

**BEFORE THE REGIONAL FORESTER,  
FOREST SERVICE, ROCKY MOUNTAIN REGION,  
U.S. DEPARTMENT OF AGRICULTURE**

**The Wilderness Society, Great Old  
Broads for Wilderness, Quiet Use  
Coalition; Rocky Mountain Recreation  
Initiative** )

Appellant )

v. )

**Charles S. Richmond, Forest Supervisor  
Grand Mesa, Uncompahgre, and  
Gunnison National Forests** )

Respondent )

) **In Re:** Appeal of June 28, 2010 Record  
) of Decision for the Gunnison National  
) Forest Motorized Travel Management  
) Plan Final Environmental Impact  
) Statement

### APPELLANTS' CONTACT INFORMATION

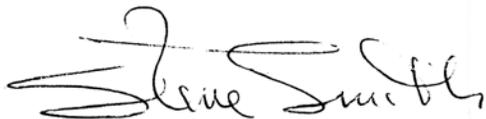
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### CERTIFICATION OF FILING

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Dated this 16th Day of August 2010.



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Steve Smith

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

**I. NOTICE OF APPEAL**

Notice is hereby given that, pursuant to the U.S.D.A. Forest Service Regulations at 36 C.F.R. part 215, The Wilderness Society and the undersigned organizations appeal to Rick Cables, Regional Forester, U.S.D.A. Forest Service, for relief from Forest Supervisor Charles S. Richmond's Record of Decision (ROD), signed on June 28, 2010, for the Gunnison National Forest Motorized Travel Management Plan Final Environmental Impact Statement (FEIS).

This appeal is consistent with 36 C.F.R. § 215.11 and is based upon written comments submitted by Appellants during the scoping period, comments on the Draft Environmental Impact Statement (DEIS), and oral communications with Gunnison National Forest staff. This appeal is consistent with 36 C.F.R. § 215.14 (Appeal Content) in that we are submitting substantial evidence of violations of law, regulation, and policy contained in the ROD and FEIS, requiring remand or reversal of portions of said decision.

**II. STATEMENT OF POSITION**

The Wilderness Society (TWS) and the undersigned organizations (hereinafter collectively referred to as "TWS") respectfully appeal the June 28, 2010 record of decision (ROD) signed by Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forest Supervisor Charles S. Richmond. TWS and the undersigned organizations wish to acknowledge the Forest Service's considerable efforts to develop a comprehensive Gunnison Travel Management Plan (TMP) that attempts to balance the diverse interests of the public with critical environmental concerns. However, we have found within the Final Environmental Impact Statement (FEIS) and ROD several legal inadequacies that preclude us from lending our full support to the decision.

TWS is a not-for-profit conservation organization that since 1935 has sought to protect wilderness and inspire Americans to care for wild places. Of TWS's more than 526,000 members and supporters, 16,501 of them reside in Colorado and many of them live, work, and recreate in the Gunnison Basin. Our members have a vested interest in ensuring the continued integrity of wildlife and its habitat, water and other natural resources, and cultural resources, as well as ensuring the availability of quiet recreation opportunities in a variety of landscapes on Forest Service lands. With this appeal, Appellants seek to ensure that motorized travel on the Gunnison National Forest is managed sustainably to ensure the long-term health of the affected environment and to minimize conflicts with other important uses of the Forest. Management practices approved by the ROD will fail to halt resource damage, fail to reduce conflicts with other recreational users, and fail to meet other important resource objectives.

This appeal of the Gunnison Motorized Travel Management Plan ROD will show that important and timely comments and reasonable, feasible management alternatives provided by interested members of the public during the National Environmental Policy Act (NEPA) process were inadequately addressed by Forest officials. The Final Environmental Impact Statement for the

ROD omit critical information, fail to incorporate required analysis, fail to respond to public comments, and provide and rely upon incorrect claims and statements. Furthermore, the Forest selected an action alternative that fails to comply with multiple legal requirements to minimize impacts to resources and to non-motorized recreation.

### **III. STATEMENT OF REASONS**

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

With the release of the ROD, the U.S. Forest Service (USFS) has improperly authorized extensive vehicle-assisted dispersed motorized camping corridors along the vast majority of its motorized routes. Even for those 12 route segments where spur routes will be designated to access dispersed campsites, those designations will not occur until some undetermined point in the future. Such broad-scale designations violate the Travel Management Rule. The Forest Service also failed to take a hard look at the site-specific effects of its exemption allowing cross-country motorized use for dispersed motorized camping and failed to consider a reasonable range of alternatives with respect to its motorized dispersed camping designations in violation of the National Environmental Policy Act (NEPA).

##### ***1. The motorized dispersed camping designations violate the Travel Management Rule.***

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

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

70 Fed. Reg. 68, 264, 68,265 (Nov. 9, 2005). In order to address and avoid detrimental impacts to forest resources, direction to the Forest Service provides for *sparing* application of the exemption, and use of the exemption must be supported by the appropriate site-specific environmental analysis:

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

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

***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)***

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

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

***Forest Service Manual 7703.11(4):***

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

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

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

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

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

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

2. Forest Motor Vehicle Maps (MVUM) must clearly identify the roads and distance where off road motor vehicle use is authorized for dispersed camping ...so that the public understands the rules and regulations...
3. Over time, the long term goal for the Rocky Mountain Region's forests...will be to ***strive towards designating individual spur routes or dispersed camping sites.*** During future travel management planning efforts, forests... will identify those areas or locations where unacceptable resource damage is occurring or where there are opportunities to improve the recreation experience by designating individual dispersed sites. Forest Supervisors and District Rangers are charged with the responsibility of identifying and managing these areas in a manner that best meets the resource objectives of the area with consideration of their overall program of work and funding situation.

Thus, all Forest Service travel management guidance reinforces the requirement that the authorization of off-route motorized access to dispersed camping is to be a designation used sparingly, as opposed to a blanket exception to the general prohibition on cross-country travel. Further, Region 2 expressly directed forests to work towards designating individual spur routes and dispersed camp sites in their travel planning efforts, identifying places where unacceptable resource damage was occurring along the way.

Unfortunately, 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." Instead, the agency authorized the use of motor vehicles for dispersed camping on every designated route (except for along 12 corridors at some point in the future),<sup>1</sup> with blatant disregard for compliance with the 2005 Travel Management Rule. The ROD states:

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<sup>1</sup> Even for these 12 corridors, the designation of spur routes will only occur at some unspecified point "*in the future.*" ROD at 18 (emphasis added); FEIS at 47-48.

[I]t is my decision that for the majority of the areas on the Gunnison National Forest the existing situation that allows for motorized travel off of designated roads, up to 300 feet on either side of the centerline of the road . . . for the sole purpose of camping will be continued. It is also my decision that for the 12 road corridors listed in the Final EIS (Pages 47-48) that the Forest Service will, in the future, designate road spurs off the designated open roads as open to public travel solely based on the need to provide access to appropriate and suitable camping areas.

United States Forest Service, *Record of Decision for Gunnison National Forest Travel Management*, 18 (2010). This unsparing use of the exemption for vehicle-assisted dispersed camping corridors across virtually every route of the Gunnison NF violates the Travel Management Rule.

**2. The motorized dispersed camping designations violate the NEPA.**

**a. The Forest Service failed to take a hard look at the effects of its motorized dispersed camping designations.**

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

The Forest Service’s decision is unsupported by the requisite NEPA analysis. Complimentary to the requirement that motorized dispersed camping corridors only be designated along a small subset of routes, agency policy mandates that the Forest “[a]pply the provision for big game retrieval and dispersed camping sparingly after conducting travel analysis and appropriate site-specific environmental analysis and public involvement.” FSM 7703.11(4) (emphasis added). Even if agency direction were not so clear, the agency must comply with the “hard look” mandates of NEPA in any event. 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. Chapter 3 of the FEIS – Affected Environment and Environmental Effects – generally contains the environmental impacts analysis from the various alternatives. The Gunnison's FEIS for Travel Planning scarcely mentions the impacts from allowing a 300 foot cross-country corridor for dispersed camping along nearly 2,000 miles of designated routes. 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:

*Activities associated with soil disturbance include, but are not limited to timber sale log skidding, road and trail construction and maintenance, wildfires, fire-line construction, dispersed camping, OHV riding, mountain bike riding, fence-line construction, and water developments.*

FEIS, Ch. 3, p. 85. The analysis regarding the preferred alternative's impact on wildlife also contains a brief statement on dispersed camping and the impacts it could have on the Uncompahgre Fritillary Butterfly:

*Additional potential impacts to butterflies or butterfly habitat include road and trail construction and use, off-route travel, and development of recreational facilities, sheep grazing in areas where they are not supposed to be, and dispersed camping and hiking.*

FEIS, Ch. 3, p. 186. While the Forest Service does briefly discuss motor vehicle-facilitated dispersed camping later in Chapter 3, it is merely a summary of what the Forest Service is proposing under each alternative and how it will impact recreational opportunities, *not* forest resources. 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 (including the 12 routes where the Forest Service will some day in the future—but not now—reign in cross-country travel to designated spur routes), not to mention the huge impacts of cross-country travel off of the 1,046 miles on the Bureau of Land Management (BLM) side plus the untold number of miles of "existing" routes on the BLM side. FEIS, Ch. 3, p. 188. This represents an *incredible* failure to consider the direct, indirect, and cumulative impacts of the Forest Service's motorized dispersed camping policy, and it represents a significant NEPA violation.

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). We remind the agency that NEPA is not simply an exercise in which the Forest Service can "check off" a list of required analyses. Proper completion of NEPA should result in a "hard look" at the

effects of a project on various natural and cultural resources and disclosure of these findings to inform the public and the decision maker about the consequences of the action. As one court recently described:

[B]y requiring agencies to take a “hard look” at how the choices before them affect the environment, and then to place their data and conclusions before the public, *see Or. Natural Res. Council Fund v. Goodman*, 505 F.3d 884, 889 (9th Cir.2007), NEPA relies upon democratic processes to ensure-as the first appellate court to construe the statute in detail put it-that “the most intelligent, optimally beneficial decision will ultimately be made.” *Calvert Cliffs' Coordinating Comm. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1114 (D.C.Cir.1971). “NEPA's purpose is not to generate paperwork-even excellent paperwork-but to foster excellent action.” 40 C.F.R. § 1500.1(c).

*Or. Natural Desert Assoc. v. Bureau of Land Mgmt.*, 531 F.3d 1114, 1120 (9th Cir. 2008). Unfortunately, based on the Forest Service’s failure to adequately analyze the effects of its vast designations of corridors that will effectively be available for cross-country travel, the agency has failed to meet its basic obligations under NEPA.

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

NEPA requires that, in preparing an EIS, agencies must “insure the professional integrity, including scientific integrity, of the discussions and analyses” in the document, and the impact statement must present alternatives to the proposed action. 42 U.S.C. § 4332(C), (E). The analysis of alternatives is “the heart of the environmental impact statement,” and an EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” 40 C.F.R. § 1502.14. An EIS must include “the alternative of no action,” as well as a “hard look” at “all reasonable alternatives.” 42 U.S.C. § 4332(C); 40 C.F.R. § 1502.14(a), (d). In examining the reasonableness of an EIS’s alternatives and elimination of alternatives from analysis, courts first look to whether the “Purpose and Need” was reasonable, and then whether the alternatives considered were reasonable in light of that goal. *Surfrider Found. v. Dalton*, 989 F.Supp. 1309, 1327 (S.D. Cal. 1998), *aff’d per curiam*, 196 F.3d 1057 (9th Cir. 1999). Regarding alternatives rejected for full evaluation, a court asks “whether the summary rejection of these sites was unreasonable, such that the [EIS] failed to consider a reasonable range of alternatives.” *Id.* at 1327–28 (“An unreasonable failure to consider a viable alternative renders an alternatives analysis inadequate.”); *see also Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813 (9<sup>th</sup> Cir. 2005) (““The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.””) (quoting *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9<sup>th</sup> Cir.1985)). Much legal precedent guards against an insufficient range of alternatives.<sup>2</sup> Further, the Forest Service Handbook (FSH) guides

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<sup>2</sup> “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Nw. Env’tl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g.,*

managers to “develop . . . alternatives fully and impartially . . . [and to] ensure that the range of alternatives does not prematurely foreclose options that might protect, restore, and enhance the environment.” FSH 1909.15 sec. 14. NEPA also requires that agencies “present complete and accurate information to decision-makers and to the public to allow an informed comparison of the alternatives considered in the EIS.” *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 813 (9th Cir. 2005).

The Gunnison NF analyzed four action alternatives. In each of those alternatives, the motorized dispersed camping policy was that:

Motor vehicle access for dispersed camping and other dispersed recreational activities would be allowed on existing access routes to existing campsites within 300 feet of the centerline of routes designated as open to motorized travel. This is a minor change from existing conditions and would require vehicles to follow existing “two track” access routes to access existing campsites and parking areas. Under this alternative, as with the No Action Alternative, motor vehicle travel that causes resource damage would not be allowed, even for the purposes of dispersed camping access.

FEIS at 37, 40-45. The selected alternative altered the policy ever so slightly in that it indicates the Forest Service is to examine designating spur routes to dispersed campsites along 12 corridors due to resource damage. ROD at 18-19; FEIS at 47-48. However, the dispersed camping assessments will not happen until some undetermined point in the future (with a goal of within 6 years), which is dependent upon the availability of funding and staff resources. *Id.* Thus, even though the Forest Service has expressed its desire that someday spur routes may be designated, it did not do that with this plan.

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:

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

*a) Forest visitors may park a motor vehicle within one vehicle length from the edge of the road surface when it is safe to do so and without causing*

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*Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122–23 (9th Cir. 2002) (and cases cited therein). NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e. the applicant’s proposed project).” *Col. Envtl. Coal. v. Dombek*, 185 F.3d 1162, 1174 (10th Cir. 1999) (citing *Simmons v. U.S. Corps of Eng’rs*, 120 F.3d 664, 669 (7th Cir. 1997)). This requirement prevents the EIS from becoming “a foreordained formality.” *City of New York v. Dep’t of Transp.*, 715 F.2d 732, 743 (2d Cir. 1983). *See also Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002).

*damage to the Forest Service resources (campers walk to access a backcountry camp of their choosing), and/or*  
*b) Motor vehicles may access signed campsites via designated camp spur routes that are signed and demarcated on a travel management map.*

High Country Citizen Alliance et al's Comments on the DEIS at 14. We also described the inherent ambiguities and enforcement problems associated with the Forest Service's proposed policy. *Id.* 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. *Id.* This was the wrong angle from which to approach the dispersed camping policy—instead the Forest Service should have started from the premise that it would not designate cross-country corridors, but would work to designate spur routes in popular dispersed camping areas over time (instead of the other way around, as it is doing with the 12 corridors in the selected alternative). Further, this would have allowed the Forest Service to avoid the fatal flaws to its NEPA analysis that we described above and its violation of the ORV Executive Orders and TMR's minimization criteria, which we describe below.

As noted above, in examining the reasonableness of an EIS's alternatives and elimination of alternatives from analysis, a court first looks to whether the "Purpose and Need" was reasonable, and then whether the alternatives considered were reasonable in light of that goal. *Surfrider Found. v. Dalton*, 989 F.Supp. 1309, 1327 (S.D. Cal. 1998), *aff'd per curiam*, 196 F.3d 1057 F.3d 1057 (9th Cir. 1999). Regarding alternatives rejected for full evaluation, a court asks "whether the summary rejection of these sites was unreasonable, such that the [EIS] failed to consider a reasonable range of alternatives." *Id.* at 1327–28 ("An unreasonable failure to consider a viable alternative renders an alternatives analysis inadequate."). 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 Council on Environmental Quality's (CEQ's) "Forty Questions" guidance document indicates that when a "very large or even an infinite number of reasonable alternatives" exist, an agency must analyze and compare a "reasonable number of examples, covering the full spectrum of alternatives." Council on Environmental Quality, "Forty Most

Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," Question 1, Fed. Reg. 18,026, 18,027 (1981). As an example, CEQ notes that the possible range of alternatives an agency could examine in its decision to designate wilderness is infinite because it could propose alternatives that would designate any percentage of land between 0 and 100%. *Id.* at 18,027. In such a case, the agency need only examine a "reasonable" range of alternatives, indicating an "[a]n appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness." *Id.* at 18,026–27. An EIS designating motorized dispersed camping corridors similarly allows an infinite number of designation options, which should be examined at similar intervals. Despite this clear guidance and suggestions from the public, each of the alternatives designates motorized dispersed camping corridors along *all* of the Gunnison NF's routes that are open to public use. The agency's failure to consider the parking rule/designated spurs policy we proposed in commenting (and in our recommendation below) or any alternative that would have significantly limited the total number of routes along which a motorized dispersed camping corridor would be designated renders the agency's range of alternatives inadequate in violation of NEPA.

Because the Forest Service's dispersed motorized camping policy is based on an incomplete analysis of resource impacts, in violation of the requirements of NEPA to fully analyze and disclose the impacts from a selected action; the FEIS fails to consider a reasonable range of alternatives related to motorized dispersed camping; and the decision violates the Travel Management Rule's provision for the *sparing* use of the motorized dispersed camping exemption, the decision must be remanded back to the agency for correction of these deficiencies.

#### Recommended Dispersed Camping Policy

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

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

At a minimum, the Forest Service must remand the plan and complete a supplemental EIS to examine an alternative or alternatives that would address the inadequacies outlined above and to assess the *site-specific* environmental effects of designating each of the motorized dispersed camping corridors designated through this plan.

#### **B. The Forest Service Failed to Comply with the Minimization Criteria of Executive Order 11644, as amended by Executive Order 11989, and the Travel Management Rule.**

- 1. 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. In 1972, in response to widespread and growing use of off-road vehicles, President Nixon adopted Executive Order 11644 to establish policies and procedures to “ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” Executive Order 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972). Executive Order 11644 requires federal agencies to develop regulations designating specific areas and trails on public lands both open and closed to off-road vehicles. Executive Order 11644 specifically applies to public lands under the jurisdiction of the Secretary of Agriculture, which include national forests. *Id.* § 2.

Executive Order 11644 provides that the designation of trails and areas for use by off-road vehicles shall:

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

In addition, Executive Order 11644 requires that agencies shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails open to off-road vehicle use. *Id.* § 3. Further, Executive Order 11644 directs federal agencies to monitor the effects of off-road vehicle use and to amend or rescind designations as necessary to further the policy of the order. *Id.* § 8.

In 1977, President Carter adopted Executive Order 11989 amending Executive Order 11644. Executive Order 11989 provides that federal agencies shall “immediately close” areas or trails to off-road vehicles whenever the agency “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.” Executive Order 11989, § 9, 42 Fed. Reg. 26959 (May 24, 1977). The closure must remain in effect until such time as the agency “determines that such adverse effects have been eliminated and that measures have been implemented to prevent further recurrence.” *Id.*

The Forest Service first adopted regulations implementing Executive Order 11644 and Executive Order 11989 in 1974. Their most recent iteration in the TMR came into being because management of OHV use in the national forests was not meeting the environmental objectives of the executive orders.

[T]he magnitude and intensity of motor vehicle use have increased to the point that the intent of E.O. 11644 and E.O. 11989 cannot be met while still allowing unrestricted cross-country travel. Soil erosion, water quality, and wildlife habitat

are affected. Some National Forest visitors report that their ability to enjoy quiet recreational experiences is affected by visitors using motor vehicles. A designated and managed system of roads, trails, and areas for motor vehicle use is needed.

70 Fed. Reg. 68, 264, 68,265 (Nov. 9, 2005). Accordingly, the Forest Service promulgated the 2005 Travel Management Rule, which was not intended to be a continuance of the *status quo*.

The TMR carries forward relevant language from the Executive Orders to trails and areas, which requires minimization of damage to soil, watershed, vegetation, and other forest resources. Specifically, the TMR requires the responsible official to designate a system of roads, trails and areas “by vehicle class and, if appropriate, by time of year.” 36 C.F.R. § 212.51(a). In designating roads, trails and areas, the responsible official is required to consider generally the:

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

*Id.* § 212.55(a) (emphasis added). In addition, to the general criteria described above, the responsible official must minimize:

1. Damage to soil, watershed, vegetation, and other forest resources;
2. Harassment of wildlife and significant disruption of wildlife habitats; and
3. Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands.

Executive Order 11644 § 3; 36 C.F.R. § 212.55(b) (“[T]he responsible official “shall consider effects on the following, with the objective of minimizing . . .”).

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). The court further explained:

Nor does the fact that the BLM closed almost two-thirds of the evaluated routes constitute evidence that the BLM complied with 43 C.F.R. § 8342.1. “Minimize” as used in the regulation does not refer to the number of routes, nor their overall

mileage. It refers to the effects of route designations, i.e. the BLM is required to place routes specifically to minimize “damage” to public resources, “harassment” and “disruption” of wildlife and its habitat, and minimize “conflicts” of uses.

CBD v. BLM, No. C 06-4884-SI, Opinion and Order at 30 (emphasis in original). This requirement to “show your work” with specificity applies fully to the Forest Service route designation decisions in the Gunnison Travel Plan.

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. Further, it is a violation of NEPA to fail to take a hard look at whether the agency’s actions will comply with applicable legal authority and the site-specific effects of individual route designations. 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). In no way should this be viewed as an exhaustive list of the routes for which the Forest Service did not demonstrate compliance with the minimization criteria—in fact, it is merely a handful.<sup>3</sup> After all, it is fundamentally the *agency’s* duty to “show its work” on the record, not the public’s. That said, throughout commenting we pointed out natural resource and user conflicts caused by these and many other routes, as well as motorized dispersed camping corridors, which the Forest Service should have taken into consideration in its analysis.

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<sup>3</sup> Please note discussion of the Forest Service’s violations of the executive orders and TMR with respect to the Carbon Trail and Crest Trail are discussed in those trail-specific sections below. In addition, we note that the Forest Service has not adequately analyzed the environmental and recreational impacts of re-designating the Snow Mesa Trail (#787) from non-motorized to motorized (single-track motorcycle), merely explaining this change as an attempt to be consistent with the Rio Grande’s motorized designation, despite the fact that that forest has yet to go through a travel planning process or itself analyzed the minimization criteria.

*Example Route Designations in which the Forest Service did not Minimize Effects*

**Trail #557 (Teocalli Ridge)** was designated as open to motorized vehicles despite soil erosion impacts, disruption to wildlife, impacts on vegetation, and conflicts between recreationists. Further, parallel motorized routes exist adjacent to 557. We suggested to the Forest Service that Trail #557 be designated as non-motorized to reduce user conflicts, erosion and degradation of this trail, and improve wildlife habitat. The Forest Service did not examine the route at all in the FEIS, let alone demonstrate it had minimized damage to natural resources and conflicts between recreationists.

**Left Hand Trail #495** was designated as open to ATV use in every action alternative. The only variance is that Alternative 5 proposed seasonal closures. Designating this route for ATV use will likely have significant impacts on quiet users and impacts on the roadless character of the Cochetopa Hills IRA. Further, low elevation habitat in the area is critical for wildlife migration. Route density and the presence of parallel routes in the area does not appear to have been factored into the decision about whether to designate this trail for motorized use as raised in our DEIS comments. We suggested that at least one alternative should have consider restricting Trail #495 to hiker and horse travel only. The Forest Service did not do this, nor did it take a hard look at or demonstrate that it had minimized the trail's effects on the roadless character of the Cochetopa Hills IRA, wildlife, and user conflicts with quiet recreationists.

**Trail # 578.2A (Sargents Mesa)** was designated as open to high clearance motorized use in every action alternative, despite our request that at least one alternative consider closure of this route. Trail #578.2A follows a cherry stem of the Cochetopa Hills Roadless Area which is a part of critical low elevation wildlife migratory habitat. Designating this route will fragment this roadless area and important wildlife habitat. Further, given that this is a user-created route, any alternative proposing to designate this route for motorized use must include a site-specific impacts analysis, which the FEIS does not. Nor did it demonstrate that designation of this route minimized effects on natural resources.

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. If the location of the trail does not minimize damage to natural resources, the agency cannot designate it. Given the non-discretionary nature of the Executive Order and TMR's minimization requirements, we are perplexed as to why the Forest Service at least did not choose Alternative 3, the self-described "environmentally preferable" alternative, which the Forest Service itself has admitted would cause the least damage to natural resources. ROD at 7. In addition, for the 12 motorized dispersed camping corridors for which 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. The Forest Service's failure to minimize damage to natural resources and conflicts between forest users, as well as its failure to "show its work" with respect to its examination of these criteria constitutes a violation of Executive Order 11644, as amended by Executive Order 11989, the TMR, and NEPA's "hard look" requirements.

***2. The Forest Service violated the Executive Orders, TMR, and NEPA by not considering an alternative that closed all routes causing natural resource damage.***

As described in detail above, the Forest Service is required to consider a reasonable range of alternatives. 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.

**Recommendation**

TWS respectfully requests the Forest Service to complete a supplemental EIS for those routes where it has not yet analyzed and disclosed on the record whether designation will satisfy the minimization criteria, including those routes to which we have specifically drawn your attention in this appeal. If the minimization criteria are not satisfied, the Forest Service must immediately close that route as required by the Executive Orders and TMR.

**C. The Forest Service's Motorized Designation of the Carbon Trail (#436) Violates the Executive Orders, the TMR, the Administrative Procedure Act, and NEPA.**

TWS and the undersigned organizations appeal the USFS decision to designate Trail #436 (hereinafter referred to as the "Carbon Trail") as motorized in the Whetstone Inventoried Roadless Area (IRA).

***1. 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 Whetstone IRA is a 17,000 acre expanse of land south of Crested Butte encompassing Whetstone Mountain, Mount Axtell, and Carbon Peak, as well as the headwaters of Ohio and Carbon creeks. It contains a relatively pristine watershed and provides essential wildlife habitat in the Crested Butte/Gunnison area. The Colorado Division of Wildlife recognizes the Whetstone area as being important for elk summer calving and as a winter migration corridor.

Mule deer, Canada lynx, bear, and other wildlife species also rely on the roadless area, heightening many citizens' discomfort with motorized designations in the area. The Whetstone IRA is also a popular destination for hikers and other quiet recreationists. In fact, many members of the public as well as the town of Crested Butte sent letters to the Forest Service asking that Whetstone be managed for non-motorized use.<sup>4</sup> Preserving the wildness of the Whetstone IRA is a primary goal of The Wilderness Society and other conservation organizations. Indeed, the area is a prime future Wilderness Area candidate, and it was recommended as such by the Forest Service itself only three years ago. Protection of the Whetstone IRA is also central to the Mountains to Mesas (M2m) initiative, a collaborative effort of several local and regional organizations. The M2m effort is a long-term vision for the Grand Mesa, Uncompahgre, and Gunnison National Forests where in vast landscapes are connected, native species thrive, natural ecological processes maintain a healthy balance, and large core wild areas are protected. 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.

As described in the section immediately preceding this one, the Forest Service has a non-discretionary duty under Executive Orders and the TMR to minimize the impact of motorized designations on water, soils, and wildlife. Executive Order 11644, as amended by Executive Order 11989, §§ 3, 9; 36 C.F.R. § 212.55(b). It also must minimize conflict between recreationists. *Id.* The designation of this trail as open for motorcycle use fails to minimize “[d]amage to soil, watershed, vegetation, and other forest resources[,]” “harassment of wildlife or significant disruption of wildlife habitats[,]” and “conflicts between...other existing or proposed recreational uses of the same or neighboring public lands.” *Id.* For instance, the Colorado Division of Wildlife submitted the following observations about roads and motorized trails in its comments to the GMUG regarding roadless areas in the Forest Plan Revision process:

Reducing road and motorized trail densities reduces habitat fragmentation and direct and indirect impacts to wildlife due to roads and motorized trails including audible, olfactory and visual disturbances. Roads and trails can create obstructions to migratory routes for wildlife. Reduced road and motorized trail densities also reduce opportunities for the introduction and spread of noxious weeds and sedimentation to watersheds and aquatic habitats. Additional pressures from traffic and increased access to roadless areas can cause big game to move to adjacent private lands, potentially creating new or compounding existing game damage situations. This can be further complicated by reducing big game harvest

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<sup>4</sup> The Town of Crested Butte submitted a letter to the USFS in May 2009 regarding the current travel planning process. In this letter, the Town of Crested Butte voiced its support for protecting the wilderness character in the Whetstone Roadless Area, thereby preserving the ability for the Whetstone area to potentially be designated as wilderness. An excerpt from the letter, which was attached to our FEIS comments, reads: Underlying all the comments from the Town of Crested Butte are the following principle[. . .]. The ability to further the potential wilderness area in the vicinity of Whetstone Mountain and Carbon Peak should be preserved.

through animals remaining on private lands which may act as refuges or sanctuaries.<sup>5</sup>

To the extent we can decipher the Gunnison's travel analysis, it also appears that the Forest Service recognized that the Carbon Trail caused resource damage to elk calving and migration habitat. *See* Attachment E (representing copy of cells from travel analysis spreadsheet that discuss segments of the Carbon Trail). It also acknowledged that motorized use of the trail was causing damage to wetlands and other unenumerated "resources," as well as that parts of the trail were in disrepair. *Id.* Notwithstanding these observations from Forest Service staff and comments from the public that a motorized designation of the Carbon Trail would impair quality wildlife habitat, undisturbed or lightly disturbed soils, watershed health, quiet recreationists' experience, vegetative integrity of the area, and other natural resources, the Forest Service failed to evaluate on the record how the minimization criteria are reflected in designating the Carbon Trail for motorized use.

The failure to minimize impacts and the failure of the Forest Service to "show its work," as we described the defect in the earlier section, is fatal to a decision implementing the regulations and Orders. 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. Because the Forest Service failed to show its work and failed to minimize impacts to the relevant resources on the ground, the agency cannot designate the Carbon Trail as motorized.

## ***2. The Forest Service failed to take a hard look at the effects of the Carbon Trail's motorized designation on roadless and wilderness characteristics in violation of NEPA.***

As the Forest Service is aware, the Hidden Gems Wilderness Campaign is actively seeking designation of 16,060 acres of the Whetstone IRA as a new Wilderness area.<sup>6</sup> With respect to IRAs and citizen-proposed wilderness, the Forest Service must evaluate two distinct types of effects resulting from the motorized travel plan. First, 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." *Lands Council v. Martin*, 529 F.3d 1219, 1230, 1232 n. 7 (9th Cir. 2008); *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, 1078 (9th Cir. 1994); *Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 531 F.3d 1114, 1137-38 (9th Cir. 2008). In other words, the Forest Service must carefully analyze and disclose impacts (i.e., take a "hard look" under the requirements of NEPA described above) to "Roadless Area Characteristics," which are "[r]esources or features that are often present in and characterize inventoried roadless areas, including:

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<sup>5</sup> Colorado Division of Wildlife. General Comments on Inventoried Roadless Areas in GMUG (Gunnison National Forest). *See* <http://wildlife.state.co.us/NR/rdonlyres/05FA7B35-B194-4CBD-AC3B-216093B31935/0/FieldRecommendationsSWRegionArea16forGMUGNFIRAs.pdf>.

<sup>6</sup> *See* <http://www.whiteriverwild.org/p-130.html>.

- (1) High quality or undisturbed soil, water, and air;
- (2) Sources of public drinking water;
- (3) Diversity of plant and animal communities;
- (4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land;
- (5) Primitive, semi-primitive non-motorized and semi-primitive motorized classes of dispersed recreation;
- (6) Reference landscapes;
- (7) Natural appearing landscapes with high scenic quality;
- (8) Traditional cultural properties and sacred sites; and
- (9) Other locally identified unique characteristics.”

36 C.F.R. § 294.11. Second, 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, at 1230 (9th Cir. 2008). The “possibility of future wilderness classification triggers, at the very least, an obligation . . . to disclose the fact that development will affect a 5,000 acre roadless area” or a roadless area of “sufficient size as to make practicable its preservation and use in an unimpaired condition.” *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, at 1078 (9th Cir. 1994).

#### **a. Failure to Take a Hard Look at the Effects on Roadless Area Characteristics and Other Natural Resources**

The Forest Service failed to take a hard look at the effects motorized designation of the Carbon Trail will have on the Whetstone IRA’s roadless characteristics and the potential for future wilderness designation. While the FEIS and its supporting documents contain some general statements regarding the effects of motorized routes on roadless areas, the analysis never touches down at the IRA or route level. For instance, the FEIS generally acknowledges the benefits of roadless areas for wildlife:

Maintaining roadless areas has a positive impact on wildlife due to the preservation of large, un-fragmented habitats and security areas. Under this alternative [#2], there would be fewer miles of road and motorized trail, and elk would be more likely to remain on federal lands rather than be displaced to adjacent private lands.

FEIS at 125.<sup>7</sup> However, the FEIS does not examine the potential environmental effects the Carbon Trail’s motorized designation and the associated motorized dispersed camping corridor

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<sup>7</sup> The Forest Service also acknowledges: “The Gunnison and Paonia Ranger Districts of the GMUG and adjacent BLM lands contain some tracts of relatively unroaded, unfragmented land that provide essential habitat to wildlife. Most of these areas are associated with existing Wilderness and lands identified as roadless areas. Natural disturbance (e.g., fire and avalanche) and man-caused disturbance, such as mining, timber harvest, or private land development, all contribute to the degree of habitat patchiness of the landscape. On a landscape scale, habitat security areas and Wilderness contribute to regional biodiversity. Regional biodiversity refers to the pattern of habitats and species assemblages across a large area of land. This level of biodiversity has important functional ramifications. For instance, many wide-ranging animals require a variety of habitat types occurring over a large geographic area.” FEIS at 117-18.

will have on the Whetstone Area. This is so even though the Carbon Trail (and the motorized dispersed camping corridor) literally bisects the Whetstone IRA. In fact, the Whetstone IRA is never mentioned in the FEIS; the Carbon Trail is mentioned exactly twice in the FEIS, but only to explain that the Forest Service was backpedaling from its proposed action wherein the trail was non-motorized, non-mechanized (hiker and horseback only) to the ROD's designation of the trail as motorized single track (allowing motorcycles and mountain bikes).

The Forest Service failed to take a hard look at the impacts of the designations on wildlife and wildlife habitat, as well as a host of other resources. Despite the fact that many conservation groups and the Colorado Division of Wildlife (CDOW) alerted the Forest Service to the potential effects on wildlife, as well as the fact that the Forest Service generally acknowledges that fewer motorized trails leads to improved, unfragmented habitat and security areas, 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 mile route will have on the IRA, a corridor that totals 461 acres. In our comments, we explicitly told the Forest Service that the Whetstone IRA contains important elk calving areas and that the area, which is contiguous to the West Elk Wilderness, is a major migration corridor for elk.<sup>8</sup> Further, we noted that the area contains suitable lynx habitat, which is adjacent to lynx home ranges. When evaluating the Whetstone IRA, the Colorado Division of Wildlife also stressed to the Forest Service its critical importance for elk, mule deer and lynx:<sup>9</sup>

14,170 acres in this IRA most of which contains elk production (calving area) and summer concentration area which is contiguous with summer concentration areas to the west and south in the West Elk Wilderness. A major migration corridor also crosses this area which currently allows migration to winter ranges south and west. IRA also contains lynx habitat and is adjacent to home ranges for several lynx. IRA provides important summer habitat for mule deer.

Given these important wildlife values of the IRA, CDOW recommended:

Concur with this IRA remaining *Semi-primitive Non-motorized and motorized travel occurring only on designated routes on the periphery on the IRA*. No new routes for motorized or mechanized travel should be designated within this IRA.<sup>10</sup>

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.<sup>11</sup> Other Forest Service

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<sup>8</sup> At least some Forest Service staff appear to be aware of these and other resource impacts from the Carbon Trail, but we can find no where that the Forest Service used this information to inform the hard look that should have been present in its NEPA analysis. See Attachment E.

<sup>9</sup> Colorado Division of Wildlife, General Comments on Inventoried Roadless Areas in GMUG, 95 (2006), available at <http://wildlife.state.co.us/NR/rdonlyres/05FA7B35-B194-4CBD-AC3B-216093B31935/0/FieldRecommendationsSWRegionArea16forGMUGNFIRAs.pdf>.

<sup>10</sup> *Id.* at 96 (emphasis added).

<sup>11</sup> The Forest Service generally compares the travel management plan's alternatives' likely effects on elk habitat effectiveness, but it does not explain how the motorized/mechanized Carbon Trail designation will affect elk habitat. See, e.g., FEIS at 52 (containing comparison chart of alternatives indicating alternatives 2, 3, and 4 would result in

units' NEPA analysis has been found deficient when the state wildlife department provided analysis and recommendations regarding individual ORV routes, which the Forest Service ignored and for which it provided no contrary effects analysis in the record. *Wash. Trails Alliance v. U.S. Forest Serv.*, 935 F.Supp. 1117, 1125-26 (W.D. Wash. 1996) (holding Forest Service's failure to acknowledge and contradict recommendations that ORV routes should not be designated in certain occupied mountain goat habitat violated NEPA). The failure to take a hard look at these effects of motorized designation of the Carbon Trail and designation of a 600-foot motorized dispersed 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.

We note, too, that 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.<sup>12</sup> 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.

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. In our comments on the FEIS, we wrote:

Permanent designation of motorized routes in IRAs will undoubtedly result in increasing impacts on surrounding ecosystems as well as changes to the routes. Permanent designation and advertisement on a motor vehicle use map (MVUM) will likely draw more attention to the trail by motorized users which, in turn, would likely lead to a host of new and increased impacts: the creation of additional user-created routes, an increase in the introduction and spread of invasive species via the vehicular transport, additional noise disturbance from the

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elk habitat effectiveness improvements of 2%, 6%, and 3%, respectively, while the preferred alternative would result in improvement of only 1%).

<sup>12</sup> Further, we request the Forest Service to produce the NEPA analysis that supported this designation in the first place as we have been unable to locate this analysis. We are concerned that the trail designation may never have been subjected to a hard look under NEPA in this or any other NEPA process.

engines, increased wildlife fragmentation, and user-conflicts with non-motorized users to name a few.

HCCA et al. Comments on the FEIS at 11. The Forest Service does generally acknowledge that vehicular travel would increase on the remaining open routes due to closures of other routes.

HE [i.e., Habitat Effectiveness] would improve for most LAUs [i.e., Lynx Analysis Units] in the analysis area. In general, while the calculated HE examines the effectiveness of habitat for elk, habitat would likely be improved for all wildlife species due to reduced road density and/or reduced use of roads through administrative closures or change in the type of use. Under Alternative 2, HE is expected to improve by approximately 2 percent across the affected LAUs.

Vehicular travel is expected to increase on the remaining open routes because of the continued increased demand for recreation travel and due to displacement of existing traffic from routes proposed for closure. With more vehicles, the impacts to wildlife are expected to be similar, though of less impact than the No Action alternative, and there would be more chances for wildlife to be hit and killed by vehicles. Human disturbance related to the use of roads and trails could disturb individuals, but the levels of disturbance would be reduced because of the decrease in road densities and the improvement in HE values. For species that use an area on a recurring basis, their pattern of use may be established, and they may adapt to the existing environmental baseline.

FEIS at 125-26. However, 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 is so even though the likelihood of increased use and associated impacts is especially likely to occur because the agency is actually directing mountain bike users to use the Carbon Trail to complete a loop trail due to its closure of the Green Lake Trail to mechanized use.

I am closing the western segment (0.47 miles) to mountain bikes . . . . Mountain bike riders riding on the Green Lake trail from the Kebler Pass road trail head will have to use the Carbon trail (#436) to either return to the Kebler Pass road (CR 12) or go further west on the Carbon trail to the Ohio Pass road (#730), either way creates a looped riding opportunity for mountain bike riders.

ROD at 29; FEIS, Appendix XX at 34. Thus, the Forest Service surely could have anticipated increased future motorized and mechanized use of the Carbon Trail and its motorized dispersed camping corridor, but, even so, it never examined the effects of that increased use on the Whetstone IRA's roadless characteristics or potential wilderness designation.

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. In discussing plaintiff's

contention that increased ORV traffic on certain routes "would have a significant impact on soil, vegetation, wildlife and non-motorized users," the District Court for the Western District of Washington concluded that USFS had not taken future increased use into account, enjoining the ORV project based on NEPA violations. *Id.*

Plaintiffs believe that if the Langille/Juniper Trails project and other connected ORV trail projects are completed, ORV use of the former trails will increase much more than projected by the USFS because the area will become a destination for ORV users from a wide geographic area. Any significant increase in ORV use of the Langille/Juniper Trails would, plaintiffs believe, drive hikers out completely and would have a significant detrimental impact on the environment.

...

Clearly, proper planning and assessment . . . can only take place when the USFS has considered all relevant factors surrounding the issue of user allocation and ORV use on the Langille/Juniper Trails, including all factors which may portend increased use and user conflict in the future. The court concludes that the USFS is clearly obligated to consider the impact of proposals for connecting trails on the user allocation issue.

...

Plaintiffs contend that the USFS has failed to adequately consider the potential harm to the high alpine environment through which the Langille/Juniper Trails run, including damage to soil, vegetation and wildlife. Again the USFS cannot accurately assess the threat of such harm until it squarely considers all of the factors which might contribute to increased ORV use of the trails.

*Id.* at 1124-25; *see also The Mountaineers v. U.S. Forest Serv.*, 445 F. Supp. 2d 1235, 1248 (W.D. Wash 2006) (finding a NEPA violation when the Forest Service had never carefully considered "the impact of the existing system, and whether it can bear an increase in use") (citing and quoting *N. Cascades Conservation Council v. U.S. Forest Serv.*, 98 F. Supp. 2d 1193, 1198 (W.D. Wash 1999)).

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.<sup>13</sup> 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.

### **b. Failure to Take a Hard Look at Effects on Potential Wilderness Designation**

As noted above, 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 "possibility of future wilderness classification triggers, at the very least, an obligation . . . to disclose the fact that development will affect a 5,000 acre roadless area" or a roadless area of "sufficient size as to make practicable its preservation and use in an unimpaired condition." *Smith v. U.S. Forest Serv.*, 33 F.3d 1072, at 1078 (9th Cir. 1994).

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. As the Forest Service is keenly aware, the Hidden Gems Wilderness Campaign is working to permanently protect the Whetstone IRA through Congressional designation of the area as wilderness. Further, 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. *See* Letter from the Washington Office, U.S. Forest Service, to Regional Foresters Regarding "Planning Directives for Plan Revisions and Plan Amendments" (Oct. 23, 2009) (Attachment A) (noting Forest Service should continue to use existing FSM and FSH direction for wilderness evaluations). 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. As we stated in our comments:

Roadless management, wilderness recommendations and travel management decisions are interrelated. Motorized and mechanized use directly impacts the wilderness character of roadless areas. When these wilderness characteristics have been compromised, lands can be disqualified from being designated as wilderness. Areas possessing outstanding wilderness characteristics often don't receive serious consideration for designation once motorized use has become established due to degradation of wilderness character and the expectation among

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<sup>13</sup> At one point in the FEIS, the Forest Service 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." FEIS at 236. While the Forest Service may contend that the mere presence of motorized trails does not conflict with roadless area management objectives, the agency is obligated to do an environmental effects analysis to see if individual trails do conflict with management objectives. The agency failed to do so here. Furthermore, as discussed in the next subsection, the Forest Service failed to explain the effects of these individual routes on the possibility of future wilderness classification.

motorized [and mechanized] recreationists that, once motorized use is established, this use will continue. Managing motorized and mechanized uses in roadless areas and recommended wilderness areas will affect the long-term treatment of these landscapes.

HCCA et al.'s Comments on the FEIS at 10. The Forest Service knows full well that the designations made in this travel planning process could affect the success of future wilderness designations, but it failed to recognize this fact in any way in its analysis. It 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.<sup>14</sup> 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. If the agency now wishes to discredit its own experts' analysis and recommendations, to some extent, that is the Forest Service's prerogative. However, 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.

***3. 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.***

It is fundamental to administrative law that an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). An agency decision is arbitrary and capricious if "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.* Further, NEPA requires that: "Agencies *shall* ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." Finally, we also direct the USFS to its travel analysis guidelines, which dictate that the agency "[d]etermine if any relevant analyses have already been conducted and if relevant data are available. Existing data and assessments should be used whenever they are accurate and available." FSH 7709.55, sec. 21.13.

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<sup>14</sup> See, e.g., FEIS, Appendix XX, at 71 ("The purpose of this travel management planning effort was to determine which existing routes should remain open to public motorized and mechanized travel. All of these comments reference inventoried Roadless designations. All of the travel routes in this Whetstone/Carbon/Axtell Roadless area are trails, not roads. As trails, whether motorized or non-motorized, they are allowed in Roadless areas. Comments referencing the draft Forest Plan (2007) are not within the scope of this travel management planning effort."); *id.* at 73 ("This travel management planning effort was focused on the need to determine which existing routes need to remain open for public motorized and mechanized travel. Future Wilderness plans and possible Roadless area designations are speculative and therefore not factors in this decision making process").

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. Under the 1982 Planning Rule and the National Forest Management Act (NFMA), Forests are required to evaluate potential wilderness area designations during forest plan revision. 36 C.F.R. § 219.17(a). The GMUG was actively engaged in this process, which culminated in the Draft 2007 Forest Plan, when the 2005 NFMA planning rule was thrown out. The Draft Forest Plan contained wilderness recommendations based on the 2005 GMUG Roadless Inventory, which was *completed by the agency's own experts* and included a wilderness recommendation for the Whetstone IRA. *See* USDA Forest Service, *Proposed Land Management Plan, Grand Mesa, Uncompahgre and Gunnison National Forests*, 93 (2007) [hereinafter “2007 Draft Forest Plan”]. The Draft GMUG Forest Plan specifically recommended 12,820 acres of the Whetstone IRA for wilderness designation. *Id.*

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.

When confronted with the agency's own wilderness analysis and recommendations in our FEIS comments, the agency blithely replied in its record of decision:

I am fully aware of the details of recent Forest Plan revision considerations for this area. Those draft plan revision management objectives were not subject to public review and comment because the public was not afforded a full comment period. The Forest Service has never been able to gauge the public's support or opposition to the draft Forest Plan revision (2007) that could have affected travel management decisions in the future. Therefore the current Forest Plan (1983 as amended) direction is still in effect.

ROD at 23. Again, we do not assert that the Forest Service is legally bound by the wilderness recommendations of the 2007 draft plan, though we remind the Forest Service, here and below, that it is certainly within the agency's discretion to designate the Carbon Trail as non-motorized, non-mechanized under its existing Forest Plan. What we do want the Forest Service to appreciate is that it is legally required to consider the reliable evidence before it—that is, 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.

***4. The Forest Service has the discretion to re-designate the Carbon Trail as non-motorized, and should as a matter of good public policy.***

As described above, the Forest Service has the legal obligation to designate the Carbon Trail as non-motorized. However, for the sake of argument, even if the Forest Service was not legally bound to change the designation, it is certainly within the agency's discretion to do so, notwithstanding the agency's repeated protestations to the contrary. The Forest Service suggests that the management area established in its 1983 Forest Plan precludes a non-motorized designation for the Carbon Trail.

In the GMUG Forest Plan (1991 amended) there are only two non-wilderness Management Area prescriptions (2A and 3A) within which specific ROS objectives are prescribed for travel management. The 2A Management Area ROS objective calls for semi-primitive motorized recreational opportunities. The 3A Management Area ROS objectives call for semi-primitive non-motorized recreational opportunity. All of the other Management Area ROS objectives allow for a range of possible recreational travel opportunities. In particular, the 2A and 3A Forest Plan ROS management objectives have influenced my decisions regarding travel on two controversial trails. One is the Carbon trail (#436) where a significant portion of the trail lies within a 2A Management Area. This area designation supports my decision to continue to allow motorcycle use on that entire trail, as opposed to restricting such use as many public comments suggest.

ROD at 14; *see also id.* at 23 ("Therefore the current Forest Plan (1983 as amended) direction is still in effect. When there are specific Forest Plan objectives that influence or effect travel management those plan requirements are intended to guide management decisions."); *id.* at 22 (suggesting the Carbon Trail must be designated motorized because it is the only trail in the management area). In an article published in the *Crested Butte News* on June 2, 2010, travel planning team leader Gary Shellhorn also implied that the Forest Service was bound to designate the Carbon Trail for motorized use.

"We understand [HCCA's] preference, but legally we are still bound to our 1983 Forest Plan, and under that plan there is very little planning direction that would restrict or control travel," said Shellhorn. "There is an area in the Whetstone complex where the objective is semi-primitive motorized travel. Not only was it allowed, it was the objective. It affords that kind of primitive recreational

experience.” Shellhorn continued, “What we’re doing is consistent with that ‘83 plan.”<sup>15</sup>

Despite the 27-year-old LRMP’s management area *objective*, it is *most certainly* within the Forest Service’s discretionary authority to choose not to designate the trail as motorized because there are absolutely no standards and guidelines in the 1983 LRMP that require the provision of motorized recreation in every 2A Management Area.<sup>16</sup> In any event, even the LRMP direction on which the Forest Service relies for its motorized designation of the Carbon Trail indicates that “[s]pecific land areas or travel routes [in 2A Management Areas] may be closed seasonally *or year-round* for compatibility with adjacent area management, *to prevent resource damage*, for economic reasons, *to prevent conflicts of use*, and for user safety.” GMUG LRMP at page III-106 (emphasis added). Thus, even if it were not illegal for the Forest Service to designate the Carbon Trail as motorized under the TMR and ORV Executive Orders, it would be entirely within the agency’s discretion to close the route in spite of the Management Area objective for a host of management reasons, including in order to prevent resource damage and recreational conflicts.

Further, the Forest Service is likely only delaying a management headache by failing to close the Carbon Trail to motorized use now. The 1983 LRMP is a first generation forest plan, which is 13 years overdue for revision.<sup>17</sup> The 2A management objective dates back twenty-seven years, and if written today, would not comply with the 2005 Travel Management Rule. Regardless, if the Forest Service relies on its 2005 GMUG Roadless Inventory when it restarts forest planning, which it is likely to do if the Washington Office continues to retain the Forest Service Manual and Handbook guidance upon which the Gunnison NF appears to have relied for its inventory, the Forest Service would probably recommend the Whetstone IRA for wilderness designation again. See 2007 Draft LRMP at 93; 2005 GMUG Roadless Inventory at 25-27. If this is the case, in conformity with the Forest Service Manual and Region 2 policy, the Forest Service would need to revisit its decision in this TMP to allow motorized and mechanized use of the Carbon Trail in the Whetstone IRA:

Any inventoried roadless area recommended for wilderness or designated wilderness study is not available for any use or activity that may reduce the wilderness potential of an area. Activities currently permitted may continue, pending designation, if the activities do not compromise wilderness values of the area.

FSM 1923.03. In addition to the Forest Service Manual direction, USFS Region 2 has a standing policy not to allow non-conforming uses in recommended wilderness, and to phase-out non-

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<sup>15</sup> Crested Butte News. Decision on Forest Travel Plan Will Impact Whetstone Area. June 2, 2010. See [http://www.crestedbuttenews.com/index.php?option=com\\_content&task=view&id=2531&Itemid=40](http://www.crestedbuttenews.com/index.php?option=com_content&task=view&id=2531&Itemid=40) (Attachment F).

<sup>16</sup> At any rate, where an objective in the LRMP and a substantive requirement of another controlling authority are at odds, the LRMP objective must yield. In this case, as described above, the Forest Service failed to minimize impacts to natural resources and conflicts between users by designating the Carbon Trail as motorized, so sections 3 and 9 of the ORV executive orders and sections 212.55(b) and 212.52(b) require its closure to motorized use.

<sup>17</sup> NFMA requires forest plans to be revised at least once every 15 years. 16 U.S.C. § 1604(f)(5).

conforming uses.<sup>18</sup> Further, even though we fully recognize that the plan was never finalized, in order to comply with this guidance, the 2007 Draft Forest Plan would not have allowed motorized or mechanized use in the Whetstone IRA. *See* 2007 Draft LRMP at 81, 152.

Obviously, all of this “speculation” (as the Forest Service likes to refer to it) over what will or will not happen with the Whetstone IRA relates to some date in the future, but the point is that if the Forest Service is considering relying on its 2005 roadless inventory and 2007 draft plan as a starting point for its new forest plan revision, then it would behoove the agency to use its discretionary authority to close the Carbon Trail to motorized and mechanized use now to avoid management headaches down the line.<sup>19</sup> As the Forest Service is aware and as we have explained before, permanent designation of motorized routes in IRAs and advertisement of that designation on a MVUM will undoubtedly result in increased impacts on surrounding ecosystems and feelings of entitlement related to the motorized route designation. The Forest Service should simply manage for the wilderness characteristics it knows to exist now in order to avoid entrenchment of use over the next few years, particularly because motorized and mechanized users are directed to the Carbon Trail through the MVUM that will result from this decision.

#### Recommended Carbon Trail Designation

TWS respectfully requests that the Forest Service immediately close the Carbon Trail to motorized and mechanized use because the current designation of those trails violates the Executive Orders and TMR. TWS respectfully requests that the Carbon Trail be designated non-motorized, non-mechanized, as it was in the Preferred Alternative in the DEIS. If the agency does not re-designate the Carbon Trail immediately, at a minimum, the agency must disclose the impacts that a motorized designation would have on natural resources, recreational conflicts, and the possibility of future wilderness designation in a supplemental EIS, closing the trail if the minimization criteria are not met.

#### **D. 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.**

TWS and the undersigned organizations respectfully appeal the agency’s decision to allow motorized use on the Crest Trail (#531) from Monarch Pass to Marshall Pass, as well as the motorized dispersed camping corridor established along this stretch of trail. This popular trail is

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<sup>18</sup> USDA Forest Service National Forest System Briefing Paper, *Management of Recommended Wilderness*, July 16 2007.

<sup>19</sup> The ROD even suggests that travel planning decisions may need to be revisited in light of forest planning: “It should be noted that future Forest Plan revision efforts would again evaluate the wilderness suitability and potential eligibility of this Carbon/Whetstone area. There is the possibility that Forest Plan revisions may necessitate changes in travel management for this area in the future.” ROD at 23. We would submit that the Forest Service will almost certainly need to revisit this travel management decision in the Forest Plan revision if it retains the motorized designation. Although the Forest Service suggests that there is “strong public preference” for motorized designation of the Carbon Trail, there is an equally strong or stronger public preference that the Carbon Trail be non-motorized. *See* FEIS at 43; ROD at 22. It is probable that the Carbon Trail issue will come up again if the Forest Service retains the motorized designation of the trail in this TMP.

part of the Continental Divide National Scenic Trail (CDNST). Motor vehicle and bicycle use by the general public on the CDNST is prohibited, except where allowed by limited exception. The National Trails System Act (NTSA) states:

The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this Act shall be construed as authorizing the use of motorized vehicles within the natural and historic areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary.

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.

Throughout the travel planning process, the agency consistently sought a mechanized or motorized designation for the Crest Trail. The USFS designated the Crest Trail as mechanized in the DEIS Preferred Alternative, then reverted to a motorized designation, along with an associated motorized dispersed camping corridor, in the FEIS and ROD. The agency based its decision in large part on the lack of coordination between adjacent forests, overemphasizing this aspect while downplaying legitimate resource concerns and potential user conflicts. The ROD states:

Further, to make changes on those portions of the CDNST that are on the Gunnison National Forest has the potential to affect other trails on adjacent forests. A comprehensive CDNST travel plan does not exist; therefore, it is not possible to take a look at travel on the CDNST that takes into account adjacent forest's management. There may be a need to revisit travel designations on the CDNST if a comprehensive plan for the trail in this area is completed in the future.

ROD at 25. Although the GMUG should have taken the opportunity to lead the way for environmentally sound and forward-looking management of the CDNST from the start, a fundamental premise of its decision not to designate the CDNST as non-motorized, non-mechanized is obsolete because, in fact, 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.

Rather than using the confusion that exists between the multiple managers of the CDNST as a flimsy shield for its poorly supported and environmentally harmful decision, the Gunnison NF should now be implementing the CDNST Comprehensive Plan.<sup>20</sup> Pertinent passages in the Plan state:

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<sup>20</sup> We note also that the Forest Service is only making things more confusing and dangerous for forest users by designating this trail segment as motorized. The allowed us on Trail #531 north and west of Highway 50 was shown

The nature and purposes of the CDNST are to provide for high-quality scenic, *primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.*<sup>21</sup>

It is the intent of the Forest Service that the CDNST will be for *non-motorized* recreation.<sup>22</sup>

Bicycle use may be allowed on the CDNST (16 U.S.C. 1246(c)) if the use is consistent with the applicable land and resource management plan and *will not substantially interfere* with the nature and purposes of the CDNST.<sup>23</sup>

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;
- (3) Is for the purpose of allowing private landowners who have agreed to include their lands in the CDNST by cooperative agreement to use or cross those lands or adjacent lands from time to time in accordance with Federal regulations;
- 4) Is on a motor vehicle route that crosses the CDNST, as long as that use *will not substantially interfere* with the nature and purposes of the CDNST;
- 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

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as a bicycle trail in the 2006 GMUG TMP DEIS existing conditions (no action alternative) map, and the adjacent Pike-San Isabel NF's Salida RD's 2009 MVUM does not show Trail #531 north of Monarch Pass as open to motorized use. However, the ROD's final map now designates the segment of Trail #531 north and west of State Highway 50 as a motorcycle trail. The motorized designation of this route does the public a disservice by exposing unlicensed motorcyclists as young as 10 years old to a dangerous crossing of 4-lane State Highway 50 in order to travel the length of Trail #531, exposes them to potential ticketing for traveling further onto an adjacent non-motorized segment of Trail #531 on the Salida Ranger District, and tempts the public into making unauthorized travel decisions.

<sup>21</sup> United States Forest Service, *Continental Divide National Scenic Trail Comprehensive Plan*, 4 (2009) (emphasis added).

<sup>22</sup> *Id.* at 3 (emphasis added).

<sup>23</sup> *Id.* at 15 (emphasis added).

the use will not substantially interfere with the nature and purposes of the CDNST.<sup>24</sup>

Specific Forest Service Manual direction regarding management of the CDNST echoes these prescriptions.<sup>25</sup>

Decisions to be made by the Gunnison NF include whether to allow bicycle<sup>26</sup> and motor vehicle<sup>27</sup> 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. More importantly, 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.<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup> Evaluations of “substantial interference” must be objective and based on the management objectives of the CDNST. 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. The analysis and

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<sup>24</sup> *Id.* at 19 (emphasis added).

<sup>25</sup> Forest Service Manual 2300, Ch. 2350.

<sup>26</sup> Forest Service Manual 2353.44b, paragraph 10.

<sup>27</sup> *Id.* at paragraph 11.

<sup>28</sup> United States Forest Service and Bureau of Land Management, *Final Environmental Impact Statement, Gunnison Basin Federal Lands Travel Management*, Appendix XX, 175 (2010).

<sup>29</sup> ROD at 25.

<sup>30</sup> NEPA requires that “[a]gencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon conclusions in the statement. 40 C.F.R. § 1502.24

documentation to support a “does not substantially interfere” determination are critical to the current and future management of the CDNST.

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. Furthermore, this statement of increased crowding for motorized users does not make sense with regard to the CDNST. The FEIS estimates that 80 percent or more of recreational use on this segment of trail is non-motorized, FEIS at 176, and it is therefore difficult to imagine that the change of a low-use trail would have a dramatic effect on the experience of motorized users. Continuing to allow motorized and mechanized uses on the CDNST, especially along the Monarch Crest, may, however, lead to a very negative experience for through-hikers and others that may not have been aware that the trail is open to mountain bikers and motorcycle riders. FEIS at 198. For hikers and equestrians that are aware that motorized and mechanized use is allowed on the trail (and off the trail for motorized dispersed camping), that knowledge and/or past negative experiences on the trail may lead to their displacement from the CDNST and Colorado Trail, which was designated for hiker and equestrian use in the first place.

As described above, 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. The motorized designation of the Crest Trail and its associated motorized dispersed camping corridor, thus, must be reversed.

In sum, TWS and the undersigned organizations believe that continued motorized use would substantially and significantly hinder the nature and purposes of the CDNST, the experience sought by hikers and horseback riders on the CDNST, and wildlife habitat vitality. The agency’s lack of critical analysis of the impacts of motorized and mechanized use and failure to comply with substantive legal standards of the executive orders and TMR renders the designation illegal.

#### Recommended Monarch Crest Trail Designation

TWS respectfully requests that the Forest Service immediately close the Crest Trail to motorized use because the motorized designation of this trail and the motorized dispersed camping corridor designation violates the Executive Orders, TMR, and the NTSA. TWS respectfully requests that the Crest Trail be designated non-mechanized, non-motorized in a new decision. At the very least, we request that the agency support in a supplemental EIS any contrary designation of this route with evidence that it will not substantially interfere with the nature and purposes of the CDNST and evidence that it will minimize recreational conflicts and resource impacts.

#### **E. The Forest Service’s High-Clearance Designations of Routes 578 and 578.2A are Arbitrary and Capricious Because There Is No Legal, Existing Motor Vehicle Access to the Routes.**

TWS and the undersigned organizations respectfully appeal the high-clearance designations of routes 578 and 578.2A. We commented that no legal, open-to-the-public road extends over the Divide from the adjacent Saguache Ranger District on the Rio Grande National Forest to connect to Road 578. The FEIS responds:

[I]t has been confirmed that there is motorized access on the Saguache District leading up to road #578. The Preferred Alternative would continue to allow full-sized motorized travel on road #578 and #578.2A since that is the existing conditions [sic] and there were no adverse conditions anticipated with such use that would warrant closure.

Appendix X, 120. 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 Grand 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.

Finally, it is also problematic in that it is inconsistent with existing designations on the adjacent RGNF, having the potential to affect any upcoming travel plans on that forest. If the Forest Service is serious about maintaining or achieving consistency between adjacent forests, it should honor the non-motorized designations of its sister forests.

#### Recommended Trail Designations

TWS and the undersigned organizations request that the designation of routes 578 and 578.2A as open to full-sized vehicle use by the public be reversed, and we ask that they be designated as administrative roads or closed.

#### **F. The Forest Service’s FEIS and ROD violate the National Environmental Policy Act due to their failure to consider route-specific evidence and suggestions submitted by the public.**

##### ***1. The Forest Service failed to consider or respond to specific comments and recommendations provided by the public.***

The National Environmental Policy Act (NEPA) “ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989). An agency preparing an FEIS must assess and consider comments, both individually and collectively, and must state its response to comments in the FEIS. 40 C.F.R. § 1503.4. CEQ regulations specifically state:

An agency preparing a final environmental impact statement *shall assess and*

*consider* comments both individually and collectively, *and shall respond* by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

1. Modify alternatives including the proposed action.
2. Develop and evaluate alternatives not previously given serious consideration by the agency.
3. Supplement, improve, or modify its analyses.
4. Make factual corrections.
5. Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

*Id.* § 1503.4(a); *see also, e.g., Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 445-46 (4th Cir. 1996) (stating that agencies are required to respond to comments by explaining in the EIS why the comments do not warrant further agency response and by citing the authorities or reasons that support the agency's position).

On June 3, 2009, TWS, along with a host of other national, regional, and local conservation and quiet recreation organizations, submitted detailed, substantive comments to the Forest Service regarding the agency's Gunnison TMP Draft Environmental Impact Statement (DEIS), which we incorporate here by reference. In particular, we 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. Our June 2009 comment letter addressed specific trail designations and alternatives organized under the following topic areas: (1) Proposed Changes to Designations, (2) Additional Alternatives for Analysis, (3) NEPA Analysis Requested, (4) Comments on DEIS Alternatives and (5) Suggestions for the Proposed Alternative. 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. *See High Country Citizens' Alliance (HCCA) et al.'s May 28, 2010 FEIS Comments*. Below are a sampling of excerpts on specific trails from our comments that were overlooked by the agency in its FEIS and ROD:

Trail Number (Name)

400 (Brush Creek)

- "The MO designation found in all alternatives fails to consider a reasonable range of alternatives and fails to analyze impacts to soils from such a designation."
- "HCCA requests that at least one alternative in the FEIS analyze the impacts of a non-motorized designation and that the impacts of a motorized designation on soils and recreation opportunities be disclosed."
- "Any alternative proposing the designation of this route must be supported by substantial, site-specific analysis of the impact to recreation opportunities and soils should be analyzed and compared among alternatives."

578 (McIntyre Gulch)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “TWS requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

557 (Teocalli Ridge)

- “Parallel motorized routes exist adjacent to 557. Designating 557 as non-motorized will reduce user conflicts in addition to reducing erosion and degradation of this trail.”
- “The designation of this trail as open to motorized use fails to minimize “damage to soil, watershed, vegetation, and other forest resources” and “significant disruption of wildlife habitats” as required by the TMR and Executive Orders. In addition, we cannot find any USFS response to our DEIS comments regarding this trail and its resource concerns.”

549 (Cameron Gulch)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

495 (Left Hand)

- “All alternatives propose this trail for ATV use. We suggest that this status is inaccurate in the No Action alternative. Further, the lack of other potential designations fails to consider a reasonable range of alternatives.”
- “HCCA requests that a hiker and horse designation be considered in at least one alternative and that a mountain bike designation be considered in at least one alternative.”
- “This route could significantly impact quiet use and roadless characteristics of this area. Low elevation wildlife habitat in the area is critical for migration.” DEIS Comments, p. 48 Table 1.
- “Any proposed change in user class under any alternative must be supported by substantial, site-specific analysis. Effects of expanded motorized use of this trail on roadless characteristics and wildlife migration should be analyzed.” Scoping Comments, pg. 48

427 (Gold Creek)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

578.2A (Sargents Mesa)

- “Further analysis is required in order to propose a change from Administrative to HC (high clearance). In addition, proposing a HC designation in all action alternatives fails to consider a reasonable range of alternatives. We recommend closure.”
- “HCCA requests that at least one alternative should consider closure of this route. If this route is proposed for inclusion in the travel system, it must be accompanied by additional, site-specific NEPA analysis.”

#### 426 (Fairview)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

#### 610 (Bear Gulch)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

#### 478 (Fossil Ridge)

- “The designation of this route as MO in all action alternatives fails to consider and analyze a reasonable range of alternatives.”
- “HCCA requests additional analysis of the designation of this route as MO and consideration of other designations in at least one alternative.”

Following the release of the FEIS, conservation organizations brought these oversights to the agency’s attention in comments submitted on May 28, 2010. Unfortunately, the ROD again ignored our comments and seems to have made no effort to analyze trail designations based upon our recommendations and concerns, particularly the specific trails noted above. The two documents 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. The agency’s failure to acknowledge these and other route-specific comments creates the appearance that numerous trail designations may have been pre-determined outcomes and made without consideration of appropriate environmental analysis and public input that was before the agency. 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.

### Recommendation

TWS respectfully requests that the ROD be remanded to the GMUG to analyze and respond to our trail-by-trail comments. This includes the possibility that trail designations could be changed to reflect the additional information, and we believe that they should.

## ***2. The Forest Service failed to consider a reasonable range of alternatives.***

As described earlier in this appeal, the Forest Service is required to consider a reasonable range of alternatives under NEPA. The Forest Service violated NEPA, and the ROD and FEIS are invalid, because they fail to rigorously explore and evaluate all reasonable alternatives for designating 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.

Our concern with the failure to consider our comments and the resulting lack of analysis is not merely procedural. Rather, we worry that the agency has prematurely precluded an adequate range of alternatives from being considered for certain routes and failed to sufficiently analyze resource impacts. 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. This failure has caused the agency to foreclose options that would protect, restore, or enhance the environment.

### **Recommendation**

TWS respectfully requests that the ROD be remanded to the GMUG to analyze an alternative that would incorporate the specific route closures described in this appeal and our earlier comments in a supplemental EIS. This includes the possibility that Forest Service could choose the new alternative it examines.

## ***3. The Forest Service failed to take a hard look at the effects of several route designations.***

As described in detail earlier in this appeal, the Forest Service is required to take a "hard look" at

the environmental effects of its actions. 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. 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.

### Recommendation

TWS respectfully requests that the ROD be remanded to the GMUG to complete a supplemental EIS that contains environmental analysis sufficient to address the concerns raised in this appeal and earlier comments.

### **G. The Forest Service violated Subpart A of the travel management regulations because the minimum road system identification does not contain a science-based analysis.**

While we continue to appreciate that the Gunnison National Forest recognized its obligation to complete travel analysis, identify the minimum road system (MRS), and identify unneeded roads for decommissioning under 36 C.F.R. § 212.5(b), the fact remains that the Forest Service did not complete the “science-based” travel analysis required to derive its minimum road system and its list of unneeded roads for decommissioning. Because the minimum road system was not founded on a “science based analysis” within the meaning of the Roads Rule and agency guidance, we ask that any statements or inferences made in the ROD or FEIS that this process was “travel analysis” or that this ROD reflects the minimum road system for the Gunnison should be deleted. Most importantly, we believe the Regional Office should not suggest that the format presented by the Gunnison would satisfy other forests' obligations to complete travel analysis or a minimum road system identification under the Roads Rule.<sup>31</sup>

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 ROD and FEIS go on to both state outright and imply that the Forest Service has completed a full travel analysis during the travel planning process that

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<sup>31</sup> Note, too, that Congress has specifically expressed its expectation that the Forest Service will fully comply with its obligation to complete a science-based travel analysis. The Committee Report that accompanied the Appropriations Act of 2009 states: “*The Committees on Appropriations expect that each individual National Forest or Grassland will comply fully with all travel management regulatory requirements, particularly the science-based analysis in 36 CFR 212.5 (b)(1), the identification of unneeded roads in 36 CFR 212.5(b)(2), and the criteria for designation in 36 CFR 212.55(a) and (b).* The Committees expect the Forest Service to identify priorities, and associated resource requirements, to fully comply with the regulatory requirements of 36 CFR 212.5(b) (1) and (2).” Appropriations Act of 2009, 155 Cong. Rec. H2089-01 at H2110. (Feb. 23, 2009) (emphasis added).

is adequate to designate a minimum road system. Unfortunately, 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 Travel Analysis Process is a term of art and its components are described in detail in Forest Service Directives. 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.<sup>32</sup>

The Roads Rule requires that the Forest Service “must incorporate a science-based roads analysis at the appropriate scale” in “determining the minimum road system.” 36 C.F.R. § 212.5(b)(1). The Forest Service Travel Planning Handbook describes the objectives of travel analysis as, *inter alia*, to inform decisions related to identification of the minimum road system and designation of roads, trails, and areas for motor vehicle use. FSH 7709.55, sec. 20.2. The Handbook reaffirms that the travel analysis process (“TAP”) must be science-based, tracking language found in the Forest Service’s Roads Analysis Report FS-643. *See* FSH 7709.55, sec. 20.3.1. To date, Report FS-643 provides the most comprehensive direction available to guide efforts to meet the “science-based” travel analysis requirement, explaining that:

Roads analysis [now referred to as “travel” analysis] is intended to be science based. That is, analysts should locate, correctly interpret, and use relevant existing scientific literature in the analysis. They should disclose any assumptions made during the analysis, and reveal the limitations of the information on which the analysis is based. Finally, the analysis report should be subjected to critical technical review.

U.S.D.A. Forest Service, *Roads Analysis: Informing Decisions About Managing the National Forest Transportation System*, Misc. Report FS-643, page 2 (Aug. 1999), available at [http://www.fs.fed.us/eng/road\\_mgt/01titlemain.pdf](http://www.fs.fed.us/eng/road_mgt/01titlemain.pdf). The agency further described the attributes of critical technical review: “A principal tenet of scientific rigor and credibility is that the methods and conclusions be subjected to critical internal and external technical review, and that the final product adequately addresses concerns raised by those reviews.” *Id.* at 34; *see also id.* at 21 (“Internal and external technical review will add rigor and credibility to the final report. Subjecting a sample of draft reports to an evaluation of how science was used in the analysis (Everest et al. 1997) is also desirable.”) (emphasis added).

The science-based analysis must include identification of “the risks and opportunities for each road or road segment.” *Id.* at 13. The Forest Service Handbook also notes that the science-based travel analysis must consider the benefits, problems, and risks of routes as informed by the general and specific criteria found at 36 C.F.R. § 212.55 for individual route designations. FSH 7709.55, sec. 21.4. That means the Forest Service must specifically consider effects of each

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<sup>32</sup> It may be that the analysis conducted and used for this travel planning process forms a solid foundation from which to start to complete a legally adequate travel analysis, but it is currently not evident from the record that the analysis conducted considered all of the criteria required for a travel analysis.

route on natural and cultural resources, including damage to soil, watershed, vegetation, and other forest resources, harassment of wildlife and disruption of wildlife habitat, and conflicts between recreational users of the forest. 36 C.F.R. § 212.55(b). It must also consider the compatibility of motor vehicle use of routes with existing conditions in populated areas (e.g. noise, emissions), non-motorized and motorized recreational opportunities, public safety, access needs, and the funding needed and available for maintenance and administration of each route. *Id.* § 212.55(a)-(b).<sup>33</sup> 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).<sup>34</sup>

Based on this direction, a few logical conclusions can be reached. First, the hallmark of travel analysis is a route-by-route assessment of risks, problems, and benefits, based on criteria enumerated in the travel management regulations at 36 C.F.R. § 212.5(b)(1) and § 212.55(a)-(b). Second, in evaluating a given route based on these criteria, the Forest Service must employ existing scientific literature and evidence it has in its possession. If there is no data or literature that can inform an analysis of the risks, benefits, and problems of a given route, the Forest Service must disclose any assumptions made in the analysis of that route and reveal the limitations of information on which the analysis is based. Third, the Travel Analysis must precede the identification of the minimum road system 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.”<sup>35</sup> Fourth, because the Travel Analysis is designed to inform the *minimum* road system identification (and individual route designations), the route-by-route analysis necessarily must comprise all routes on the forest (i.e., the whole travel network). Finally, the Forest Service should not include high-risk, low-benefit routes in the “minimum road system” identification because they do not meet the definition of the “minimum road system,” nor can a travel plan that includes these routes satisfy the minimization criteria of 36 C.F.R. § 212.55 and the Executive Orders.

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<sup>33</sup> See also Report FS-643 at 25–30 (providing questions analysts should ask with regard to each route in order to determine associated benefits, problems, and risks, as well as codes cross-referencing the FS-643’s index, which includes scale considerations, information needs, analytical tools, and recommended references that could assist analysts).

<sup>34</sup> This provision further defines the minimum system as the road system needed:

- to meet resource and other management objectives adopted in the relevant land and resource management plan. . . .
- to meet applicable statutory and regulatory requirements,
- to reflect long-term funding expectations, [and]
- to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

<sup>35</sup> Travel analysis should precede any NEPA analysis that purports to designate a minimum road system. The Southwest Region of the Forest Service defined travel analysis as involving “a broad-scale comprehensive look at the forest transportation network, providing long-term management guidance and site-specific proposals for change to travel management direction and the forest transportation system. These changes will then be evaluated through the NEPA process(es) before implementation.” USDA Forest Service Southwestem Region Travel Analysis Frequently Asked Questions. October 2006.

In our FEIS comments, we alerted the Gunnison National Forest to an existing travel analysis and minimum road system identification that bears out these conclusions from the Cibola National Forest's Mountainair Ranger District. We have again attached the travel analysis process report (Attachment B) and minimum road system identification (Attachment C) for the Gunnison National Forest's review, and we can point the Gunnison NF's staff to additional TAPs that are faithful to the "science-based" requirement of the rule if requested. Although we may not agree with all of the conclusions reached in these documents, we do believe they represent adherence to the *process* required of the Forest Service.

Unfortunately, we see little resemblance between these travel analyses and minimum road system identifications and the Excel Sheet the Gunnison NF provided to us, which, according to the forest, represents the forest's "travel analysis." (Attachment D) Although some discrepancy in format is sure to exist between regions and even between forests within the same region, the subject matter of the analysis should be more or less the same since the regulations and agency guidance list several specific criteria the Forest Service must take into account when completing travel analysis. Further, whether the Forest Service examined each criterion with respect to each route and what the conclusions were as to the criterion should be apparent to the reviewing public and agency staff, not just the staff that developed the travel analysis.

A quick comparison of pages from each of the attached travel analyses will illustrate the problems with the Gunnison's analysis. This is the first page of the Mountainair RD's route-by-route assessment:

APPENDIX A - RISK AND BENEFIT ASSESSMENT

MOUNTAINAIR RANGER DISTRICT  
Last Updated 01/05/2009

Appendix A is the table of risk or benefit ranking of each criteria and the overall Risk/Benefit category for each road that was evaluated as part of the Travel Analysis Process. The table also includes additional remarks by the ID Team members. Initials in the remarks column indicates which team members generated the remark. The Appendix is broken into two tables. The first table shows the roads that were evaluated and have a maintenance level from 1 to 3. The second table shows additional roads that were evaluated as part of the TAP. Additional Roads may include unauthorized, closed or decommissioned roads that were considered because of their contribution to the overall transportation system on the Mountainair Ranger District. The Minimum Road System column indicates whether or not a ML-1-3 road was determined to be part of the Minimum Road System (Maps 7 and 8). All additional roads evaluated were added to the minimum roads system.

OPERATIONAL MAINTENANCE LEVEL 1-3 ROADS

ROUTE NO.	ROAD NAME	SEGMENT	OPERATIONAL LEVEL	BENEFIT RATED		RISK												BENEFITS								MINIMUM ROAD
				R	B	HUMAN IMPACT	WILDLIFE	SEASONALITY	PRODUCTION	RESOURCES	INFRASTRUCTURE	TRIP/ACCIDENT	OVERALL RISK	OVERALL RISK	RESCUE	TRAVEL	RECREATION	RECREATION	EMERGENCY	OVERALL	OVERALL					
001		0.3	2	L	L	1	1	1	1	1	3	1	9	L	2	1	1	1	1	1	8	L				
002		3.6	2	M	L	1	1	2	2	3	1	1	11	M	1	1	1	1	1	1	5	L				
002A		0.7	2	M	M	1	1	1	2	3	3	1	12	M	2	1	2	2	1	1	8	M	x			
002C		0.5	2	M	L	1	1	1	2	3	3	1	12	M	1	1	1	1	1	1	5	L	x			
002D		0.5	2	L	M	1	1	1	2	3	1	1	10	L	2	1	2	2	1	1	8	M	x			
002E		0.4	2	L	L	1	1	1	2	3	1	1	10	L	1	1	1	1	1	1	5	L				
002F		0.2	2	L	L	1	1	1	2	3	1	1	10	L	1	1	1	1	1	1	5	L				
102	GALLINAS LOOK OUT	1.8	2	H	H	3	3	1	3	2	2	1	16	H	3	1	3	2	3	12	H	x				
104	COUGAR MTN	3.1	2	H	H	3	2	3	2	2	3	1	18	H	3	1	3	2	3	12	H	x				
104	COUGAR MTN	5.8	3	M	M	1	1	3	2	2	3	1	13	M	3	1	1	1	3	8	M	x				
104A	SAWMILL CYN (Bates)	1.9	1	H	M	3	1	3	2	2	2	1	14	H	1	1	3	2	1	8	M	x				
104A	SAWMILL CYN (Bates)	1.9	3	H	H	1	1	3	3	2	3	1	14	H	1	1	3	2	3	10	H	x				
104AA		1.5	2	H	M	1	3	2	2	3	2	1	14	H	2	1	2	2	1	8	M	x				
104AB		0.5	2	M	M	1	1	1	2	3	2	1	11	M	2	1	2	2	1	8	M					
104AC		0.6	2	M	L	1	1	3	2	3	1	1	12	M	1	1	1	1	1	5	L					
104B		1.1	2	L	L	1	1	2	1	2	2	1	10	L	2	1	1	1	1	8	L	x				
104CA		0.2	2	L	L	1	1	1	1	3	2	1	10	L	2	1	1	1	1	8	L					
104CB		0.1	2	L	L	1	1	1	1	3	2	1	10	L	1	1	1	1	1	5	L					
104CC		1.1	2	M	M	1	1	2	2	3	2	1	12	M	2	1	2	2	1	8	M	x				
104CD		0.5	2	L	L	1	1	1	1	3	2	1	10	L	1	1	1	1	1	5	L					
104CE		0.6	2	M	L	1	1	2	1	3	2	1	11	M	2	1	1	1	1	8	L	x				
104CF		0.6	2	M	L	1	1	2	1	3	2	1	11	M	2	1	1	1	1	8	L	x				

The chart depicts the criteria considered for each route, describes how the Forest Service evaluated its relative benefits and risks, and clearly denotes whether the route comprises part of the minimum road system.

In contrast, this is a screen from the Gunnison's travel analysis<sup>36</sup>:

<sup>36</sup> If this snapshot is too small to read, please refer to Attachment D.

Gunnison--Travel\_analysis\_table\_combined.xls [Compatibility Mode] - Microsoft Excel

Click to add header

Dist Area		Greenie Tally #	Route #	Trail #		Begin Mile	End Mile	District	Alternative	District	Type of	Public	Edge
Crater Butte	Bench, Dam	4	34	Bathic Road	RC		4	reduce vehicular traffic; PGCE					
Crater Butte	Summit Crater	4	32	Traylor Pass	250	5.10		include State Hwy 125					
Hiway/Houston		13.0	13.0					Public access		Clear			
Hiway/Houston		14.0	14.0					Public access		Clear			
Hiway/Houston		15.0	15.0					Public access		Clear			BLM
Hiway/Houston		16.0	16.0					Public access		Clear			
Hiway/Houston		17.0	17.0					Public access		Clear			SLM
Hiway/Houston		18.0	18.0					Public access		Clear			
Hiway/Houston		19.0	19.0					Public access		Clear			
Hiway/Houston		20.0	20.0					Public access		Clear			
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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.

We raise this issue not because we prefer one format over another, though we do prefer the Mountainair TAP's format for its clarity on what constitutes the minimum road system, the systematic manner with which it goes through the relevant criteria, and the ease with which it can be read and understood. We raise the issue because a legally adequate minimum road system identification (and in this case designation of that system) must be founded on a science based analysis that someone outside the ID Team could review and understand. In part, this is necessary due to the continuing role the travel analysis and minimum road system identification should play in forest management. Further, the TMR states that the minimum road system determination should, to the degree practicable, include public input, 36 C.F.R. § 212.5(b)(1), so it follows that the science-based analysis should be transparent and understandable to the public.

As we explained in our FEIS comments, the fundamental purpose of Travel Analysis and identifying the minimum road system is to provide line officers with critical information to develop road systems that are safe and responsive to public needs and desires, are affordable and efficiently managed, have minimal negative ecological effects on the land, and are in balance with available funding for needed management actions. The agency and the public should be able to refer back to information developed in the travel analysis and minimum system determination to identify management opportunities to help implement or revise forest plans, help managers assure that limited funds are spent efficiently on the highest priorities, and tie to in project-level NEPA analysis to help managers address cumulative effects and to reduce the NEPA workload. The minimum road system identification and prioritized list of unneeded roads for decommissioning should also guide forest managers' road decommissioning efforts, including determining how best to allocate Legacy Roads and Trails funds.

Unfortunately, the Excel spreadsheet that constitutes the Gunnison NF's travel analysis report is a largely incomprehensible, sparsely and cryptically populated document that does not meet these needs. 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. We are concerned that this document will not serve the future needs of the forest, but more importantly, we are concerned that this "travel analysis" will somehow serve as a model to other Region 2 forests as they start to comply with their obligations under 36 C.F.R. § 212.5(b).

Except to the extent we have raised concerns about individual route and vehicle-assisted dispersed camping corridor designations and certain NEPA deficiencies in our comments and this appeal, we think the Forest Service has made large strides in this process towards designating a transportation system that is much less redundant and more ecologically sound than the existing system. We do not, however, believe that this system should be called the "minimum road system" because it is not founded upon the requisite science-based travel analysis. *See, e.g.*, ROD at 2, 13, 15. 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. In sum, it is important that the Gunnison NF demonstrate a legally adequate process for identifying the minimum road system per the standards set forth in the regulations and agency guidance, including a route-by-route analysis that considers both the fiscal and environmental impacts of each system route. In other words, the Forest Service must demonstrate that it considered each of the criteria set forth

in the regulation and agency guidance on the record. Thus, it is illegal for the Forest Service to indicate that its Selected Alternative is the minimum road system when that system has not been informed by an adequate travel analysis.<sup>37</sup>

Recommendation regarding the minimum road system:

TWS and the undersigned organizations request that the Forest Service remove all references in the FEIS and ROD stating or implying that the forest has completed “travel analysis” and the “minimum road system” identification and that it has designated said system.

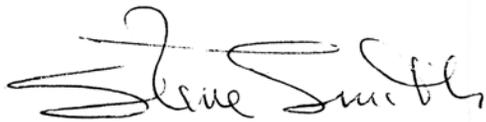
**IV. REQUEST FOR RELIEF**

TWS and the undersigned wish to reiterate our support for many aspects of the Gunnison NF’s Travel Management Plan, as we have described in earlier comments and other communications with Forest Service Staff. Given the complexity of the issues and time and resources committed to this document, we believe that its overall quality should be highlighted. However, for the reasons stated above, certain aspects of the ROD and FEIS fail to comply with law, regulation, and policy. Therefore, TWS respectfully requests the Forest Service Appeal Reviewing Officer to set aside the Decision and direct Forest Supervisor Charles S. Richmond to immediately make the changes sought in this appeal.

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

Respectfully submitted this 16th day of August 2010.

Sincerely,



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<sup>37</sup> As outlined in this appeal, some of the routes included in the Selected Alternative, which the USFS describes as the minimum road system, have serious environmental impacts and do not comply with various statutory and regulatory requirements, including Executive Orders 11644 and 11989 and the general and specific criteria of the Travel Management Rule. 36 C.F.R § 212.55. We do not believe the minimum road system determination could or should contain these routes. Further, we cannot determine whether the Forest Service has identified a list of unneeded routes for decommissioning in accordance with 36 CFR § 212.5(b)(2). If it has not, it has not yet met its obligations under the Roads Rule.

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### **List of Attachments**<sup>38</sup>

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

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

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

**Attachment D** – “Travel Analysis” Excel Spreadsheet Provided by the Gunnison NF upon request of The Wilderness Society

**Attachment E** – Carbon Trail Excerpt from Gunnison NF Travel Analysis

**Attachment F** – Article: *Crested Butte News*, “Decision on Forest Travel Plan Will Impact Whetstone Area” (June 2, 2010)

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<sup>38</sup> Please note that these attachments were sent in an email separate from the appeal in case the attachments would have exceeded the allowable size. We would be happy to provide any of the attachments to the Forest Service if they did not come through, though we note that Attachments A through E should be in the project record already and we included a hyperlink to Attachment F in the body of this appeal, so all of the documents should be within the possession of the agency upon the receipt of this appeal. We merely included the attachments for ease of reference.