Forest Service

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Subject: Appeal Recommendation Memorandum for Gunnison Travel Management Plan

To: Maribeth Gustafson, Appeal Deciding Officer

As the designated Appeal Reviewing Officer (ARO), this is my recommendation on the disposition of the appeals filed on the Gunnison Travel Management Plan on the Gunnison and Paonia Ranger Districts of the Gunnison National Forest. The appeals were filed pursuant to 36 CFR 215 and this letter addresses the following appeals:

Steve Smith, Wilderness Society (10-02-09-0064)
Matt Reed, High Country Citizen's Alliance (10-02-09-0058)

DECISION BEING APPEALED

Forest Supervisor Charlie Richmond signed the Record of Decision (ROD) for the Gunnison National Forest Travel Management Plan on June 28, 2010. This decision was made to improve travel management on National Forest System lands on the Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests. This decision was needed to design a sustainable transportation system in accordance with the Travel Management Rule.

APPEAL SUMMARY

The lead appellants (Steve Smith and Matt Reed) submitted comments during the comment period and are eligible to appeal. Steve Smith's appeal was dated August 10, 2010, and Matt Reed's appeal was dated August 16, 2010. These timely appeals were submitted separately, but had very similar issues and can be addressed with the same recommendation letter. The appellants requested the relief summarized below:

Steve Smith –

- Dispersed camping: Restrict off-route motor vehicle travel to one vehicle length from the edge of the road, and/or restrict access to signed campsites. Remand the plan and complete a supplemental EIS.

- Minimization criteria: Complete a supplemental EIS for specific routes to analyze minimization criteria.

- Carbon Trail: Immediately close to motorized and mechanized access. The agency must disclose impacts of motorized designation in a supplemental EIS.

- Crest Trail: Immediately close to motorized use. Designate as non-motorized and non-mechanized in a new decision. Conduct a supplemental EIS.

- Routes 578 and 578.2A: Designate routes as administrative roads or closed.

- Route-specific comments: Remand decision to analyze and respond to trail-by-trail comments.

- Reasonable range of alternatives: Remand to analyze an alternative that would incorporate specific route closures described in appeal in a supplemental EIS.

- Minimum road system: Remove all references in the FEIS and ROD stating that the Forest completed "travel analysis" and the "minimum road system."

Matt Reed –

- Route-specific comments: Remand decision to analyze and respond to trail-by-trail comments.

- Dispersed camping: Restrict off-route motor vehicle travel to one vehicle length from the edge of the road, and/or restrict access to signed campsites.

- Carbon Trail: Designate as non-motorized and non-mechanized, and/or disclose the impacts on wilderness and roadless characteristics.

- Crest Trail: Designate as non-motorized and non-mechanized in a new decision, or provide more information that the designation will not substantially interfere with the nature and purpose of the CDNST

- Routes 578 and 578.2A: Designate routes as administrative roads or closed.

ISSUES AND RESPONSES

Appeal Issue: 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 of:

- Travel Management Rule;
- TMR, 70 Fed. Reg. 68,264, 68,285 (Nov. 9, 2005);

- 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);
- FSM 7703.11(4);
- FSM 7715.74 – Motor Vehicle Use for Big Game Retrieval and Dispersed Camping; and
- USFS Region 2 office April 16, 2007 letter from Former Deputy Regional Forester Greg Griffith to Forest Supervisors in Region 2

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. The USFS 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."

Response: The appellants contend the Forest Service violated the Travel Management Rule and other direction regarding motorized travel for dispersed camping and big game retrieval. The appellant acknowledges travel management guidance allows for off-route motorized access for dispersed camping, but is concerned that it has been used too widely - as a "blanket exception to the general prohibition on cross-country travel."

Forest Supervisor Charlie Richmond's decision is consistent with Forest Service travel management guidance. The 2005 Travel Rule, §212.51(b), expressly addresses motor vehicle use for dispersed camping and big game retrieval:

> In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, 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.

The decision incorporates this recognition, limiting the use of motor vehicles for dispersed camping to a specified distance of 300 feet on either side of designated roads.

The appellants also raise concerns that this decision should be used "sparingly." The Forest Service Handbook, 7715.74(2) does provide guidance (not a directive) toward this intent, "the authority in FMS 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."

However, this guidance provides some flexibility (stating "should" instead of "shall") and recognizes the need for consistency in application. The Forest Supervisor recognized this, but rationalized a need for dispersed camping "similar and consistent with the other units of the GMUG National Forests" (ROD p. 18). The decision seeks to actively minimize resource damage by "educating and informing the public of the need to utilize existing campsites" (ROD p. 18). Furthermore, it distinguishes 12 specific road corridors that willl undergo dispersed camping field assessments within six years of this signed decision.

The appellants also reference Regional guidance from a 2007 letter from Deputy Regional Forester Greg Griffith to Forest Supervisors and allege noncompliance. The letter was considered in the decision (FIES appendix X, Response to Comments, p. 71, 74). The letter offers four recommendations (not directives) on how to proceed with future travel planning efforts. In general, 1) recognize limited funding; 2) restrict motor vehicle travel to 300 feet of centerline; 3) over time, strive toward designating individual spur routes or dispersed camping sites; and 4) recognize emerging trends. This decision meets the intent in each of these four categories. The decision recognizes limited funding (prioritizing 12 routes provide for an economically feasible way to analyze site impacts), restricts motor vehicles to 300 feet of centerline, outlines a plan to further analyze and restrict travel on 12 priority routes, and recognizes emerging trends by recognizing new methods of travel (hovercraft, tracked vehicles, etc) and offering a placeholder for other forms of motorized transportation that may be developed in the future (ROD p. 16).

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Motorized dispersed camping designations violate NEPA.

The Forest Service failed to take a hard look at the effects of its motorized dispersed camping designations. The exemption to the ban on cross-country travel cannot be imposed, as it is in the decision, without the proper NEPA analysis and an evidentiary basis provided in the record. The FEIS's discussion of the dispersed motorized camping policy does not adequately address or disclose the resource damage caused by cross-country motorized travel associated with dispersed camping. In its FEIS and ROD, there is no evidence or analysis provided for the agency's decision to allow widespread dispersed motorized camping. Neither is there any indication that the agency seriously considered the implications of this blanket exception for wildlife, wildlife habitat, or any other resource. In the FEIS sections covering soil, water, aquatic resources, wetlands, riparian vegetation, threatened and endangered plants, noxious weeds, wildlife, and cultural resources, only in the cumulative impacts section covering noxious weeds is the issue of motorized dispersed camping discussed relative to the preferred 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 that designates a 300-foot corridor on either side of every single mile of its 1,839 mile system. The FEIS is simply devoid of analysis that would constitute the "hard look" at effects of the motorized vehicle-assisted dispersed camping corridor designations, let alone the site-specific level of analysis required to satisfy both NEPA and Forest Service Manual 7703.11(4).

Response: The appellants contend that dispersed camping (cross-country) was not adequately analyzed or addressed for specific resource areas, thus violating the NEPA "hard look" requirement.

FSH 1909.15 Chapter 12.3 (3) and (5) states that the depth of the detail of the analysis depends on the important management and resource issues, and should be commensurate to the magnitude of the effect. The FEIS and supporting analysis satisfy NEPA.

The FEIS, ROD, and various reports contain multiple examples of specific environmental analysis of dispersed camping at scales deemed appropriate for resource and other issues. Some examples include:

- Impacts to sensitive plants from dispersed camping (FEIS p. 81)
- Impacts to soils and noxious weeds (FIES p. 85)
- Impacts to the Uncompahgre Fritillary Butterfly (FEIS p. 156)
- Characterization of dispersed camping (FEIS p. 163)
- Impacts to historic properties (FEIS p. 228-229)
- Economic activity (FEIS p. 245)
- Response to comments about low level of impacts (FEIS Appendix p. X-164)
- Response to comments about dispersed camping (FEIS Appendix p. X-184)
- Major environmental concerns of the decision (ROD p. 9 – 12)
- Consideration of dispersed camping in rout-by-route assessment (Staff Report, 2007)
- Wetland resources (FEIS p. 77)
- Cultural resource (FEIS p. 77)

In accordance with FSH 1909.15 Chapter 12.3 (3), resources were analyzed using measurement indicators. For the wildlife analysis, impacts from roads and motorized trails are calculated to be occurring outward of a road for ½ mile. There are no Threatened and Endangered Plants in the analysis area (FEIS page 76) and therefore no effects of dispersed camping on this resource.

The decision accounted for impacts of dispersed camping to multiple resources commensurate to the magnitude of the effects of the decision. The record supports a "hard look" by the Forest Service into this issue.

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Failed to consider a reasonable range of alternatives for motorized dispersed camping

The motorized dispersed camping designations violate the NEPA. The Gunnison NF analyzed four action alternatives. In each of those alternatives, the motorized dispersed camping policy was the same.

The Forest Service failed to consider a reasonable range of alternatives because it illegally eliminated from detailed study an alternative that would not allow a 300-foot motorized dispersed camping corridor along routes, but would rather institute a parking rule and designate spur routes to popular dispersed campsites. In our comments, we requested that the Forest

Service consider such a policy. However, even though the Forest Service admits that cross-country travel causes serious impacts to wildlife habitat and results in the "establishment of new unplanned and unneeded routes," FEIS at 49, the agency decided not to analyze our proposed policy. The agency decided not to consider eliminating the 300-foot corridors on either side of designated routes in an alternative, describing the idea as "infeasible at this time" because it had not yet inventoried and evaluated possible spur routes.

The FEIS's statement of purpose and need incorporates, among other things, the need to manage for resource protection and designate a system that does not cause unacceptable resource damage to wildlife populations, wildlife habitat, plants, water, fish, aquatic habitats, timber, vegetative ecosystems, cultural resources, and air. FEIS at 15. It is clear that the parking rule and designation of spur routes to dispersed campsites we suggested fits comfortably within—and would have helped to achieve—that purpose and need, and it was unreasonable for the Forest Service to eliminate this suggestion from detailed analysis.

In addition, 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 1,800 miles of routes, it could designate corridors along *certain* routes that would add up to 0%, 10%, 30%, and 50% of the transportation system. 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 in violation of NEPA.

Response: The appellants assert the Forest Service failed to analyze a reasonable range of alternatives for the motorized dispersed camping policy. The Forest Service is required to examine reasonable alternatives to the proposed action. An alternative should meet the purpose and need of the project (36 CFR § 220.5). The purpose and need of the project as stated in the Record of Decision follows:

> The purpose of this action is to improve travel management on NFS lands within the Gunnison and Paonia Range Districts…this action is needed to designate a sustainable transportation system that provides for public and management access, recreation opportunities, natural and cultural resource protection, public safety and agency management success within its capabilities. (ROD p. 1)

The purpose of the Travel Management Decision is not to establish a dispersed camping policy, but rather to improve travel management on the Gunnison National Forest. However, as recognized in the analysis, dispersed camping (like many other resource areas) will be impacted by the decision. The Forest Service has presented an adequate range of alternatives to the overall objective of improving travel management and designating a sustainable transportation system. Each alternative was analyzed for impacts to dispersed camping and 48 other specific resource areas or other areas of concern (FEIS Table 2-7 p. 50-53).

The appellant alleges that the Forest Service did not consider a specific alternative referred to as the "parking rule/designates spurs policy." The agency considered this alternative, but

eliminated it from detailed study. As explained in the FEIS section *Alternatives Considered but Eliminated from Detailed Study*, the Forest Service briefly discussed multiple alternatives considered to this point in the process. A variation to the proposed action includes "required all dispersed camping access to be on designated routes, with no 300-foot exemption throughout the analysis area" (FEIS p. 49).

The FEIS explains the rationale:

> Few public comments expressed a desire for travel management to address these types of variations [300-foot exemption and others]. In general, these variations are inconsistent with Forest Plan or BLM Resource Management Plan direction and did not address the purpose and need for the action. Eliminating the existing 300-foot exemption for dispersed camping to travel off of designated routes for dispersed camping was considered, but due to a lack of inventory and evaluation requirements, this variation to travel management is not feasible at this time... (FEIS p. 49)

The analysis clarified that a lack of public desire and other reasons excluded these options from further review. Subsequently, they were not analyzed in detail included in the preferred alternative, or other action alternatives (FEIS p. 49).

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Failed to comply with the minimization criteria

The Forest Service violated the Executive Orders, TMR, and NEPA by not minimizing the effects of its route designations on natural resources and by not demonstrating on the record how route designations minimized effects. The Forest has designated NFTS roads and trails for continued motor vehicle use without applying the appropriate criteria as required by executive orders and the Travel Management Rule.

The general criteria is described in 36 CFR 212.55(a), and Executive Order 11644 § 3. The Forest Service erred in designating particular roads and 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. A recent court decision involving the parallel BLM travel management regulations implementing the same Executive Orders confirms that a failure to show specifically how the minimization criteria are reflected in route designation decisions is fatal to a decision implementing the regulations and Orders. See *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"); *compare* 43 C.F.R. § 8342.1 (BLM regulations) *with* 36 C.F.R. § 212.55(b) (Forest Service regulations).

In addition, § 9 of Executive Order 11644, as amended by Order 11989, states as a separate mandatory requirement:

> Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

Ex. Ord. 11644, as amended by Ex. Ord. 11989 at § 9 (emphasis added). This requirement too is implemented through Forest Service regulations. *See* 36 C.F.R. § 212.52(b)(2). Although the Forest Service has a mandatory duty to minimize the adverse impacts of off-road vehicle use to the natural resources of the Gunnison National Forest and to minimize conflicts between recreationists, the Gunnison Travel Plan fails to demonstrate that the agency has carried out its duty to make 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.

Response: The appellants contend the decision violated the terms of Executive Order 11644, and the Travel Management Rule and NEPA, by not observing criteria to minimize environmental effects of roads and trails, and by not demonstrating how effects were minimized.

The referenced Executive Order seeks to ensure that the use of off-road vehicles on public lands be controlled and directed to protect resources, promote the safety of users of those lands, and minimize conflicts among the users of those lands. The Department of Agriculture produced the 2005 Motorized Travel Rule to be consistent with 11644 and 11989, and to serve as the means to implement the policy direction contained in those Orders.

The 2005 Motorized Travel Rule places emphasis on considering and reducing the effects of motorized trails. The development of alternatives specifically included the objective of minimizing environmental effects on soils, watersheds, vegetation, and wildlife, as well as conflicts between trail user groups. By implementing the 2005 Travel Management Rule, the Forest is consistent with the referenced Executive Orders and criteria to minimize resource damage.

The Travel Management Rule Response to Comments section clarified the intent, stating:

> It is the intent of E.O. 11644 that motor vehicle use of trails and areas on Federal lands be managed to address environmental and other impacts, but that motor vehicle use on Federal lands continue in appropriate locations. An extreme interpretation of "minimize" would preclude any use at all, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect the full context of E.O. 11644 or other laws and policies related to multiple uses of NFS lands. (Federal Register Vol. 70, No. 16, pg. 68281)

The record demonstrates multiple occasions when the Forest Service considered ways to minimize the effects of its route designations on natural resources. Some examples follow:

- *Travel Management – Engineering, Enforcement, Education, and Evaluation Report*: outlines the goal of having a motorized route system that is both manageable and sustainable…and to reduce the environmental and social impacts.

- *Considerations in Design of Our Transportation System Report*: further articulates the goal to provide a variety of users with a diverse experience while minimizing impacts to resources.

- Staff Report, 2007: Step 3 identifies many environmental aspects for changes to the current transportation system including route-by-route evaluations screens (erosion, hazards, effects on streams, wildlife, T&E species, cultural resources, etc) to close routes.

- Correspondence with Additional Forest Service Engineering Staff: Email from Forest engineering staff to Regional Office staff demonstrated additional consideration to meet the requirements of a minimum transportation system.

- *Travel Analysis Section* (FEIS p. 10-14): Includes a discussion of the existing transportation system as a starting point for analysis and the thought process to move toward a sustainable travel network. The culmination in part was a "route-by-route travel analysis yielded a viable and sustainable transportation system of roads and trails that is defined as a minimum road system" (FEIS p. 14).

Other specific considerations about the effort to minimize the transportation system can be found in the discussion about 1) project scope (FEIS p 16); 2) preferred alternative (FIES p. 42); 3) Table 2-7 (FEIS p. 50-53); 4) sustainability, maintenance, and funding (FIES p. 258); 5) preferred alternative and the minimum transportation system (FIES p. 265-266); and 6) effects to resources (ROD p. 9-12).

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Failed to take a hard look at actions of site-specific impacts

Below, we point out the several route-specific examples of how the responsible official failed to minimize—or at least demonstrate on the record that he 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)(1) and (2):

- Snow Mesa Trail (#787) from non-motorized to motorized (single-track motorcycle);
- Trail #557 (Teocalli Ridge) was designated as open to motorized vehicles;
- Left Hand Trail #495 was designated as open to ATV use in every action alternative;

- Trail # 578.2A (Sargents Mesa) was designated as open to high clearance motorized use in every action alternative.

Each route and motorized dispersed camping corridor designation requires a detailed analysis of the effect of that designation on the minimization criteria of the executive orders and TMR, as well as other issues raised by staff and the public during comment periods.

Response: The appellants contend the decision violated NEPA by failing to take a hard look at site-specific effects of individual route designations. Regulation 40 CFR 1500-1508 require Federal agencies to consider and disclose the effects of their actions, but there is no substantive requirement to minimize or eliminate them.

The appellants also refer to Executive Order 11644. As clarified in the previous appeal response the language regarding minimization of impacts was clarified:

> It is the intent of E.O. 11644 that motor vehicle use of trails and areas on Federal lands be managed to address environmental and other impacts, but that motor vehicle use on Federal lands continue in appropriate locations. An extreme interpretation of "minimize" would preclude any use at all, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect the full context of E.O. 11644 or other laws and policies related to multiple use of NFS lands."

The specific trails mentioned by the appellants were considered in terms of location, use, resource implications, etc in multiple locations:

- Snow Mesa Trail (ROD p. 35, ROD Appendix B p. B-12, FIES Response to Comments p. x-21)
- Teocalli Ridge (ROD p. 37, ROD Appendix B p. B-9, FIES Response to Comments p. x-212)
- Left Hand Trail (ROD p. 33, ROD Appendix B p. B-7)
- Sargents Mesa (ROD p. 24-25, ROD Appendix B p. A-7)

Based on the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Identified (12) motorized dispersed camping corridors should be closed until further evaluation

The Forest Service already knows motorized dispersed camping is causing adverse impacts to natural resources, those 12 corridors should have been closed by the decision and the designation of spur routes within those corridors should not have been deferred for some later time. *See* ROD at 18 ("Based on further evaluation of the dispersed camping situation on the Gunnison National Forest, I have also determined that there are some areas where this exemption for dispersed camping may be causing unnecessary resource damage and may be resulting in less than desirable recreational experiences."). The failure to close these 600-foot corridors (i.e.,

300-feet on either side of the route) to off-route motorized use *now* is a violation of sections 3 and 9 of the executive orders and section 212.55(b) of the TMR.

Response: The appellants allege a violation of the Travel Management Rule and Executive Orders. The Forest Service addressed concerns about the 12 corridors in question, and discussed a plan to evaluate specific resource concerns and appropriate management responses within the next six years.

The FEIS considered and disclosed impacts to these 12 routes in multiple places (FEIS p. 10-14, 190-191, ROD p. 9-12, 13, 18, FEIS Response to Comments p. x-18-19, x68-69, etc) and sets the stage for further assessment and a separate decision. This decision is not a violation of the Travel Management Rule, which specifically states that "the responsible official shall consider effects...with the object of minimizing." TMR, 212.55(b) The decision identifies these 12 corridors and lays out a plan to assess them individually with the clear intent of minimizing resource damage.

Based on the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Did not considering an alternative that closed all routes involving motorized dispersed camping

The agency failed to comply with NEPA by not considering in detail an alternative that would have closed routes and corridor areas in which motorized dispersed camping is allowed that were specifically suggested by the public due to the natural resource damage they cause and/or conflicts between recreational users of the forest. Further, the Forest Service failed to consider a reasonable range of alternatives by not considering an alternative that would have fully complied with the minimization criteria of Executive Order 11644, as amended by Executive Order 11989, and the Travel Management Rule at 36 C.F.R. § 212.55. This failure has caused the Forest to foreclose options that would protect, restore, or enhance the environment. Moreover, the Forest Service failed to provide a rational explanation as to why these alternatives should not be considered in detail.

Response: The appellants allege a violation of the Executive Order, the Travel Management Rule, and NEPA by not considering a reasonable range of alternatives, including one that closed all routes causing natural resource damage.

An alternative should meet the purpose and need of the project (36 CFR § 220.5). The purpose and need of the project as stated in the Record of Decision follows:

> The purpose of this action is to improve travel management on NFS lands within the Gunnison and Paonia Range Districts...this action is needed to designate a sustainable transportation system that provides for public and management access, recreation opportunities, natural and cultural resource protection, public safety and agency management success within its capabilities. (ROD p. 1)

The purpose of the Travel Management Decision is not to establish a dispersed camping policy, but rather to improve travel management on the GMUG National Forest. However, as recognized in the analysis, dispersed camping (like many other resource areas) will be impacted by the decision. The Forest Service has presented an adequate range of alternatives to the overall objective of improving travel management and designating a sustainable transportation system. Each alternative was analyzed for impacts to dispersed camping and 48 other specific resource areas or other areas of concern (summarized in FEIS Table 2-7 p. 50-53).

The appellant alleges that the Forest Service did not consider a specific alternative that fully complied with the minimization criteria. The agency considered an alternative that would have required dispersed camping to be on designated routes, with no 300-foot exemption, but eliminated it from detailed study. As explained in *Alternatives Considered but Eliminated from Detailed Study*, the Forest Service considered multiple alternatives, but eliminated them from further review.

The FEIS explains this:

> Few public comments expressed a desire for travel management to address these types of variations [300-foot exemption and others]. In general, these variations are inconsistent with Forest Plan or BLM Resource Management Plan direction and did not address the purpose and need for the action. Eliminating the existing 300-foot exemption for dispersed camping to travel off of designated routes for dispersed camping was considered, but due to a lack of inventory and evaluation requirements, this variation to travel management is not feasible at this time... (FEIS p. 49)

The analysis clarified that a lack of public desire and other reasons excluded these options from further review. Subsequently, they were not included in the DEIS proposed action, preferred alternative, or other action alternatives (FEIS p. 49). The Forest Service evaluated this alternative against the purpose and need for the project and provided rational explanation as to why it was not included moving forward.

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Motorized designation of the Carbon Trail

The Forest Service's Motorized Designation of the Carbon Trail (#436) Violates Executive Order 11644, as amended by Executive Order 11989, the TMR, the Administrative Procedure Act, and NEPA. The motorized designation of the Carbon Trail and a motorized dispersed camping corridor along it fails to comply with the minimization criteria of the executive orders and TMR. The Carbon Trail cuts through the heart of the Whetstone IRA, and the Forest Service's decision to designate it as motorized, along with an associated motorized dispersed camping corridor, in this travel plan arbitrarily and capriciously jeopardizes the health and future protection of these wildlands...The Gunnison does not show how the minimization criteria regarding wildlife and conflicts with other forest users, including hunters and hikers, are reflected in its decision relative to the Whetstone area. Nor does it show how the other

minimization criteria were adhered to in the Carbon Trail designation. Each route and motorized dispersed camping corridor designation requires a detailed analysis of the effect of that designation on the minimization criteria of the executive orders and TMR, as well as other issues raised by staff and the public during comment periods.

Response: The appellants allege violation of Executive Order 11644, as amended by Executive Order 11989, the TMR, the Administrative Procedure Act, and NEPA with the motorized designation of the Carbon Trail.

The 2007 Staff Report completed for the Gunnison National Forest Travel Management project demonstrates the Forest undertook a comprehensive, route-by-route, planning process prior to issuing the Record of Decision (ROD). Several "factors", including recreation, environmental, and operational, were considered; these factors, which contain a comprehensive subset of resource considerations (T&E wildlife needs, Inventoried Roadless Areas, watershed sensitivity ratings, etc.), helped define the "sideboards" or scope of the analysis.

The Staff Report goes on to describe the route-by-route evaluation process that was used to aid in making route determinations. The objective of the route-by-route assessments was "to define a transportation system within the agency's ability to manage, operate, and maintain; and to offer a variety of users with a diverse experience while minimizing impacts to resources" (Staff Report, p. 5). The previously mentioned "factors" and the route-by-route evaluation criteria included in the 2007 Staff Report encompass all of the "minimization criteria" outlined in E.O. 11644 (Section 3).

Information contained in the 2007 Staff Report was used to develop a Route-by-Route Spreadsheet (2007) for the Gunnison NF Travel Management project. The spreadsheet identifies Trail 436 and includes information relative to wildlife resources, the area's proposed wilderness designation, and a synopsis of public comments. Information contained in the spreadsheet was used to develop the alternatives analyzed in the FEIS, including the designation of Trail 436 as a motorized trail.

FEIS Tables 3-32 and 3-35 demonstrate that adjusted road densities and elk habitat effectiveness, respectively, would be reduced from existing conditions in the Whetstone lynx analysis unit (LAU) under the Preferred Alternative (Alternative 5 - decision). These tables indicate that impacts to wildlife would be reduced in the Whetstone IRA under the selected alternative.

Pages 22 and 23 of the ROD specifically discuss allowing continued motorcycle use on Trail 436 through the Whetstone IRA. The decision recognizes that resource impacts exist on the northern of the trail in the area known as Wildcat canyon; it also indicates that this segment of trail will remain closed to motorized use until resource impacts can be mitigated, repaired, or resolved (p. 23). This decision recognizes the existing problem area and includes language to ensure that impacts to the IRA are minimized, as required by E.O. 11644 and 36 CFR Parts 212, 251, 261, and 295 Travel Management.

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Hard look at the effects of motorized designation of the Carbon Trail

The Forest Service failed to take a hard look at the effects of the Carbon Trail's motorized designation on roadless in violation of NEPA. The FEIS must "disclose that significant roadless areas will be affected [under the motorized travel plan] and take the requisite 'hard look' at the environmental consequences of that fact," including analyses of the plan's effects on "water resources, soils, wildlife habitat, and recreation opportunities." In other words, the Forest Service must carefully analyze and disclose impacts to "Roadless Area Characteristics"...the Forest Service did not take a hard look, let alone any look, at the specific environmental effects of the Carbon Trail's motorized designation in its NEPA documents, nor did it take a hard look at the effects that the 600 foot motorized dispersed camping corridor along the 6.34 miles route will have on the IRA, a corridor that totals 461 acres.

Response: The appellants allege the Forest Service ignored environmental effects of the Carbon Trail's motorized designation, including impacts to roadless characteristics.

Information pertaining to roadless areas is contained on FEIS pages 236 and 237. While this FEIS section outlines the history of the Roadless Area Conservation Rule (currently enjoined in Colorado) and how it guides management of roadless areas on the Gunnison NF, it does not contain information specific to motorized trail designations associated with this project. The Roadless Areas discussion in the FEIS (pp. 236 – 237) simply states, "There are motorized trails within some roadless areas; however, the presence of those trails is not considered in conflict with the roadless area management objectives."

Although the FEIS section does not specifically provide an analysis of the nine characteristics that define inventoried roadless areas, it does contain affected environment and environmental consequences information for a variety of resource areas including wildlife and wildlife habitat. Pages 9 – 12 of the ROD also provide a synopsis of the effects to resources (soil, water, wetland, aquatic resources, wildlife, etc.). This information supports the decision maker's conclusion that the adverse environmental effects associated with the decision will be less than under current travel management.

Pages 22 and 23 of the ROD specifically outline the rationale for allowing continued motorcycle use on Trail 436 (Carbon Trail) through the Whetstone IRA. This section indicates that: a) motorized use on the Carbon Trail meets Forest Plan management area direction; b) that the Carbon Trail is the only travel route within the management unit and is therefore the only travel opportunity that can meet the area's motorized designation; and c) the area's current wilderness character exists with motorized and mechanized use and that continued motorized use of the trail will not change its character.

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Carbon Trail and CDOW recommendation

The Forest Service failed to take a hard look at the effects of the Carbon Trail's motorized designation on roadless in violation of NEPA. CDOW recommended: Concur with this IRA remaining *Semi-primitive Non-motorized and motorized travel occurring only on designated routes on the periphery of the IRA.* No new routes for motorized or mechanized travel should be designated within this IRA.

The Forest Service did not act on this information by analyzing the effects of the motorized/mechanized Carbon Trail designation on wildlife or its habitat...The failure to take a hard look at these effects of motorized designation of the Carbon Trail and designation of a 600-foot motorized disperse camping corridor along it violates NEPA because the Forest Service must examine how its actions will affect the Whetstone IRA's roadless characteristics, including plant and animal diversity and habitat for T/E species, sensitive species, and species that depend on large, undisturbed areas of land.

Response: The Colorado Division of Wildlife's (CDOW) comment letter on the Gunnison Travel Management Draft EIS (dated May 28, 2009) was reviewed relative to comments pertaining to the Whetstone IRA remaining *"semi-primitive non-motorized and motorized travel occurring only on designated routes on the periphery of the IRA."*

The cover letter attached to the actual comments indicates that CDOW staff reviewed documents and maps specific to the travel management analysis and that the CDOW worked closely with the Bureau of Land Management and the Forest Service during the alternative development process. This information is supported by several Forest Service responses to CDOW's comments (FEIS, Response to Comments Appendix, Comments C9, M99, W30, W45, and W78). This indicates CDOW's comments were considered and incorporated into the analysis process.

The following information provides information on the effects of the Preferred Alternative on plant and animal species:

- FEIS page 77 indicates that there are no Threatened or Endangered (T&E) plants found on federal lands within the analysis area; therefore, no effects to these species are anticipated; FEIS page 81 indicates that sensitive plant species may be affected by implementation of the Preferred Alternative, but that there would not be a loss of species viability within the analysis area nor cause a trend toward federal listing or a loss of species viability range-wide;
- FEIS pages 136 - 151 indicate that implementation of the Preferred Alternative would either have no impact or would result in beneficial impacts to sensitive wildlife species.
- FEIS pages 155 – 157 indicate that implementation of the Preferred Alternative "may affect, but is not likely to adversely affect Canada lynx" (Threatened species) and would have "no effect" on the Uncompahgre fritillary butterfly (Endangered species).

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Failure to analyze Carbon Trail designation on resources

The Forest Service has never analyzed the route- and motorized dispersed camping corridor-specific effects of the Carbon Trail's motorized/mechanized designation on soils, water quality, watershed health, or quiet recreational experiences either. For instance, while the Forest Service includes in its rationale for the last-minute change to the Carbon Trail designation that it is basing that change on Recreation Opportunity Spectrum (ROS) classifications, it never completed an analysis of the motorized/mechanized designation on recreational user conflict. This is so even though the executive orders and TMR specifically require the Forest Service to minimize user conflict, and the omission occurred even though many comments in the record indicated that quiet recreationists had experienced conflicts with motorized users in the Whetstone IRA and along the Carbon Trail in the past. *See, e.g.*, FEIS, Appendix X at 247; FEIS, Appendix XX at 72-73, 77 (Response # Ss 226 indicates even mountain bikers would like motorized use out of the IRA). The agency's failure to take a hard look at the effects of the Carbon Trail's motorized/mechanized designation on wildlife and wildlife habitat, quiet recreational experiences, water quality, watershed health, and soils constitutes a violation of NEPA.

Response: The appellants assert the Forest Service violated NEPA by failing to take a hard look at the effects of the Carbon Trail's motorized designation on wildlife and other resources, and failed to minimize user conflict based on this decision. The Forest Service did take a hard look at the impacts of this designation, considered public comment about the designation, and took steps to minimize recreational user conflict.

The purpose and need for the action is to "determine the location and management of roads and trails needed for a transportation system that provides for resource protection, public safety, and recreational opportunities..." (FEIS p.15). The decision identified public safety in the context of recreational opportunities as specific drivers for this effort. It further explains that "strategies are needed to provide recreational experiences for motorized and non-motorized travelers that balance recreation use demands with public safety..." (FEIS p. 15)

The FEIS takes a deeper look into minimizing user conflict, including a *Crowding, Density, and Conflict* section. This discloses conflicts between user groups and provides that "the closure of almost 1,146 miles of routes on Forest Service lands would help to reduce density and conflict issues with hunters and other visitors who desire a more non-motorized experience." (FEIS p. 199) The conversion of specific designations from jeep trails and full-sized high-clearance vehicle roads to ATV trails "would have a positive effect on crowding, density, and conflict issues as new opportunities are created for these types of recreational vehicles, taking into consideration loop and through opportunities." (FEIS p.199)

The analysis from the FEIS is carried through into the ROD, which expresses that the Carbon Trail is one of the most controversial covered under this decision. Forest Supervisor Charlie Richmond considers public comments representing multiple sides interested in the Carbon Trail (FEIS Response to Comments, p x-128, x-129, x-135, xx-34, xx71-xx-76, etc). The decision to

keep the Carbon Trail a single-track motorized trail is consistent with the Forest Plan and considered public comments and subsequent analysis.

The decision took a hard look at the effects of the Carbon Trail on other resources (watershed, soils, etc), resulting in immediate closure of the Wildcat Canyon section of the trail "until resource damage concerns associated with the trail can be mitigated." (ROD p. 23) A hard look into resource damage by the Forest Service resulted in closing a section of this popular motorized and mechanized trail.

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Failed to consider effects of Carbon Trail and dispersed camping on roadless characteristics

An additional NEPA violation is that the Forest Service failed to consider the effects that increased motorized and mechanized use of the Carbon Trail and its motorized dispersed camping corridor would have on roadless characteristics. Despite the acknowledgment that closures can lead to increased use of other nearby routes, the agency never specifically examined the effects on the Whetstone IRA of increased motorized and mechanized use of the Carbon Trail and its associated motorized dispersed camping corridor. This failure is problematic for the Gunnison NF because in similar situations courts have held that ORV designation plans violate NEPA when they fail to consider the potential for and effects of increased use. *Wash. Trails Alliance*, 935 F.Supp. at 1123-24.

Response: The appellants allege the Forest Service violated NEPA by failing to consider the effects of increased motorized and mechanized use of the Carbon Trail would have on roadless characteristics. The decision allows for the continued use as a single-track motorized trail.

Information pertaining to "Roadless Areas" is contained on FEIS pages 236 and 237. While this FEIS section outlines the history of the Roadless Area Conservation Rule (currently enjoined in Colorado) and how it guides management of roadless areas on the Gunnison NF, it does not contain information specific to motorized trail designations associated with this project. The Roadless Areas discussion in the FEIS (pp. 236 – 237) simply states, "There are motorized trails within some roadless areas; however, the presence of those trails is not considered in conflict with the roadless area management objectives."

Although the FEIS section does not specifically provide an analysis of the nine characteristics that define inventoried roadless areas, it does contain affected environment and environmental consequences information for a variety of resource areas including wildlife and wildlife habitat. Pages 9 – 12 of the ROD also provide a synopsis of the effects to resources (e.g., soil, water, wetland, aquatic resources, wildlife, etc.). This information supports the decision maker's conclusion that the adverse effects associated with the decision will be less than under current travel management.

The ROD specifically outline the rationale for allowing continued motorcycle use on Trail 436 (Carbon Trail) through the Whetstone IRA (ROD p. 22-23). This section indicates that: a) motorized use on the Carbon Trail meets Forest Plan management area direction; b) that the Carbon Trail is the only travel route within the management unit and is therefore the only travel opportunity that can meet the area's motorized designation; and c) the area's current wilderness character exists with motorized and mechanized use and that continued motorized use of the trail will not change its character.

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Disregard public input regarding negative environmental impacts

Input from the public drawing the agency's attention to negative environmental implications, including the potential for increased future use, was given short shrift: "I have considered these assertions and find that the area's current wilderness character exists with motorized and mechanized use; and therefore, continued use should not change its character." ROD at 22. An examination of the record indicates that there is no effects analysis supporting the Forest Supervisor's rationale for designating the Carbon Trail as motorized, nor is there any support in the record for the assumption that continued use would not equate to increased use. Because the Forest Service failed to take a "hard look" at any of the environmental effects and recreational conflicts issues associated with designating the Carbon Trail as motorized and mechanized and designating a motorized dispersed camping designation along the trail—which, again, comprises 471 acres in the middle of the Whetstone IRA—the agency violated NEPA.

Response: The appellants allege the decision violated the NEPA hard look requirement when designating the Carbon Trail as motorized. The use of the Carbon Trail prior to and after the decision has not changed; it remains a single-track motorized trail, consistent with the Forest Plan (ROD p. 22). Therefore, the effects analysis is the current condition, analyzed in detail under the no action alternative.

Forest Supervisor Charlie Richmond did take a hard look at the impacts of maintaining this and even closed the northern section to all motorized and mechanized travel (ROD p. 23).

Pages 22 and 23 of the ROD specifically outline the rationale for allowing continued motorcycle use on Trail 436 (Carbon Trail) through the Whetstone IRA. This section indicates that: a) motorized use on the Carbon Trail meets Forest Plan management area direction; b) that the Carbon Trail is the only travel route within the management unit and is therefore the only travel opportunity that can meet the area's motorized designation; and c) the area's current wilderness character exists with motorized and mechanized use and that continued motorized use of the trail will not change its character.

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Failed to take a hard look at the effects of the Carbon Trail's designation on wilderness

The Forest Service must disclose the effect of designating motorized routes in roadless areas on potential wilderness designation. *Lands Council v. Martin*, 529 F.3d . 1219, 1230 (9th Cir. 2008). The Forest Service failed to take a hard look at the effects that motorized designation of the Carbon Trail could have on potential wilderness designation of the Whetstone IRA. Even though the Gunnison NF now turns a blind eye to its own analysis, just three years ago the agency itself recommended the Whetstone IRA for designation as wilderness in a pre-NEPA, non-planning rule dependant analysis. Whether or not the agency now refuses to acknowledge the findings of its own experts, it cannot deny that a motorized/mechanized designation in the Whetstone IRA could have an effect on the likelihood that Congress will designate this greater than 5,000 acre roadless area as wilderness.

The Forest Service certainly did not take a hard look at the effects of its motorized/mechanized designation of the Carbon Trail on potential designation of the Whetstone IRA as Wilderness. We find it disingenuous for the Forest Service to disregard as outside the scope of the analysis many comments that people would like to see the Whetstone IRA contain only hiker and equestrian trails, in part, because they would like to see the Whetstone area designated as Wilderness. *See* FEIS Appendix XX at 71-73. While this planning process was not about commenting on the Forest Service's 2007 recommended wilderness proposals, it was emphatically about what uses the Forest Service allows in what areas, and what the effects of those decisions will be. It is not within the discretion of the agency to avoid an analysis of the effects of its actions on *Congress's prerogative* to designate the area as wilderness.

The Forest Service's failure to rely on its own experts' wilderness evaluation without refuting that evaluation is a violation of the Administrative Procedure Act and NEPA. The decision to designate the Carbon Trail as motorized in the Selected Alternative is arbitrary and capricious because the USFS failed to consider existing agency expert analysis of the capability and suitability of the Whetstone IRA for wilderness designation. Although the agency may not be bound by the wilderness recommendations found in the draft forest plan because the plan was never finalized, the Forest Service *is* bound to take into account the comprehensive, accurate, and available analysis of the Whetstone IRA that guided development of that draft plan, an analysis that we remind the Forest Service was completed by its own experts. To ignore the high quality research and recommendations associated with the 2007 Draft Forest Plan is to arbitrarily disregard existing, reputable information produced by the agency itself. Moreover, if the Forest Service wishes to back away from this expert analysis in this travel planning process, it must explain how conditions on the ground have changed between 2007 and the present, which it has not.

The Forest Service cannot ignore the wilderness recommendation, and particularly the analysis from the agency's 2005 Inventory that was the basis for that recommendation, merely because the forest plan revision was not finalized. While it did not go through a final public review, the draft forest plan nevertheless comprised a wealth of pertinent information, as well as recommendations based on extensive expert analysis of roadless areas contained in the 2005

GMUG Roadless Inventory. According to the Washington Office, such evaluations are planning-rule neutral. *See* Attachment A. In addition, the validity of such data and expert analyses is not dependent on public input. The agency erred when it did not incorporate the 2005 GMUG Roadless Inventory and 2007 Draft Forest Plan recommendations in its analysis of the Carbon Trail. To consciously ignore the agency's own expert analyses and recommendations in making its management decisions is the height of arbitrary and capricious behavior.

Response: The appellants allege that the decision violated NEPA and by failing to take a hard look of the effects of the Carbon Trail's designation on wilderness characteristics, and ignored agency evaluation of wilderness. They further assert that the designation of the Carbon Trail as motorized was arbitrary and capricious. The use of the Carbon Trail prior to and after the decision has not changed; it remains a single-track motorized trail, consistent with the Forest Plan (ROD p. 22).

Pages 22 and 23 of the ROD specifically outline the rationale for allowing continued motorcycle use on Trail 436 (Carbon Trail) through the Whetstone IRA. This section indicates that: a) motorized use on the Carbon Trail meets Forest Plan management area direction; b) that the Carbon Trail is the only travel route within the management unit and is therefore the only travel opportunity that can meet the area's motorized designation; and c) the area's current wilderness character exists with motorized and mechanized use and that continued motorized use of the trail will not change its character.

The FEIS *Travel Analysis* section discussed the *Roads Analysis Report* that included the NSRE Uses and Values of Wildlife and Wilderness in the United States (FEIS p. 12). More detailed consideration of wilderness designation is evident in the Record of Decision:

> Some content that this area's roadless nature and efforts to obtain a wilderness designation for it should be managed through non-motorized travel designation. Additionally, some suggest that continued use by motorcycles and mountain bikes compromises the wilderness character of the area. Still others contend that because the trail has been traditionally open to motorized and mechanized trail riding, which is consistent with the Forest Plan direction, there is no need for change. I have considered these assertions and find that the area's current wilderness character exists with motorized and mechanized use...(ROD p. 22)

The agency took a hard look at continued motorized and mechanical use on the Carbon Trail and disclosed the effects in the ROD. Forest Supervisor Charlie Richmond discussed his decision, which considered, analyzed, and provided rationale for maintaining motorized and mechanical use on the Carbon Trail.

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: The Crest Trail's Motorized Designation Is Inconsistent with the National Trails System Act, the Comprehensive Management Plan for the CDNST, the ORV Executive Orders, and the TMR

Motor vehicle and bicycle use by the general public on the CDNST is prohibited, except where allowed by limited exception. 16 U.S.C. § 1246(c). Although a 1978 amendment to the NTSA allows for limited motor vehicle use along the CDNST if certain requirements are met, *id.*, the Forest Service has the burden to establish the requirements of the exception are satisfied when it proposes alternatives that would allow motor vehicle use on the CDNST as opposed to managing the trail for hiker and equestrian use only.

The Crest Trail's Motorized Designation Is Inconsistent with the National Trails System Act, the Comprehensive Management Plan for the CDNST, the ORV Executive Orders, and the TMR. The *Continental Divide National Scenic Trail Comprehensive Plan* and FSM Policy direction became effective in 2009—months prior to the finalization of the EIS and signing of the ROD. The Gunnison NF should now be implementing the CDNST Comprehensive Plan. Pertinent passages in the Plan state:

> Motor vehicle use on the CDNST is prohibited on the CDNST, unless that use is consistent with the applicable land management plan *and*:
> (1) Is necessary to meet emergencies;
> (2) Is necessary to enable adjacent landowners or those with valid outstanding rights to have reasonable access to their lands or rights;

Specific Forest Service Manual direction regarding management of the CDNST echoes these prescriptions. Decisions to be made by the Gunnison NF include whether to allow bicycle and motor vehicle use on the CDNST, but those decisions must be made in light of and based on the criteria in the Comprehensive Plan and FSM. In its FEIS and ROD, the Gunnison has not established that motorized use on this portion of the CDNST is necessary for emergency purposes or for landowner access needs. The USFS made decisions to allow motorized and mechanize use, but did so without providing sufficient analysis and justification for either making this portion of the CDNST motorized, nor for the motorized dispersed camping corridor that accompanies this stretch of trail.

The Crest Trail's Motorized Designation Is Inconsistent with the National Trails System Act, the Comprehensive Management Plan for the CDNST, the ORV Executive Orders, and the TMR. The *Continental Divide National Scenic Trail Comprehensive Plan* and FSM Policy direction became effective in 2009—months prior to the finalization of the EIS and signing of the ROD. The Gunnison NF should now be implementing the CDNST Comprehensive Plan. Pertinent passages in the Plan state:

> Motor vehicle use on the CDNST is prohibited on the CDNST, unless that use is consistent with the applicable land management plan *and*:
>
> 5) Is designated in accordance with 36 C.F.R. Part 212, Subpart B, on National Forest System lands or is allowed on public lands *and*:
>
> a) The vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978, *and* the use *will not substantially interfere* with the nature and purposes of the CDNST or

b) That segment of the CDNST was constructed as a road prior to November 10, 1978; or

(6) In the case of over-snow vehicles, is allowed in accordance with 36 CFR Part 212, Subpart C, on National Forest System lands or is allowed on public lands and the use will not substantially interfere with the nature and purposes of the CDNST.

The Gunnison has not established that the motorized use was on-going prior to November 1978 and that that use will not substantially interfere with the nature and purposes of the CDNST. The USFS made decisions to allow motorized and mechanize use, but did so without providing sufficient analysis and justification for either making this portion of the CDNST motorized, nor for the motorized dispersed camping corridor that accompanies this stretch of trail. For example, the agency addressed motorized use with the following rationales:

For those other sections of the CDNST that would allow motorized travel, it has been determined that continuation of this type of use would not substantially interfere with the nature and purposes of the CDNST. The existing use and modes of travel have not been shown to result in unacceptable levels of environmental impact and continued motorized use was supported in many of the public comments.

These statements are not supported by facts contained in the record for this decision and do not meet the scientific integrity requirements of NEPA, neither do they address whether this use was on-going prior to 1978 or disclose evidence supporting that conclusion.

The ROD's Crest Trail designation violates and disregards the specific language in Section 7(c) of the National Trails System Act and directives in the *Comprehensive Plan* that generally prohibit motorized use on National Scenic Trails, and further prohibit motorized use when it will "substantially interfere" with the nature and purpose of the trail. There is no analysis in any of the TMP documents of whether motorized use will "substantially interfere" with the nature and purpose of the CDNST, only conclusory statements. Furthermore, there are actually statements within the FEIS that indicate that continued motorized use *will* substantially interfere with the nature and purpose of the CDNST. For instance, in describing Alternative 3, which eliminates motorized use on the CDNST, the FEIS states:

On the CDNST and Colorado Trail, the designation of the majority of the trail between Monarch Pass and Spanish Divide as non-motorized would be a positive effect for many users and help to reduce crowding, density, and conflict issues.

Overall, this alternative addresses numerous crowding, density and conflict issues that currently exist in the analysis area for non-motorized users. However, the burden of minimizing crowding, density and conflict issues is placed on the motorized users as their recreation opportunities are reduced to allow for more non-motorized trail opportunities.

FEIS at 181. There is no detailed discussion of these conflict issues within the FEIS and the current crowding on the trail, both of which are exacerbated by an intensive use such as motorcycle riding. The Forest Service later attempts to justify its decision to allow for motorized use on the CDNST by stating that prohibiting motorized use on this trail will increase crowding

and user conflicts elsewhere in the forest. While this type of displacement is obviously something that the Forest must consider in making management decisions, the management policies of the CDNST and the requirements of the ORV Executive Orders 11644 and 11989 (which were discussed in great detail above) that motorized and non-motorized conflicts must be minimized must be complied with and have not been in this decision.

The ORV Executive Orders and 36 C.F.R. § 212.55(b) of the TMR require that "Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands." Further, pursuant to the TMR, in designating National Forest system roads, trails, and areas the USFS is required to "consider effects on National Forest System natural and cultural resources, public safety, provisions of recreational opportunities, access needs, conflicts among uses of National Forest System lands, [and] the need for maintenance and administration of roads . . . that would arise if the uses under consideration are designated; and the availability of resources for that maintenance and administration." 36 C.F.R. § 212.55(a). Examination of the DEIS, FEIS and ROD reveals no analysis by the agency that would support a motorized designation for the trail in light of the minimization criteria of both the executive orders and TMR. In fact, the Forest Service acknowledged that conflicts exist on the CDNST and that this decision will not address these conflicts. Because the Forest Service failed to demonstrate that continued motorized use on the CDNST complies with the mandate of the ORV Executive Orders and 36 C.F.R. § 212 that trails be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, the designation decision is in violation of the mandates of the ORV Executive Orders and TMR.

Response: The appellants raise many questions and concerns regarding the designation of the Continental Divide National Scenic Trail. In summary:

- Motorized designation is inconsistent with the National Trails System Act, the Comprehensive Management Plan for the CDNST, the ORV Executive Orders and the Travel Management Rule. Motor vehicle and bicycle use on the CDNST is generally prohibited, except where allowed by limited exception.
- The USFS made decisions to allow motorized and mechanized use, but did so without providing sufficient analysis and justification…
- The Gunnison has not established the motorized use was on-going prior to November 1978.
- It has not been determined that this type of use (continued motorized and mechanized) would not substantially interfere with the nature and purposes of the CDNST.
- The Forest Service did not demonstrate that continued motorized use has been located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses…

After reviewing the project record, the determination that the decision will not "substantially interfere" with the nature and purpose of the CDNST lacked supporting documentation. The FEIS does state the "use will not substantially conflict with the nature and purposes of the CDNST," however, the rationale for this statement is not apparent from review of the project

record. The ROD looks at multiple issues regarding the CDNST on pages 6 and 25, but fails to adequately address substantial interference. The record does support the assertion that motorized use was occurring on the trail prior to November 10, 1978 (email documentation from agency experts and locals in the area in the late 70s).

Forest Supervisor Charlie Richmond references a need for a longer-term solution to the management of the CDNST, involving more detailed site-specific efforts across multiple Ranger Districts and multiple Forest Service units, and the probability of such an outcome influencing travel designations on the CDNST (ROD p. 25, FEIS p. 198).

I recommend reversing the portion of the decision specific to the designation of the CDNST with instructions to move toward a better informed decision based on additional analysis.

Appeal Issue: High-Clearance Designations of Routes 578 and 578.2A are Arbitrary and Capricious

There Is No Legal, Existing Motor Vehicle Access to the Routes. The agency states that there is motorized access, yet even if this is so; it is *not* legal *public* motorized access. A careful examination of the 2009 Saguache District MVUM confirms that there is, in fact, no legal, public, full-sized motorized access leading to route 578. Furthermore, a road over the divide from Road 855 or 860 on the Rio Grande National Forest (RGNF) has *never* appeared as open to public use, which we confirmed by reviewing the 1975 and 1996 Forest Visitor maps and the 1999, 2002 and 2005 travel maps produced in conjunction with travel orders. Finally, examination of INFRA data from the RGNF shows that there is a timber road that extends up to the divide to connect with Road 578, but the operational and objective maintenance level of this road is Maintenance Level 1: *Closed*. We do not understand what type of "confirmation" the agency could possibly be referring to when it says there is motorized access to route 578 from the Saguache District, and we ask that the agency immediately present the exact evidence upon which it is relying to the public.

Since there is no legal, public, full-sized vehicle access to 578 and 578.2A from the Gunnison District lands, and there is no legal, public, full-sized vehicle access to these roads from the Saguache District, the high-clearance designation for these routes is unsupported by any rational analysis. In other words, there's no existing, legal access to these routes, so how does the Forest Service anticipate motor vehicles will get to them without breaking the law? Further, the agency has not completed the requisite NEPA analysis needed to open the only potential access point—the *closed* timber road, which likely should have been decommissioned in accordance with NFMA long ago. *See* 16 U.S.C. § 1608(b). An agency's explanation of the basis for its decision must be documented in and supported by an administrative record, which includes a "rational connection between facts found and the choice made." *Bowen v. American Hospital Ass'n*, 476 U.S. 610, 626 (1986). It is pre-decisional and improper to show a road system as open to a mode of use when there is no existing, legal public access to it.

Response – The appellants assert there is no legal, public, full-sized vehicle access to 578 and 578.2A.

According to the map provided (Figure 1C) all motorized access to the 578 and 578.2A from the Gunnison National Forest side are ATV or single track. The 2009 Gunnison Visitor Use Map shows 4WD access from the Saguache RD side, however the 2010 MVUM from Saguache does not show the 855 road extending to the 578. The Forest's response to the original comments from the Quiet Use Coalition (FEIS, App X, P X-120, M34) refers to their acknowledgement of motorized access (trail 813), however this motorized access is shown as single-track motorized on Figure 1C, indicating no legal full-sized vehicle access to the 578.

I recommend affirming this part of the decision with instruction to the Gunnison National Forest to resolve this issue.

Appeal Issue: Failed to consider route-specific evidence and suggestions submitted by the public.

The Forest Service failed to consider or respond to specific comments and recommendations provided by the public. On June 3, 2009, TWS alerted the agency that there may be resource impacts associated with a number of routes throughout our comments, which we asked the agency to analyze and assess. With the agency's release of the FEIS, we determined that although certain of our comments on the DEIS were noted, addressed, and analyzed, at least ten of our route-by-route comments were not addressed by the agency in any way.

The two documents (FEIS & ROD) do not include a discussion of the resource impacts associated with the above routes, nor do they consider alternatives that would close these routes to motorized use, thereby potentially minimizing resource impacts and recreational conflicts. By ignoring our route-specific comments, the USFS has opted to base a decision on incomplete information and therefore has adopted a decision that is not based on a consideration of the relevant factors or all of the evidence that was before the agency. This decision precluded the agency and the public from a full understanding of the issues and impacts associated with numerous trail designations. Below are a sampling of excerpts on specific trails from our comments that were overlooked by the agency in its FEIS and ROD:

- 400 (Brush Creek)
- 578 (McIntyre Gulch)
- 557 (Teocalli Ridge)
- 549 (Cameron Gulch)
- 495 (Left Hand)
- 427 (Gold Creek)
- 578.2A (Sargents Mesa)
- 426 (Fairview)
- 610 (Bear Gulch)
- 478 (Fossil Ridge)

Response: The appellants assert the decision failed to consider public comments on those ten routes. Many of the issues raised refer to the lack of consideration regarding route-by-route comments. In general, for one or more of the following routes, the appellants assert:

- Lack of reasonable range of alternatives
- Lack of site-specific analysis
- Suggestions for specific trails to be designated as non-motorized
- Failure to minimize impacts
- Impacts to wildlife
- Impacts to roadless character

The Forest Service explains their position on route-by-route suggestions, noting:

> Individual alternatives are not required to address every issue or every option on every route. The number of alternatives would be limitless. Rather, responses to various issues are packaged into reasonable alternatives which can be considered in the analysis (Final EIS App X, X91).

The decision used a sound process for developing alternatives as outlined in the Travel Analysis Process Staff Report, and Chapters 1 and 2 of the FEIS. Having an alternative that eliminates all motorized designation would not meet the Purpose of and Need for Action:

> The Gunnison Basin travel management strategies are needed to provide recreational experiences for motorized and non-motorized travelers that balance recreational use demands with public safety and management objectives for natural resources such as wildlife populations, wildlife habitat, plants, water, fish, aquatic habitats, timber, vegetative ecosystems, cultural resources, and air. (FEIS p. 15)

Trails and roads were adequately analyzed and potential user conflicts were taken into consideration. Specific trails mentioned above were considered and reviewed. This is confirmed by meeting notes contained in the record. For example, 1) 427 notes "motorized single-track, elk calving area, DOW seasonal closure, and notes about the first rifle season;" 2) 549 "motorized single-track, keep open seasonal closure;" 3) 478 "single-track motorized" and access notes; 4) 400 mentions possible watershed issues, motorcycle access, and fisheries; 5) 578 notes that Milk Creek Road crosses the Continental Divide, timber sales may have occurred along the route, and may not be passable by a full-size vehicle; 6) 557 "currently motorcycle –status quo" and references comments to make it mechanized; and 7) 495 notes include options to add a trail reroute around a private section and notes a steep section near the fence. These comments prove that these trails were considered in meeting deliberations and, therefore, taken into account when making this decision.

Several of the trails mentioned are also addressed in the response to comments (Brush Creek area trails p. xx-7, Fossil Ridge xx-93, x-50, x-120, x-91, etc). This section also contains a relevant discussion about alternative development as a response to a comment about traffic erosion and seasonal closures, wildlife concerns, etc (FEIS Response to Comments p. x-7).

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Failed to rigorously explore and evaluate all reasonable alternatives

The Forest Service did not examine reasonable routes for motorized use in light of an analysis based on all of the available evidence and data. In Table 1 of our scoping comments and Appendix A of our DEIS comments, we proposed numerous route-specific designations based on specific and reliable data and information, which would minimize impacts associated with motorized use, which were consistent with the purpose and need of the project, and which were required to comply with the governing legal standards, but the Forest Service failed to adequately evaluate many of them or explain its failure to do so. In particular, we suggested closure of particular routes to motorized vehicle use that should have been analyzed in an alternative in order to address resource concerns from the existing and proposed National Forest Transportation System, such as impacts on roadless areas and citizen-proposed wilderness, sensitive wildlife habitat, and quiet recreationists' experience on the forest. Instead of analyzing these closures in an alternative, the Forest eliminated our recommendations from detailed analysis without acknowledgment or explanation.

While we are aware of the agency's position that a full range of alternatives does not need to be created for every route on the Gunnison National Forest, public input that brings the agency's attention to deficiencies in that range should be addressed. Because the alternatives analysis is the "heart" of NEPA, "an agency must on its own initiative study all alternatives that appear reasonable and appropriate for study at the time, and *must also look into other significant alternatives that are called to its attention* by other agencies, or *by the public* during the comment period afforded for that purpose." *Seacoast Anti-Pollution League v. Nuclear Regulatory Comm'n*, 598 F.2d 1221, 1230 (1st Cir.1979) (emphasis added). The USFS failed in these mandates by not considering TWS's legitimate route-specific recommendations.

Response: The appellants assert the decision did not consider a reasonable range of alternatives, including route-specific recommendations. However, Forest Supervisor Charlie Richmond considered route-specific comments to minimize motorized impacts provided by the appellants in their DEIS comment letter, but recognized tradeoffs between recreation and resource protection that would have to be made by this decision (FEIS p. 16).

The decision recognized that "issues and concerns raised by the public and ID team during scoping were addressed in the DEIS; however, not all of them are resolved by the action alternatives" (FEIS p. 31). The analysis included alternative development and incorporated various comments – including route-specific comments where appropriate. "The preferred alternative incorporates various travel options presented in the No Action and action alternatives that meet the agencies purpose and need while addressing many of the comments and additional information received during the DEIS comment period" (FEIS p. 31). Although the Forest Service did not develop and analyze one alternative specific to the appellants' route-by-route comments, it did incorporate an "environmentally preferable alternative, that identified fewer routes open to travel and less motorized travel in an effort to further benefit wildlife, reduce

cumulative impacts to watersheds, and further protect sensitive resource areas from human intrusion" (FEIS p. 31).

The rationale for specific routes and their consideration can be found on various pages in the record (FIES Response to Comments x-4, x-50, x-120, x-91, xx-6, xx-7, xx-93).

The Forest Service has presented an adequate range of alternatives to the overall objective of improving travel management and designating a sustainable transportation system.

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: Failed to take a hard look at the effects of route designations

The Forest Service has violated NEPA, and the ROD and FEIS for the Travel Plan are invalid, because they fail to rationally and adequately assess or address the environmental effects of the motorized routes listed in the beginning of this section (see F.1.1 – F.1.10). Specifically, we are concerned that because the agency failed to analyze the specific routes listed above at all, that the agency could not make an informed decision and the public was left in the dark as to the environmental effects of these routes designation as open to motor vehicle traffic, including likely effects on wildlife, soil, water, roadless areas, and quiet recreationists' experience on the forest.

Response: The appellants assert the decision failed to take a hard look at the effects of several route designations. The Forest Service explains their position on route-by-route suggestions, noting:

> Individual alternatives are not required to address every issue or every option on every route. The number of alternatives would be limitless. Rather, responses to various issues are packaged into reasonable alternatives which can be considered in the analysis (Final EIS App X, X91).

The decision used a sound process for developing alternatives as outlined in the Travel Analysis Process Staff Report, and Chapters 1 and 2 of the FEIS. Having an alternative that eliminates all motorized designation would not meet the Purpose of and Need for Action:

> The Gunnison Basin travel management strategies are needed to provide recreational experiences for motorized and non-motorized travelers that balance recreational use demands with public safety and management objectives for natural resources such as wildlife populations, wildlife habitat, plants, water, fish, aquatic habitats, timber, vegetative ecosystems, cultural resources, and air. (FEIS p. 15)

Trails and roads were adequately analyzed and conflicts taken into consideration. Specific trails mentioned above were considered and reviewed as evidence by meeting notes contained in the record. For example, 1) 427 notes "motorized single-track, elk calving area, DOW seasonal

closure, and notes about the first rifle season;" 2) 549 "motorized single-track, keep open seasonal closure;" 3) 478 "single-track motorized" and access notes; 4) 400 mentions possible watershed issues, motorcycle access, and fisheries; 5) 578 notes that Milk Creek Road crosses the Continental Divide, timber sales may have occurred along the route, and may not be passable by a full-size vehicle; 6) 557 "currently motorcycle –status quo" and references comments to make it mechanized; and 7) 495 notes include options to add a trail reroute around a private section and notes a steep section near the fence.

Several of the trails mentioned are also addressed in the response to comments (Brush Creek area trails p. xx-7, Fossil Ridge xx-93, x-50, x-120, x-91, etc). This section also contains a relevant discussion about alternative development as a response to a comment about traffic erosion and seasonal closures, wildlife concerns, etc (FEIS Response to Comments p. x-7).

Additional analysis of environmental concerns are disclosed and analyzed in the FEIS (p. 9-11).

Based on my review of the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

Appeal Issue: The minimum road system identification does not contain a science-based analysis

The Forest Service did not complete the "science-based" travel analysis required to derive its minimum road system and its list of unneeded roads for decommissioning. The Gunnison may be correct in its statement in the ROD that for this travel planning process "there is no requirement to conduct a travel analysis" and that therefore "the requirements to prepare a report documenting that process and publication of such a report are not applicable," given the date of its scoping notice. ROD at 13. However, if the Gunnison wanted to identify a minimum road system during this process, then it was required by its own handbook and regulations to complete a science-based travel analysis to inform that identification (and designation of the system identified). The process the Gunnison has completed to determine which roads should be displayed on an MVUM does not meet the specific requirements of a "travel analysis" as described in Forest Service Handbook 7709.55 and Manual 7700 and should not be called by that name, nor should the USFS rely solely upon it to determine a minimum road system. The spreadsheet that is discussed below that was provided to TWS as a representation of the "travel analysis" process is inadequate to satisfy the requirements of a travel analysis and cannot be used in its current form to identify a minimum road system on the Gunnison, in large part, because does not explicitly address the many factors and considerations that should be the basis of a minimum road system determination.

The Forest Service must specifically consider effects of each route on the criteria at 36 C.F.R. § 212.55(a)-(b). The comprehensive analysis of the risks, benefits, and problems of individual routes then allows the Forest Service to "identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands" in accordance with 36 C.F.R. § 212.5(b)(1). Based on this direction, a few logical conclusions can be reached.

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).

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.

The Travel Analysis must precede the identification of the minimum road system and any NEPA process that would designate that system because 36 C.F.R. § 212.5(b)(1) indicates the responsible official must "incorporate" the Travel Analysis "in determining the minimum road system."

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).

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 36 C.F.R. § 212.55 and the Executive Orders.

While the Gunnison's Excel sheet contains a listing of many routes with a smattering of associated cells describing *some* problems or benefits of that route, it does not systematically examine each of the criteria required under the Roads Rule's definition of a minimum road system at 36 C.F.R. § 212.5(b)(1), nor the additional criteria required by the Forest Service Handbook at FSH 7709.55, sec. 21.4 and 36 C.F.R. § 212.55. It is also unclear which routes the Gunnison NF has determined comprise its minimum roads system based on this document or whether all existing routes were analyzed.

Unfortunately, the Excel spreadsheet that constitutes the Gunnison NF's travel analysis report is a largely incomprehensible, sparsely and cryptically populated document. Further, no one but the person who actually filled in the cells associated with individual routes could really understand the Forest Service's management intentions with respect to that route because there is no uniformity and no explicit statement of whether any given route is part of the minimum road system. The 2001 Roads Rule defines 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.

36 C.F.R. § 212.5(b)(1) (emphasis added). 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.

Response: The appellants allege the decision identified a minimum road system not based in science; therefore, it does not meet the requirements in regulation.

The regulation concerning identification of the minimum road system is defined at 36 CFR 212.5(b)(1). The ROD and FEIS identify the minimum road system and the rationale for choosing it at several different locations:

- "The system of roads and trails to be managed under this Preferred Alternative defines the minimum transportation system (36 CFR 212.5(b)(1)) for the Gunnison National Forest...." (ROD p. 15)

- "The travel analysis that was conducted was the basis to help define transportation system [sic] in this decision and would constitute the minimum road system for the Gunnison National Forest." (ROD p. 13)

- "This travel analysis process involved balancing factors related to land management and recreational needs, environmental concerns, road and trail system operations, long-term funding expectations, public input, and the best available science related to natural resource management. Therefore this route-by-route travel analysis yielded a viable and sustainable transportation system of roads and trails that is defined as a minimum road system." (FEIS p. 14)

- "The Forest Service believes the Preferred Alternative is the minimum transportation system for the Gunnison Basin travel analysis area because it balances the public's needs and desires for access and recreation opportunities (societal demands) with the multiple-use resource management activities mandated by other laws and the Forest Plan. The transportation system to be designated as open for public travel has been developed on a route-by-route basis with extensive public involvement, scientific analysis of potential resource impacts (i.e. best available science) and consideration for resource management objectives on the federal lands." (FEIS p. 265-266).

- The Travel Analysis Process (TAP) Staff Report states, "The objective of the route-by-route assessments were [sic] to define a transportation system within the agency's ability to manage, operate, maintain, and to offer a variety of users with a diverse experience while minimizing impacts to resources...." (Travel Analysis Process Staff Report p. 5)

Part of the appellants appeal on minimum road system asserts that the minimum system was never defined. The FEIS lists Gunnison National Forest roads and trails, and their designation under the Preferred Alternative. Since the Preferred Alternative was identified as the minimum transportation system, the routes identified as part of it would constitute the minimum system.

The appellants assert the process was not science-based. The TAP Staff Report describes the resource specialists - and their experience and education - on the interdisciplinary team. This team conducted the travel analysis to define the minimum road system. It was comprised of experts in recreation, range, vegetation management, fire suppression, forest transportation systems, lands and realty, timber, watershed management, fisheries, wildlife, soils, road maintenance, cultural resources, and geographic information systems (GIS).

The Report further articulates the scientific integrity of the team, describing GIS database coverage and spatially explicit information for soils, erosion hazard, vegetation, wildlife habitat areas, wildlife use areas, fuel hazards, suitable timber, past timber harvesting, important plant and wildlife species, habitats, watershed sensitivity, streams, aquatic habitats, cultural resources inventories, recreation facilities and easements. This report notes, "the ID team members, because of their expertise and experience, had knowledge of and access to current resource studies and scientific findings for the resources they managed on the National Forest." (TAP Staff Report, pg. 5). The assertion that the minimum road system, or any other part of this analysis, was not based in science is unfounded.

The comments contain valuable resource information and recommendations from resource specialists representing a variety of disciplines. The availability of this information to the decision maker provided a critical tool in assessing whether to include individual routes in a minimum system.

The ID team conducted travel analysis of existing routes. Public comment and input was taken during the early planning stages (May to October 2006) to help define existing uses, route locations, and desired modes of recreational travel. The ID team also relied on technical information (best available science) regarding soil characteristics, water quality, locations of wetland and riparian vegetations, stream inventories, aquatic species inventories, wildlife habitat and population surveys and inventories, noxious weeds infestations, suitable timber, fragile alpine environments, and cultural resource inventories. Additionally, the ID team's knowledge of on-the-ground conditions about travel, past user conflicts, road and trail maintenance history, traditional dispersed camping locations, hunting pressure, etc was well-documented.

This travel analysis process was used to conduct route-by-routes assessments to determine if there was a need for change, and inform managers on possible route designations. The travel analysis criteria and screening processes (Pages 10 to 14, Final EIS) were used to help assess environmental consequences as documented in Chapter 3 of the Final EIS and aided in the development of the agency's proposed action published in the Notice of Intent (May 2007).The route-by-route evaluation files used in the travel analysis are part of the project record and were considered in the development of the Proposed Action (Draft EIS) and subsequent Preferred Alternative (Final EIS).

Based on the record, I find no violation of law, policy or regulation. I recommend affirming the Forest Supervisor's decision on this issue.

RECOMMENDATION

A review was conducted pursuant to and in accordance with 36 CFR 215.19. The review included consideration of the appeal record, FEIS, ROD, comments received during the comment period, agency response to comments, appellant's appeal issues, and relief requested. Based on the review of the record I recommend affirming the majority of the Forest Supervisor's decision with the following two exceptions:

1. The designation decision of the Continental Divide National Scenic Trail (CDNST) should be reversed with the aforementioned instructions; and

2. The designation of Routes 578 and 578.2A should be affirmed with the aforementioned instructions.

Bill Dunkelberger
Deputy Forest Supervisor, San Juan Public Lands
Appeal Reviewing Officer