for administration, utilization (including recreation) and the protection of NFS lands. This does not mean identifying

---

<sup>1</sup> The Committee Report that accompanied the Appropriations Act of 2009 states “The Committees on Appropriations expect that each individual National Forest or Grassland will comply fully with all travel management regulatory requirements, particularly the science-based analysis in 36 CFR 212.5 (b)(1), the identification of unneeded roads in 36 CFR 212.5(b)(2), and the criteria for designation in 36 CFR 212.55(a) and (b). The Committees expect the Forest Service to identify priorities, and associated resource requirements, to fully comply with the regulatory requirements of 36 CFR 212.5(b) (1) and (2).”

the most non-motorized areas the forest can provide, rather it is identifying the system needed for accessing the variety of uses that occur on National Forest System lands. The White River National Forest examined alternatives for the road system to address access needs. Alternative E in the Draft Environmental Impact Statement provided a minimal road and trail alternative for examination. Alternative G considered the elements needed to access the land. The preferred alternative also showed a reduction in miles of road from current conditions. The preferred alternative considered what is needed for access, what can be converted to needed trails, and what is no longer needed and thus can be rehabilitated.

We suspect was this resulted from the drafter not fully understanding the Forest Service's obligations under Subpart A as opposed to an attempt to side-step that process. Because the agency has not completed the requirements of Subpart A, those statements should be removed from the FEIS.<sup>2</sup>

The WRNF indicates in its FEIS that Alternative E in the DEIS represents a "minimal road and trail" system.<sup>3</sup> The WRNF defines "minimal road and trial" system as "a system that is needed to access public lands" and is directly under the heading and regulatory definition for a "minimum road system." It is therefore logical to conclude that the WRNF believes that Alternative E satisfies the requirements of 36 C.F.R. §212.5(b)(1) and represents the "minimum road system" for the forest. Alternative E in the DEIS neither complies with the requirements of the regulatory definition of an MRS, nor was it founded on a "science based analysis at the appropriate scale."<sup>4</sup>

The 2001 Roads Rule and Subpart A of the Travel Management Rule define the minimum road system as:

[T]he road system determined to be needed to *meet resource and other management objectives adopted in the relevant land and resource management plan* (36 CFR part 219), *to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations*, to ensure that the identified system *minimizes adverse environmental impacts* associated with road construction, reconstruction, decommissioning, and maintenance.<sup>5</sup>

Thus, the regulation establishes substantive requirements for a "minimum road system," and the record must reflect that the Forest Service determined the road system identified meets each of these requirements. The importance of a valid minimum road system determination was recently affirmed by a Federal District Court in Idaho in *Idaho Conservation League v. Guzman*, 2011 WL \_\_\_\_ F. Supp. 2d. \_\_\_\_, 2011 WL 447456 (D. Idaho Feb. 4, 2011). In that case, the Salmon Challis National Forest had inserted a statement into the ROD indicating that the selected

---

<sup>2</sup> When other National Forests have inaccurately stated they completed the requirements of Subpart A in their TMP FEIS or ROD, they have voluntarily issued errata sheets to correct the statement (e.g. Bridgeport RD of the Humboldt-Toiyabe NF, see attachment) or have been ordered to do so by a federal court. *Idaho Conservation League v. Guzman*, 2011 WL \_\_\_\_ F. Supp. 2d. \_\_\_\_, 2011 WL 447456 (D. Idaho Feb. 4, 2011).

<sup>3</sup> FEIS, p. 18.

<sup>4</sup> 36 C.F.R. § 212.5(b)(1).

<sup>5</sup> 36 C.F.R. § 212.5(b)(1) (emphasis added).

alternative represented the minimum road system, but provided no analysis to support that assertion and did not allow the public to comment on this “determination.” During litigation, the Forest Service attempted to denounce its statements in the FEIS and ROD by stating in briefing documents that a minimum road system had not been determined. The court found that “there is no dispute that the Forest Service could not properly designate a minimum road system, because it did not follow the requisite public notice requirements.” *Id.* at 22.

In determining and adopting the minimum road system, the Forest Service “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”<sup>6</sup> The minimum road system identified and chosen is 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.”<sup>7</sup>

DEIS Alternative E, which the Forest Service indicates is the minimum road system, does not meet the regulatory requirements of Subpart A. As outlined in this appeal, many of the routes included in both Alternative E and in the selected alternative have serious environmental impacts, fail to meet relevant forest plan objectives, standards and guidelines, and do not comply with various statutory and regulatory requirements, including Executive Orders 11644 and 11989 and subpart B of the Travel Management Rule.<sup>8</sup> Moreover, we presented copious route-specific evidence of environmental damage that the Forest Service chose to ignore. If the Forest Service had considered the on-the-ground damage occurring on the forest, the routes discussed above would not have been designated, and certainly would not be included in the “minimum road system.” The minimum road system identified in Alternative E does not “reflect long-term funding expectations” either.<sup>9</sup> The FEIS admits that an alternative was not analyzed that would meet funding expectations because such an alternative was unrealistic and would not meet the purpose and need of the travel management project.<sup>10</sup> While this may be appropriate for a NEPA analysis, it does not satisfy the requirements of subpart A that the minimum system determination reflect long-term funding expectations.

- ii. Subpart A requires the completion of specific products, which the White River National Forest has not yet produced.

The Forest Service “must incorporate a science-based roads analysis at the appropriate scale” in “determining the minimum road system.”<sup>11</sup> The Forest Service Travel Planning Handbook describes the objectives of travel analysis as, *inter alia*, to inform decisions related to

---

<sup>6</sup> *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

<sup>7</sup> *Id.*

<sup>8</sup> 36 C.F.R. § 212.55.

<sup>9</sup> 36 CFR § 212.5(b)(1)

<sup>10</sup> See FEIS p. 131 (“None of the alternatives present a scenario where the White River National Forest, under current funding allocations, would be able to meet the desired maintenance frequency of three to five years. If the travel management plan developed an alternative that was based solely on allocations for roads, it would not be able to meet the purpose and need to identify and designate an official transportation system.”)

<sup>11</sup> 36 CFR § 212.5(b)(1)

identification of the minimum road system and designation of roads, trails, and areas for motor vehicle use.<sup>12</sup> The Handbook reaffirms that the travel analysis process (“TAP”) must be science-based, tracking language first found in the Forest Service’s Roads Analysis Report FS-643, which provides the most comprehensive direction available to guide efforts under the Travel Management Rule.<sup>13</sup> According to the Forest Service, “science-based” means:

Roads analysis is intended to be science based. That is, analysts should locate, correctly interpret, and use relevant existing scientific literature in the analysis. They should disclose any assumptions made during the analysis, and reveal the limitations of the information on which the analysis is based. Finally, the analysis report should be subjected to critical technical review.<sup>14</sup>

FS-643 indicates the science-based roads analysis must include identification of “the risks and opportunities for each road or road segment.” (emphasis added)<sup>15</sup> The Forest Service Handbook, FSH 7709.55, sec. 21.4, also notes that travel analysis must consider the benefits, problems, and risks of routes as informed by the general and specific criteria found at 36 CFR § 212.55 for individual route designations. The analysis of the risks, benefits, and problems of individual routes then allows the Forest Service to “identify the minimum road system” in accordance with 36 CFR § 212.5(b)(1).

Based on this direction, a few logical conclusions can be reached.<sup>16</sup> First, the hallmark of travel analysis is a route-by-route assessment of risks, problems, and benefits, based on criteria enumerated in the travel management regulations at 36 C.F.R. § 212.5(b)(1) and § 212.55(a)-(b). Second, in evaluating a given route based on these criteria, the Forest Service must employ existing scientific literature and evidence it has in its possession. If there is no data or literature that can inform an analysis of the risks, benefits, and problems of a given route, the Forest Service must disclose any assumptions made in the analysis of that route and reveal the limitations of information on which the analysis is based. Third, the Travel Analysis must precede the identification of the minimum road system because 36 CFR § 212.5(b)(1) indicates the responsible official must “incorporate” the Travel Analysis “in determining the minimum

---

<sup>12</sup> FSH 7709.55, sec. 20.2

<sup>13</sup> FSH 7709.55, sec. 20.3.1

<sup>14</sup> U.S.D.A. Forest Service, *Roads Analysis: Informing Decisions About Managing the National Forest Transportation System*, Misc. Report FS-643, Washington, D.C. (Aug. 1999), page 2. The agency further described the attributes of critical technical review: “A principal tenet of scientific rigor and credibility is that the methods and conclusions be subjected to critical internal and external technical review, and that the final product adequately addresses concerns raised by those reviews.” FS-643, Pages 34, 21 (“Internal *and external* technical review will add rigor and credibility to the final report. Subjecting a sample of draft reports to an evaluation of how science was used in the analysis (Everest et al. 1997) is also desirable.”) (emphasis added).

<sup>15</sup> *Id.*, Page 13. See also *id.*, Pages 25–30 (providing questions analysts should ask with regard to each route in order to determine associated benefits, problems, and risks, as well as codes cross-referencing the FS-643’s index, which includes scale considerations, information needs, analytical tools, and recommended references that could assist analysts).

<sup>16</sup> We have attached the travel analysis report completed by the Mountainair Ranger District from the Cibola National Forest in order to provide an example that bears out these conclusions. See attached. We believe this travel analysis report and minimum road system identification is a mostly faithful execution of 36 CFR § 212.5(b)(1), though we note that it does not contain the requisite minimum road system map or list of unneeded roads for decommissioning. We hope the WRNF will use it or other similar FS TAPs as a starting template when it undertakes a legitimate travel analysis and minimum road system identification.



road system.”<sup>17</sup> Fourth, because the Travel Analysis is designed to inform the *minimum* road system identification (and individual route designations), the route-by-route analysis necessarily must comprise all routes on the forest (i.e., the whole travel network), not just those routes the Forest Service is considering for additions to the designated system. Finally, the Forest Service should not include high-risk, low-benefit routes in the “minimum road system” identification because they do not meet the definition of the “minimum road system,” nor can a travel plan that includes these routes satisfy the minimization criteria of subpart B of the Travel Management Rule and the Executive Orders.

A route-by-route assessment of the whole system and an identification of the minimum road system should have preceded the development of alternatives in this travel management plan and any decisions to designate individual routes and to determine a minimum road system.<sup>18</sup> The FEIS contains no list of routes that the Forest Service identified as the minimum road system. The minimum road system is not something the agency can merely stumble upon; rather it must be the result of a thoughtful, science-based risk/benefit analysis of each route on the Forest. This thoughtful determination then should have informed the alternatives presented in the travel management planning process; however, an alternative not informed by that analysis cannot simply be renamed the “minimum road system.”

We raise the issue because a legally adequate minimum road system identification must be founded on a science based analysis, which can then aid forest managers as they consider and adopt projects over time. The fundamental purpose of Travel Analysis and identifying the minimum road system is to provide line officers with critical information to develop road systems that are safe and responsive to public needs and desires, are affordable and efficiently managed, have minimal negative ecological effects on the land, and are in balance with available funding for needed management actions. The agency and the public should be able to refer back to information developed in the travel analysis and minimum system determination to identify management opportunities to help implement or revise forest plans, help managers assure that limited funds are spent efficiently on the highest priorities, and inform project-level NEPA analysis to help managers address cumulative effects and to reduce the NEPA workload. The minimum road system identification and prioritized list of unneeded roads for decommissioning should also guide forest managers’ road decommissioning efforts, including determining how best to allocate Legacy Roads and Trails funds.

We think the Forest Service has made large strides in this process towards designating a transportation system that is much less redundant and more ecologically sound than the existing system. However, no alternative analyzed in this FEIS can legally be called the “minimum road system” because it is not founded upon the requisite science-based travel analysis or comply with other obligations in the regulation or agency guidance. We believe that a future travel analysis,

---

<sup>17</sup> Travel analysis should also precede any NEPA analysis completed for route designations because travel analysis is also designed to inform the designation process. The Southwest Region of the Forest Service defined travel analysis as involving “a broad-scale comprehensive look at the forest transportation network, providing long-term management guidance and site-specific proposals for change to travel management direction and the forest transportation system. *These changes will then be evaluated through the NEPA process(es) before implementation.* (emphasis added.) USDA Forest Service Southwestern Region Travel Analysis Frequently Asked Questions. October 2006.

<sup>18</sup> FSM 7712 Exhibit 01.

that evaluates each system road, even those that were designated as part of this travel plan, will further move the Forest towards this goal of an ecologically sound and fiscally responsible road system. We look forward to working with you in that process.

Recommendation regarding the minimum road system:

The undersigned organizations request that the Forest Service remove all references in the FEIS stating or implying that the forest has completed the “minimum road system” identification.

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

The WRNF designated trails for motor vehicle use without applying criteria required by executive orders and the 2005 Travel Management Rule (TMR). In 1972, in response to widespread and growing use of off-road vehicles, President Nixon adopted Executive Order 11644 to establish policies and procedures to “ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” Executive Order 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972). Section 3 of Executive Order 11644 requires federal agencies to develop regulations ensuring that the designation of trails and areas for use by off-road vehicles shall:

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

Further, Executive Order 11644 directs federal agencies to monitor the effects of off-road vehicle use and to amend or rescind designations as necessary to further the policy of the order. *Id.* § 8.

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

...effects on National Forest System **natural and cultural resources**, public safety, provision of recreational opportunities, access needs, **conflicts among uses of National Forest System lands**, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration are designated; and the **availability of resources for that maintenance and administration**.

*Id.* § 212.55(a) (emphasis added). In addition, to the general criteria described above, the TMR carries forward the language from the Executive Order, requiring minimization of damage to soil, watershed, vegetation, and other forest resources in trail and area designations (see indented

list above for complete list of resources to be protected under this section). 36 C.F.R. § 212.55(b).

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

Last February, the United States District Court in Idaho held that the Salmon-Challis National Forest Travel Plan violated the TMR and NEPA because the Forest Service must not only document that it “considered” minimization criteria in the Travel Management Rule and Executive Orders, but the Forest Service must also explain on the record “how the minimization criteria were applied in the route designation decisions” with the objective of minimizing impacts. *Idaho Conservation League v. Guzman*, 2011 WL 447456, at \*17 (D. Idaho Feb. 4, 2011). In *ICL v. Guzman*, the record reflected consideration of the criteria (through route matrices looking at watershed conditions, erosion potential, location of sensitive plants, weed risk ratings, route density and related wildlife effects, routes in riparian areas, and information on user conflicts), but the Forest Service failed to demonstrate how this information was *applied* in route designation decisions. Thus, the court vacated and remanded the plan.

In addition, while an overall reduction in the number of routes open to motorized use and the resulting reduction in environmental impacts is an important outcome of the WRNF’s TMP, and one which we whole-heartedly support, it does not equate to a minimization of impacts of individual routes under the TMR and executive orders. As the courts in both *Idaho Conservation League* and *Center for Biological Diversity* explained, “[m]inimize’ as used in the regulation does not refer to the number of routes, nor their overall mileage. It refers to the effects of route designations, *i.e.* the [Forest Service] is required to place routes specifically to minimize ‘damage’ to public resources, ‘harassment’ and ‘disruption’ of wildlife and its habitat, and minimize ‘conflicts’ of uses.” *Idaho Conservation League v. Guzman*, 2011 WL 447456, at \*16 (D. Idaho Feb. 4, 2011) (quoting *Ctr. for Biological Diversity v. U.S. Dept. of Interior*, --- F.Supp.2d ----, 2009 WL 7036134, at \*20 (Sept. 28, 2009)).

Although the Forest Service has a mandatory duty to minimize the adverse impacts of off-road vehicle use to the natural resources of the White River National Forest and to minimize conflicts between recreationists, the TMP fails to demonstrate that the agency made route designation decisions that actually will minimize damage to soil, watershed, vegetation, or other resources, which is a violation of the executive orders and TMR. Further, the failure to take a hard look at whether the agency’s actions will comply with applicable legal authority and the site-specific effects of individual motorized trail designations is a violation of NEPA, as is explained further below. Each motorized trail and motorized dispersed camping corridor designation requires a

detailed analysis of the effect of that designation on the resources described in the minimization criteria of the executive orders and TMR, as well as other issues raised by staff and the public during comment periods. If the location of the trail does not minimize damage to natural resources, the agency cannot designate it.

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

#### *Trail Designations in which the Forest Service did not Minimize Effects*

**534W.2M TRIANGLE PEAK TRAIL:** The appellants have recommended against inclusion of this unauthorized trail into the system from the start of the travel planning process. The trail itself was created by motorcyclists who preferred riding on smooth grass and dirt to navigating the old, rocky, rutted system road (534 Red Rim Road) a few hundred feet away. The current rationales for including it are “to provide a loop opportunity” and “to provide a motorized, primitive recreation experience.” It is neither. This trail is not a loop route; it is a shadow trail that closely follows an existing road and then rejoins it. And, it's actually less primitive than the road it shadows. Road 534 is a rough, rocky route in very primitive condition whereas the trail is smooth and refined. Rd. 534 is a Maintenance Level 2 road which the WRNF characterizes as providing a quality experience for motorcyclists. 534W.2m Triangle Peak Trail is redundant, unnecessary, and gratuitous in direct contravention of minimization direction. Further, we don't find data that suggests that the Forest Service performed the necessary site specific evaluation prior to adopting this unauthorized route into the system.

**N2855.1A OLD HORSE CREEK RANCH SOUTH:** This short road serves no necessary purpose and should not be added to the system. The primary rationale offered by the Forest Service for adding this 1/3 mile road that runs parallel to State Highway 9 one hundred yards to its east is “to provide a motorized, primitive recreation opportunity.” This rationale strains credulity – we find it hard to believe that a primitive opportunity is available on this route presents given that it parallels a major state highway a mere 100 yards away and that the route is only 1/3 of a mile in length. In addition, given that accessing the route requires unsafe use of a busy state highway and access through a campground, we find incredulous the Forest Service's rationale of providing for user safety and/or recreation management.

**GH-27 BRAKESVILLE ROAD and GH-44 FULLER TRAIL:** This motorcycle route being added to the travel system in Gold Run Gulch weaves its way between and across a half dozen different ML 2, four-wheel drive roads, all suitable for and providing a quality experience for dirtbikes and all contained in a half-square mile area. At no point along its 1 1/3 mile length is it more than 1000' from one of these roads, and mostly it is within 500' of one. Its eastern half winds its way up through the forest at a 20% grade – hardly a problem for a good dirt bike but

hard on the loose granitic soil when a rider loses traction or skids around a corner. A dedicated motorcycle trail is neither appropriate nor needed in this area where there is a surplus of four-wheel drive roads and a motorcycle is likely to do far more harm to the environment when ridden on a natural surface trail than when ridden on a graded road. Finally, it depends on using 1/8 mile of the Harum mountain bike trail (GH-73) in order to actually connect to the Spruce Road GH-72 and the Golden Rule motorcycle trail (GH-71), creating a dangerous situation, mixing heavy, fast dirtbikes with lighter and more vulnerable mountain bikes.

**GH-71 GOLDEN RULE TRAIL:** This 0.9 mile motorcycle trail cuts cross-country between the Spruce Road GH-72 and Lincoln Park Road GH-66. It is in the same immediate area as the Fuller, Half Pipe, and Governor King Trails and appears to be part of an attempt by the Forest to attract motorcyclists to an area that is already densely packed with four-wheel drive roads. It is inappropriate and unnecessary to add a whole secondary layer of off-road routes in an area such as this. Also it depends on using 1/10 mile of the Harum mountain bike trail (GH-73) in order to connect to Fuller motorcycle trail (GH-44) to make any sort of motorcycle loop through the area.

**N527 WEST GEORGIA PASS:** This 2-mile long twin to the Georgia Pass Road 355 parallels it so closely that they are never more than 700' apart. That distance, small as it is, is necessitated by the extensive wetlands along the South Fork of the Swan River that flows between the two routes. Adding this unneeded trail to the official system network solely for the purpose of providing a separate, parallel and exclusive experience for dirt bikers is sure to encourage impacts to the Swan River wetland complex and is certain to further disturb elk that congregate in that area in the summer time. Doubling routes serving/accessing the same area with attendant impacts from that doubling simply to cater to the special demands of one constituency blatantly contravenes EO 11644 and the TMR direction to minimize the effects of ORVs. Although GIS mapping in the DEIS showed a route connecting N527 to American Gulch Road GH-93, the GIS mapping that accompanied the FEIS and ROD fails to connect the north end of this trail back to the Georgia Pass Road. Whether attributable to sloppy GIS work or a deliberate decision, this obligates riders to either turn around, continue along another mile of *decommissioned road* to reach the American Gulch Road, or forge a trail of their own back to the Georgia Pass Road...all of which are bad management situations likely leading to illegal, unauthorized route development or use.

**GH-57 GOVERNOR KING TRAIL:** This additional mile-long motorcycle trail splits the space between two existing four-wheel drive roads that are less than half a mile apart. The rationales for adding this trail are to provide for a particular recreation activity and specifically to "provide a motorized, primitive recreation experience." Given the dozens of miles of jeep roads in the immediate area and the intensity of use concentrated in a small landscape, it stretches credulity to suggest that a primitive experience is within the realm of possibility here. Once again, it appears that the Dillon Ranger District is intent upon maximizing the impact of ORVs rather than minimizing them.

**601.4D:** This route in the heavily-visited and densely-roaded Meadow Creek Lake area was recommended for decommissioning by the appellants and scheduled for decommissioning in the preferred alternative "to protect archaeological, heritage or special plant site." Then, in the final plan, it was brought back "to facilitate public access, to provide a loop opportunity, to provide a motorized, primitive recreation experience" with no explanation as to why, all of a sudden, the archaeological, heritage or special plant sites no longer needed protection. Given the number

and length of the roads being decommissioned in the Meadow Creek Lake area there seems to be no dearth of public access. There are also 5 inter-connected loop routes in the area, including one around Meadow Creek Lake, that are all at least as large as the sixth one that the added route would create. Lastly, given that the ROD is decommissioning multiple routes adding up to many miles in the Meadow Creek Lake area, claiming that there's a need for more access in the midst of this major pruning process is nonsensical and misleading. There is absolutely no need for another ATV trail or loop route in this location and 601.4D needs to be decommissioned, not added to the system. This fails minimization direction.

**N189.1 BATTLEMENT TRAIL:** This unconstructed, substandard road runs across hummocky terrain with many potholes, ponds and wetlands on top of Battlement Mesa to a collection of reservoirs. Because of its permanently wet and soft soils, the route is badly rutted where users stick to the designated route and badly braided where users decide to pioneer new routes outside of the rutted, designated route. The Forest has provided no rationale for its use. Unless the Forest gives compelling rationale for keeping this route open, it should be closed. If a need for administrative access is demonstrated, the Forest Service must reroute and improve the road to eliminate impacts to wet soils and wetlands.

**211.2A RED ELEPHANT, 211.2K RED ELEPHANT CUTOFF, 848 RED ELEPHANT CUTOFF:** This small network of roads tucked inside the southern loop of Bar HL Road 211 serves nothing more than a few isolated stock ponds and the Forest Service has offered no rationale for adding another 3.66 miles to an already overloaded system. These routes should be decommissioned, not added on in direct contravention of minimization direction.

**517 HUNTSMAN RIDGE:** At the start of the Travel Management planning process this route existed as an extremely steep, difficult four wheel drive road. In the SEIS preferred alternative G, it was rightly scheduled for decommissioning, and then inexplicably resurrected in the final modified final plan as an ORV trail. In the first round of the planning process the appellants recommended that this route be reduced to foot travel only due to the environmental damage caused by vehicular use, and then welcomed the decision to decommission it entirely. The route is a poster child for the environmental damage both on- and off-route caused by inappropriate ORV route placement. It winds straight up a steep hillside, channelizing run-off which causes deep incision and gullying of the roadway itself and off-route sheet erosion, gullying and debris flow. In the few spots where the route flattens out, water pools and vehicular use causes deep mud holes. This route should be decommissioned and should be high priority for immediate restoration. Given that the Forest Service had scheduled the route for decommissioning preferred alternative G in the Supplemental Draft, we can only surmise that this about face gave ascendancy political concerns over protection of the land and minimizing the effects of ORVs.

**TAYLOR CREEK Trails 510.1A and 510.3T:** Both were recommended for closure in the SEIS Preferred Alternative G. No rationale was given as to why the Forest changed its mind. 510.1A initiates on the ridge of Red Table Mountain at an elevation of 11,200 and steeply switchbacks down to dead end at a private property boundary 3000 ft below. Once descending 3000 vertical feet of torturous switchbacks, the public must turn around and retrace their route back up – the private ranch owners covet their privacy and prohibit public access from the National Forest. However, this isn't apparent as Forest users set off from the ridge since maps show FS road 510.1 (providing access to the private inholding from the county road downhill of the ranch) as open to public travel. In other words, the FS shows travel open to the ranch from

above and below but thru-passage is not possible. We contend that this is an attractive nuisance that creates an unmanageable situation by encouraging public use in a manner that suggests thru-travel is possible when in fact it is not. This isn't speculative and theoretical. The ranch owner informs us that they are constantly dealing with trespass, particularly by ATVs, facilitated by the confusion surrounding management of route 510.1A. Given that ATV use on this non-destination route predominately occurs during hunting season when the weather can swing dramatically between extremes, out of state hunters who have traveled down 510.1A in clear warm weather often find themselves stuck unprepared at the bottom with the route made impassable by heavy snow or rain. As survival is a matter of trespass, the inevitable trespass happens. Appellants submit that this is a no-win situation directly caused by the Forest Service's decision not to decommission 510.1A as originally identified in SEIS Preferred Alternative G. The private ranch owners also report that with the first sign of hunting season (likely the buzz of ATVs scouting locations), big game swiftly retreat to the refuge of their ranch, making them completely out of reach to the public and defeating the purpose of leaving this route open. The FEIS notes this problem generally:

*Under the current situation, motorized access and use has increased to the point where, during the hunting seasons, animals are forced to retreat to either relatively inaccessible locations on the forest such as deep canyons or large pockets of dark timber or completely off the forest to private lands or other areas where the general public does not have access.*

#### ***FEIS 94 Chapter 3: Affected Environment and Environmental Consequences***

Lastly, appellants are concerned that permitting ATV use on 510.1A and 510.3T will create another attractive nuisance situation by encouraging unauthorized motorized use of a high quality mountain bike trail specifically closed to motors in the ROD to reduce user conflicts. Motorized users utilizing 510.1A and 510.3T will be presented with several problematic options where it intersects with 1909: turn around and retrace their tracks, complete a small loop from 510.3T back to 510.1A via unauthorized use of 1909, or complete a larger loop traveling unlawfully on 1909 back to the vehicle staging at the trailhead. The Forest designated 1909 and 1911 as non-motorized specifically to reduce user conflicts (rationale #24). The nearby Bowers Gulch is a motorcycle concentration area (with all trails created by unauthorized use and adopted into the system via this ROD) that connect to the road across the top of Red Table Mountain, out to the start of 510.1A. The motorcycle users that created the unauthorized Bowers Gulch trail networks are accustomed to completing a loop that ascends Bowers Gulch, traverses across Red Table Mt, and returns to the starting point via 510.1A, 1909 and 1911, the routes the ROD just designated as non-motorized to reduce user conflicts. Providing for motorized uses on trail 510.1A will only serve to encourage the motorcycling community, with a history of ignoring travel rules, to continue treating this as a loop ride, albeit illegally.

Providing motorized access to Trails 510.1A and 510.3T clearly does not minimize the affects of ORVs. To the contrary, this decision exacerbates the affects of ORVs by creating an attractive nuisance where motorized ORV riders are given bad options, all of which incentivize decisions leading to ORV impacts to other users, wildlife and private property owners. It also creates an unmanageable and unenforceable situation that puts both land managers and ORV users in untenable circumstances.

Road 536.1A Freeman Creek Powerline: This road was appropriately selected for decommissioning in the SEIS Preferred Alternative G. According to GIS data, this route proceeds straight up a 40% slope into the WRNF's Red Table Mountain Recommended Wilderness. Since appellants last inventoried the route a decade ago, the already scruffy and ATV-hacked up terminus has been user-extended a ¼ mile up slope which channelizes runoff, accelerates erosion and causes deep gulying on the road. It's hard to accept rational that suggests the route is necessary for public access as there's another road, Freeman Creek Road 536, accessing the same terrain and emanating from the same trailhead. Since it allows both licensed and unlicensed use, it provides more inclusive access than 536.1A which is for licensed only.

**Resolution Mountain Road 708.1A:** This is very steep, destructive and unnecessary spur route that we recommended for removal. Its runoff and debris have created a 400-foot long channel on the opposite side of the McAllister Gulch Road 708. It's an open running sore that goes to an insignificant overlook but at high cost.

**GH-34 TRAYLOR WAY, GH-35 SEWINDER ROAD, GH-36 LIGHTBURN ROAD:**

There is almost no information and therefore considerable confusion about recent management decisions about these routes. For Traylor Way and Lightburn Road, every alternative prior to Alternative G (including Existing Conditions) recorded these roads as closed to full-size vehicles if not to all vehicles. Alternatives G and GM made them open to all vehicles without providing any rationale. At the same time, Alternative GM (but not Alternative G) closed the northern part of Sewinder Road to all motor use to create a short, disconnected mountain bike route, turning the just-added Traylor Way/Lightburn Road full-size vehicle route into a dead end at this new bike route. Alternative GM also decommissioned part of Traylor Way north of its junction with Lightburn Road because "the route is not needed for administrative or recreation purpose." This implies that the rest of the route is somehow needed but not for any particular purpose. Given this confusion and lack of clear purpose around these routes the Forest Service should take this opportunity to decommission all of Traylor Way and Lightburn Road to help meet its goals for reducing the overall size of the travel system.

Recommendation

The preceding list is not meant to be comprehensive; rather it is to demonstrate compelling examples of routes that illustrate our complaint. Appellants respectfully requests the Forest Service to complete a supplemental EIS for all routes where it has not yet analyzed and disclosed on the record whether designation will satisfy the minimization criteria, most particularly on, but not restricted to, formerly non-system, unauthorized routes made part of the official system by this decision. If the minimization criteria are not satisfied, the Forest Service should remove these trails or areas from the MVUM.

**C. The ROD's Motor Vehicle-Assisted Dispersed Camping Corridor Designations Violate the Travel Management Rule and the NEPA.**

With the release of the ROD, the U.S. Forest Service (USFS) has improperly authorized extensive vehicle-assisted dispersed motorized camping corridors (300ft of either side of the route) along the vast majority of its motorized routes. Such blanket designations violate the Travel Management Rule. The Forest Service also failed to take a hard look at the site-specific



effects of its exemption allowing cross-country motorized use for dispersed motorized camping and failed to consider a reasonable range of alternatives with respect to its motorized dispersed camping designations in violation of the National Environmental Policy Act (NEPA).

i. The motorized dispersed camping designations violate the Travel Management Rule.

The 2005 Travel Management Rule (TMR) provides for a narrow exemption to the ban on cross country travel, which allows the Forest Service to designate corridors for the “the limited use of motor vehicles within a specified distance of *certain* designated routes” for purposes of vehicle-assisted dispersed camping or big game retrieval. 36 C.F.R. § 212.51(b) (emphasis added). An abundance of regulatory, manual and internal agency guidance, both national and regional, outlines criteria for dispersed motorized camping management and makes clear that the Forest Service may not simply designate blanket motor vehicle-assisted dispersed camping corridors for all or most of a national forest’s routes. Such designations completely undermine the intent and spirit of the Travel Management Rule, which was promulgated because:

[T]he magnitude and intensity of motor vehicle use have increased to the point that the intent of E.O. 11644 and E.O. 11989 cannot be met while still allowing unrestricted cross-country travel. Soil erosion, water quality, and wildlife habitat are affected. Some National Forest visitors report that their ability to enjoy quiet recreational experiences is affected by visitors using motor vehicles. A designated and managed system of roads, trails, and areas for motor vehicle use is needed.

70 Fed. Reg. 68, 264, 68,265 (Nov. 9, 2005)

To address and avoid detrimental impacts to forest resources, direction to the Forest Service provides for *sparing* application of the exemption, and use of the exemption must be supported by the appropriate site-specific environmental analysis.

The Department expects the Forest Service to apply this provision sparingly, . . . to avoid undermining the purposes of the final rule and to promote consistency in implementation. Provision for cross-country travel for big game retrieval and dispersed camping will be at the discretion of the responsible official.

*Preamble for the TMR*, 70 Fed. Reg. 68,264, 68,285 (Nov. 9, 2005)

Dispersed Camping and Game Retrieval (36 CFR 212.51(b))

The responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes solely for the purposes of dispersed camping or big game retrieval. Such designations represent site-specific decisions associated with specific roads and trails or road or trail segments, rather than a blanket exception to the rule. Designations under 36 CFR 212.51(b) will be applied sparingly to avoid undermining the purposes of the rule and to promote consistency in implementation. Regional foresters will coordinate designations within states and between adjoining national forests to promote consistency.

Letter from Former Chief Dale Bosworth, U.S. Forest Service, to Regional Foresters, Station Directors, Area Director, IITF Director, Deputy Chiefs and WO Staff (June 8, 2006)

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

Forest Service Manual 7703.11(4)

1. The responsible official may include in a designation the *limited* use of motor vehicles within a specified distance of *certain* forest roads and forest trails where motor vehicle use is allowed, and if appropriate within specified time periods, solely for the purposes of dispersed camping or retrieval of a downed big game animal by an individual who has legally taken that animal (big game retrieval).
2. The authority in FSM 7715.74, paragraph 1, should be used sparingly to avoid undermining the purposes of the travel management rule and to promote consistency in its implementation.
3. To promote consistency, the Regional Forester should coordinate designations pursuant to FSM 7715.74, paragraph 1, within states and among adjoining administrative units.
4. Prior to including in a designation the limited use of motor vehicles within a specified distance of state and county roads for dispersed camping and big game retrieval, the responsible official shall obtain written concurrence from the public road authority with jurisdiction over those routes.
5. Consider designating routes, including existing terminal facilities (FSM 7716.1), to dispersed camping sites, instead of authorizing off-route motor vehicle use.

Forest Service Manual 7715.74 – Motor Vehicle Use for  
Big Game Retrieval and Dispersed Camping

The Washington Office is not alone in directing the field to apply the provision sparingly, nor is it alone in suggesting that the Forest Service should consider designating spur routes (or “existing terminal facilities”) to dispersed campsites, as opposed to allowing off-route motor vehicle use. In conformity with the national direction, the USFS Region 2 office issued the following guidance in an April 16, 2007 letter from Former Deputy Regional Forester Greg Griffith to Forest Supervisors in Region 2:

I am writing to request each Forest Supervisor consider these recommendations in your travel management planning effort so that there is a standard approach towards consistency efforts by all Region 2 Forests and Grasslands. The recommendations are:

2. Forest Motor Vehicle Maps (MVUM) must clearly identify the roads and distance where off road motor vehicle use is authorized for dispersed camping ...so that the public understands the rules and regulations...
3. Over time, the long term goal for the Rocky Mountain Region’s forests...will be to strive towards designating individual spur

routes or dispersed camping sites. During future travel management planning efforts, forests...will identify those areas or locations where unacceptable resource damage is occurring or where there are opportunities to improve the recreation experience by designating individual dispersed sites. Forest Supervisors and District Rangers are charged with the responsibility of identifying and managing these areas in a manner that best meets the resource objectives of the area with consideration of their overall program of work and funding situation.

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

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

The ROD states:

### **Dispersed Camping**

For most of the forest, dispersed camping with a motor vehicle can occur 300 feet from a designated road. Camping is prohibited within 100 feet of lakes and streams and system trails, unless exceptions are justified by terrain or specific design that protects the riparian and aquatic ecosystems. There are some places on the forest where dispersed camping can only occur in designated sites. This direction is part of the forest plan and compliant with the travel rule. (Forest Plan - General Recreation Standard 1 page 2-34; Travel System Infrastructure Standard 5 page 2-39) On-going monitoring of dispersed camping sites and site-specific actions is conducted to address resource and safety concerns. As funding is available, the White River National Forest will continue to inventory and monitor dispersed camping across the landscape. From these inventories, forest staff will evaluate dispersed camping conditions and determine if and where some areas should only allow camping in designated sites. Staff will also focus efforts along streams and lakes to improve conditions in these areas. Special emphasis will be placed on developing partnerships and education programs to minimize impacts to these riparian areas.

United States Forest Service, Record of Decision for White River National Forest Travel Management, p24 (2011).

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

ii. The motorized dispersed camping designations violate the NEPA.

- a. The Forest Service failed to take a “hard look” at the effects of the decision to allow unrestricted motorized vehicle travel up to 300 ft. from roadways for the purpose of dispersed camping.

NEPA requires federal agencies to assess the direct, indirect, and cumulative environmental impacts of proposed actions, taking a “hard look” at environmental consequences, and performing an analysis commensurate with the scale of the action at issue. 40 C.F.R. §§ 1502.2 (b), 1508.8. “General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Neighbors of Cuddy Mt. v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998). Analysis of site-specific impacts must “contain a reasonably thorough discussion of the significant aspects of the probable environmental consequences.” *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982). NEPA mandates a “hard look at a decision’s environmental consequences.” *Id.* An agency may not “rely upon forecasting difficulties or the task’s magnitude to excuse the absence of a reasonably thorough site-specific analysis of the decision’s environmental consequences.” *Id.* at 765; *see also Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1357 (9th Cir. 1994) (holding site-specific analyses for approval of multiple sites required when the agency makes a “critical decision . . . to act on site development” (internal citations omitted)). NEPA’s implementing regulations require an agency preparing an EIS to analyze both the “direct effects, which are caused by the action and occur at the same time and place” and the “indirect effects, which are caused by the action and are later in time or farther removed in distance,” of its actions. 40 C.F.R. § 1508.8(a), (b).

The WRNF TMP ROD applies a blanket exemption to the ban on cross-country travel without the “hard look” required by NEPA. We find no evidentiary basis provided in the record proving that a “hard look” informed the decision. However, we do find direction in the Forest Service Manual at 7703.11(4) that reinforces what a “hard look” should consist of:

[a]pply the provision for big game retrieval and dispersed camping sparingly after conducting travel analysis and appropriate site-specific environmental analysis ...

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

In Chapter 3 of the FEIS, Affected Environment and Environmental Effects, the public would reasonably expect to see a discussion of the existing or potential impacts from allowing a 300 foot unrestricted cross-country corridor for dispersed camping along more than 1,600 miles of roads. However, this chapter scarcely mentions dispersed camping, limiting discussion to a

summary of what the Forest Service is proposing under each alternative. We cannot find the “site-specific environmental analysis” required by the agency’s own travel planning directives or any analysis that would satisfy the basic “hard look” requirement of NEPA to support a decision allowing unrestricted motorized travel for a 600-foot corridor (300 ft. on either side) of nearly all of an approximate 1416 mile public motorized system. This amounts to a decision to allow unrestricted travel on 161 square miles of the White River National Forest without any supporting analysis or data. We are perplexed as to how such a significant decision potentially affecting 161 sq. miles of the WRNF can be justified without the hard look required by NEPA nor any site specific analysis as required by the FSM.

The WRNF appears to rely solely on the Forest Plan to justify the 300 foot dispersed camping policy without analyzing the impacts of such use.

5. Permit motor vehicle travel up to 300 feet from designated travelways for direct access to campsites, parking, firewood cutting, or gathering forest products provided that:

- Minimal resource damage occurs;
- Such access is not otherwise prohibited.

WRNF LRMP 2002, p. 2-39

In contrast, travel and parking up to 300 ft. off of designated roads for day use activities such as fire wood gathering, picnicking and forest products gathering authorized by the WRNF LRMP 2002 were prohibited by this Decision in compliance with the 2005 Travel Management Rule. Clearly the WRNF finds it has the flexibility to bring the 2002 LRMP into compliance with the TMR without having to separately amend the LRMP. The same flexibility would also apply to a similar revision of the 300 ft. dispersed camping rule and LRMP consistency would not pose an impediment to making the dispersed camping rule comply with the TMR. This flexibility is granted by the second bullet—“such access is not otherwise prohibited”—under the LRMP citations reference above. The TMR is not a buffet of options that the WRNF can selectively choose to implement or ignore. Yet, the WRNF has selectively chosen to ignore a key provision of the TMR that directs the agency to apply the 300 ft. dispersed camping provisions “*sparingly*” and “*route by route*”, in a manner that triggers a site specific hard look at the impacts of this decision.

Therefore while the Forest had the time and procedural flexibility to analyze and address motorized dispersed camping in this TMP, the FEIS is simply devoid of any analysis constituting a requisite “hard look” at effects of the motorized vehicle-assisted dispersed camping corridor policy, let alone the site-specific level of analysis required to satisfy both NEPA and Forest Service Manual 7703.11(4). Informed decision making relies on solid data derived from site specific inventories given a “hard look.” Given the absence of site specific data informing the Forest’s rational, the WRNF’s blanket exception to the prohibition on open cross-country travel for dispersed camping is not the type of informed decision intended under NEPA.

iii. The Forest Service failed to consider a reasonable range of alternatives.

NEPA requires that, in preparing an EIS, agencies must “insure the professional integrity, including scientific integrity, of the discussions and analyses” in the document, and the impact statement must present alternatives to the proposed action. 42 U.S.C. § 4332(C), (E). The

analysis of alternatives is “the heart of the environmental impact statement,” and an EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” 40 C.F.R. § 1502.14. An EIS must include “the alternative of no action,” as well as a “hard look” at “all reasonable alternatives.” 42 U.S.C. § 4332(C); 40 C.F.R. § 1502.14(a), (d). In examining the reasonableness of an EIS’s alternatives and elimination of alternatives from analysis, courts first look to whether the “Purpose and Need” was reasonable, and then whether the alternatives considered were reasonable in light of that goal. *Surfrider Found. v. Dalton*, 989 F.Supp. 1309, 1327 (S.D. Cal. 1998), *aff’d per curiam*, 196 F.3d 1057 F.3d 1057 (9th Cir. 1999). Regarding alternatives rejected for full evaluation, a court asks “whether the summary rejection of these sites was unreasonable, such that the [EIS] failed to consider a reasonable range of alternatives.” *Id.* at 1327–28 (“An unreasonable failure to consider a viable alternative renders an alternatives analysis inadequate.”); *see also Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813 (9<sup>th</sup> Cir. 2005) (“The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.”) (quoting *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9<sup>th</sup> Cir.1985)). Much legal precedent guards against an insufficient range of alternatives.<sup>19</sup> Further, the Forest Service Handbook (FSH) guides managers to “develop . . . alternatives fully and impartially . . . [and to] ensure that the range of alternatives does not prematurely foreclose options that might protect, restore, and enhance the environment.” FSH 1909.15 sec. 14. NEPA also requires that agencies “present complete and accurate information to decision-makers and to the public to allow an informed comparison of the alternatives considered in the EIS.” *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813 (9th Cir. 2005).

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

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

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

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

---

<sup>19</sup> “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Nw. Envtl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122–23 (9th Cir. 2002) (and cases cited therein). NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e. the applicant’s proposed project).” *Col. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999) (citing *Simmons v. U.S. Corps of Eng’rs*, 120 F.3d 664, 669 (7th Cir. 1997)). This requirement prevents the EIS from becoming “a foreordained formality.” *City of New York v. Dep’t of Transp.*, 715 F.2d 732, 743 (2d Cir. 1983). *See also Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002).

The Forest Service failed to consider a reasonable range of alternatives because it illegally eliminated from detailed study an alternative that would preclude a 300-foot motorized dispersed camping corridor along designated roads, but would instead institute a parking rule for dispersed camping and designate appropriate spur routes to popular dispersed campsites. In our 2006 DEIS and 2008 SDEIS comments, and captured in the DEIS in Chapter 5-21-Recreation Management Public Concern (PC) 216, we requested that the Forest Service consider such a policy:

[T]he Forest Service should allow dispersed camping generally but restrict motor vehicle travel for the purposes of dispersed camping according to a combination of the following options, as dictated by resource, safety, and private property concerns:

- a) Forest visitors may park a motor vehicle within one vehicle length from the edge of the road surface when it is safe to do so and without causing damage to the Forest Service resources (campers walk to access a backcountry camp of their choosing), and/or
- b) Motor vehicles may access signed campsites via designated camp spur routes that are signed and demarcated on a travel management map.

This suggested alternative is wholly and singularly compliant with the TMR's provisions that the 300ft dispersed camping rule be used sparingly and on a route by route basis, thus making it a viable and reasonable alternative for full consideration in the NEPA process. Without it, the range of alternatives presented by the WRNF is incomplete and in violation of NEPA. We also described the inherent ambiguities and enforcement problems associated with the Forest Service's proposed policy. The agency decided not to consider eliminating the 300-foot corridors on either side of designated routes in any alternative, responding in the DEIS and FEIS by simply claiming that:

The [Travel Management] rule provides the responsible official with the opportunity to authorize the limited use of motor vehicles within a specified distance of certain motorized roads and trails and, if appropriate, within specified time periods solely for the purposes of dispersed camping... (§212.51). (FEIS p.16)

This willfully selective reading of the TMR not only ignored the "sparingly" and "on a route by route basis" direction and failed to analyze the impacts of such a policy, but turns the TMR's policy intent upon its head. The greater context in which the TMR was created was best articulated by the Chief of the Forest Service who identified unmanaged ORV recreation as one of the principal threats to National Forest System and highlights that cross-country travel causes serious impacts to wildlife habitat and results in the establishment of new unplanned and unneeded routes. A default policy of open travel unless otherwise restricted is precisely the framework that created the nationwide problem with unmanaged motorized recreation noted by the Chief. To the WRNF's credit, the Revised LRMP 2002 established the unambiguous policy that travel is restricted to designated routes, a welcome reversal of the historic policy of open unless signed closed. We are mystified as why the Forest would want to perpetuate the failed historic travel policy with respect to the 300 ft. dispersed camping rule and risk the public confusion and unmanageability caused by the conflicting direction between this and the newly adapted default designated routes only policy. The WRNF's dispersed camping policy should

have started from the same default forest-wide travel policy, designating spur routes and campsites in popular dispersed camping areas. Further, this would have allowed the Forest Service to avoid the fatal flaws to its NEPA analysis that we described above and its violation of the ORV Executive Orders and TMR's minimization criteria, which we describe above.

Further, the Forest Service failed to consider a reasonable range of alternatives because it did not examine alternatives that would apply its motorized dispersed camping policy and designation of these motorized dispersed camping corridor to a *range* of *specific* routes. For instance, instead of designating corridors along its over 1,600 miles of final motorized routes, it could designate corridors along *certain* routes that would add up to 0%, 10%, 30%, and 50% of the transportation system. The Council on Environmental Quality's (CEQ's) "Forty Questions" guidance document indicates that when a "very large or even an infinite number of reasonable alternatives" exist, an agency must analyze and compare a "reasonable number of examples, covering the full spectrum of alternatives." Council on Environmental Quality, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," Question 1, Fed. Reg. 18,026, 18,027 (1981). As an example, CEQ notes that the possible range of alternatives an agency could examine in its decision to designate wilderness is infinite because it could propose alternatives that would designate any percentage of land between 0 and 100%. *Id.* at 18,027. In such a case, the agency need only examine a "reasonable" range of alternatives, indicating "[a]n appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness." *Id.* at 18,026–27. An EIS designating motorized dispersed camping corridors similarly allows an infinite number of designation options, which should be examined at similar intervals. Despite this clear guidance and suggestions from the public, each of the alternatives designates motorized dispersed camping corridors along "all" or "most" of the White River NF's motorized routes that are open to public use. The agency's failure to consider the parking rule/designated spurs policy we proposed in commenting (and in our recommendation below) or any alternative that would have significantly limited the total number of routes along which a motorized dispersed camping corridor would be designated renders the agency's range of alternatives inadequate and in violation of NEPA.

In sum, because the WRNF's TMP dispersed motorized camping policy is based on an incomplete analysis of resource impacts for this use, in violation of the requirements of NEPA; because the FEIS fails to consider a reasonable range of alternatives related to motorized dispersed camping; and because the decision violates the Travel Management Rule's provision for the *sparing* use of the motorized dispersed camping exemption, this aspect of the decision must be remanded back to the agency for correction of these deficiencies. A simple remedy would be for the WRNF to commit to completing a dispersed camping plan within 3 years in the ROD which we offer a suggestion for below.

#### Recommended Dispersed Camping Policy

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



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

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

#### **IV. REQUEST FOR RELIEF**

Appellants wish to reiterate our support for many aspects of the WRNF's Travel Management Plan, as we have described in earlier comments and other communications with Forest Service Staff. Given the complexity of the issues and time and resources committed to this document, we wish to emphasize how much we appreciate the tough choices made in the ROD to bring the WRNF's travel system to a more fiscally and ecological sustainable state. However, for the reasons stated above, certain aspects of the ROD and FEIS fail to comply with law, regulation, and policy. Therefore, Appellants respectfully requests the Forest Service Appeal Reviewing Officer to set aside the Decision and direct Forest Supervisor Scott Fitzwilliams to immediately make the changes sought in this appeal.

We look forward to discussing resolution of this appeal with the Forest Service.

Respectfully submitted this 20th day of June 2011.

Sincerely,



/for appellants/

Sloan Shoemaker  
Wilderness Workshop  
PO Box 1442  
Carbondale, CO 81623  
[sloan@wildernessworkshop.org](mailto:sloan@wildernessworkshop.org)  
970.963.3977

### **List of Attachments**

**Attachment A** – Errata to the Birdgeport Travel Management Plan Record of Decision

**Attachment B** – Letter from the Washington Office, U.S. Forest Service, to Regional Foresters Regarding “Planning Directives for Plan Revisions and Plan Amendments” (Oct. 23, 2009)

**Attachment C** – Cibola National Forest, Mountainair Ranger District Travel Analysis Process Report (Feb. 2009)

**Attachment D** - Cibola National Forest, Mountainair Ranger District Travel Analysis Process Report – Appendix A – Route-by-Route Risk & Benefit Assessment/Minimum Road System Identification (Feb. 2009)