

US Forest Service - Rocky Mountain Regional Office
 Attn: Reviewing Officer
 P.O. Box 18980
 Golden, CO 80402

Objections to the Pike & San Isabel National Forests Motorized Travel Management (MVUM) Analysis

Submitted on behalf of Colorado Offroad Enterprise and Patrick McKay
 December 20, 2020

Project Name: Pike & San Isabel National Forests Motorized Travel Management (MVUM) Analysis
Project ID: 48214

Responsible Official: Diana M. Trujillo, PSICC Forest and Grasslands Supervisor

Affected National Forest Units: Pike & San Isabel National Forests (Leadville, Pikes Peak, South Platte, South Park, Salida, & San Carlos Ranger Districts)

Dear Objection Reviewing Officer:

Please accept these joint objections regarding the "Pike & San Isabel National Forests Motorized Travel Management (MVUM) Analysis" on behalf of Colorado Offroad Enterprise (CORE), as well as CORE Advisory Board Member Patrick McKay as an individual. This document includes objections both to the Project and to the Forest Plan amendments.

These objections are submitted in accordance with 36 C.F.R. part 218. The **lead objector** and primary point of contact for these objections is Patrick McKay, address 5563 Sydney Place, Highlands Ranch, CO 80130. He can be contacted by email at patrick@fairusetube.org or by phone at 303-809-3613.

We formally request a resolution meeting in accordance with 36 C.F.R. § 218.11. We hereby authorize, and indeed encourage, the Reviewing Officer to extend the time for a written response to objections, particularly if it will facilitate a thorough effort to explore opportunities to resolve objections. See 36 C.F.R. § 218.26(b).

I. Statement of Interest and Standing to Object

Based in Buena Vista, CO, CORE was founded in 2016 and is a motorized action group dedicated to keeping all motorized roads and trails open in the Pike/San Isabel National Forest. CORE currently maintains 7 adopted trails in the Salida Ranger District and 5 trails in the Leadville Ranger District. Since creation, CORE has logged nearly 6,000 volunteer hours. In the reporting year 2019, we completed nearly 2,000 volunteer hours through our organization. CORE has worked in the Salida District, Leadville District, Gunnison District, and the South Park District. Additionally, we have made it our mission to not only educate our own users, but to also educate land managers on the preferences, habits, and overall character of the motorized community. As an Advisory Board Member of CORE, Mr. McKay shares in its mission and goals.

CORE submitted extensive comments on the PSI Motorized Travel Management Analysis and has a strong interest in keeping all existing full-size four wheel drive trails in the Pike San Isabel National Forest area open to public full-size motorized use. Patrick McKay also submitted numerous comments on the MVUM analysis as an individual. Though our objections are submitted jointly, both CORE (through President Marcus Trusty) and Patrick McKay independently meet the requirements of 36 C.F.R. § 218.5 to qualify as objectors. While not every objection below is based on comments by both objectors, as long as each objection is based on substantive comments by at least one objector, the Forest Service is required to accept it.

Standing is based on two groups of comments submitted during the Draft EIS public comment period in the fall of 2019: (1) Comments submitted by CORE President Marcus Trusty on behalf of CORE as an organization, and (2) comments submitted by Patrick McKay as an individual. Subsequent to the public comment period, Mr. McKay joined CORE's Advisory Board and is now also an authorized representative of CORE as an organization. Because he originally submitted his comments as an individual, he joins in these objections as an individual for purposes of standing, though he is also the primary point of contact for both entities for these joint objections. CORE as an organization will be filing an independent set of objections specifically regarding routes in Wildcat Canyon through its attorney Kevin Garden, to which these objections are intended to be complementary.

The table below lists all of the specific comments by which we claim standing to qualify as objectors. These comments and all attached documents submitted with them are incorporated by reference per 36 C.F.R. § 218.8(b)(4). Note that because the Forest has since cleared the reading room for the project, the URLs to the individual comments no longer work. However the original URLs are provided for reference. We will also reference our submitted comments by the unique ID numbers in Appendix D of the FEIS. All objections not related to these specific comments are based on new issues arising after the last public comment period.

Date Submitted	Author Name	Organization	Subject	URL
10/09/2019	Trusty, Marcus	CORE	Salida public meeting	https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4872805&project=48214
10/29/2019	Trusty, Marcus	CORE	Opening comments, flaws with travel management process	https://cara.ecosystem-management.org/Public/Letter/2132690?project=48214
10/29/2019	Trusty, Marcus	CORE	Alternative D parking areas	https://cara.ecosystem-management.org/Public/Letter/2132691?project=48214

10/29/2019	Trusty, Marcus	CORE	Loop routes and connectors (South Platte District)	https://cara.ecosystem-management.org/Public/Letter/2132692?project=48214
10/29/2019	Trusty, Marcus	CORE	Loop routes and connectors (Pikes Peak District)	https://cara.ecosystem-management.org/Public/Letter/2132693?project=48214
10/29/2019	Trusty, Marcus	CORE	Loop routes and connectors (South Park District)	https://cara.ecosystem-management.org/Public/Letter/2132694?project=48214
10/29/2019	Trusty, Marcus	CORE	Four Mile North area (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2133019?project=48214
10/29/2019	Trusty, Marcus	CORE	Four Mile North area comment 2 (Trout Creek trail system)	https://cara.ecosystem-management.org/Public/Letter/2133045?project=48214
10/29/2019	Trusty, Marcus	CORE	Four Mile South area (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2133051?project=48214
10/29/2019	Trusty, Marcus	CORE	Monarch Pass area (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2133058?project=48214
10/29/2019	Trusty, Marcus	CORE	East Buffalo Peaks area (South Park District)	https://cara.ecosystem-management.org/Public/Letter/2133070?project=48214
10/31/2019	Trusty, Marcus	CORE	Baldwin Lake Road (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2135064?project=48214
10/31/2019	Trusty, Marcus	CORE	Browns/Breakneck Pass area (South Park District)	https://cara.ecosystem-management.org/Public/Letter/2135392?project=48214
10/31/2019	Trusty, Marcus	CORE	Cloyes Lake Road (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2142860?project=48214

10/31/2019	Trusty, Marcus	CORE	Alma area roads (South Park District)	https://cara.ecosystem-management.org/Public/Letter/2142861?project=48214
10/31/2019	Trusty, Marcus	CORE	Grassy Gulch road (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2142863?project=48214
10/31/2019	Trusty, Marcus	CORE	Halfmoon Gulch area (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2142864?project=48214
10/31/2019	Trusty, Marcus	CORE	Hope Gulch road (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2142865?project=48214
10/31/2019	Trusty, Marcus	CORE	Mount Antero road (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2142867?project=48214
10/31/2019	Trusty, Marcus	CORE	Slide Lake road (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2142869?project=48214
11/01/2019	Trusty, Marcus	CORE	Peerless Mountain road (South Park District)	https://cara.ecosystem-management.org/Public/Letter/2146479?project=48214
11/01/2019	Trusty, Marcus	CORE	Saint Elmo trails (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2146481?project=48214
11/01/2019	Trusty, Marcus	CORE	Upper Geneva road (South Platte District)	https://cara.ecosystem-management.org/Public/Letter/2146484?project=48214
11/01/2019	Trusty, Marcus	CORE	Wheeler Lake Trail (South Park District)	https://cara.ecosystem-management.org/Public/Letter/2150497?project=48214
11/01/2019	Trusty, Marcus	CORE	South Fork Lake Creek area (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2150498?project=48214

11/01/2019	Trusty, Marcus	CORE	South Colony Road (San Carlos District)	https://cara.ecosystem-management.org/Public/Letter/2150499?project=48214
11/01/2019	Trusty, Marcus	CORE	Pomeroy Lakes Road (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2150500?project=48214
11/01/2019	Trusty, Marcus	CORE	Willow Stump Road (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2150501?project=48214
11/01/2019	Trusty, Marcus	CORE	West Tennessee Road (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2150503?project=48214
11/01/2019	Trusty, Marcus	CORE	Mount Arkansas Road (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2150504?project=48214
11/01/2019	Trusty, Marcus	CORE	Williams Pass (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2150510?project=48214
11/01/2019	Trusty, Marcus	CORE	Lost Canyon Road (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2150511?project=48214
11/01/2019	Trusty, Marcus	CORE	Twin Cones Road (South Platte District)	https://cara.ecosystem-management.org/Public/Letter/2150512?project=48214
11/01/2019	Trusty, Marcus	CORE	Hillside area (San Carlos District)	https://cara.ecosystem-management.org/Public/Letter/2150553?project=48214
11/01/2019	Trusty, Marcus	CORE	Response to Colorado Parks and Wildlife comment	https://cara.ecosystem-management.org/Public/Letter/2150568?project=48214
11/02/2019	Trusty, Marcus	CORE	Response to Colorado Parks and Wildlife comment regarding Red Cone trail	https://cara.ecosystem-management.org/Public/Letter/2150657?project=48214

11/02/2019	Trusty, Marcus	CORE	Wildcat Canyon (aka The Gulches) roads	https://cara.ecosystem-management.org/Public/Letter/2150661?project=48214
11/02/2019	Trusty, Marcus	CORE	North East Buena Vista area roads	https://cara.ecosystem-management.org/Public/Letter/2150691?project=48214
11/03/2019	Trusty, Marcus	CORE	Supplemental comments	https://cara.ecosystem-management.org/Public/Letter/2150756?project=48214
11/03/2019	Trusty, Marcus	CORE	Excuses for closures (roadless, wilderness, etc.)	https://cara.ecosystem-management.org/Public/Letter/2150765?project=48214
11/03/2019	Trusty, Marcus	CORE	Continental Divide Trail	https://cara.ecosystem-management.org/Public/Letter/2151077?project=48214
11/04/2019	Trusty, Marcus	CORE	Response to CO Mountain Club & Quiet Use Coalition re: Cloyes Lake Road	https://cara.ecosystem-management.org/Public/Letter/2151878?project=48214
09/20/2019	McKay, Patrick	Individual	Lack of easily readable route data released with DEIS	https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4842848&project=48214
09/30/2019	McKay, Patrick	Individual	Wildcat Canyon Roads	https://cara.ecosystem-management.org/Public/Letter/2122115?project=48214
10/08/2019	McKay, Patrick	Individual	Twin Cones Road and Kenosha Pass Roads	https://cara.ecosystem-management.org/Public/Letter/2126481?project=48214
10/11/2019	McKay, Patrick	Individual	Lost Canyon Road (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2128327?project=48214
10/11/2019	McKay, Patrick	Individual	Wildcat Canyon Roads and Park County easement applications	https://cara.ecosystem-management.org/Public/Letter/2128331?project=48214

10/16/2019	McKay, Patrick	Individual	FR 372 and FR 327 (Pikes Peak District)	https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4876199&project=48214
10/16/2019	McKay, Patrick	Individual	FR 376.A Bull Park, FR 385 Catamount (Pikes Peak District)	https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4876218&project=48214
10/19/2019	McKay, Patrick	Individual	Fairplay and Alma area roads (South Park District)	https://cara.ecosystem-management.org/Public/Letter/2129558?project=48214
10/21/2019	McKay, Patrick	Individual	Rampart Range area roads (Pikes Peak District)	https://cara.ecosystem-management.org/Public/Letter/2129860?project=48214
10/22/2019	McKay, Patrick	Individual	Willow Stump Road (Leadville District)	https://cara.ecosystem-management.org/Public/Letter/2129986?project=48214
10/23/2019	McKay, Patrick	Individual	Baldwin Lake Road (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2130043?project=48214
10/24/2019	McKay, Patrick	Individual	Browns/Breakneck Pass area roads (South Park District)	https://cara.ecosystem-management.org/Public/Letter/2130323?project=48214
10/25/2019	McKay, Patrick	Individual	Browns/Breakneck Pass area roads follow up	https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4879653&project=48214
10/28/2019	McKay, Patrick	Individual	Williams Pass (Salida District)	https://cara.ecosystem-management.org/Public/Letter/2132529?project=48214
10/28/2019	McKay, Patrick	Individual	NSFT 1423 in Chinaman Gulch area (Salida District)	https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4880642&project=48214
10/29/2019	McKay, Patrick	Individual	Misc routes	https://cara.ecosystem-management.org/Public/Letter/2132703?project=48214

10/30/2019	McKay, Patrick	Individual	Williams Pass follow-up	https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4882640&project=48214
10/30/2019	McKay, Patrick	Individual	Mount Herman seasonal dates (Pikes Peak District)	https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4882655&project=48214
10/31/2019	McKay, Patrick	Individual	General comments: Travel management and TAP process, user conflicts, roadless areas	https://cara.ecosystem-management.org/Public/Letter/2146361?project=48214
11/01/2019	McKay, Patrick	Individual	Alma roads prescriptive easements	https://cara.ecosystem-management.org/Public/Letter/2150486?project=48214
11/01/2019	McKay, Patrick	Individual	Lost Canyon Forest Plan amendment	https://cara.ecosystem-management.org/Public/Letter/2150562?project=48214
11/02/2019	McKay, Patrick	Individual	Response to Colorado Parks and Wildlife comment	https://cara.ecosystem-management.org/Public/Letter/2150648?project=48214
11/03/2019	McKay, Patrick	Individual	Prejudicial behavior by Rangers Voorhis and Banks	https://cara.ecosystem-management.org/Public/Letter/2150912?project=48214
11/04/2019	McKay, Patrick	Individual	Closing comments, Wildcat Canyon follow-up	https://cara.ecosystem-management.org/Public/Letter/2151809?project=48214
11/04/2019	McKay, Patrick	Individual	Response to Wild Connections comment	https://cara.ecosystem-management.org/Public/Letter/2155985?project=48214

II. Background and Adverse Impacts

The Pike San Isabel MVUM Analysis Draft ROD would impose dramatic and unwarranted changes to the Pike San Isabel National Forest's long-established motorized road and trail system. It would cause significant harm to the quality of motorized recreational opportunities in the Forest and would deprive the public of reasonable access to numerous highly-prized destinations on public lands in south-central Colorado.

The PSI travel management process was initiated as the result of a 2015 settlement agreement with a coalition of anti-motorized environmental groups who challenged the Forest's original travel plan from 2009 in a 2011 lawsuit. Despite the Forest's attempts to appear objective, everything about this process from inception to completion has been designed to placate these groups and cater to their interest in eliminating motorized access to public lands. The result is an extremely biased travel plan that imposes mass closures in many of the most popular motorized trail networks in Colorado. These closures are heavily concentrated in the ranger districts closest to the Front Range cities of Denver and Colorado Springs, where demand for motorized recreational opportunities is the highest.

Though the raw number of closures appears small as a percentage of the overall route network (~4%), the proposed closures inflict the maximum possible harm to the quality of motorized recreation in the Pike San Isabel National Forest. While it is typical in travel management processes such as this one for Forests to focus on closing motorized routes that are redundant, rarely used, and naturally reclaiming, the Draft ROD focuses on closing many of the most popular and heavily used full-size 4x4 trails in the Pike San Isabel National Forest, in some cases eliminating entire trail systems. This includes multiple routes the Forest itself has acknowledged in prior NEPA proceedings as nationally recognized trails, along with others that have been featured in four-wheel-drive guidebooks for decades and are listed among the best motorized trails in Colorado.

Contrary to all established facts and outside any reasonable range of disagreement, the Draft ROD and FEIS declares these routes to be of low value and not needed as part of the Minimum Road System, which itself was determined by a non-scientific process largely up to the subjective whim of individual district rangers. When certain district rangers still did not like the outcome produced by the pseudo-scientific MRS rubric, they were given free reign to override those outcomes, resulting in an excessive number of closures in districts such as South Park where the district staff are demonstrably biased against motorized recreation. The Draft Decision severs multiple existing loop opportunities while simultaneously professing to value them, and cuts off numerous routes at arbitrary endpoints that fall short of their historical destinations at prized scenic overlooks, historical mining sites, or popular campsites.

Throughout the Draft ROD and Final EIS, the Forest Service favors non-motorized "quiet use" recreation at the expense of motorized recreational opportunities, closing numerous routes on the implied basis of alleged "user conflict" and converting long-established motorized routes to de facto non-motorized trails. Though the Travel Management Rule is clear that motorized recreation is a valuable, legitimate activity on National Forest lands, the Draft ROD treats it as an inferior, disfavored form of recreation that is to be "minimized" if not largely eliminated from many areas of the Forest. In so

doing, the proposed travel plan inherently violates both the letter and spirit of the TMR, and must be reversed.

III. Standard of Review

We raise the following objections, which provide a legal basis for our requested changes to the Draft ROD.

The objection process necessarily anticipates the possibility of, and likelihood of success in, subsequent litigation brought by an objector. In such a challenge the Administrative Procedure Act (APA) waives the United States' sovereign immunity for those aggrieved by "final agency action." 5 U.S.C. §§ 702, 704; *Lujan v. National Wildlife Fedn.*, 497 U.S. 871, 882 (1990). APA section 706(2) provides the relevant standard of review: a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) unsupported by substantial evidence...."

This standard of review is "narrow" but the agency:

must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made....Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983) (citations omitted). This is considered a deferential standard of review, but as we will outline below, the agency will hopefully recognize and avoid the litigation risk that attends this uniquely flawed decision.

IV. General Objections

OBJECTION #1: THE AGENCY HAS FAILED TO SUFFICIENTLY DOCUMENT ROUTE-SPECIFIC MANAGEMENT DECISIONS

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

From the beginning of the Pike San Isabel travel management process through the publication of the Draft Record of Decision and Final EIS, the Forest has utterly failed to articulate any route-specific rationale for specific management decisions.

As calculated using the tabular data provided by the Forest for the Draft ROD, the Forest is proposing to close approximately 122 miles of routes and route segments that are currently open to the public under the existing travel plan, in addition to multiple other routes that are currently closed to the public in admin or ML1 status that are highly desirable for motorized recreation. Nowhere in the record for this

project has the Forest articulated specific reasons why each individual route segment (many of which have existed for over a century and have been routinely traveled by motorized users for many decades) should now be closed.

This subject was addressed in Patrick McKay's comment given the unique ID of 2065-13 in Appendix D of the FEIS, which corresponds to the comment entitled "General Comments" in the table above submitted on 10/31/2019. The continued lack of route-specific rationale for closures in the FEIS and Draft ROD also constitutes a new issue arising after the last public comment period. Standing to object is thus established for both objectors.

B. ANALYSIS

The Decision fails to meet the APA's basic requirement to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. The Draft ROD and FEIS employ a narrative and summary style that largely fails to meet applicable requirements for presentation of technical conclusions.

NEPA imposes various technical protocols including disclosure of methods, presentation of hard data, and disclosure of any "sources relied upon for conclusions" in an EIS. 40 C.F.R. § 1502.24. NEPA does not envision undocumented narrative exposition, but requires that "[a]gencies shall insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements." *Id.*; *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006) ("NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data"). A "bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS." *Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1103 (9th Cir. 2016).

Of critical importance is the standard of review for agency decisions such as the one at issue here. The applicable "arbitrary and capricious" standard is narrow and the 10th Circuit advises, "[w]e confine our review to ascertaining whether the agency examined the relevant data and articulated a satisfactory explanation for its decision." *Colorado Wild v. U.S. Forest Service*, 435 F.3d 1204, 1213 (10th Cir. 2006).

The focus is "on the rationality of an agency's decision making process rather than on the rationality of the actual decision" and the "agency's action must be upheld, if at all, on the basis articulated by the agency itself." *Id.* "Thus, the grounds upon which the agency acted must be clearly disclosed in, and sustained by, the record." *Id.* (emphasis added). Even this deferential review "requires an agency's action to be supported by facts in the record." *Id.* Such facts must rise to at least the level of "substantial evidence" which is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (quoting *Pennaco Energy v. U.S. Dep't of Interior*, 377 F.3d 1147, 1156 (10th Cir. 2004)) and is "something more than a mere scintilla but something less than the weight of the evidence." *Id.* (quoting *Foust v. Lujan*, 942 F.2d 712, 714 (10th Cir. 1991)).

In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision regarding the alternative adopted, but also to the decisions made regarding individual routes. In *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1077 (D. Idaho 2011), the court

overturned a Forest Service travel plan because of the Forest's failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs. The Forest Service's Decision here is likewise adrift from this critical connection between evidence presented in the record and identified as a rational basis for the chosen route-specific conclusions.

In the Pike San Isabel MVUM Draft Decision and FEIS, the Forest utterly fails to provide *any* route-specific reasons for decisions to close or limit public motorized use of specific routes. It provided a great deal of *raw data* in the form of the TAP/TAR scores and the Minimum Road System (MRS) rubric and screening criteria for individual routes, but it failed to document how this raw data was actually applied to reach specific management decisions for specific routes. The agency also alluded to additional "site specific information" that it relied upon in making route-specific determinations, but did not disclose any of this information to the public. As a result of this completely opaque process, the members of the public have been unable to even know, let alone effectively comment upon, the agency's reasons for closing specific routes.

During the public comment period, we submitted numerous comments objecting to closures of specific routes. Because the Forest did not provide any reason for closing specific routes, we were forced to guess (based largely on the TAP and MRS screening data) what concerns the agency might have with a given route, and we attempted to address those and demonstrate why that route should remain open to the public. Almost invariably, the Forest responded to such comments indicating the comment was considered but no changes were needed, using this boilerplate statement:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information.

See, e.g., response to comment 2120-5, FEIS Appendix D at D-20. This generic statement is typically the closest the agency ever comes in the FIES or ROD to articulating the reasons for route-specific decisions. It only references Chapter 3 of the EIS plus four generalized sources of information used in combination to make route-specific decisions, without actually disclosing all of this information or articulating how it was applied to individual routes. Each of these things fails to meet the requirement that the agency must articulate a "rational connection between the facts found and the choice made" with respect to route-specific management decisions.

1. Chapter 3 of the EIS

The sections of Chapter 3 of the FEIS on Recreation and Transportation consist entirely of narrative descriptions, conclusory statements, and tables listing aggregate statistics for route mileage under each of the different alternatives. Many of these conclusory statements describing the impacts of Alternative C (the Preferred Alternative adopted in the ROD) are unsupported by any factual evidence, and blatantly contradicted by numerous comments the agency received. Examples include:

- Alternative C would slightly reduce the overall motorized recreation route network that is not likely to reduce access to favorite destinations or result in overcrowded or congested motorized routes.

- The loss of mixed-use roads is offset by the diversity of motorized route options under Alternative C for the semiprimitive motorized and roaded natural ROS classes and should not affect the motorized recreationist's experience.

FEIS at 3-138. Given that the decision would result in the permanent closure of areas such as Wildcat Canyon which the Forest has acknowledge in two prior NEPA decisions (the 2004 Hayman Roads EA and the prior South Platte Wild and Scenic River Study EIS) are extremely high value trails for motorized recreation (see Objection #38), as well as routes like NFSR 126 Twin Cones (see Objection #17) which have been featured in four-wheel-drive guidebooks as being among the best motorized trails in Colorado, these statements are disputed at best, and blatantly false at worst.

More to the point here, the agency appears to reach these conclusions based on mere aggregate route mileage numbers alone, concluding that because the raw number of routes closed as a percentage of the Forest's entire route network is relatively small, there is no harm to the quality of motorized recreation. The Forest does not appear to have considered the impacts of any specific route closures or given regard to the idea that certain routes may be more valuable to the motorized community and their closure may have a disproportionate effect on the qualitative experience of motorized recreationists. The sole acknowledgement the FEIS gives to this concept is a generalized statement that individual route closures may have "site-specific impacts" on motorized recreation. FEIS at 2-40.

The Forest also failed to acknowledge the disproportionate effects on motorized recreational opportunities caused by the high concentration of mass route closures in ranger districts such as South Park and Pikes Peak, which are some of the closest districts to the population centers on the Front Range. The agency's sole focus on aggregate statistics implies that specific routes are irrelevant to its analysis. The selection of which routes to close and which to keep open may as well have been random, and the agency would still claim the same impacts based on aggregate mileage numbers alone. Regardless, nowhere in Chapter 3 of the FEIS does the agency make any attempt to articulate the reasons for route-specific management decisions of any kind.

2. TAP/TAR Reports

The Pike San Isabel National Forest conducted its Travel Analysis Process in two phases: producing a Forest-wide Travel Analysis Report in 2009, followed by six individual TAP Addendum reports for each of the six ranger districts covered in this travel management process, compiled between 2013 and 2015. The TAP reports and addendums had minimal public involvement, with the Forest receiving less than two dozen separate comments on all them combined compared to the thousands of comments it received in the most recent comment period on the travel management process last year. We will address the Forest's improper reliance on the TAP and TARs to illegally pre-determine outcomes in this process in Objection #2.

For purposes of this objection, we will merely note that while the agency did provide the raw data from the TAP reports to the public, nowhere in this process has it attempted to explain how that data was used to make actual route-specific management decisions, beyond a generalized description of the MRS screening process. The TAP reports provided a series of scores ranking each route segment in separate risk and benefit categories (ie. watershed risk, recreational benefit), where each category received possible scores of HH (very high), H (high), M (moderate), or L (low). These letter scores also

had associated numerical scores. These were added together to produce a combined risk/benefit score, such as H/H, L/L, H/L, etc.

Some routes (but not most) also had specific management recommendations, such as a recommendation to convert a route segment to an admin road or special use permit road. The FEIS states that these management recommendations were automatically adopted and those routes were not subject to further screening. "Of the roads subject to the MRS screening process, any specific road recommendation in the TARs was adopted, regardless of the screening process and criteria described below." FEIS at 2-6.

For the routes where the TAP reports included a specific management recommendation and the Forest ended up adopting that management recommendation as part of the Draft Decision, it is therefore possible to deduce that the TAP recommendation was the reason the agency adopted that particular management decision. In at least one case (NFSR 450 Loveland), the agency directly stated this in response to comments: "The specific management of converting to a special use permit only road is provided in the TAP/TAR report and adopted across all action alternatives." FEIS Appendix D at D-28.

This statement at most discloses the *source* of the agency's decision, not the *reasons* behind it. Neither in the original TAP report that made that recommendation, nor anywhere in the tabular data or the FIES documents, does the agency ever explain *why* that management option was recommended or what specific resource concerns motivated the decision to close it to the public.

The TAP report management recommendations are at most one sentence stating the conclusion of an agency official, with no facts articulated to support that conclusion. Again using NFSR 450 Loveland as an example, the TAP recommendation for that route stated, "*Special Use Access, Recommend eliminating public access and keeping as an SUP road.*" The most we can glean from this recommendation is that the official who wrote it (likely the district ranger) thought that the road had value for special use access, but wanted to eliminate public access. That is a conclusion, not a reason. The actual basis for the recommendation to eliminate public access is never disclosed.

For all route segments without specific management recommendations in the TAP reports (the vast majority), the public can only guess which risk or benefit scores were dispositive in producing the management decision for a given route. Was a route closed because of the watershed risk score? The botany risk score? Low recreational benefit score? There is no way to know for sure. The best we can do is attempt to reverse-engineer the agency's thought process in how it applied the MRS screening rubric, discussed below.

3. MRS Screening Criteria

The FEIS explains that for routes that lacked specific management recommendations in the TAP reports (which includes the vast majority of routes considered in this analysis), the Forest applied a Minimum Road System (MRS) rubric to reach specific management recommendations for each route. This MRS rubric used a combination of the TAP scores plus an additional set of MRS criteria for each route, which included a variety of yes/no questions such as whether a route is within a half mile of a non-motorized trail (used as a proxy for noise impacts on non-motorized users), whether the route was in sensitive species habitat, etc.

The overall risk/benefit scores from the TAP reports were used to place routes in general categories such as High Risk / High Benefit, Low Risk / Low Benefit, etc. which carried certain default management recommendations. Then individual category scores (ie. recreation benefit, watershed risk) plus answers to the MRS screening criteria were used to determine if a different management recommendation than the category default applied.

In theory, this rubric should have allowed the public to understand why the agency made a given route-specific management decision. However, as will be discussed in more detail in Objection #3, in practice it was applied inconsistently and frequently overridden by individual rangers substituting their subjective opinion for the result of the pseudo-scientific MRS screening process. It was also possible for multiple applicable screening criteria to result in conflicting management recommendations, leaving which one to actually choose up to agency discretion.

While the FEIS contains a lengthy description of the MRS analysis *process*, nowhere does the agency attempt to articulate how the MRS screening criteria were actually applied to a given route to reach the final management recommendation adopted in the Preferred Alternative C. Once again, the agency only provided *raw data* to the public, without actually articulating the connection between that raw data and the chosen management decision for specific routes.

4. Scoping Data

While the Forest did make a few changes to the alternatives between the scoping comment period in 2016 and the publication of the Draft EIS in fall 2019, the vast majority of the route closures we object to remained the same as in pre-scoping drafts of Alternative C.

Some additional closures were added after scoping, such as the proposed decommissioning of the ML1 roads in Wildcat Canyon, which had not previously been considered at all in earlier drafts of the alternatives. These routes had been specifically requested to be re-opened in scoping comments by multiple motorized groups. While the Forest did consider re-opening some of them in Alternative D, only one small segment of NFSR 220 Hackett ended-up being reopened in the final version of Alternative C, while the rest of these highly valuable routes are proposed for decommissioning. These routes will be discussed in much greater detail in other objections. For the purposes of this objection, it is important to note that the Forest did not provide any actual explanations for additional route closures added after scoping, and in the case of the Wildcat Canyon roads, adopted management actions that directly contradicted both numerous scoping comments and the findings of two separate prior NEPA processes.

Ultimately, scoping data appears to have played little role in the agency's decisions to close specific routes, and nowhere in the FEIS or Scoping Report did the agency clearly articulate how they applied scoping information in making route-specific decisions. Most of the Scoping Report consists solely of narrative summary and generalized statements in response to subjects raised in scoping comments. While the agency listed all comments received during the scoping comment period and determined whether they were substantive or non-substantive, it did not provide any direct responses to comments or discuss management choices for specific routes. The FEIS likewise contains no route-specific discussion of routes where scoping information was dispositive in the final management decision. Where scoping information was used in route-specific determinations, the Forest Service has again failed to articulate the connection between that information and the choice made.

5. “Site-specific Information”

The “site-specific information” referenced in the Forest’s boilerplate response to route-specific comments is none other than the subjective opinions of PSI staff and district rangers, which the FEIS explains was used to override route-specific management decisions that would otherwise have been recommended by the MRS screening process. The description of Alternative C states that it includes, “management based on route specific-concerns identified by the PSI ranger districts.” FEIS at 2-23. The section of the FEIS describing alternatives development describes this in more detail:

For Alternative C (the proposed action), PSI staff and specialists further revised the MRS outcomes by applying site-specific district level knowledge to ensure access to private parcels and facilities, correct errors in mapping, and address site-specific constraints.

FEIS at 2-4. It further expands on this site-specific review process a couple pages later:

For Alternative C, PSI staff reviewed on a site-by-site basis the changes to route status indicated by the MRS screening process. The purpose of the review was to be sure that any status changes would still ensure access to private parcels and facilities, correct errors in mapping, and address site-specific constraints. Changes that did not meet these needs were adjusted, for example to maintain a segment as a road instead of converting it to a trail.

This final screening resulted in some management for segments proposed under Alternative C deviating from the recommendations defined by the MRS; however, the changes remain consistent with the aim and emphasis of the alternative. Examples of rationales for changing Alternative C from the recommendations defined by the MRS screening process are as follows:

- A road has high use and provides access to private land.
- The PSI has an agreement with a private landowner for access, which is required for fire suppression.
- Spur road to a developed recreation site with fishing access and parking.
- There are logistical reasons why installing fencing would not be appropriate.

FEIS at 2-6. This is the most information the FEIS provides about the “site-specific information” the Forest Service relied upon to make route-specific management decisions which overrode the outcomes produced by the screening criteria. Notably, the Forest did not even provide raw data here, let alone any explanations of why specific route management options were changed. It provides a few examples of possible reasons for such deviations, but it does not say which actual routes these reasons applied to. And the only examples it supplies are cases where these changes resulted in keeping routes open. The Forest does not provide any examples of reasons why they chose to close routes to the public that the MRS rubric would have otherwise kept open (of which there are many, discussed in Objection #3).

In the end, it appears the “site-specific information” the Forest is referring to here amounts to simply the subjective management desires of the district rangers and staff, who in their “expert opinions” (what the FEIS refers to as “district level knowledge”) disagreed with the management recommendations of the MRS rubric. Some level of subjective decision making is inevitable in a process like this, and may well be justified when the practical knowledge of agency staff is used to prevent nonsensical outcomes. However, because the agency completely failed to disclose the actual reasons behind these route-specific decisions, the public was prevented from having any insight into them or opportunity to

comment on them. The public is simply expected to trust that whatever reasons agency staff had for deviating from the MRS rubric, they must have been good ones.

As the Federal courts have held, A “bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103. Subjective management decisions based on undisclosed reasoning and opinions by agency staff are not a valid legal basis for route-specific management decisions, especially ones that result in roads that have been open to the public for decades being closed without clear justification.

C. CONCLUSION AND REQUESTED RESOLUTION

For the above reasons, the Forest failed to satisfy its obligations under NEPA and the APA to articulate a “rational connection between the facts found and the choice made” with respect to specific routes proposed to be closed to public use. The Forest’s failure to provide anything beyond raw screening data, with no explanation of how that data was used to reach route-specific decisions, is a fatal flaw that renders the entire Decision legally deficient.

Were this travel plan to be challenged in court, a judge would likely rule that the Forest failed to sufficiently “show its work” by articulating clear reasons for each route management decision. We therefore object to all route closures under the Draft Decision on this basis.

The ideal resolution of this objection would be for the Reviewing Officer to order the Decision withdrawn and remand the proposed travel plan back to the Deciding Official with instructions to conduct a new route-specific analysis that clearly articulates the reason why each route-specific management decision was made, and provide the public a new opportunity to comment on these route-specific decisions.

Recognizing that is likely not feasible, however, we would accept an alternate resolution of this objection in which all route closures discussed in our route-specific objections below are reversed, so that those routes remain open to public motorized use under the new travel plan. We request that the Reviewing Officer reverse and remand the Draft Decision with appropriate instructions accordingly.

OBJECTION #2: THE FLAWED TRAVEL ANALYSIS PROCESS UNLAWFULLY PREDETERMINED ALTERNATIVES, AND THE PUBLIC WAS GIVEN NO MEANINGFUL OPPORTUNITY TO COMMENT ON OR INFLUENCE ROUTE-SPECIFIC DECISIONS

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the use of the Travel Analysis Report recommendations and scores to effectively predetermine the outcome of numerous route-specific decisions in the travel management process and preclude meaningful public input. Both Patrick McKay and Marcus Trusty submitted numerous comments pointing out flaws, inconsistencies, and inaccuracies in the TAP scores and recommendations with respect to specific routes and objecting to adopting the management recommendations in the TAP reports (see, e.g., comments 176-14 and 176-15, pointing out mapping

errors and erroneous scores regarding NFSR 450). Our comments regarding the roads in Wildcat Canyon focused heavily on the erroneous recreational benefit TAP scores given to those routes, which caused them to be improperly slated for decommissioning in Alternative C.

Patrick McKay also discussed the flaws with the TAP process generally in his comment entitled “General Comments” submitted on 10/31/2019, though that portion of the comment does not appear to be listed in Appendix D of the FEIS. Moreover, the following objection is heavily based on the responses to comments in the FEIS, which constitute new issues arising after the public comment period. In particular the agency did not disclose its decision not to review the TAP Report recommendations but instead treat them as non-reviewable final decisions until it revealed that decision in its response to public comments in the FEIS. Standing to object on this basis is thus established for both objectors.

B. ANALYSIS

The Travel Management Rule has two primary parts that are relevant to this process: the designation of a sustainable motorized route network under 36 C.F.R. § 212.55, and the identification of the Minimum Road System (MRS) under 36 C.F.R. § 212.5(b). The Purpose and Need statement in the FEIS of the Pike San Isabel National Forest MVUM Analysis Project lists the need to comply with both of these parts of the TMR as the two primary ‘needs’ of this project. FEIS at 1-9. While those two designations are not legally required to be made in the same process, the Pike San Isabel National Forest has chosen to do both in this process, and has conducted this process such that both are inseparably intertwined.

The Minimum Road System analysis rubric was the primary means by which the Forest made most route designation decisions in the Preferred Alternative C adopted in the Draft Decision. Many others were made based on the route-specific recommendations in the TAP reports, which also provided the factual basis for the Minimum Road System rubric. In essence, the Forest chose to comply with 36 C.F.R. § 212.55 *by* identifying the Minimum Road System under 36 C.F.R. § 212.5(b).

Though the Forest’s treatment of these two CFRs is confusing, the Forest has taken on the burden of complying with *both* parts of the TMR in this process, and therefore a failure to properly follow either regulation necessarily causes the Draft Decision to fail to meet the Purpose and Need of this project. Since compliance with both regulations relied on the same source data from the Forest’s Travel Analysis Process, any flaws with that process or with how the TAP data was applied and analyzed undermine the foundations of this entire travel management process and leave the Draft Decision legally unsupported. As shown below, both the Travel Analysis Process and this Travel Management Process were fatally flawed and violated both parts of the Travel Management Rule (as well as other laws and regulations) in multiple ways.

The Travel Analysis Process is a predecisional first step prior to commencement of an official Travel Management Process under NEPA with the goal of identifying the Minimum Road System under 36 C.F.R. § 212.5(b). That regulation states:

For each national forest, national grassland, experimental forest, and any other units of the National Forest System (§ 212.1), the responsible official must identify the minimum road system needed for safe

and efficient travel and for administration, utilization, and protection of National Forest System lands. In determining the minimum road system, the responsible official **must incorporate a science-based roads analysis at the appropriate scale** and, to the degree practicable, **involve a broad spectrum of interested and affected citizens**, other state and federal agencies, and tribal governments.

As described in Forest Service regulations, the Travel Analysis Process is the first step in determining the MRS, conducting an initial analysis of roads that are likely needed or not needed for the MRS. The actual determination of the MRS occurs during a formal travel management process subject to NEPA, which is informed by the Travel Analysis Reports. This two step process has been affirmed by the courts as the proper method of determining the MRS. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (D. Mont. 2020):

Identification and implementation of a minimum road system is a two-step process. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117 (9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

The Pike San Isabel National Forest conducted its Travel Analysis Process in two phases, producing a Forest-wide Travel Analysis Report in 2009, followed by six individual TAP Addendum reports for each of the six ranger districts covered in this travel management process compiled between 2013 and 2015. The follow-on addendums were necessary because the Forest-wide TAR did not include a complete inventory of routes in every ranger district. The TAP scores and recommendations in the tabular data in the FEIS are mostly derived from the ranger district addendums.

The TAP and TARs (which we often refer to collectively as TAP reports) provide the foundational data upon which this entire travel management process is based. The risk/benefit scores in the TAP reports were used as the primary basis for the Minimum Road System (MRS) screening rubric, while route-specific recommendations in the TAP comments were almost universally directly adopted as the final management decisions in the FEIS and Draft ROD, with no further analysis or screening.

With the exception of those routes discussed in Objection #3 where the final management decision was determined by the arbitrary decisions of district rangers to override the action recommended by the MRS rubric, almost all route-specific management decisions in the Decision rely on the data in the TAP reports. As a consequence, any flaws in the TAP reports undermine the Decision, which rests on a flawed factual foundation. Regardless of whether formal revisions to the TAP reports are necessary, any erroneous *decisions* made in this process on the basis of flawed data or recommendations in the TAP reports, as well as the omission of a valid science-based analysis upon which the public can then comment, is an error in *this* process and should be corrected.

The PSI TAP process was fatally flawed for three reasons: (1) The analysis process was rushed and put together by staff members based on their personal knowledge and perceptions of the routes being analyzed, and was therefore not sufficiently science-based; (2) there was no meaningful public involvement or input into any science-based analysis as required by 36 C.F.R. § 212.5(b); and (3) arbitrary and unsupported recommendations in the TAP comments were used to unlawfully predetermine the outcome of numerous route-specific decisions in the travel management process and limit the range of alternatives considered, in violation of multiple CFRs. As a result, all decisions to

close routes to public motorized use based on the TAP reports are arbitrary and capricious and therefore legally invalid.

1. The Travel Analysis Process was rushed, not science-based, and excessively influenced by the personal knowledge, perceptions, and biases of agency staff

As mandated by 36 C.F.R. § 212.5(b) and further required by the Forest Service Handbook:

Travel analysis should be science-based. Analysts should locate, correctly interpret, and use readily available and relevant scientific literature in the analysis. Disclose any assumptions made during the analysis and reveal the limitations of the information on which the analysis is based.

FSH 7709.55, Ch. 20, § 20.3(1).¹ The Travel Analysis Process employed by the Pike San Isabel National Forest to create the six ranger district TAP addendums failed to comply with this requirement, substituting the personal opinions and assumptions of district staff for a thorough science-based process. As described in the Pikes Peak District TAP Addendum, the Travel Analysis Process was conducted thusly:

A core team was assembled to define an analysis plan for the Pikes Peak Ranger District. The core team completed an initial rapid analysis of all routes using the criteria defined in the Forest-wide TAP. This rapid analysis was completed during a **two-day workshop** in which the team reviewed GIS data, INFRA data, and filled out a TAP Matrix spreadsheet. The core team collectively ranked each route based on the TAP criteria, which allowed for an iterative, collaborative, and rapid analysis process. **While the core team members are not experts on each of the criteria, their substantial experience in the Ranger District allowed them to make an initial judgment on the route criteria.** The draft TAP matrix table was then distributed to each ID team member for their detailed and specialized review of the analysis. Changes recommended by individual ID team members were incorporated and the TAP was redistributed to the entire ID team for a final review. This rapid analysis method was effective and allowed completion of the TAP with limited budget and time.

Pikes Peak Ranger District TAP Addendum at 1-2 (emphasis added). Each of the other ranger district TAP addendums contain a nearly identical description of this process, though some districts had only a *one day* workshop. By their own admission, the TAP addendums were compiled extremely quickly over a period of one or two days by a team of staff members who were not experts in the various criteria, and who may have only had very limited area-specific knowledge and experience. There is no reference to any site visits taking place during these workshops, so it appears that most of the analysis was done based on maps and the personal knowledge of district staff.

Many of the staff involved in the creation of the TAP reports had likely never traveled on the majority of the routes they analyzed (particularly those requiring modified four-wheel-drive vehicles or ATVs) and had little personal knowledge of them. Most of them were likely not motorized recreationists and were not familiar with what makes routes valuable to the offroad community. Additionally, many popular dispersed recreation areas (especially dispersed campsites) do not appear on maps. Except in a few

¹ Note, while this specific version (amended 2016) of FSH 770.55 Chapter 20 was not in effect at the time the PSI TAP addendums were created, a similar version was. We have been unable to obtain a copy of the version that was in effect at that time, but we assume there were no substantial differences in this requirement.

specific areas like the northern part of Rampart Range in the South Platte District, the Pike and San Isabel National Forests have never conducted a complete inventory of dispersed campsites. Therefore unless the individual staff members on the team were intimately familiar with every area, they could not have known every location popular for dispersed camping.

The final result of the team's analysis for the myriad of individual routes (totaling 427.68 miles of roads for the Pikes Peak District alone) was an ultimate route score based upon each individual route's perceived benefit (High or Low) and risk (High or Low). A key factor in these TAP scores was recreational use benefit, of which one element the team considered was "whether the road has high value as a recreation experience." Pikes Peak District TAP Addendum at 5-1. Determining recreational use benefit without significant input from the actual users of a route (eg. motorized recreationists in the public) left the determination of a route's benefit solely to the USFS team and caused it to be based upon the team's subjective personal opinions and perceptions regarding routes they may or may not have ever visited.

As a result, the number of routes recommended to be closed or kept open varied widely from district to district, depending on how favorably that district's staff viewed motorized recreation in general, and how well the staff knew which routes in their district were highly valued by the public. The fact that a lack of objective science-based data left this decision open to the personal whims of agency staff can be clearly seen in the final route system in the Draft Decision, with nearly 67 miles of currently open routes being closed in the South Park District, where staff are widely known in the motorized community to be heavily biased against motorized recreation. This compares to only 4.9 miles of closures in the Leadville District and 6.5 miles of closures in the Salida District, where staff view motorized recreation much more favorably.

This process also resulted in the travel analysis data containing significant factual errors. Our comments pointed out numerous such errors, including a number of routes being analyzed relying on erroneous mapping that put them entirely in the wrong place. For example, we pointed out that NFSR 174 Willow Stump in the Leadville District followed a completely different path hundreds of yards from where the current MVUMs show it. The same was true with NFSRs 192, 450, and 451 in the South Park District. Many other routes were shown with incorrect endpoints.

Numerous routes were given high watershed risk ratings despite not being anywhere near streams or creeks and thus posing minimal risk of carrying sediment into streams. Public health and safety and financial burden risks were all lumped together into a single score, making it impossible to know whether a high score was given based on a public health concern (e.g. water pollution), a safety issue with the route (e.g. a dangerous shelf road) or simply because district staff thought the road was expensive to maintain.

The most common error was giving roads too low of a recreational use benefit score that was not reflective of a road's actual use or popularity with the public. Our comments on the DEIS, and our route-specific objections below, document numerous cases where the TAP scores failed to give 'high' benefit ratings to extremely popular and well known four-wheel-drive trails leading to highly scenic overlooks, alpine lakes, hiking trails, or popular dispersed camping and hunting areas. Some of these routes like NFSR 126 Twin Cones or NFSR 323 Winding Stairs have been featured in published four-wheel-drive guidebooks and listed among the best offroad trails in Colorado. In some cases, the

TAP reports failed to recognize when a route was a critical component of a loop or a connector between different trail systems.

The most egregious errors regarding recreational benefit scores occurred regarding the roads in Wildcat Canyon, perhaps the most controversial route network in the PSI. Our comments regarding these roads focused heavily on the erroneous TAP scores given to these roads, which were falsely given low recreational benefit scores solely because they were temporarily closed after the Hayman Fire, despite having been acknowledged by the Forest Service in two prior NEPA proceedings as having extremely high value for off-highway recreation when they were open.

NFSRs 220 Hackett, 220.A Crossover, 220.B Widow Maker, and the upper segment of NFSR 540 Corral Creek were all given 'low' recreational use benefit ratings solely because of their current ML1 closed status. Only the lower portion of NFSR 540 Corral Creek along the South Platte River was given the proper 'high' recreational use benefit rating. The ML1 portion of NFSR 221 Longwater was specifically stated in the TAP report to have been downgraded from 'high' to 'moderate' recreational use benefit solely because of its ML1 status in response to the *single* comment the South Platte District received on its TAP Addendum:

Comment #1: Closed ML1 roads should not have any recreational motorized benefit, but the draft TAP shows a High recreational use benefit rating for the 221 road. This rating should be lowered to a Low rating on the TAP.

Response #1: Recreational use ratings for the specific road listed above was re-evaluated, and the result of that re-evaluation is as follows:

- Change the Recreational Use Benefit rating for NFSR 221 from High to Moderate, as non-motorized recreation is still available to access the river.

South Platte District TAP Addendum at A2. Note that the only reason NFSR 221 received even a moderate rating was because of non-motorized recreational benefit, even though the TAP was supposed to be evaluating *motorized* recreational use benefit.

The Wildcat Canyon roads (also known as "The Gulches") have been featured in four-wheel-drive guidebooks for decades, and are among the most widely recognized offroad trails in Colorado. All of the roads in Wildcat Canyon were repeatedly acknowledged by the Forest Service itself as having extremely high value for motorized recreation in both the 2004 Hayman Fire Roads Management Project EA and South Platte River Wild and Scenic Study Report EIS, also published in 2004. For example, the Hayman Roads EA stated:

One Hayman area of the South Platte District that is especially popular with four-wheel drive motorized users is the northern section of Wildcat Canyon which includes nationally-known four-wheel drive roads such as Metberry, Northrup, Longwater, and Corral Creek.... The Wildcat Canyon area was extremely popular because of the 4x4 challenge of the roads, the South Platte River destination point, the opportunity for long and scenic loop rides, the close proximity to the Colorado Front Range and the many other dispersed recreational opportunities available in the area like fishing, hunting, camping, picnicking, and rock-climbing.... Over the past 8-10 years, a considerable amount of volunteer hours and over \$100,000 in grant monies has been dedicated to hardening and rehabilitating four-wheel drive roads in the area, especially Longwater, Corral Creek and Hackett.

Environmental Assessment for Hayman Fire Roads Management Project at 3-17 (“Hayman Roads EA”). Earlier documents published in the South Platte Wild and Scenic River Study acknowledged the importance of these roads well before that, and the segment of the river in Wildcat Canyon was specifically given ‘scenic’ eligibility instead of ‘wild’ in order to allow motorized recreation along that segment to continue.

Under any objective evaluation of the recreational use benefit of the roads in Wildcat Canyon, all of them would have received at least a ‘high’ (H) or likely even a ‘very high’ (HH) recreational use benefit rating based on their value to the motorized community when they were last open to public use prior to the 2002 Hayman Fire. Yet most of them were rated ‘low’ solely because of their temporary ML1 status. As CORE has learned from filing multiple FOIA requests over the last year, that status was only still in place at the time the TAP addendums were written because of the intervention of two South Park District rangers who first delayed and then dissuaded the Park County Commission applying for easements to take over jurisdiction of these roads as contemplated by the decision in the Hayman Fire Roads Management Project.

These examples clearly show the extent to which the TAP scores and recommendations were influenced by the personal biases and perceptions of the ranger district staff, and demonstrate that this process was error-prone and not science-based. The TAP reports (and any analysis and decisions in this travel management process based on them) can only be as good as the underlying data they relied upon. When team members relied solely on inaccurate maps which frequently showed routes in the wrong place, or relied on their own perceptions and opinions of a route’s value rather than objective facts and input from actual trail users, they could not possibly produce reliable recommendations or decisions.

Such errors could have been corrected with sufficient involvement from members of the public who were actually familiar with the routes being analyzed. But as shown below, the TAP addendums were not publicized in a prominent location and as a result involved almost no public input. The Forest was also completely unwilling to consider comments throughout this travel management process arguing that route decisions based on erroneous TAP data should be changed. Accordingly, any flaws and errors in the TAP data carried straight through to the Draft Decision and FEIS, causing the route-specific decisions made in them to be fatally flawed and lacking any factual basis.

Finally, the recreational use benefit ratings for most roads considered in the TAP reports are likely no longer current or accurate. Since the TAP and TAP addendums were completed, UTV/side-by-side use alone has grown substantially. Recent estimates show a record of 458,000 UTVs sold in the United States in 2018, up 5.9% from 2017 and a 95.3% gain from 2006.² Since a majority of UTVs exceed the 50” width restriction for use on the Forest Service’s ATV trails, most UTVs depend on full-size USFS roads for recreation and use. Demand and use by UTV/side-by-sides on USFS roads has undoubtedly increased (perhaps by over 95% since 2006 based on unit sales) since the TAP process began and the assessments were completed. Therefore roads that may have had ‘low’ recreational value in the past may well have a greatly increased recreational value today.

² Mike Imlay, *Upward Trend in Powersports*, SEMA News, July 2019, <https://www.sema.org/news-media/magazine/2019/27/upward-trend-powersports>.

To use the TAP data and the associated conclusions that are nearly 10 years old to assess recreational value today, when there has been such a significant increase in the demand and use by UTV/side-by-sides, calls into question the accuracy of the TAP process, assessment and conclusions. It also highlights the absurdity of the Forest's consistent refusal to consider any comments challenging the validity of the TAP scores or recommendations, which were invariably dismissed with a statement that, "Revision of the TAP/TAR reports is beyond the scope of this undertaking." Whether that is true or not is beside the point, as the clear intent of these comments were to challenge the *decisions* made on the basis of the TAP reports and ask for a different outcome to be adopted in the final decision, rather than asking for changes to be made to the TAP documents themselves.

In conclusion, the PSI TAP addendums violated 36 C.F.R. § 212.5(b) and related provisions of the Forest Service Handbook by failing to incorporate a sufficiently science-based process, are replete with errors and are likely outdated, and are legally deficient as the foundational data source for the Draft Decision. Because the route-specific management decisions made in the Draft Decision have insufficient legal or factual basis, they are inherently arbitrary and capricious and must be set aside.

2. There was no meaningful public involvement or opportunity for comment in the TAP process.

A second key requirement of 36 C.F.R. § 212.5(b) is that the responsible official must "to the degree practicable, **involve a broad spectrum of interested and affected citizens**, other state and federal agencies, and tribal governments." The Forest Service Handbook further states, "As appropriate, **obtain input from external groups, other members of the public, and other governmental agencies.**" FSH 7709.55 Ch. 20, § 21.11(3). The Pike San Isabel ranger districts utterly failed to meet this requirement when compiling the Forest-wide TAP report or TAP addendums.

Despite their extreme complexity, analyzing every road in a ranger district, the original 2009 TAP report and the district TAP addendums each had mere 30 day public comment periods, several of which overlapped with each other. As far as is indicated by the text of the TAP addendums, the only form of public notice given was that the draft reports were published on the Pike San Isabel National Forest website. We have been unable to obtain any information about how prominently they were posted, whether the comment periods for them were announced in any other forum (ie. newspapers, social media, email lists), or if any interested groups were notified of the opportunity to comment. CORE submitted a FOIA request on this subject, but the Forest was unable to provide any additional information beyond the fact that the TAP addendums were posted on the Forest webpage. All the evidence we have indicates that few interest groups or members of the public received word of these comment periods, as the districts received only a handful of comments for each addendum.

The comment period dates and number of comments received on the 2009 TAP report and each district TAP Addendum are listed below:

TAP Document	Comment Period Dates	Number of Comments Received
2009 Forest-wide TAP	Sept 3 - Oct 3, 2009	0
Salida District Addendum	Aug 14 - Sept 16, 2013	9
Pikes Peak District Addendum	May 30 - June 30, 2014	1
San Carlos District Addendum	July 31 - Aug 31, 2014	3
Leadville District Addendum	Oct 10 - Nov 10, 2014	4
South Park District Addendum	June 15 - July 15, 2015	2
South Platte District Addendum	June 25 - July 25, 2015	1

As seen above, none of the district TAP addendums received more than 9 comments, with only **20 total comments** received between all of them. The original 2009 TAP report received **zero** public comments. In contrast, during the public scoping period for the PSI travel management process, the Forest received **1,280** individual comments (Scoping Report at 2-2), and the comment period on the DEIS resulted in **3,148** individual comments (Draft ROD at 9).

The huge discrepancy between over **4,000** total public comments received in the instant travel management process, and the mere **20** comments received on the TAP reports, constitutes prima facie evidence that the ranger districts' efforts to obtain public input on the TAP reports was woefully inadequate.

Moreover, what public input the districts did receive was incredibly one-sided. Only the San Carlos Ranger District identified the individuals or organizations who submitted comments. Two were from anti-motorized environmental groups (the Quiet Use Coalition and Backcountry Hunters and Anglers), while the third was from a volunteer fire department primarily commenting on firefighting access benefits. Judging by the content of the individual comment statements listed in the other TAP addendums, the vast majority were also from anti-motorized groups seeking additional road closures and restrictions on motorized use.

While CORE did not yet exist at the time the TAP addendums were open for public comment, we have spoken with the motorized advocacy groups that were involved in the PSI lawsuit and travel management process from the beginning (the Colorado Off-Highway Vehicle Coalition and Trails Preservation Alliance), and neither of them were aware of the public comment periods for the TAP addendums or participated in them.

Because of the complete lack of involvement from motorized recreationists and advocacy groups, where the districts made changes to the TAP addendums in response to comments, those changes

were almost invariably detrimental to motorized recreation. Risk scores were raised while recreational benefit scores were lowered for numerous roads, particularly roads that had been temporarily closed and placed in ML1 or admin status by either the PSI lawsuit settlement or the 2004 Hayman Fire Roads Management decision.

These roads were the subject of a multitude of comments from motorized users and groups in the scoping period asking for them to be reopened, and should have been evaluated for recreational benefit based on the value they had *before* they were closed. Instead, as discussed in the previous section of this objection, the districts were persuaded by the few comments they received to rate almost all roads that were currently closed to motorized use as having low recreational benefit, causing them to be deemed not needed for the Minimum Road System and recommended for permanent closure. The same was true of many roads that are currently open to public use as well.

If motorized advocates had been a part of this process, they would have been able to counter the biased arguments of anti-motorized groups, which of course would claim roads they wanted closed had little recreational value. The one-sided public comment process caused the final TAP addendums to be unfairly biased toward recommending closure of many valuable motorized routes. As discussed below, the recommendations from the TARs were almost universally carried over and adopted automatically as the only action considered in this travel plan, depriving motorized users of any meaningful opportunity to comment on them before the decision was already effectively made.

It is patently obvious that the Forest's efforts to obtain public input on the TAP addendums was utterly insufficient to meet the legal requirement in 36 C.F.R. § 212.5(b) to "involve a **broad spectrum** of interested and affected citizens", as well as the Forest Service Handbook's requirement to "obtain input from external groups, other members of the public, and other governmental agencies." We grant that those requirements are both qualified with phrases such as "to the degree practicable" and "as appropriate." However, given the strong public interest in the PSI travel management process and the significant number of individuals and groups affected by the management decisions which would be based on the TAP data, it clearly would have been both appropriate and practical to have significantly more public involvement in the TAP process than actually occurred.

Only a year after the last TAP addendum (for the South Platte District) was completed, the MVUM Analysis scoping period generated well over a thousand comments versus the one single comment received on that last TAP addendum. From this it is clear that the Forest could have obtained far more comments on the addendums if it had publicized the comment periods more widely and properly notified all interested groups. Whatever public notice the agency did give was *res ipsa* inadequate to insure that all interested parties knew of and were given adequate opportunity to comment on the TAP documents.

The failure to obtain adequate public involvement in the TAP process constitutes a second independent violation of 36 C.F.R. § 212.5(b) in addition to the failure discussed above to conduct a science-based analysis process. The TAP reports are therefore a legally deficient basis for the route management decisions contained in the Draft ROD and FEIS, and those decisions must be set aside as arbitrary and capricious.

3. *Arbitrary and unsupported recommendations in the TAP comments were used to unlawfully predetermine the outcome of numerous route-specific decisions and limit the range of alternatives considered.*

As stated in multiple official Forest Service policy documents, the Travel Analysis Process is not intended to be a decisional process. Rather, it is a predecisional process that is supposed to *inform*, not *dictate*, management decisions made in a formal travel management process subject to NEPA.

Forest Service Manual FSM 7700 states:

Travel analysis is **not a decision-making process**. Rather, travel analysis informs decisions relating to administration of the Forest transportation system and helps to identify proposals for changes in travel management direction....

FSM 7700, § 7712(1) (emphasis added). Again:

Travel analysis is **not a decision-making process**. Travel management decisions are site-specific decisions.

FSM 7700, § FSM 7712.3(1) (emphasis added).

Likewise, the Forest Service Handbook states:

Travel analysis **neither produces decisions nor allocates NFS lands for specific purposes**. Rather, Responsible Officials, with public involvement, make travel management decisions that are **informed** by travel analysis (sec. 21.6, ex. 01).

FSH 7709.55, Ch. 20, § 21(3) (emphasis added).

These policy statements are clear that the Travel Analysis Process is not intended to make final decisions with respect to the management of individual motorized routes, but is only intended to *inform* decisions subject to further public input under NEPA. The Travel Analysis Process is also not subject to any form of appeal or judicial review, as it is not considered a final agency action. This again underscores the fact that it is supposed to be non-decisional. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (emphasis added):

Identification and implementation of a minimum road system is a **two-step process**. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117 (9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

The TAP reports were only the first step of this two-step process. This travel management process was supposed to be the second step, where the findings in the TARs were subjected to a thorough analysis under NEPA and route-specific outcomes changed in response to public comments, to ultimately designate the Minimum Road System for the Forest.

Despite this, the Pike San Isabel National Forest treated the TAP reports as *de facto* decisional documents with respect to numerous routes where the TARs included specific management

recommendations, and acted as if the Minimum Road System had already been designated by the TAP reports alone.

As described in Objection #1, these TAP recommendations were brief one sentence conclusory statements that made no effort to explain their reasoning or articulate the facts upon which they were based. This makes them an improper, arbitrary basis for decisions under the APA, which requires an agency to articulate a “rational connection between the facts found and the choice made....” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43.

In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision regarding the alternative adopted, but also to the decisions made regarding individual routes. In *Idaho Conservation League*, 766 F. Supp. 2d at 1077, the court overturned a Forest Service travel plan because of the Forest’s failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs. The Forest here likewise failed to offer an adequate explanation for the route-specific decisions made in the TAP recommendations.

Nevertheless, the Draft Decision and FEIS used the recommendations from the TAP addendums to dictate the final management decisions regarding numerous specific routes without conducting any further analysis of those routes or considering any public comments calling for different outcomes than those recommended in the TAP reports. The FEIS explains that for any route that had a management recommendation in the TARs, that recommendation was automatically adopted, and that route was not subject to any further analysis under the MRS screening process:

Of the roads subject to the MRS screening process, any specific road recommendation in the TARs **was adopted**, regardless of the screening process and criteria described below.

FEIS at 2-5 (emphasis added). For the vast majority of routes with specific recommendations from the TARs, that recommendation was the *only* action considered across all action alternatives. As a result, the agency never gave any consideration to management actions other than the one recommended by the TARs, and there was effectively no chance for public input to change that decision. By the time the public comment period for scoping was held, the decision on many if not most routes the motorized community cared about had already been effectively made.

By making many decisions regarding specific route management during the TAP process instead of the travel management process, the Forest violated 40 C.F.R. § 1502.5 on the timing of NEPA actions involving Environmental Impact Statements, which states:

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can **serve as an important practical contribution to the decision-making process** and will **not be used to rationalize or justify decisions already made.....**

If, contrary to Forest Service policy, the Forest wished to make final route designation decisions and make a final determination of the Minimum Road System during the TAP process, then it should have prepared an EIS at that stage of the process, which it did not. Instead, it simply made those decisions in

the TARs, and the entire travel management process that followed has been a *post hoc* rationalization of decisions already made in the supposedly non-decisional TAP process.

Of the routes that had specific management recommendations in the TARs, the vast majority recommended closing those routes to public motorized use. As a result, a disproportionate number of routes were subject to automatic closure based on the TAP recommendations.

Below is a list of currently open routes that are slated for closure in the Draft ROD solely because of the TAP recommendations, listing the recreational benefit rating, the overall benefit rating, and the TAP comment/recommendation. Numerous other routes that are currently closed but which should have been considered for possible conversion to routes open to the public were likewise kept closed based solely on the TAP recommendations.

Currently Open Routes Closed Because of TAP Recommendation

Includes currently open routes longer than 0.1 miles. Shorter routes are mostly re-designated as parking areas.

Route Number	Name	Ranger District	Start MP	End MP	Length	Current Status	Decision Action	Rec Benefit	Overall Rating	TAP Comment
174	WILLOW STUMP	LEADVILLE	0.5	1.07	0.57	Roads, open to all vehicles	Decommission	L	L/H	Seasonal, Recommend for decommissioning
174	WILLOW STUMP	LEADVILLE	0	0.5	0.5	Roads, open to all vehicles	Decommission	L	L/H	Seasonal, Recommend for decommissioning
397.B	RADIO TOWER SPUR	LEADVILLE	0.6	1.92	1.32	Roads, open to all vehicles	Identify and implement appropriate, targeted road maintenance techniques to minimize areas of watershed impacts and convert to admin use only road (ML2)	L	H/H	Recommend closing to public
300.D	STAGGS	PIKES PEAK	0	0.89	0.89	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning

300.E	STAGGS SPUR	PIKES PEAK	0	0.3	0.3	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning
300.G	QUARTZ	PIKES PEAK	0	0.4	0.4	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning
300.P	RRR CAMP 1	PIKES PEAK	0.04	0.33	0.29	Roads, open to all vehicles	Decommission	H	L/L	Reroute possible
300.Q	RRR CAMP 2	PIKES PEAK	0	0.3	0.3	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning or conversion to a non-motorized trail
300.V	RUPP GULCH	PIKES PEAK	1.1	1.5	0.4	No data	Decommission	No data	No data	Potential full-size trail
302.A	DEVIL'S KITCHEN	PIKES PEAK	0	1.2	1.2	Roads, open to all vehicles	Decommission	L	L/H	Recommend Decommissioning
308	SKELTON RIDGE	PIKES PEAK	0	0.25	0.25	Roads, open to all vehicles	Convert to admin use only road (ML2)	L	H/L	SUP Road; Recommend eliminating public motorized access and change to admin road
309	FARISH	PIKES PEAK	0	0.98	0.98	Roads, open to highway legal vehicles only	Convert to special use permit only road	L	L/L	SUP Road; Recommend eliminating public motorized access and change to PVT SUP road

312	FARRISH MEMORIAL	PIKES PEAK	0.31	1.44	1.13	Roads, open to highway legal vehicles only	Convert to special use permit only road	L	H/L	SUP Road; Licensed vehicles only (no mixed use) - Recommend eliminating public motorized access
312.A	CARROLL LAKES	PIKES PEAK	0	0.35	0.35	Roads, open to highway legal vehicles only	Convert to special use permit only road	L	H/L	SUP Road, Licensed vehicles only (no mixed use); Recommend eliminating public motorized access and change to PVT SUP road
314.A	SKID	PIKES PEAK	0	0.3	0.3	Roads, open to all vehicles	Decommission	L	L/L	Recommend eliminating public motorized access
314.B	ENSIGN RIDGE	PIKES PEAK	0	0.33	0.33	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning
324.B	COUNTY LINE	PIKES PEAK	0	2.25	2.25	Roads, open to all vehicles	Decommission	L	L/L	Recommend eliminating public motorized access
327	GOVE CREEK	PIKES PEAK	1.85	4.7	2.85	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning approximately the last three miles
332.D	CONNECT OR	PIKES PEAK	0	0.37	0.37	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning
336.A	SHOOTING	PIKES PEAK	0.1	0.5	0.4	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning

337	CRYSTOLA S.H.	PIKES PEAK	0.52	1.4	0.88	Roads, open to highway legal vehicles only	Convert to special use permit only road	L	H/L	Licensed vehicles only (no mixed use); Recommend eliminating public motorized access and change to a PVT SUP road
339.C	CREEK CROSSING	PIKES PEAK	0	0.6	0.6	Roads, open to all vehicles	Convert to special use permit only road	L	H/L	SUP Road; Recommend eliminating public motorized access and change to PVT SUP road
342.A	TEMPLED HILLS	PIKES PEAK	0	0.4	0.4	Roads, open to all vehicles	Convert to special use permit only road	L	H/L	SUP Road; Recommend eliminating public motorized access
345	LOWER JOHNS GULCH	PIKES PEAK	0	2.2	2.2	Roads, open to all vehicles	Convert to special use permit only road	M	H/L	SUP Road
346.B	HOTEL SPUR EAST	PIKES PEAK	0	0.25	0.25	Roads, open to all vehicles	Convert to admin use only road (ML2)	L	H/L	Recommend eliminating public motorized access and change to Admin use only
354.B	MINE SHAFT	PIKES PEAK	0	0.4	0.4	Roads, open to all vehicles	Convert to special use permit only road	L	L/L	Recommend eliminating public motorized access and change to a PVT SUP road
355.A	WHALES	PIKES PEAK	0	0.7	0.7	Roads, open to all vehicles	Convert to special use permit only road	L	H/L	Recommend eliminating public motorized access and change to Admin/SUP road
355.B	MORGAN	PIKES PEAK	0	1	1	Roads, open to all vehicles	Convert to special use permit only road	L	H/L	Recommend eliminating public motorized access and change to Admin/SUP road

356.A	ASPEN HILLS SHORT CUT	PIKES PEAK	0	0.4	0.4	Roads, open to all vehicles	Convert to special use permit only road	L	H/L	Access to Aspen Hills subdivision - no authorization; Recommend eliminating public motorized access and change to a PVT SUP road
377	SKY HIGH RANCH	PIKES PEAK	0	0.74	0.74	Roads, open to highway legal vehicles only	Convert to special use permit only road	L	H/L	SUP Road, Licensed vehicles only (no mixed use); Recommend eliminating public motorized access and change to Admin road
385	CATAMOUNT	PIKES PEAK	0.45	2.2	1.75	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	M	L/H	Recommend eliminating public motorized access and change to admin road
365.A	PANDORA	SALIDA	0	0.4	0.4	Roads, open to all vehicles	Convert to special use permit only road	L	H/L	Special Use Access.
198.A	LAKE CREEK SPUR	SAN CARLOS	0	0.22	0.22	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	L/H	Recommend eliminating public access and keeping as an admin road
303	OAK CREEK CG	SAN CARLOS	0	0.6	0.6	Roads, open to all vehicles	Increase maintenance interval/techniques, install fencing, and convert to admin use only road (ML2)	H	H/H	Rec Site Access
348	RIDGE	SAN CARLOS	0	0.11	0.11	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	L/L	Recommend eliminating public access and keep as an admin road

406	HUDSON DITCH	SAN CARLOS	0	1.16	1.16	Roads, open to all vehicles	Convert to admin use only road (ML2)	L	H/L	Recommend eliminating public access and keeping as an admin road
130	CLARK SPRING	SOUTH PARK	1.61	1.9	0.29	Roads, open to all vehicles	Decommission	M	H/L	Recommend eliminating public access after the intersection with 39.2C, and keeping as an Admin road
130.A	ROCK	SOUTH PARK	0	1.03	1.03	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	L/L	Recommend eliminating public access and keeping as an Admin road
141	CABIN SPRING	SOUTH PARK	3.3	4.12	0.82	No data	Decommission	No data	No data	Rec Site Access
176.2A	MOTHER LODGE	SOUTH PARK	0.1	0.4	0.3	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning
201.2C	CRYSTAL CREEK SPUR	SOUTH PARK	0	0.2	0.2	Roads, open to all vehicles	Convert to special use permit only road	L	L/L	Recommend eliminating public access and keeping as an SUP road
228	LOOKOUT	SOUTH PARK	0	1.25	1.25	Roads, open to highway legal vehicles only	Decommission	H	H/H	Licensed vehicles only (no mixed use), Recommend Decommissioning
23.2A	FISHLINE	SOUTH PARK	0	0.48	0.48	Roads, open to highway legal vehicles only	Decommission	L	L/L	Licensed vehicles only (no mixed use), Recommend Decommissioning

233	GET AWAY	SOUTH PARK	0	0.24	0.24	Roads, open to all vehicles	Decommission	H	H/L	Recommend Decommissioning
240.A	DINGER	SOUTH PARK	0	0.4	0.4	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning
243.1C	JACKPOT	SOUTH PARK	0	0.7	0.7	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning
309.2A	CHUBB	SOUTH PARK	0	0.26	0.26	Roads, open to all vehicles	Convert to special use permit only road	L	L/L	Private land access
39.2B	LONE CHIMNEY SPRING	SOUTH PARK	0	0.59	0.59	Roads, open to all vehicles	Convert to admin use only road (ML2)	M	H/L	Recommend eliminating public access and keeping as an Admin road
393.2B	HEELER	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	L/L	Recommend eliminating public access and keeping as an Admin road
393.2C	DOGBANE	SOUTH PARK	0	0.2	0.2	Roads, open to all vehicles	Decommission	L	L/L	Recommend eliminating public access and keeping as an Admin road
393.2E	CALF	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Convert to special use permit only road	L	L/L	duplicate access to private, Recommend eliminating public access and keeping as an Admin road

423.B	MA BELL	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Convert to admin use only road (ML2)	L	L/H	Recommend eliminating public access and keeping as an SUP road
435.4B	BRUSH PARK	SOUTH PARK	0	0.6	0.6	Roads, open to all vehicles	Decommission	M	L/H	Recommend Decommissioning
436	SOUTH SALT CREEK	SOUTH PARK	1.26	5.1	3.84	Roads, open to all vehicles	Convert to admin use only road (ML2)	M	H/L	Seasonal
436.1A	FORK	SOUTH PARK	0.2	0.5	0.3	Roads, open to all vehicles	Decommission	M	L/L	Recommend Decommissioning the last segment to shorten this road
436.2A	SAWMILL	SOUTH PARK	0	0.4	0.4	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	L/L	Recommend eliminating public access and keeping as an Admin road
436.2B	MIDDLE	SOUTH PARK	0	0.52	0.52	Roads, open to all vehicles	Convert to special use permit only road	M	L/H	Recommend eliminating public access and keeping as an SUP road
448	PARIS	SOUTH PARK	0	0.14	0.14	Roads, open to all vehicles	Decommission	L	L/H	Recommend eliminating public access and keeping as an Admin road
450	LOVELAND	SOUTH PARK	0	2.8	2.8	Roads, open to all vehicles	Convert to special use permit only road	L	L/H	Special Use Access, Recommend eliminating public access and keeping as an SUP road

451	FARO	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Convert to special use permit only road	L	L/H	Special Use Access, Recommend eliminating public access and keeping as an SUP road
752	SMOKEY QUARTZ	SOUTH PARK	0.58	1.45	0.88	Roads, open to all vehicles	Decommission	M	L/L	Recommend eliminating public access on segment past intx with 752.A, and keeping as an Admin road
754.A	JUNIOR	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Decommission	M	L/L	Recommend eliminating public access and keeping as an Admin road
756	BATTLE	SOUTH PARK	0	0.6	0.6	Roads, open to all vehicles	Decommission	M	L/L	access road to mines
802.A	BOLLINGER	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	L/L	Recommend eliminating all motorized access and keeping as a M11 road
813	INGRAM	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Convert to special use permit only road	L	L/L	Recommend eliminating public access and keeping as a SUP road
839	SCHOOL HOUSE	SOUTH PARK	0.01	0.6	0.59	Roads, open to all vehicles	Decommission	L	L/L	OP ML2, Recommend eliminating public access and keeping as an Admin road
852	RYAN	SOUTH PARK	0	1.2	1.2	Roads, open to all vehicles	Convert to admin use only road (ML2)	L	L/H	Seasonal

853.A	BANANA PEEL	SOUTH PARK	0	1.48	1.48	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	L/H	Recommend eliminating public access and keeping as an Admin road
856	PIRATE	SOUTH PARK	0	1.6	1.6	Roads, open to all vehicles	Decommission	L	L/H	Recommend eliminating public access and keeping as an SUP road
857.A	KEOUGH	SOUTH PARK	0	0.2	0.2	Roads, open to all vehicles	Decommission	L	L/H	Recommend Decommissioning
857.B	CRESKILL	SOUTH PARK	0	0.44	0.44	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	L/H	Recommend eliminating public access and keeping as an Admin road
858	QUARTZVILLE	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Convert to special use permit only road	L	L/L	Recommend eliminating public access and keeping as an SUP road
870	OHLER	SOUTH PARK	0.95	2.3	1.35	Roads, open to highway legal vehicles only	Decommission	L	L/H	Licensed vehicles only (no mixed use), Recommend Decommissioning
878	FOREST GLEN	SOUTH PARK	0.41	0.94	0.53	No data	Decommission	No data	No data	Recommend eliminating public access and keeping as an Admin road
884.B	TOUGH TRAP	SOUTH PARK	0	0.4	0.4	Roads, open to all vehicles	Decommission	L	L/L	Recommend eliminating public access and keeping as an Admin road

888.A	GLOBE & ANCHOR	SOUTH PARK	0	0.25	0.25	Roads, open to all vehicles	Decommission	L	L/L	Recommend Decommissioning
888.B	MUD WINCHING	SOUTH PARK	0	0.12	0.12	Roads, open to all vehicles	Decommission	L	L/H	Recommend Decommissioning
94.A	FAT CHANCE TRAIL	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Decommission	M	L/L	Recommend eliminating public access and keeping as an Admin road
101	CROW CR	SOUTH PLATTE	4.03	7.02	2.99	Roads, open to all vehicles	Convert to admin use only road (ML2)	L	H/L	Seasonal Rd, Recommend eliminating public access at S. intx with 105, MP 4.03, and keeping as an Admin road
102	ELK CREEK	SOUTH PLATTE	0.17	0.41	0.24	Roads, open to highway legal vehicles only	Convert to special use permit only road	M	L/L	Rec Site Access, Licensed vehicles only (no mixed use)
102	ELK CREEK	SOUTH PLATTE	0.41	1	0.59	Roads, open to highway legal vehicles only	Convert to special use permit only road	M	L/H	Rec Site Access, Licensed vehicles only (no mixed use)
102.A	CAMP ROSALIE	SOUTH PLATTE	0	0.14	0.14	Roads, open to highway legal vehicles only	Convert to special use permit only road	L	L/L	Licensed vehicles only (no mixed use), Maintained by SUP holder
107	LIMBER PINE	SOUTH PLATTE	0.53	0.83	0.3	No data	Decommission	No data	No data	Seasonal Rd

118.E	BUNO GULCH	SOUTH PLATTE	1.17	1.5	0.33	No data	Decommission	No data	No data	Licensed vehicles only (no mixed use)
126.A	KENOSHA CREEK	SOUTH PLATTE	0.22	0.9	0.68	Roads, open to all vehicles	Decommission	H	H/L	Recommend decommissioning from intx with 126.C to end, Recommend seasonal closure
516	ARCHERY RANGE	SOUTH PLATTE	0	0.5	0.5	Roads, open to highway legal vehicles only	Convert to admin use only road (ML2)	L	H/L	Licensed vehicles only (no mixed use), Recommend changing to ML2 Admin
543.H	ROLLING CREEK TRHD	SOUTH PLATTE	0.06	0.26	0.2	No data	Decommission	No data	No data	Rec Site Access, Licensed vehicles only (no mixed use)
550.C	RIFLE RANGE	SOUTH PLATTE	0	1.34	1.34	Roads, open to highway legal vehicles only	Convert to admin use only road (ML2)	H	H/L	SUP, Licensed vehicles only (no mixed use), Maintained by SUP holder

In the vast majority of cases for the routes listed above, all of the action alternatives considered throughout the entire travel management process adopted the TAP recommendation, regardless of what benefit/risk scores the routes had or any other screening criteria. For some routes where the TAP recommendation only said “eliminate public access,” the alternatives had some variation in the *type* of closure (decommissioning vs. conversion to admin or special use permit roads), but they were universal in closing that route to public use. The only alternative that would have kept any of these routes open to public use was the No Action Alternative A, which anyone who has ever been involved in a NEPA process knows is never adopted or seriously considered.

An example comparison of the alternatives considered for NFSR 450 Loveland is below:

Alternatives Comparison for NFSR 450 Loveland (South Park District)

	Alt A	Decision	Alt C	Alt B	Alt D	Alt E
Management Recommendation	Keep as is	Convert to special use permit only road	Convert to special use permit only road	Convert to special use permit only road	Convert to special use permit only road	Convert to special use permit only road
Type of Management	Keep route classification as is	NFS subtraction	NFS subtraction	NFS subtraction	NFS subtraction	NFS subtraction
Route Class Management	Roads, open to all vehicles	Convert to special use permit only road	Convert to special use permit only road	Convert to special use permit only road	Convert to special use permit only road	Convert to special use permit only road
Open to Public Motor Vehicle Use?	Open to public motor vehicle use	Closed to public motor vehicle use	Closed to public motor vehicle use	Closed to public motor vehicle use	Closed to public motor vehicle use	Closed to public motor vehicle use

Where public comments received during scoping or the DEIS comment period called for the alternatives to be modified to keep the routes listed above open to public use, those requests were denied with a statement saying that was the recommended action in the TARs, so that was the action that was adopted.

Again using NFSR 450 as an example, in response to comment 3180-1 by local residents John and Lisa Kunst, stating that NFSR 450 and the connecting road NFSR 192 were both highly popular routes used by locals to cross between the Buckskin Gulch and Mosquito Gulch drainages and to access the Loveland Mountain ridgeline, and requesting to keep those routes open, the Forest replied simply: "Route 450 conversion to a special use permit road is a **management recommendation provided in the TAP**, no further change made." FEIS Appendix D at D-93 (emphasis added).

Patrick McKay also commented on NFSRs 192 and 450 in comments #176-12 and #176-14, pointing out that both roads had severe mapping errors on the current MVUMs and TAP / alternative maps which showed portions of the routes in the entirely wrong place, causing them to be improperly evaluated in the TAP reports. In response, the Forest appeared to acknowledge the mapping errors but

said they were irrelevant because of the TAP recommendation to convert them to special use permit roads:

Corrections to the NFSR 192 alignment were considered but not put forward in this analysis due to the recommendation to convert it to a special use permit only road not open to public use.

FEIS Appendix D at D-20.

And:

The specific management of converting to a special use permit only road is provided in the TAP/TAR report and adopted across all action alternatives. Revision of the TAP/TAR reports is beyond the scope of this undertaking.

FEIS Appendix D at D-28. The Forest gave a similar response to Patrick McKay's comment 186-1 pointing out blatant mapping errors for NFSR 174 Willow Stump (Leadville District):

The Forest Service is aware of the mapping error of this route. The route is proposed for decommissioning under Alternative C, the Proposed Action.

FEIS Appendix D at D-141. In response to another comment (1919-2) on NFSR 174 Willow Stump, the Forest made it clear this road was also slated for decommissioning under all action alternatives solely based on the TAP recommendation:

Route management recommendations are based on TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information, and the TAP/TAR specifically recommends decommissioning NFSRs 174 and 174.A.

FEIS Appendix D at D-144.

Even though the Forest directly relied upon the TAP recommendation to determine the management of these routes, it considered blatant errors in the maps relied on for the TAP evaluation to be irrelevant and beyond the scope of this process. By the Forest's own admission, it simply adopted the TAP recommendations to close these roads across all action alternatives without any further analysis or consideration of comments calling for a different outcome. The responses to public comments in Appendix D of the FEIS are replete with similar or identical statements where the Forest blatantly states that the decision to close these routes was made in the TAP reports and it will not consider changing that outcome.

As evidenced by these statements, the Forest clearly treated the TAP reports as *decisional* documents in violation of Forest Services policies laid out in the Forest Handbook and Forest Manuals, and also violated several CFRs regarding the travel management process and NEPA processes generally.

36 C.F.R. § 212.52(a) requires that the public be allowed to participate in travel management decisions:

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

By effectively making numerous route-specific management decisions during the predecisional Travel Analysis Process, which as discussed above clearly did NOT involve sufficient public participation, the Forest violated 36 C.F.R. § 212.52(a). By the time the public comment periods for scoping and the DEIS were held, most route-specific decisions were already predetermined, and the route designations were already made. Therefore, the public was precluded from participation in the actual route designations as required by the CFR.

By predetermining the designations for numerous routes based on the TAP recommendations, the Forest violated one of the basic requirements of NEPA processes as specified in 40 C.F.R. § 1502.14(a), to “Evaluate **reasonable alternatives** to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.” Under 40 C.F.R. § 1508.1, “Reasonable alternatives means a reasonable range of alternatives that are **technically and economically feasible, [and] meet the purpose and need for the proposed action....**”

With respect to each of the currently open routes listed in the table above (plus multiple other routes that are currently closed, but for which strong demand exists for them to be open to public use), the *only* option that was considered across all action alternatives was closing them to public use. There is no analysis in any of the documents associated with the FEIS and Draft ROD that explains why no other alternatives were considered with respect to these routes as required by the CFR, or why considering at least one action alternative that kept them open was not technically or economically feasible or failed to meet the purpose and need of the proposed action. The only explanation ever given for failing to consider other management options for these routes was that the chosen option was recommended by the TAP reports.

The artificial limiting of the range of alternatives considered based on the TAP recommendations further violated 40 C.F.R. § 1506.1, which provides:

(a) Except as provided in paragraphs (b) and (c) of this section, until an agency issues a finding of no significant impact, as provided in § 1501.6 of this chapter, or record of decision, as provided in § 1505.2 of this chapter, no action concerning the proposal may be taken that would:

- (1) Have an adverse environmental impact; or
- (2) Limit the choice of reasonable alternatives.

Because a travel management EIS would likely be considered a programmatic decision, 40 C.F.R. § 1506.1(c) likely applies. That section states:

While work on a required programmatic environmental review is in progress and the action is not covered by an existing programmatic review, agencies shall not undertake in the interim any major Federal action covered by the program that may significantly affect the quality of the human environment unless such action:

- (1) Is justified independently of the program;
- (2) Is itself accompanied by an adequate environmental review; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

The closure of numerous motorized routes relied upon by the public to access public lands undeniably “affects the quality of the human environment”, and the use of the TAP recommendations to predetermine the range of alternative considered for numerous routes clearly “prejudice[d] the ultimate outcome of the program” by “determin[ing] subsequent development or limit[ing] alternatives.” The improper use of the TAP reports as decisional documents which predetermined the outcome of the pending travel management process therefore violated these CFRs as well, and was wholly unlawful.

C. CONCLUSION AND REQUESTED RESOLUTION

Returning to the basic standard of review employed for an agency decision such as this one, APA section 706(2) provides that a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) unsupported by substantial evidence....”

The Draft Decision fails this test on multiple counts. Its reliance upon the TAP reports as both its basic factual foundation and to unlawfully predetermine the outcomes for numerous individual routes and limit the range of alternatives considered violates multiple CFRs and Forest Service policies laid out in the relevant manuals and handbooks. It failed to employ a sufficiently science-based process to analyze the minimum route system as required by 36 C.F.R. § 212.5(b), and also failed to “involve a **broad spectrum** of interested and affected citizens” as required by that same CFR.

By treating the TAP reports as decisional documents which predetermined the designations of numerous routes prior to the first public comment period on the travel management process, it further violated the requirement in 36 C.F.R. § 212.52(a) that, “The public shall be allowed to participate in the **designation** of National Forest System roads...”, as well as the requirement in 40 C.F.R. § 1502.14(a), to “Evaluate **reasonable alternatives** to the proposed action....”

At no point did the agency conduct any NEPA review of the actual (rather than perceived) impacts or likely risks to the environment of allowing versus not allowing motorized recreation on these routes as part of its obligation to assess the appropriate amount of motor vehicle use based on the level of environmental impacts of that use. See, e.g., *Minnesota Center for Environmental Advocacy v. US Forest Service*, 914 F. Supp. 2d 957, 983 (D. Minn. 2012) (the agency’s obligation under § 212.55(b) is to determine the appropriate level of motorized use based on its impacts in order to ensure that the agency meets its obligation to promote multiple uses of National Forest System lands); 70 Fed. Reg. 68264, 68281 (Nov. 9, 2005) (the agency is mandated by Executive Order not to eliminate motorized use but instead to ensure “motor vehicle use on Federal lands continue in appropriate locations”).

The failure to conduct an actual NEPA review of the environmental impacts of allowing or disallowing motorized recreation on these routes, but instead accepting and relying exclusively on the prior recommendations in the TAP Reports to ban any such use (1) violates the agency’s stated obligation to ensure appropriate motorized use occurs, (2) precluded valid public comment from being submitted to the decision maker on reasonable alternatives allowing such recreation and (3) makes the proposed decision to close these routes to motorized recreation uninformed, unreasonable, arbitrary, an abuse of discretion, and contrary to law.

On this basis, we request that the Reviewing Officer:

1. Order the Draft Decision and FEIS withdrawn and direct that a new travel analysis process and travel management process be conducted that properly adheres to all statutory and regulatory requirements; or,
2. Remand the Draft Decision to the Deciding Official with instructions to reverse all of the route closures listed in the table above, keeping these routes open to the public in the Final Decision with the same management as under the current MVUMs; or,
3. Grant all of our route-specific objections below and reverse all route closures discussed in them that improperly relied upon either TAP data or TAP recommendations to close those routes.

Each of these options would be an acceptable resolution to this objection. While a complete redo of the entire travel analysis and travel management processes would be ideal, we recognize that is likely not practical. Therefore we would accept an alternate resolution where the majority of route closures from the list above, particularly those highlighted in our route-specific objections below, are reversed and those routes are kept open to the public under their existing designations.

Additionally, we are objecting to multiple routes/route segments that are not currently open to the public but have been in the past, and were likewise prevented from receiving fair consideration of reopening due to the Forest's overreliance on the TAP data or TAP recommendations. These routes include the upper portions of NFSR 126 Twin Cone and NFSR 381 Cloyses Lake 4WD (both currently designed as admin roads), and the ML1 segments of NFSRs 220 Hackett, 220.A Crossover, 220.B Widow Maker, 221 Longwater, and 540 Corral Creek in the Wildcat Canyon area. We contend that the selection of alternatives with respect to these routes was also unlawfully predetermined by the TAP reports, and successful resolution of this objection would require that each of those routes be reopened to public motorized use as either a road or a trail open to all vehicles.

OBJECTION #3: ARBITRARY CLOSURE OF HIGH VALUE ROUTES CONTRARY TO THE MINIMUM ROAD SYSTEM SCREENING CRITERIA

A. INTRODUCTION AND CONNECTION TO PREVIOUS COMMENTS

Of the roads that were actually subject to the Minimum Road System screening process, meaning there was no specific management recommendation for them included in the TARs, a disproportionate number of routes with 'high' or 'moderate' recreational use benefit ratings were decommissioned or otherwise closed in Alternative C of the FEIS and the final route system adopted in the Draft ROD. This was directly contrary to the recommendation for such routes described in the section of the FEIS on the MRS Screening Criteria Process, which was to convert such routes to Trails Open to All Vehicles.

We object to the inconsistent application of the MRS screening criteria contrary to its intended goals as described in the FEIS, which resulted in an excessive number of currently open high value motorized routes being arbitrarily closed for no apparent reason. We suspect (though we cannot know) that many if not all of these routes were decided based upon the supposed "route-specific information" discussed

in Objection #1, which substituted district rangers' arbitrary opinions about the management of specific routes for the at least mostly objective and scientific outcomes of the MRS rubric.

Both Marcus Trusty and Patrick McKay submitted multiple comments discussing the recreational benefit ratings of numerous routes, arguing that routes with high or moderate recreational benefit ratings should be kept open. Mr. McKay also discussed the flaws with the TAP process and ratings generally in his comment entitled "General Comments" submitted on 10/31/2019, though that portion of the comment does not appear to be listed in Appendix D of the FEIS. Finally, the Forest's refusal to consider any public input challenging the conclusions reached in the "site-specific review," the existence of which was not clearly disclosed until a general description of this review was added to the FEIS, constitutes a new issue arising after public comments. Standing to object is this established for both objectors.

Below is a list of all currently open routes longer than 0.1 miles with no TAP recommendation that are slated for closure despite having high or moderate recreational benefit ratings, to which this objection applies. Our route specific objections will also highlight routes with incorrect recreational benefit ratings.

Currently Open High Value Routes Closed With No TAP Recommendation

Only includes currently open routes longer than 0.1 miles. Shorter routes are mostly being converted to parking areas.

Route Number	Name	Ranger District	Start MP	End MP	Length	Current Status	Decision Action	Rec Benefit	Overall Rating (Benefit / Risk)
372	EAST BEAVER	PIKES PEAK	0	2.15	2.15	Roads, open to highway legal vehicles only	Convert to special use permit only road (ML2)	H	H/H
374	GOULD CREEK	PIKES PEAK	2.6	3	0.4	Roads, open to all vehicles	Decommission	H	H/H
204.E	204.E	SALIDA	0	0.11	0.11	Roads, open to all vehicles	Decommission and add new parking area	H	H/L
353.A	353.A	SAN CARLOS	0	0.4	0.4	Roads, open to all vehicles	Decommission	H	H/L
353	353	SAN CARLOS	0.1	1.07	0.97	Roads, open to all vehicles	Decommission	H	H/L

426	426	SAN CARLOS	0.8	1.17	0.37	Roads, open to all vehicles	Decommission	H	H/L
183	BEAR PARK	SOUTH PARK	0	0.83	0.83	Roads, open to all vehicles	Decommission	H	H/H
183	BEAR PARK	SOUTH PARK	0.83	1.04	0.21	Roads, open to all vehicles	Decommission	H	H/H
184	RIDGE	SOUTH PARK	0	2.6	2.6	Roads, open to all vehicles	Decommission	H	L/H
194	TROUT CREEK	SOUTH PARK	2.9	4.73	1.83	Roads, open to all vehicles	Decommission	H	H/H
258.A	WINDMILL	SOUTH PARK	0	0.8	0.8	Roads, open to all vehicles	Convert to admin use only road (ML2)	H	H/H
360.2C	PILGRIM	SOUTH PARK	0	0.9	0.9	Roads, open to all vehicles	Decommission	H	H/L
360.2E	QUARTZ	SOUTH PARK	0	0.2	0.2	Roads, open to all vehicles	Decommission	H	L/L
393.1B	GOOD CLIFFS	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Decommission	H	H/H
433.2B	PONY CREEK	SOUTH PARK	0	1	1	Roads, open to all vehicles	Decommission	H	H/H
435.4C	NORTH SALT	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Decommission	H	H/H
110.C	KILN	LEADVILLE	0	0.26	0.26	Roads, open to all vehicles	Decommission	M	L/L

150	GOLD BASIN	LEADVILLE	0	1	1	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	M	L/H
422	SAWMILL RIDGE	LEADVILLE	3.21	4.1	0.89	Roads, open to all vehicles	Decommission	M	H/H
325.B	SAYLOR PARK SOUTH	PIKES PEAK	0	0.5	0.5	Roads, open to all vehicles	Decommission	M	L/L
348.C	AROUND HILL	PIKES PEAK	0	0.9	0.9	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	M	L/L
357.H	LEFT	PIKES PEAK	0	0.22	0.22	Roads, open to all vehicles	Decommission	M	L/L
208	208	SALIDA	0	0.19	0.19	Roads, open to all vehicles	Convert to special use permit only road	M	H/L
214.B	STUMPY CREEK 4WD	SALIDA	0	2.23	2.23	Roads, open to all vehicles	Decommission	M	L/L
225.B	POWERLINE SPUR	SALIDA	0	0.18	0.18	Roads, open to all vehicles	Convert to special use permit only road	M	L/L
230.C	HOFFMAN PARK	SALIDA	0	1.18	1.18	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	M	L/L
349	GRASSY GULCH 4WD	SALIDA	1.6	1.92 5	0.33	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	M	L/L
142.A1	PROMONTORY	SOUTH PARK	0	0.2	0.2	Roads, open to all vehicles	Decommission	M	L/L

142.B	THICKET	SOUTH PARK	0	0.11	0.11	Roads, open to all vehicles	Decommission	M	L/L
200	200	SOUTH PARK	0	0.19	0.19	Roads, open to all vehicles	Convert to special use permit only road	M	L/L
205	BLADDER BAG	SOUTH PARK	0	1.17	1.17	Roads, open to all vehicles	Decommission	M	L/L
205.B	LIKELY	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Decommission	M	L/L
237.A	SCHOOLMARM	SOUTH PARK	0	1	1	Roads, open to all vehicles	Convert to ML1 road	M	L/L
237.B	BROKEN JUG	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Change maintenance level to ML1	M	L/L
237.C	SOFT END	SOUTH PARK	0	1.05	1.05	Roads, open to all vehicles	Change maintenance level to ML1	M	L/L
263	SHIMMINS	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Decommission	M	H/L
284	MEAL-READY TO EAT	SOUTH PARK	0	0.6	0.6	Roads, open to all vehicles	Decommission	M	H/L
393.2D	TOMPKINS	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Decommission	M	L/L
452	COONEY LAKE	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Decommission	M	L/H
452	COONEY LAKE	SOUTH PARK	1	1.2	0.2	Roads, open to all vehicles	Decommission	M	L/H

603	PEERLESS MTN	SOUTH PARK	1.05	2.2	1.15	Roads, open to all vehicles	Convert to special use permit only road	M	L/H
669.2B	TILLY	SOUTH PARK	0	1.39	1.39	Roads, open to all vehicles	Decommission	M	L/L
754	OUT BACK	SOUTH PARK	0	1	1	Roads, open to all vehicles	Decommission	M	L/L
755	SKIRMISH	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Decommission	M	L/L
807	OHLEER	SOUTH PARK	0	0.55	0.55	Roads, open to all vehicles	Decommission	M	L/L
811	T-PIT	SOUTH PARK	1.54	2.2	0.66	Roads, open to all vehicles	Convert to special use permit only road	M	L/H
811.A	FOREIGN	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Decommission	M	L/H
872	PINK BOTTOMS	SOUTH PARK	0	0.83	0.83	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	M	L/L
881	HUNTERS	SOUTH PARK	0	0.6	0.6	Roads, open to all vehicles	Decommission	M	H/L
603	PEERLESS MTN	SOUTH PARK	0.49	1.05	0.56	Roads, open to all vehicles	Convert to special use permit only road	M	L/H
861.A	ALTHEA	SOUTH PARK	0.42	1.3	0.88	Roads, open to all vehicles	Decommission	M	H/L

B. ANALYSIS

The TAP and TARs evaluated every route in the PSI classified as a road, and did not consider motorized trails. The end result of the TAP process was that each of the roads examined was given an overall Benefit/Risk rating that was calculated using ratings in a number of individual Benefit and Risk Categories. While we have discussed the inherent flaws with the TAP process at length in Objection #2, we will assume for the sake of this objection that the TAP scores were correct, and that these scores were valid factual data to base the Minimum Road System evaluation upon.

One of the individual benefit categories was Recreational Use Benefit. As described in the Pikes Peak Ranger District TAP Addendum:

5.2 Criteria for Recreational Use Benefit

Recreational Use Benefit:

- High Benefit = 2
- Moderate Benefit = 1
- Low Benefit = 0

The recreational use ratings for roads are based on the location of and access to developed recreation sites/facilities, dispersed recreation areas and the recreation experience of the road itself.

A High (H) rating was assigned to roads that are the primary access routes to developed recreation sites/facilities, or primary access routes to popular dispersed recreation areas, or the road has high value as a recreation experience.

A Moderate (M) rating was assigned to roads that are the primary access routes to other dispersed recreation areas.

A Low (L) rating was assigned to roads that are secondary access routes to recreation areas, or to roads not leading to any recreation areas.

Pikes Peak District TAP Addendum at 5-1.

In theory, roads that offer technical challenges for four-wheel-driving and are destination trails for off-road vehicle enthusiasts should have received a High recreational benefit rating, as should roads to popular dispersed recreation areas (such as highly popular dispersed camping areas). Roads accessing developed recreation sites such as hiking trailheads and campgrounds also would have received High ratings. Roads that are the primary access to less popular dispersed recreation areas would have received a Moderate rating, while all others received Low recreational benefit ratings. Some routes also received HH (Very High) recreational benefit ratings, which was used for roads with such high recreational benefit that it guaranteed an overall High benefit score by itself.

As described in the FEIS, all of the benefit and risk scores for a given route were added together to produce an Overall Benefit/Risk score. While individual categories could have Moderate ratings, the overall score was engineered such that all routes had either a High or Low benefit and risk rating. This placed each route in one of four general categories, which corresponded to their overall ranking from most to least needed as part of the Minimum Route System (MRS):

1. High Benefit - Low Risk (Ideal candidates for MRS)
2. High Benefit - High Risk (Good candidates for MRS with risk mitigation)
3. Low Benefit - Low Risk (Fair candidates for MRS)
4. Low Benefit - High Risk (Poor candidates for MRS)

As described in the FEIS section on MRS Screening Criteria, roads with High benefit ratings had a default management recommendation that would result in them being open to the public, while for roads with a Low overall benefit rating, the default recommendation was decommission, *unless an exception applied*.

Both low benefit categories had exceptions for roads with high or moderate recreational value. For the Low Benefit / Low Risk category, this exception states:

- Recreational use (**moderate** or **high** benefit TAP ratings) – Management recommendation is Convert to trail open to all vehicles.

FEIS at 2-9.

For roads in the Low Benefit / High Risk category, there were two separate exceptions depending on whether the recreational benefit rating was high or moderate:

- Recreational use (high benefit TAP rating) – Management recommendation is Convert to trail open to all vehicles.
- ...
- Recreational use (moderate benefit TAP rating) – If the road has potential to provide a loop or connection to other trails open to public motor vehicle use, then the management recommendation is Convert to trail open to all vehicles.

FEIS at 2-8, 2-9.

For each of the low benefit categories, only one exception was supposed to apply, and they were supposed to be applied in the order listed. For L/H routes, the exception to convert a road with high special use access benefit to a special use permit road ranked higher than the high recreational benefit rating, and the resource management exception to convert a road with high resource management benefit to an admin road ranked higher than the exception for moderate recreational use benefit. For L/L routes, the recreational benefit exception was ranked first above all other exceptions.

For the High Benefit categories, the FEIS states that High Benefit / Low Risk roads were supposed to remain as-is with no change in status. FEIS 2-6. High Benefit / High Risk roads were considered good candidates for the MRS with minimization or mitigation measures applied to reduce resource risk. Converting a road to a motorized trail was one of the management recommendations to minimize risk for high watershed risk, and for high financial burden/public health and safety risk on ML2 roads.

As we have learned from informal conversations with the PSICC's former Forest Transportation Planner, including so many exceptions and recommendations that resulted in converting roads to trails open to all vehicles was deliberate. This was because Forest staff recognized that many routes currently designated as roads were poor roads (used for transportation for one point to another), but

excellent trails (used for recreational experience). Thus they designed the screening process to steer decisions in favor of converting such roads to motorized trails.

Unfortunately, this intention was lost somewhere along the line, as the screening criteria were inconsistently applied in a manner that favored decommissioning and other forms of closure rather than conversion to motorized trails. That is, when the screening criteria were allowed to make the final management recommendation in the first place. The FEIS notably includes this caveat:

As described previously, the MRS management recommendations were subject to a further site-specific analysis for Alternative C. This could result in differing management for road status changes.

FEIS at 2-8.

As discussed in Objection #1, this refers to the undisclosed “route-specific information” district ranger relied upon in their review of the Preferred Alternative C to override the MRS rubric outcomes. This “site-specific analysis” substituted the arbitrary opinions of the district rangers as to how individual routes should be managed for the outcomes of the relatively scientific MRS screening process. In essence, the staff rejected their own Travel Analysis Process results and ignored MRS screening criteria rules, and made unscientific and biased travel management decisions that contradicted the science-based results from their own Travel Analysis Reports. In most if not all cases, the same district rangers performing this site-specific analysis were also the responsible officials who signed their district’s TAP Addendum. If they had a strong preference for specific outcomes on specific routes, they should have included those recommendations in the original TAP reports. If changed circumstances had since caused them to prefer different management options for certain routes, revisions to the TAP reports were likely warranted in order to properly consider those changed circumstances.

Instead of following the Forest Service directives for updating/amending a TAP, the staff short-circuited that process and disenfranchised the public when they substituted a staff review process instead of following the standard procedures for redoing and updating the TAP. The PSI NF’s own Forest Transportation Planner informed and advised the PSICC leadership that the correct process for making changes to route status decisions that contradict TAP results would be to first update the current TAP with a TAP revision or TAP amendment so that their desired changes would be properly analyzed in a science-based analysis with public involvement. Forest leadership rejected the advice of their own engineering expert and proceeded with their staff review process without the engineering expert’s professional assistance. It is abundantly clear that this staff review process violated Forest Service policy and procedures, and therefore the unacceptable route status decisions resulting from this staff review process need to be corrected.

By substituting subjective staff opinions for the outcomes derived from the science-based TAP and MRS screening processes, and then failing to disclose the basis for those route-specific decisions, the Forest violated NEPA. As the courts have ruled in other NEPA cases, a “bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103. In the case of the routes whose status were changed based on this site-specific staff review, we don’t even have the assertion of the actual opinion from the agency expert, merely the statement that such opinions existed and were used to determine the management outcome for an unspecified number of routes. Which routes those actually were, and what reasons the ranger

district staff had for choosing different management options than specified by the MRS rubric was never disclosed to the public in the Draft ROD, FEIS, or any associated documents.

Based on the large number of routes listed above with High or Moderate recreational benefit ratings that are subject to closure in specific ranger districts (especially the South Park District, where Ranger Josh Voorhis is famously hostile toward motorized recreation), we believe there is strong evidence that biased ranger opinions were unfairly used to recommend closure of many high value motorized routes, including a number in the High Benefit / Low Risk category for which the description of the MRS screening criteria lists no justification for closure. It simply states: "H/L roads are ideal for an MRS. Roads in this category that lack a specific management recommendation, such as from scoping comments or district input, remain as is, with no change in status." FEIS at 2-6.

While we cannot analyze each of the routes in the list above in depth, below are a few examples. The following routes are all High Benefit / Low Risk roads with High or Moderate recreational benefit ratings, that are nevertheless being closed. The MRS Criteria section of the FEIS directly states that "district input" (i.e. the arbitrary decisions of district rangers) are one of the only reasons they would be closed.

Currently Open High Benefit / Low Risk Roads Closed

Route Number	Name	Ranger District	Start MP	End MP	Length	Current Status	Decision Action	Rec Benefit	Overall Rating
263	SHIMMINS	SOUTH PARK	0	0.5	0.5	Roads, open to all vehicles	Decommission	M	H/L
353.A	353.A	SAN CARLOS	0	0.4	0.4	Roads, open to all vehicles	Decommission	H	H/L
353	353	SAN CARLOS	0.1	1.07	0.97	Roads, open to all vehicles	Decommission	H	H/L
426	426	SAN CARLOS	0.8	1.17	0.37	Roads, open to all vehicles	Decommission	H	H/L
360.2C	PILGRIM	SOUTH PARK	0	0.9	0.9	Roads, open to all vehicles	Decommission	H	H/L
208	208	SALIDA	0	0.19	0.19	Roads, open to all vehicles	Convert to special use permit only road	M	H/L
284	MEAL-READY TO EAT	SOUTH PARK	0	0.6	0.6	Roads, open to all vehicles	Decommission	M	H/L

881	HUNTERS	SOUTH PARK	0	0.6	0.6	Roads, open to all vehicles	Decommission	M	H/L
861.A	ALTHEA	SOUTH PARK	0.42	1.3	0.88	Roads, open to all vehicles	Decommission	M	H/L

While these are all short route segments under a mile long, they all had significant recreational value and no significant environmental risks justifying closure. These routes were likely only closed because of the arbitrary decisions of district rangers unsupported by any facts or evidence in the project record.

Among the High Benefit / High Risk Category, here a few examples of high value routes being closed:

Currently Open High Benefit / High Risk Roads Closed

Route Number	Name	Ranger District	Start MP	End MP	Length	Current Status	Decision Action	Rec Benefit	Overall Rating
372	EAST BEAVER	PIKES PEAK	0	2.15	2.15	Roads, open to highway legal vehicles only	Convert to special use permit only road (ML2)	H	H/H
374	GOULD CREEK	PIKES PEAK	2.6	3	0.4	Roads, open to all vehicles	Decommission	H	H/H
183	BEAR PARK	SOUTH PARK	0	0.83	0.83	Roads, open to all vehicles	Decommission	H	H/H
83	BEAR PARK	SOUTH PARK	0.83	1.04	0.21	Roads, open to all vehicles	Decommission	H	H/H
194	TROUT CREEK	SOUTH PARK	2.9	4.73	1.83	Roads, open to all vehicles	Decommission	H	H/H

These are much more significant routes. NFSR 194 Trout Creek near Fairplay is the subject of one of our route-specific objections, but this is an extremely valuable route both for motorized recreation and hunting access near Mount Silverheels. These were its TAP scores:

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: H/H

Benefits

Category	Score
Recreational Use Benefit	H
Fire/Fuels Access Benefit	H
Timber Access Benefit	M
Special Use Access Benefit	L
Resource Management/Range Access Benefit	H

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	H

With an overall H/H rating, high recreational use benefit, and high watershed, wildlife, and public health/financial burden risks, it would have been an ideal candidate to be converted to a trail open to all vehicles (recommended as management actions to minimize both watershed and public health/financial burden risks) as well as reinforcing and hardening stream crossings and adding a seasonal closure. The MRS rubric would not have produced the recommendation of decommissioning, yet that was the only action considered across all action alternatives. In the responses to public comments, the agency directly admits that the decision to close this route was the result of ranger district input, not the MRS criteria.

NFSR 372 East Beaver off Gold Camp Road west of Colorado Springs is another important route in this category, in the same situation. Here are its TAP scores:

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: H/H

Benefits

Category	Score
Recreational Use Benefit	H
Fire/Fuels Access Benefit	H
Timber Access Benefit	L
Special Use Access Benefit	H
Resource Management/Range Access Benefit	H

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	L

This is an ML3 road that happens to be extremely popular for dispersed camping. With its high recreational use benefit rating, the high watershed rating would have given it a recommendation to convert it to a trail open to all vehicles and harden water crossings, while the high wildlife risk would have produced a recommendation for adding a seasonal closure.

This combination of scores should not have resulted in closing the route to the public by converting it to a special use permit road. Indeed for this route, all alternatives *except* Alternative C would have kept it open to the public. Only Alternative C would close it and convert it to a special use permit road. This

road then has especially strong evidence that the MRS rubric outcome was overridden by the arbitrary decision of the district ranger.

Finally, there are numerous roads in the list above in L/L and L/H status which are improperly slated for closure. Some of these are addressed in our route specific comments. One final example, using a L/L road, is NFSR 348.C Around Hill in the Rainbow Falls OHV Area near Rampart Range. Here are its TAP scores.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/L

Benefits

Category	Score
Recreational Use Benefit	M
Fire/Fuels Access Benefit	H
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	M
Wildlife Risk	M
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	L

Though it has a Moderate recreational use benefit and no risk score higher than moderate, it is slated to be converted to an admin road under the Draft ROD. This road was at one time recommended to be designated as a 4x4 challenge route in the now defunct South Rampart Travel Plan. As a L/L route, the default management action for it would be decommission unless an exception applies. There are three possible exceptions which under the MRS criteria rules are supposed to be applied in-order, and only one applies. The first exception in the list is high or moderate recreational use benefit, which would result in it being converted to a trail open to all vehicles, and it qualifies for that.

The Decision action of converting it to an admin road is only reachable if you skip over the recreational benefit exception to the resource management exception, which only applies if the resource management benefit is high or moderate, which it is not. The chosen management option could not have been produced by the MRS screening criteria, but only through the arbitrary decision of the agency staff to ignore the MRS rubric and substitute their own subjective opinions.

Each of the routes in the main list above could have a similar analysis done to show why the management action chosen is inconsistent with the result produced by the MRS Screening Criteria. Perhaps there were good reasons for some of them, but those reasons were never disclosed to the public. Therefore we object to all route closure decisions that are inconsistent with the result produced by the MRS Screening Criteria.

C. CONCLUSION AND REQUESTED RESOLUTION

Based on the above reasoning, we believe there is strong evidence that biased ranger opinions were improperly allowed to override the scientifically-derived outcomes specified by the MRS Screening Process for the above listed routes, causing these route decisions to lack sufficient factual justification to satisfy the APA's requirement that an agency must articulate a "rational connection between the facts

found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. Because a “bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS” (*Great Basin Resource Watch*, 844 F.3d at 1103), these decisions also constitute an abuse of agency discretion. Accordingly, we request that the Reviewing Officer remand the Draft ROD to the Deciding Official with instruction to reverse all of the route closures listed above for which district staff recommended a different management action than that specified by the MRS rubric, or applied the MRS rubric improperly.

Because the exact list of routes this applies to was not made public, only Forest Service staff truly knows which routes those are. The list we have compiled above is only our best guess based on the clear discrepancies between the MRS criteria and the ultimate management decision reached. Therefore only the Forest knows which routes for which closure decisions should be reversed. At minimum, successful resolution of this objection will result in a significant number of closures of high value routes listed above (especially those highlighted in our route-specific objections) being reversed and those routes remaining open to public motorized use with either their current management or being converted to trails open to all vehicles.

OBJECTION #4: IMPROPER CLOSURE OF MOTORIZED ROUTES BASED ON ALLEGATIONS OF USER CONFLICT

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to all motorized route closures on the basis of “user conflict.” The issue of user conflicts was addressed generally in Patrick McKay’s comment entitled “General Comments” submitted on 10/31/2019.

Neither the Draft EIS nor the final EIS contains any route-specific rationale for proposed closures. The closest thing the Forest has offered to route-specific justifications for closures (including mentions of user conflict) occurs in the responses to public comments in the appendix to the Final EIS, as well as what can be inferred from the screening criteria and the section of the FEIS on noise impacts to non-motorized recreationists. Both of these facts constitute circumstances arising after the public comment period for purposes of standing.

Because the Forest did not provide route-specific justifications for individual route closures, but did refer in the abstract to user conflict as a consideration, we can only object to closures on this basis in general terms. Only Forest Service officials know which routes were closed on this basis, and if this objection is sustained, only they can reverse those decisions. Nevertheless, here is a sample of routes we believe were *likely* closed primarily because of user conflict, or where conflict was a factor, based on a YES answer to the MRS screening question, “Is the route or area located within 0.5 miles of a nonmotorized trail?” (Screening Criterion 5. Recreation Conflict), which the FEIS explains was used as a proxy for motorized noise impacts on non-motorized recreationists:

Currently Open Routes Closed Possibly Because of Conflict

Currently open routes longer than 0.1 miles where the Quiet Use Conflict screening criterion is Yes.

Route Number	Name	Ranger District	Start MP	End MP	Length	Current Status	Decision Action	Rec Benefit	Quiet Use Conflict
174	WILLOW STUMP	LEADVILLE	0.5	1.07	0.57	Roads, open to all vehicles	Decommission	L	Yes
422	SAWMILL RIDGE	LEADVILLE	3.21	4.1	0.89	Roads, open to all vehicles	Decommission	M	Yes
300.P	RRR CAMP 1	PIKES PEAK	0.04	0.33	0.29	Roads, open to all vehicles	Decommission	H	Yes
300.Q	RRR CAMP 2	PIKES PEAK	0	0.3	0.3	Roads, open to all vehicles	Decommission	L	Yes
302.A	DEVIL'S KITCHEN	PIKES PEAK	0	1.2	1.2	Roads, open to all vehicles	Decommission	L	Yes
312	FARRISH MEMORIAL	PIKES PEAK	0.31	1.44	1.13	Roads, open to highway legal vehicles only	Convert to special use permit only road	L	Yes
314.A	SKID	PIKES PEAK	0	0.3	0.3	Roads, open to all vehicles	Decommission	L	Yes
314.B	ENSIGN RIDGE	PIKES PEAK	0	0.33	0.33	Roads, open to all vehicles	Decommission	L	Yes
336.A	SHOOTING	PIKES PEAK	0.1	0.5	0.4	Roads, open to all vehicles	Decommission	L	Yes
339.C	CREEK CROSSING	PIKES PEAK	0	0.6	0.6	Roads, open to all vehicles	Convert to special use	L	Yes

							permit only road		
342.A	TEMPLED HILLS	PIKES PEAK	0	0.4	0.4	Roads, open to all vehicles	Convert to special use permit only road	L	Yes
345	LOWER JOHNS GULCH	PIKES PEAK	0	2.2	2.2	Roads, open to all vehicles	Convert to special use permit only road	M	Yes
374	GOULD CREEK	PIKES PEAK	2.6	3	0.4	Roads, open to all vehicles	Decommission	H	Yes
377	SKY HIGH RANCH	PIKES PEAK	0	0.74	0.74	Roads, open to highway legal vehicles only	Convert to special use permit only road	L	Yes
214.B	STUMPY CREEK 4WD	SALIDA	0	2.23	2.23	Roads, open to all vehicles	Decommission	M	Yes
225.B	POWERLINE SPUR	SALIDA	0	0.18	0.18	Roads, open to all vehicles	Convert to special use permit only road	M	Yes
230.C	HOFFMAN PARK	SALIDA	0	1.18	1.18	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	M	Yes
290.B	CHALK CREEK SMR HOMES	SALIDA	0	0.31	0.31	Roads, open to all vehicles	Convert to admin use only road (ML2)	L	Yes

365.A	PANDORA	SALIDA	0	0.4	0.4	Roads, open to all vehicles	Convert to special use permit only road	L	Yes
375.D	LITTLE ANNIE	SALIDA	0	0.23	0.23	Roads, open to all vehicles	Convert to special use permit only road	L	Yes
349	GRASSY GULCH 4WD	SALIDA	1.6	1.925	0.33	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	M	Yes
198.A	LAKE CREEK SPUR	SAN CARLOS	0	0.22	0.22	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	Yes
358	358	SAN CARLOS	0.5	1.16	0.66	Roads, open to all vehicles	Decommission	L	Yes
141	CABIN SPRING	SOUTH PARK	3.3	4.12	0.82	No data	Decommission	No data	Yes
183	BEAR PARK	SOUTH PARK	0	0.83	0.83	Roads, open to all vehicles	Decommission	H	Yes
183	BEAR PARK	SOUTH PARK	0.83	1.04	0.21	Roads, open to all vehicles	Decommission	H	Yes
184	RIDGE	SOUTH PARK	0	2.6	2.6	Roads, open to all vehicles	Decommission	H	Yes

194	TROUT CREEK	SOUTH PARK	2.9	4.73	1.83	Roads, open to all vehicles	Decommission	H	Yes
433.2B	PONY CREEK	SOUTH PARK	0	1	1	Roads, open to all vehicles	Decommission	H	Yes
435.4B	BRUSH PARK	SOUTH PARK	0	0.6	0.6	Roads, open to all vehicles	Decommission	M	Yes
436	SOUTH SALT CREEK	SOUTH PARK	1.26	5.1	3.84	Roads, open to all vehicles	Convert to admin use only road (ML2)	M	Yes
436.2A	SAWMILL	SOUTH PARK	0	0.4	0.4	Roads, open to all vehicles	Convert to admin use only road (ML2, maintenance schedule=9 years)	L	Yes
436.2B	MIDDLE	SOUTH PARK	0	0.52	0.52	Roads, open to all vehicles	Convert to special use permit only road	M	Yes
669.2B	TILLY	SOUTH PARK	0	1.39	1.39	Roads, open to all vehicles	Decommission	M	Yes
807	OHLEH	SOUTH PARK	0	0.55	0.55	Roads, open to all vehicles	Decommission	M	Yes
811	T-PIT	SOUTH PARK	1.54	2.2	0.66	Roads, open to all vehicles	Convert to special use permit only road	M	Yes

811.A	FOREIGN	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Decommission	M	Yes
813	INGRAM	SOUTH PARK	0	0.3	0.3	Roads, open to all vehicles	Convert to special use permit only road	L	Yes
852	RYAN	SOUTH PARK	0	1.2	1.2	Roads, open to all vehicles	Convert to admin use only road (ML2)	L	Yes
870	OHLER	SOUTH PARK	0.95	2.3	1.35	Roads, open to highway legal vehicles only	Decommission	L	Yes
660	LOUIE'S LOOP	SOUTH PARK	0	2.9	2.9	Trails, open to motorcycles	Decommission	No data	Yes
102	ELK CREEK	SOUTH PLATTE	0.17	0.41	0.24	Roads, open to highway legal vehicles only	Convert to special use permit only road	M	Yes
102	ELK CREEK	SOUTH PLATTE	0.41	1	0.59	Roads, open to highway legal vehicles only	Convert to special use permit only road	M	Yes
102.A	CAMP ROSALIE	SOUTH PLATTE	0	0.14	0.14	Roads, open to highway legal vehicles only	Convert to special use permit only road	L	Yes
126.A	KENOSHA CREEK	SOUTH PLATTE	0.22	0.9	0.68	Roads, open to all vehicles	Decommission	H	Yes

543.H	ROLLING CREEK TRHD	SOUTH PLATTE	0.06	0.26	0.2	No data	Decommission	No data	Yes
550.C	RIFLE RANGE	SOUTH PLATTE	0	1.34	1.34	Roads, open to highway legal vehicles only	Convert to admin use only road (ML2)	H	Yes
690	POWERLINE	SOUTH PLATTE	9.07	9.46	0.39	Trails, open to ATVs (vehicles 50in or less in width)	Decommission	No data	Yes

B. ANALYSIS

Closure of motorized routes based on assertions of “user conflict” fundamentally contravenes both the letter and spirit of the Travel Management Rule, and is therefore unlawful, arbitrary and capricious, and fails to meet the Purpose and Need of this project.

In order to justify closure of motorized routes based on assertions of user conflict, the Forest Service must make four key assumptions:

1. “User conflict” exists as a defined legal concept that may serve as a basis for route closures.
2. User conflict is actually occurring on the relevant routes.
3. Such user conflict is the fault of motorized users and may be rectified by excluding them.
4. When in conflict, non-motorized use should prevail over motorized use.

Each of these assumptions is addressed below.

1. User Conflict is not a valid legal concept under the travel management rule. Subjective user conflict cannot support closure

The way the Forest Service uses the term “user conflict” in the EIS refers to the subjective preferences of different classes of recreational *user groups*, not an inherent conflict in the *uses* themselves.

Proposing to designate a motorized route inside a Wilderness Area would be a conflicting use, since the nature of Wilderness legally precludes motorized use. Likewise proposing a public motorized route through an active mining or logging site could also be a conflicting use, since it would not be safe for members of the public to travel through such a hazardous area.

Proposing to allow motorized use on a route that some members of the public would prefer was reserved exclusively for hikers, however, has no such inherent conflict of uses. Hikers and motorized

users share the same routes all the time, and every route in the National Forest that is open to motorized vehicles is also open to hikers. That some people who choose to hike on a motorized route find motorized use of that route annoying and would prefer that motorized use be disallowed is merely subjective preference. Yet this is what the Forest means when it discusses user conflict, as illustrated in this issue statement in the Pikes Peak Ranger District TAP Addendum:

RR (7): How does road management affect wilderness attributes, including natural integrity, natural appearance, opportunities for solitude, and opportunities for primitive recreation?

Roads and road use may negatively affect non-motorized recreationists, and some people have expressed an interest in wanting roads closed or decommissioned. Although they use roads to access trailheads into unroaded areas or wilderness areas, many users perceive roads to be a deterrent to healthy wildlife habitat or unacceptable contributors to stream sedimentation. They see these unroaded areas as critical to their individual, community, or ecosystem health.

High road density and motorized access have always been public issues and concerns on the Pike and San Isabel National Forests. The closure, presence, or addition of new roads and their management in proximity to wilderness areas can change the natural integrity and opportunities for solitude because of differences in vistas, amounts of noise and dust, and crowding.

Pikes Peak District TAP Addendum at 4-10.

As discussed in previous objections, the ranger district TAP addendums provided the primary factual basis for all management decisions in the Draft ROD and FEIS. This passage illustrates how the ranger districts evaluated user conflicts and impacts on-motorized users based solely on the subjective preferences of those users, rather than true conflicts of use.

Subjective preferences of users, individually or collectively, cannot justify elimination of access to the less popular or less conflicted users. At most, the Travel Management Rule requires the agency to “consider effects...with the objective of minimizing....(3) Conflicts between motor vehicle use and existing or proposed recreational uses” of the Forest.” 36 C.F.R. § 212.55(b). The regulation refers to conflicts of “use” not conflict between “users.”

This language is derived from the Executive Orders, issued by Presidents Nixon and Carter. See, E.O. 11644, 11989; 42 Fed.Reg. 26959. While there has been debate about whether the EO’s create an enforceable right of action, the Forest Service effectively rendered this a non-issue when it chose to paste the EO language into regulations adopted via notice and comment rule-making.

The present-day interpretation by some special interests and land managers does not rationally interpret this language. The actual wording refers to conflicts between “uses” not “users.” The historical context is relevant, as in the early 1970’s off-highway vehicles were relatively new and largely unregulated. The EO’s reflect a crude first step at the anticipated need to balance a new and developing use with the conservation efforts of the era reflected in contemporaneously adopted statutes like NEPA and FLPMA. In any event, it was not intended then, nor does it make sense now, to allow some quantum of subjective complaining by some class of “user” to exclude other users from public lands.

Nor is subjective “user conflict” an “environmental” impact under NEPA. A recent Ninth Circuit decision correctly notes that “controversy” as a NEPA intensity factor “refers to disputes over the size or effect of the action itself, not whether or how passionately people oppose it.” *Wild Wilderness v. Allen*, 871 F.3d 719, 728 (9th Cir. 2017). The panel further indicated it “need not address the question of whether on-snow user conflicts are outside the scope of the agency’s required NEPA analysis entirely because they are ‘citizens’ subjective experiences,’ not the ‘physical environment.’” *Id.* at 729 n.2 (citations omitted).

In a largely forgotten effort, the U.S. Supreme Court emphasized that NEPA focuses on impacts to the physical environment. “It would be extraordinarily difficult for agencies to differentiate between ‘genuine’ claims of psychological health damage and claims that are grounded solely in disagreement with a democratically adopted policy. Until Congress provides a more explicit statutory instruction than NEPA now contains, we do not think agencies are obliged to undertake the inquiry.” *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 778 (1983).

The governing law only authorizes the Forest Service to analyze and minimize conflicts between *uses*, not the subjective preferences of *users*. The Draft ROD and FEIS reflect an improper emphasis on the latter, which should be addressed through instructions/remand.

2. The agency lacks meaningful analysis of conflict and offers no evidence that user conflict on these routes is actually occurring

Even if the Forest could properly rely on “user conflict” as a basis for selectively closing trails to a specified form of use, the Draft ROD and FEIS are independently flawed by reaching that outcome entirely bereft of data or fact. The agency must utilize “high quality” data and cannot rely on undocumented narrative summary. We understand that the “science” behind recreation planning may be social science, but even so the Forest Service is capable of conducting real analysis of real visitors on actual sites in the project area. See, *Hells Canyon Alliance v. U.S. Forest Service*, 227 F.3d 1170, 1182 (9th Cir. 2000) (upholding decision based on recreation use study); *Riverhawks v. Zepeda*, 228 F.Supp.2d 1173, 1184 (D. Or. 2002) (discussing “user study” conducted on site noting motorized use was “cited as a source of concern” but finding “the majority of non-motorized users nevertheless indicated a high degree of satisfaction”).

The agency did not attempt any such analysis and does not purport to offer site-specific analysis of “conflict” here. The Forest appears to have simply taken on faith assertions by self-interested anti-motorized groups that user conflicts are occurring on these routes. It does not cite a single example of an actual user conflict, beyond the general idea that motorized “noise” harms the quality of non-motorized recreationists’ experience. Are motorized and non-motorized users engaging in arguments on these trails? Getting in fist fights? No evidence of such conflicts exists in the record. The mere fact that anti-motorized groups wish to see these routes reserved for the exclusive use of hikers and other non-motorized users seems to be enough to justify their closure.

3. User conflicts that do exist are entirely the fault of non-motorized users

Given that the Forest does not cite any examples of genuine user conflict, but appears to be catering solely to the preferences of anti-motorized groups who wish to see motorized users excluded from

public lands, it should be obvious that any user conflicts that do exist are entirely the fault of non-motorized users, not motorized users.

Motorized users are perfectly happy to share routes with non-motorized users, and have always done so. Every route on the National Forest that is open to motorized use is also open to non-motorized use, and motorized users have long been accustomed to encountering hikers, mountain bikers, etc. while driving motorized routes. The majority of motorized users make every attempt to be courteous to non-motorized users, for example by slowing down while passing them to minimize dust.

However, it seems the same cannot be said of certain vocal non-motorized user groups, who instead of being content to share the limited supply of trails in the Forest, insist that motorized routes be closed to satisfy their desires for exclusive use. The PSI already contains many hundreds if not thousands of miles of dedicated hiking trails, most of which are in designated Wilderness Areas far away from motorized routes. Those who choose to hike on or near motorized routes have no one but themselves to blame if they are disturbed by motorized traffic. Someone who chooses to hike on a road open to motor vehicles has no right to complain that motor vehicles are using that road and demand that road be closed to improve their “quiet use experience.”

The same can be said for management zones dedicated to motorized recreation in the Forest Plan (i.e. Wildcat Canyon). If the Forest Service has designated a particular management zone to emphasize semi-primitive or roaded motorized recreation opportunities, that is inherently not an ideal area for non-motorized recreation. Segregating uses is a deliberate decision to provide the highest quality experience for different types of recreationists. Hikers who choose to hike in motorized-emphasis zones again have no one but themselves to blame for any inconvenience they suffer, and any “user conflict” that results is entirely the fault of the non-motorized users.

Any user conflicts that do exist regarding the above listed routes, therefore, exist solely in the minds of intolerant non-motorized users who refuse to peacefully coexist with other users of public lands, but demand that they be given exclusive access to trails that have historically been managed for multiple use. It would be highly unfair to exclude motorized users based solely on the attitudes and opinions of non-motorized users, punishing them for the intolerance of others. These kinds of manufactured user conflicts and claimed harm to quiet use recreation in areas that are designated for motorized use should not be used as a basis to close motorized routes.

4. Closing motorized routes based on assertions of user conflict by non-motorized groups inherently disfavors motorized recreation and treats it as an illegitimate activity contrary to the Travel Management Rule

When the Forest Service closes a motorized route because of alleged “user conflicts”, what it is really doing is depriving motorized users of recreational opportunities in order to give exclusive access to non-motorized users. This is antithetical to the Travel Management Rule, which recognizes that, “Motor vehicles are a **legitimate and appropriate** way for people to enjoy their National Forests,” and again, “Motor vehicles remain a **legitimate recreational use** of NFS lands.” Travel Management; Designated Routes and Areas for Motor Vehicle Use, 70 Fed. Reg. 68264, 68272 (November 9, 2005).

Motorized recreation is a legitimate, co-equal form of recreational activity that is by no means inferior to hiking, biking, horseback riding, or other so-called “quiet uses.” The Travel Management Rule was never intended as a mandate to disfavor motorized recreation and to favor other forms of recreation by depriving motorized users of routes in order to award them to others. Yet that is precisely what the Forest is doing here, when it considers assertions of user conflict by non-motorized users sufficient justification to close motorized routes.

This approach inherently presumes the superiority of non-motorized recreation and the inferiority of motorized recreation. It presumes that the subjective desires and qualitative recreational experiences of non-motorized users are more important than the desires and recreational experiences of motorized users, so that when in conflict, the desires of non-motorized users prevail.

This view is directly contrary to the Travel Management Rule. It inherently treats motorized recreation as an illegitimate, inappropriate, and disfavored activity that is to be allowed only when it does not inconvenience other more favored user groups. It allows motorized users to be excluded from public lands simply because *other people don't like them*.

If the Travel Management Rule's mandate that motorized travel is to be considered a legitimate recreational use of Forest Service lands has any meaning, it demands that the Forest treat motorized and non-motorized users as equals. Rather than allocating routes based on a presumed hierarchy of users with non-motorized users at the top and motorized users at the bottom, the Forest Service should treat the recreational experiences of both groups as equally valuable.

That does not mean that motorized use must be allowed on every route in the Forest. But it does mean that where motorized use has historically been allowed, the presumption should weigh in favor of allowing that use to continue, with all user groups sharing the route under the principle of multiple use. Wherever possible, the Forest Service should allow for a wide variety of uses in keeping with its multiple use mandate, rather than playing favorites between user groups and robbing one in order to give to another.

By closing the above listed routes on the basis of alleged “user conflict” by non-motorized users, the Forest has failed to treat motorized recreation as a legitimate activity as required by the Travel Management Rule. It has both violated Federal Law and failed to meet the Purpose and Need as stated in the FEIS: “to comply with the TMR as well as all applicable laws by providing a system of roads, trails, and areas designated for motor vehicle use by class of vehicle and time of year on the PSI.” FEIS at 1-9. Non-compliance with the TMR fails to meet the Purpose and Need. Therefore this failure must be corrected.

C. CONCLUSION AND REQUESTED RESOLUTION

As argued above, the closure of motorized routes based on allegations of subjective user conflict is based on “factors which Congress has not intended [the Forest Service] to consider” and violates the Travel Management Rule, and should therefore be reversed.

We request that the Reviewing Officer remand the Draft Decision and Final EIS to the Deciding Official with instructions to re-evaluate all proposed motorized route closures for which user conflict was a reason for closure, this time giving no regard to assertions of subjective user conflicts (including noise

impacts on non-motorized users). Where alleged user conflict was the primary basis for closing a route to public motorized use and no other valid reasons for closure exist, that closure should be reversed. Successful resolution of this objection would result in all or most of the routes listed above being open to full-size motor vehicles in the final travel plan.

OBJECTION #5: THE DECISION IS CONTRARY TO THE JUNE 2020 SECRETARIAL MEMORANDUM ORDERING THE FOREST SERVICE TO INCREASE PUBLIC ACCESS TO NATIONAL FOREST LANDS

A. INTRODUCTION AND STANDING TO OBJECT

On June 12, 2020, Secretary of Agriculture Sonny Perdue issued a Secretarial Memorandum to the Chief of the Forest Service. *Secretarial Memo to the Chief of the Forest Service*, Sonny Perdue, US Secretary of Agriculture, USDA, June 12, 2020.³ This memo directed the Forest Service, among other things, to focus on increasing public access to Forest Service lands, stating:

Increasing access to National Forest System Lands

It is imperative for the Forest Service to manage the National Forests and Grasslands for the benefit of the American people. These lands provide a multitude of public benefits, including diverse recreational opportunities, access to world-class hunting and fishing, and forest products that support America's traditions and way of life. Accordingly, the Forest Service will:

- increase access to Forest Service lands by streamlining the permit process for recreational activities and embracing new technologies and recreation opportunities;
- open public access to National Forest System lands with currently limited access where feasible in cooperation with States, counties, and partners....

Id. (emphasis added).

In closing approximately 122 miles of currently open National Forest System roads and trails, the proposed actions in the Draft Decision and FEIS run directly contrary to the Secretary's directive to increase public access to National Forest lands, particularly those with currently limited access. As the memo was issued after the close of the final comment period on the PSI travel plan, but prior to the publication of the FEIS and Draft ROD, this constitutes a new issue arising after the public comment period, and we have standing to object on this basis.

B. ANALYSIS

The Draft Decision fails to comply with the Secretarial Memorandum in two ways: (1) it fails to embrace new technologies and recreational opportunities, and (2) it *decreases* rather than increases public access to National Forest lands with limited existing access.

³ Available at https://www.fs.usda.gov/sites/default/files/2020-06/secretarial_memo_national_grasslands.pdf.

1. *Failure to embrace new technologies and recreational opportunities*

It is no secret that off-highway vehicle technology has advanced dramatically in the last 20 years. Traditional Jeeps and other full-size 4x4 vehicles are more capable than ever, and the Jeep Wrangler continues to be one the best selling vehicles in America. Since the advent of the Yamaha Rhino in 2004 and the Polaris RZR in 2007, UTVs/side-by-sides have exploded in popularity across the west, and their use on National Forest lands in Colorado continues to grow dramatically every year.

While some UTVs are small enough to be used on 50" inch motorized trails, the vast majority are wide enough that they may only be used on full-size motorized routes consisting of roads and trails open to all vehicles. E-bikes are another new type of motorized conveyance growing in popularity on public lands. Because of their status as motorized vehicles, they are currently limited by Forest Service policy to riding on motorized roads and trails.

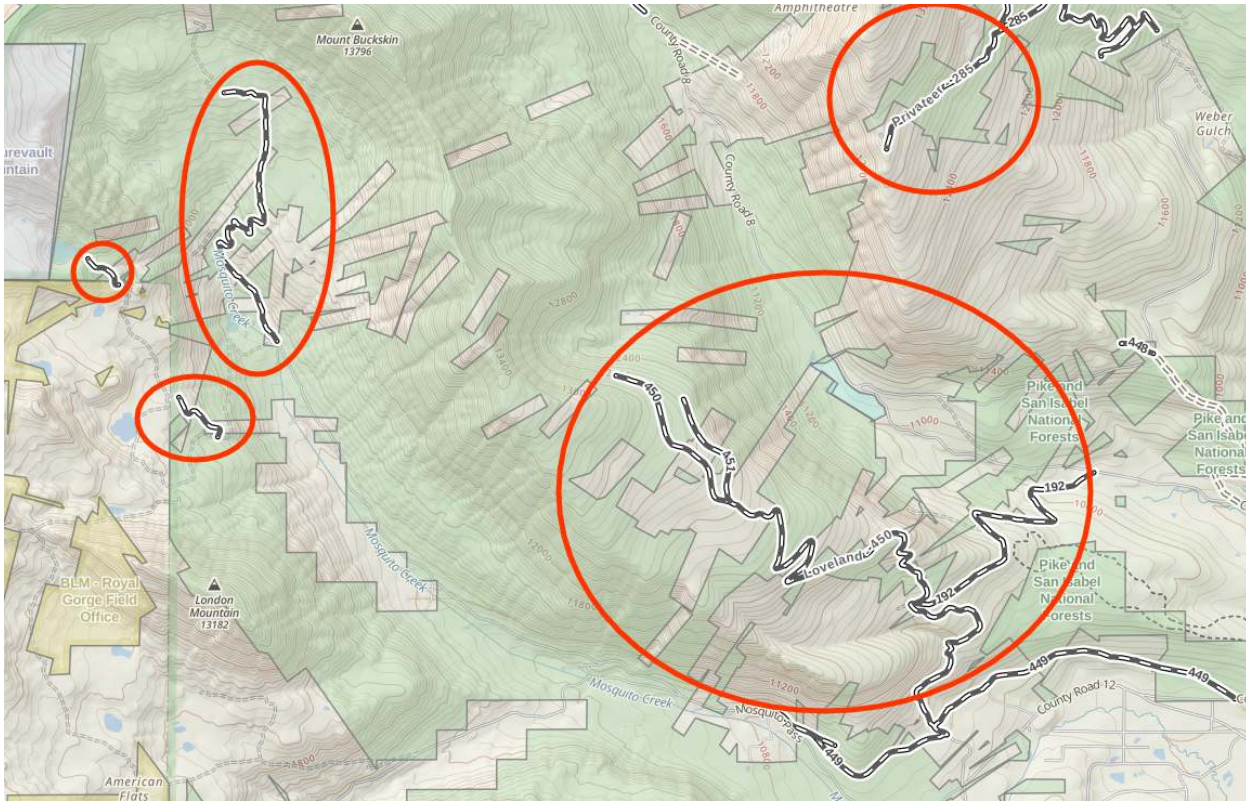
The intent of the Secretarial Memo was to encourage Forest Service officials to embrace these new technologies and provide greater recreational opportunities for them. It is notable that every other form of recreational activity on Forest Service land regularly has new trails constructed and new opportunities provided. Ever since the adoption of the Travel Management Rule, however, motorized recreation has only seen opportunities diminish, with every new travel plan resulting in mass route closures.

Rather than following the Secretary's directive to *increase* opportunities for new forms of motorized recreation on Forest Service lands, the Pike San Isabel National Forest has chosen to continue the trend of mass route-closures, with the Draft Decision adopting an approximately 4.38% overall reduction of motorized routes in the Forest, and an 11.26% reduction in full-size roads. FEIS at 2-12. As demonstrated by these figures, these closures are overwhelmingly full-size motorized roads--the very routes that have seen dramatically increased demand caused by the rising popularity of UTVs. These closures are somewhat offset by converting numerous roads to trails open to all vehicles, but we calculate there would still be an approximately 122 mile net decrease in existing motorized routes. By *decreasing* opportunities for new forms of motorized recreation rather than increasing it, the Draft Decision runs directly counter to the Secretarial Memorandum.

2. *Decreased access to National Forest lands with limited existing access*

The Draft Decision is also contrary to the directive in the Secretarial Memorandum to open public access to National Forest lands with currently limited access. This refers to isolated parcels of Forest Service land that are mostly or entirely surrounded by private property and largely cut off from public access.

Rather than increasing access to such parcels, the Draft Decision significantly *decreases* access to them, particularly in the areas around Fairplay and Alma in the South Park Ranger District. The map below shows the currently open NFSRs 452 Cooney Lake, 856 Pirate, 192 Tabor, 450 Loveland, and 285 Privateer (circled in red) -- all of which are proposed to be either decommissioned or converted to special use permit roads under the Draft Decision.



As can be clearly seen from the map, these roads provide public access to a series of small parcels of National Forest land (shown in green) interspersed with private lands and mining claims. Without these roads these parcels would be extremely difficult to access without trespassing on private lands. While the Forest Service in response to comments that the public would still be free to hike on these roads once they are closed to motorized use, that is not necessarily the case.

NFSRs 452 and 856 are proposed to be decommissioned outright, which means that the Forest Service is abandoning any claim of an easement or public right-of-way with respect to these routes. NFSRs 192, 450, and 285, along with the nearby NFSR 603 Peerless Mtn (not pictured--but involving a similar situation) are proposed for conversion to special use permit roads. While the Forest Service will still technically retain jurisdiction over them, in practice management of such roads is largely turned over to the underlying landowners. In practice, nothing will prevent private landowners from gating and blocking access to all of these routes and barring the public from using them, even for non-motorized recreation.

These are just a handful of roads proposed for closure under the Draft Decision that provide access to isolated parcels of Forest Service land intermixed with private lands--a common situation in Colorado mining country. If the Draft Decision is enacted, public access to limited-access Forest Service lands will be significantly reduced, not just for motorized users, but for *all* members of the public. This again is directly contrary to the directive in the Secretary's memorandum.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, the Draft Decision contravenes both the letter and the spirit of the Secretarial Memorandum to the Chief of the Forest Service. While Secretary Perdue will soon leave office due to the changing administrations, his memo remains official USDA policy and the Forest Service is bound to abide by it.

Accordingly, we request that the Reviewing Officer remand the Draft Decision with instructions to significantly reduce the number of closures of existing motorized routes, particularly those that provide access to isolated parcels of Forest Service land surrounded by private property. Successful resolution would be obtained by directing the Deciding Official to reverse all route closures highlighted in our route-specific objections below, especially those routes in the Fairplay and Alma areas of the South Park Ranger District.

OBJECTION #6: ADDED ROUTE CLOSURES IN THE DRAFT DECISION

A. INTRODUCTION AND STANDING TO OBJECT

We object to all new route closures added in the Draft Decision as compared to the DEIS version of the Preferred Alternative C. Since these are all new route closures that were not analyzed in the DEIS, the public was never given an effective opportunity to comment on them. Some new routes were closed based solely on the comments of anti-motorized groups, with no chance for the motorized community to respond to the reasons that these groups alleged required their closure.

Since the decisions for these routes were changed between the DEIS comment period and the publication of the Draft ROD, this constitutes a new issue arising after the last public comment period, and we have standing to object on that basis. The routes in question are listed below:

Routes Closed in Decision vs. Open in DEIS Alt C

Route Number	Name	Ranger District	Start MP	End MP	Length	Current Status	Decision Status	Alt C Status	Rec Benefit	Overall Rating
422	SAWMILL RIDGE	LEADVILLE	3.21	4.1	0.89	Roads, open to all vehicles	Decommission	Roads, open to all vehicles	M	H/H
761	TURKEY TRACK NORTH	PIKES PEAK	0	0.12	0.12	Trails, administration	Trails, administrative	Trails, ≤50" wide (open to OHVs such as ATVs and motorcycles)	No data	No data

185.A	LINHOLM RANCH	SALIDA	0	0.15	0.15	Roads, administrative	Convert to admin use only road	Convert to road open to highway-legal vehicles only (eliminate mixed use)	No data	No data
185.A	LINHOLM RANCH	SALIDA	0.19	1.25	1.06	Roads, administrative	Convert to admin use only road	Convert to road open to highway-legal vehicles only (eliminate mixed use)	No data	No data
214.B	STUMPY CREEK 4WD	SALIDA	0	2.23	2.23	Roads, open to all vehicles	Decommission	Roads, open to all vehicles	M	L/L
230.C	HOFFMAN PARK	SALIDA	0	1.18	1.18	Roads, open to all vehicles	Convert to admin use only road	Convert to trail open to all vehicles	M	L/L
349	GRASSY GULCH 4WD	SALIDA	1.6	1.925	0.33	Roads, open to all vehicles	Convert to admin use only road	Roads, open to all vehicles	M	L/L
353.A	353.A	SAN CARLOS	0	0.4	0.4	Roads, open to all vehicles	Decommission	Roads, open to all vehicles	H	H/L
353	353	SAN CARLOS	0.1	1.07	0.97	Roads, open to all vehicles	Decommission	Roads, open to all vehicles	H	H/L
358	358	SAN CARLOS	0.5	1.16	0.66	Roads, open to all vehicles	Decommission	Roads, open to all vehicles	L	H/L
426	426	SAN CARLOS	0.8	1.17	0.37	Roads, open to all vehicles	Decommission	Roads, open to all vehicles	H	H/L

861.A	ALTHEA	SOUTH PARK	0.42	1.3	0.88	Roads, open to all vehicles	Decommission	Roads, open to all vehicles	M	H/L
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B. ANALYSIS

The table above indicates 9.24 miles of additional routes were closed to the public in the Draft Decision that would have been open to public motorized use in the DEIS version of the Preferred Alternative C. All of them except Linholm Ranch Road and Turkey Track North are currently open to the public. Since none of these closures were proposed in Alternative C at the time of the last public comment period, the public was given no effective opportunity to comment on them.

While some of these closures were prompted by public comments, most of those comments were one-sided and only represented the views of anti-motorized groups such as the Quiet Use Coalition or the Colorado Mountain Club. Since the actual users of these routes (motorized recreationists) had no notice that these routes were proposed for closure until the publication of the Draft Decision, they were deprived of any effective ability to comment on these closures and counter the highly biased arguments of the anti-motorized groups.

Because the Draft ROD was published in November, most of the routes in this list were already snow covered and inaccessible, making it impossible for us or other motorized advocates to visit them and ascertain whether the environmental impacts claimed by anti-motorized groups are real. We have certainly known them to exaggerate the severity of impacts on other routes discussed in their comments, such as a number of comments calling minor trail braiding on NFSR 126 Twin Cones “the worst damage I’ve ever seen” or similar language.

It is unknown if Forest Service staff made any site-visits to these roads to verify the claimed impacts, or if they simply took the word of anti-motorized groups in their comments. The responses to the comments that elicited most of these route closures do not give any detailed explanation of what evidence in the comments the Forest found compelling or whether they made effort to verify the facts claimed. The Forest therefore failed to satisfy the requirements of NEPA, the Travel Management Rule, and the APA that route management decisions should be science-based and explained in sufficient detail to articulate a “rational connection between the facts found and the choice made...” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43.

A key example of one such new closure is **NFSR 214.B Stumpy Creek 4WD**. This is a 2.23 mile ML2 road in the Salida Ranger District. It was given an L/L overall benefit/risk rating in the TAP reports, with a moderate recreational use benefit, high fire access benefit, high watershed risk, and moderate wildlife risk. All environmental risks and impacts had already been taken into account for this road, yet it was to be kept as-is under the DEIS Alternative C as a road open to all vehicles. With those TAP scores, it should have actually been converted to a trail open to all vehicles, yet the ranger district apparently decided it should remain designated as a road. Regardless, because it was slated under the DEIS Preferred Alternative C to remain open to the public, motorized users found no need to comment on it.

The only groups that did comment on it were anti-motorized groups. Tom Sobal of the Quiet Use Coalition wrote the following comment, which apparently persuaded the Forest to decommission this route in the draft decision:

Road 214.E Support alternatives D and E decommission. This route is cherry stemmed into the Chipeta Roadless area and use of this route compromises roadless area characteristics. This route fragments an elk production area and otherwise protrudes into and fragments a large area of intact habitat. Overall this route receives little use. There are only two places along this route where evidence exists of vehicles pulling off to park or dispersed motorized camp, but these are little used. Virtually no vehicles use a 100 yard segment of the designated road above 38°28'1.25"N 106°11'7.85"W. This is due to the presence of a large boulder embedded in the middle of the designated segment of road just west of the point cited above, and the steepness and vegetation growing on that designated route segment. Almost all vehicles turn south at the point cited above and use a 200 yard long unauthorized bypass route to the south. Use of this bypass adds additional risks to this route, including an additional ford of stumpy creek, unauthorized side spur routes branching off the main unauthorized bypass, route grades exceeding 35%, and risks to old cabin structures. Road 214.B poses very high risks to Stumpy Creek that cannot be minimized. The road fords the creek twice, and vehicles ford the creek six times in their out and back journey, including use of the bypass. Vehicles also ford surface water runoff from four additional small feeder streams. Most of this road exists in an unmapped 9A riparian area emphasis management area, and it violates the Forest Plan standard/guideline at III-214 by paralleling the creek without a determination that this road is absolutely necessary. There are long sections of this road that are trenched, and with slopes extending up on either side there is no place to divert water off the road.

Comment 3158-12, FEIS Appendix D at D-333. The Forest apparently found this comment persuasive, and indicated in its response that it had decided to decommission the road:

The Forest Service believes the commenter is referring to NFSR 214.B (not 214.E). With consideration of past management challenges and resource concerns, the Forest Service preferred action for this route is decommission. The route status under Alternative C was updated to reflect this.

Id. Even though the Quiet Use Coalition's comment did not even correctly identify the road number, the Forest apparently was persuaded by this comment to close a valuable motorized route to the public. The only information the Forest gave about this decision was that it was motivated by "consideration of past management challenges and resource concerns." No more specific reasons were given, and this explanation falls far short of the APA's requirement to articulate a rational connection between the facts found and the decision made.

While we do not have any first hand knowledge of this road and are thus unable to confirm or deny the accuracy of the Quiet Use Coalition's claims, the conditions they describe are not unusual nor do they necessarily represent serious environmental impacts or management concerns. Stream crossings are frequent on 4x4 roads in Colorado, as valley floors near streams are often the only places physically possible to locate a road. River fords in themselves are not a serious environmental concern, and where fords are causing impacts they can often be hardened to mitigate that.

Unauthorized bypasses sometimes form around difficult obstacles, but those are easily dealt with with fencing and signage that motorized groups like CORE are happy to put in place when made aware of an off-trail issue. The existence of such a bypass does not justify closing the route without making any effort to block off the unauthorized bypass first. Based on the description of the boulder, it is likely the

kind of technical obstacle that makes four-wheel-drive routes fun and challenging for off-road recreationists. The same can be said of the steep grades, water crossings, and trenched/rutted areas, which likewise make 4x4 trails fun and challenging and contribute to a high quality recreational experience.

Elk habitat also is not a valid reason to close this route. Elk are an abundant and non-threatened species in Colorado, and this route is already naturally inaccessible during the winter and spring months that are sensitive times for elk. Likewise the fact that this route is cherry-stemmed into a roadless area is an invalid reason for closure. The Colorado Roadless Rule allows the presence of motorized trails *inside* roadless areas, and certainly does not require the closure of motorized routes that are outside of roadless areas and merely adjacent to them, because of nebulous allegations that the route “compromises roadless area characteristics.”

Virtually all of the Quiet Use Coalition’s complaints regarding NFSR 214.B were either invalid reasons for closure or minor management issues that could have been dealt with by blocking off the unauthorized bypass, hardening stream crossings, and adding a seasonal closure during sensitive times for elk. Nevertheless, because the Forest Service only heard one side of the story with respect to this route, and did not hear any input from motorized users who enjoy this route, they decided to close it based solely on the word of a biased anti-motorized group. This renders the decision to close this route arbitrary, capricious, and legally unjustified by sufficient facts or reasoning, and it should be reversed.

For most of the other routes in this list, the specific comment(s) which elicited their closure are not as readily apparent. **NFSR 230.C Hoffman Park** is one of the longer routes on this list, at 1.18 miles long. This is another L/L road with a moderate recreational use benefit rating. It accesses a scenic alpine basin near Monarch Ski Area. The DEIS version of Alternative C properly proposed to convert it to a trail open to all vehicles as specified by the Minimum Road System rubric.

There is no information in the responses to comments as to why this route was closed, but the Forest did receive several comments from anti-motorized groups claiming it conflicted with non-motorized recreation on the Continental Divide Trail. If this was the reason for closing it, that reason is not valid. As discussed in Objection #4, inconvenience to non-motorized users is not a valid reason for closing motorized routes. Closing motorized routes on this basis violates the Travel Management Rule.

Moreover, the CDT’s authorizing legislation specifically allowed motorized use to continue on CDT segments where it was allowed prior to the designation of the CDT, and forbade any kind of buffer zones around the CDT resulting in the closure of existing routes that are near to it. The CDT does not even coincide with this route, but rather coincides with the road it connects to, NFSR 230 Middle Fork, which remains open to motorized use under the Draft ROD. Several other anti-motorized group comments referenced risk to cutthroat trout, which the Forest Service responded to with a note that the USFWS has determined that the particular lineage of cutthroat trout in that area is no longer protected.

From this it appears that no reason whatsoever was given for the change in the Draft Decision to convert NFSR 230.C to an admin road instead of converting it to a trail open to all vehicles as specified by the MRS rubric and as was proposed in the DEIS version of Alternative C. This decision was arbitrary and unjustified by any facts or evidence in the FEIS, and should be reversed in the Final Decision.

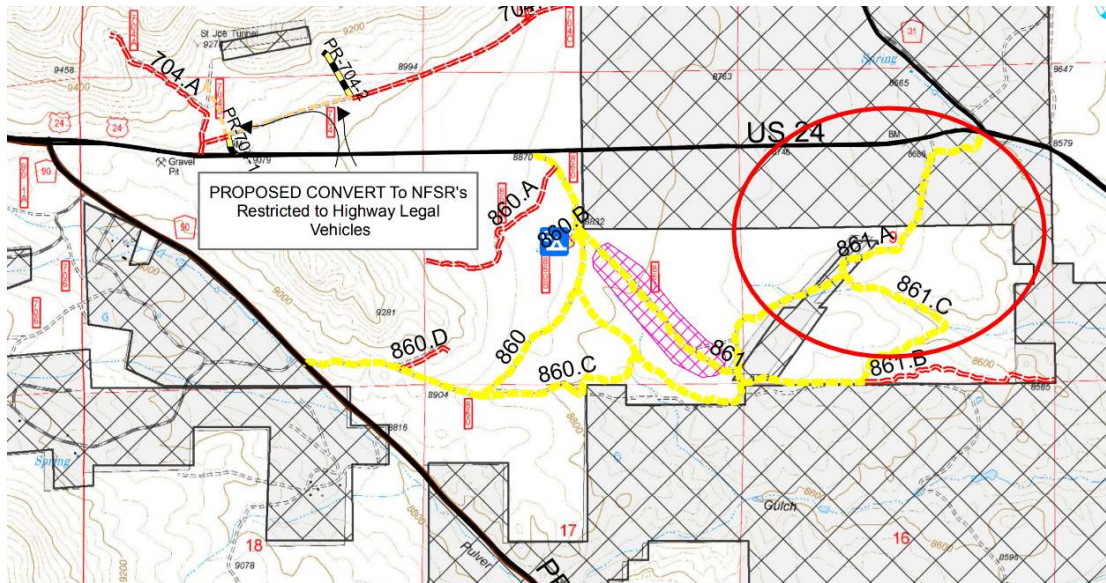
NFSR 861.A Althea is a 0.88 mile long route off Highway 24 in the Badger Flats area. Though it was not mentioned in any of the public comments or responses in Appendix D of the FEIS, it was expressly called out in the Draft ROD as a change from the Badger Flats Management Project decision, which considered the same area and left it open to public use. The Deciding Official stated in her decision, “In addition, I have decided to include one route from the Badger Flats project in this Record of Decision because it pertains to access through non-Forest Service land (NFSR 861.A).” Draft ROD at 15.

This is a curious reason to decide to decommission a road, as normally a road that facilitates access to National Forest land through private property from a major highway would be considered a highly valuable route to keep open (see Objection #5). Such an access route typically would not be decommissioned just because of annoyance to the landowner, which seems to be the implied reason for closing this road.



As seen in the map above, the segment of NFSR 861.A closed in the Draft Decision (marked in red) provides access to a route network south of Highway 24 from a parcel of state land (blueish color), and only crosses a small parcel of private land (gray), where it also forms a critical component of a loop route which will be severed by its closure. It was likely because of the highway access it provides and the loop opportunity it facilitates that it received a high benefit / low risk overall TAP score with a moderate recreational use benefit rating.

Here is the same route network as portrayed in the map for the Proposed Action Alternative (ultimately adopted) for the Badger Flats Management Project.



In the map above,⁴ NFSR 861.A (circled in red) is shown in yellow dashes which denotes existing NFSRs that were left as-is under the Badger Flats Management Project decision.

Given that Appendix D of the FEIS does not list any comments at all mentioning this route and every alternative considered in the DEIS kept it open, we can only guess what new information obtained after the DEIS public comment period ended caused the Supervisor to close this road in the Draft Decision. Whatever information that was has not been disclosed to the public, nor was the public given any opportunity to comment on it. All we know is it had to do with the fact that the road crosses private property. Many Forest Service roads cross private property and the Forest Service holds easement rights which facilitate crucial public access to public lands. That appears to be the case here as well. If the Forest does not hold any kind of verified access right, that should have been disclosed in the decision. If it does, that access right should not have been given up by decommissioning the road.

This decision is especially odd given that this route was evaluated in the recent Badger Flats Management Project decision which left it open to the public. An unexplained action contradicting the finding of a recent prior agency decision is inherently arbitrary and capricious. ("Unexplained inconsistency between agency actions is a reason for holding an interpretation to be an arbitrary and capricious change." *Organized Village of Kake v. United States Department of Agriculture*, 795 F.3d 956, 966 (9th Cir. 2015) (internal quotations omitted).) In order to comply with the APA, when an agency makes a decision that contradicts a past decision, it must display an "awareness that it is changing position" and articulate "good reasons for the new policy, which, if the new policy rests upon factual findings that contradict those which underlay its prior policy, must include a reasoned explanation for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Id.* (internal quotations omitted).

While the Deciding Official's statement does display an awareness of changing the Forest's prior decision with respect to this road, the sole reason given in the Draft ROD that NFSR 861.A "pertains to access through non-Forest Service land" is not sufficient to qualify as a "reasoned explanation" which

⁴ Available at https://www.fs.usda.gov/nfs/11558/www/nepa/102849_FSPLT3_4274621.pdf.

justifies the departure from the prior decision in the Badger Flats project, nor does it meet the agency's burden to articulate a rational connection between the facts found and the decision made under the APA and NEPA. This decision therefore must be reversed.

Finally, we note that one route in this list had additional millage closed in response to one of *our* comments. In response to Patrick McKay's comment 2917-16 on NFSR 349 Grassy Gulch 4WD in the Salida District, pointing out that the endpoint in the DEIS Alternative C was untenable because it ended on a narrow shelf road with no room to turn around, the Forest Service decided to move the endpoint *earlier*, rather than *farther* up the road as we had asked.

Patrick McKay's comment asked for the endpoint to be moved to the historical endpoint and parking area at the top of the ridge a couple hundred yards past the endpoint in the DEIS. This is where this route has historically ended and there is a well-defined parking area next to a large rock formation with an incredible view of the valley below. It is the most appropriate place to end the route, yet the short segment of road leading to it was at some point marked as an admin road, with the legal MVUM route ending lower down on the shelf road.

In response to this comment, the Forest stated:

The Forest Service recognizes the management challenges here. Additionally, the current Public segment (MP 0.0 - 1.93) ends in an area with no safe turnaround. The Forest Service prefers to keep the road segment for administrative and management purposes. However, the Forest Service prefers to modify the route section (MP 1.93 - 2.4) and change transition to approximately MP 1.6 where a safe and logical turnaround can be constructed.

Response to comment 2917-16, FEIS Appendix D at D-292. As discussed in more detail in our route-specific objection on this route below, the new endpoint the Forest specified actually falls short of the established parking area at the Ptarmigan Lake hiking trailhead, and now ends on *another* shelf road with no room to turn around. At the very least the endpoint for this route must be corrected in the Final Decision to end where we believe the Forest intended, at the Ptarmigan Lake trailhead, rather than the endpoint shown in the GIS data for the Draft Decision.

However, we continue to maintain that the best management option for this road is to have it end at the established parking area at the top of the ridge, which is the primary scenic attraction and "payoff" at the end of this route. The Forest has still provided no actual reason for moving the endpoint earlier rather than using the historical endpoint at the crest of the ridge, and has failed to justify this decision with specific evidence. This decision is therefore unsupported by substantial evidence and is arbitrary and capricious.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons described above, the new route closures added in the Draft Decision are arbitrary, capricious, and unsupported by substantial evidence. They were added at the last minute with no effective opportunity for the public to comment on them or have any input in the decisions to close them, other than the one-sided comments of anti-motorized groups whose opinions are not a valid source by which to judge a route's value for motorized recreation.

We request that the Reviewing Officer reverse these decisions and remand the Draft Decision to the Deciding Official with instructions to restore the original management decisions for these routes as specified in the DEIS version of Alternative C. In the case of NFSR 349, we request that the Final Decision be amended to place the endpoint either at the historical endpoint at the top of the ridge (preferred) or at the Ptarmigan Lake trailhead.

V. Route-Specific Objections: Preface

The remainder of our objections are regarding the management decisions contained in the Draft ROD for specific routes that are valuable to the offroad community. Most concern routes that are currently open to public motorized use under the existing MVUMs that are proposed for closure in the Draft Decision. Others are routes that were temporarily converted to admin roads under the terms of the settlement agreement which precipitated this travel management process, but were open to the public prior to the lawsuit and are now proposed for permanent closure. Other objections concern routes in low-elevation areas that have traditionally been open year-round, that are now proposed to be seasonally closed for four months of the year without justification. Finally, multiple objections concern routes that remain open under the Draft Decision, but the Forest failed to correct significant mapping errors that place their endpoints in the wrong locations, as requested by our DEIS comments.

Most of our route-specific objections follow the broad themes laid out in General Objections #1-3. For every single route covered in our objections, the PSI NF failed to provide specific explanations of the reasons for the management decisions selected in the Draft Decision, and failed to respond to or explain its reasons for ignoring contrary evidence presented in public comments. The Forest thus failed to meet its burden to provide a reasoned explanation for route-specific actions as required by NEPA and the APA (see Objection #1).

Most route-specific objections also concern the inconsistent and flawed application of the TAP scores and recommendations with regard to numerous routes. Numerous routes were improperly evaluated in the TAP reports, which were subject to frequent mapping errors or failed to consider important recreational uses of those roads. As a result, recreational use benefit scores were often unjustifiably low, while risk scores were often excessively high.

The Forest's decision to treat the TAP scores and recommendations as dispositive final decisions not subject to factual challenges in public comments or further analysis under NEPA unlawfully predetermined the final designation decisions chosen for these routes--almost always leaning in the direction of closing those routes to the public (see Objection #2). This was done either through the use of the TAP scores in the Minimum Road System rubric to decide the designation of particular routes, or by directly carrying over the specific recommendations from the TAP reports as the final action adopted with respect to routes that had them.

Many other routes have the opposite problem. These routes were (mostly) properly evaluated in the TAP reports, and the Minimum Road System rubric should have produced a recommendation to leave them open to public use and convert them to trails open to all vehicles. Yet that recommendation was arbitrarily overridden by biased and subjective ranger opinions and improperly recommended for

closure (see Objection #3). Some routes have both issues, where the route was not properly evaluated for recreational use benefit, resulting in a lower than merited recreational use benefit score, yet one that was still high enough to produce an MRS rubric recommendation to keep it open to public use, which was in turn ignored by the arbitrary decision of the ranger district to close it.

Overall, our many route-specific objections demonstrate that the Forest completely failed to consistently evaluate the recreational benefit of numerous routes and unfairly recommended them for closure based solely on the personal biases and opinions of various district rangers and their staff. This produced a tremendous disparity in the currently open route-mileage proposed for closure across the different ranger districts, as seen in the table below (calculated by comparing the current and proposed management of routes in the tabular data provided by the Forest Service).

Currently Open Route-Mileage Closed by Alternative

Ranger District	Draft Decision	Alt B	DEIS Alt C	Alt D	Alt E
LEADVILLE	4.9	32.4	4.1	8.1	81.4
PIKES PEAK	28.6	209.2	28.6	28.6	175.9
SALIDA	6.5	81.8	4.4	13.9	227.1
SAN CARLOS	7.1	203.4	5.3	12.0	246.0
SOUTH PARK	66.8	316.9	67.0	82.1	318.9
SOUTH PLATTE	7.9	15.8	7.9	5.3	215.4
TOTALS (ALL DISTRICTS)	121.9	859.5	117.4	150.1	1264.8

This disparity was present across all action alternatives considered, and was especially severe between districts like South Park (66.8 miles of currently open routes closed in the Draft Decision) where the ranger district staff generally views motorized recreation negatively, versus districts like

Leadville (4.9 currently open miles closed) and Salida (6.5 currently open miles closed) where staff largely view motorized recreation positively.

The vast majority of new route closures are concentrated in the South Park and Pikes Peak Ranger Districts, which include many of the most popular offroad trails closest to the major Front Range cities of Denver and Colorado Springs. As a result, those ranger districts have disproportionate impacts on the quality of motorized recreation across the entire Pike San Isabel National Forest. The FEIS utterly failed to account for these disparate impacts or the resulting user displacement and concentration on remaining routes in other districts (ie. users affected by route closures in the South Park District displaced to the Leadville or Salida Districts).

As seen in this table, the South Park Ranger District consistently had the highest numbers of currently open routes proposed for closure across all action alternatives considered. In our experience, supported by numerous emails we obtained over the last year through FOIA requests (see our objections on Wildcat Canyon), South Park District Ranger Josh Voorhis and several of his key staff have a strong personal dislike of motorized recreation, and do not view it as a legitimate use of National Forest land as stated by the Travel Management Rule. This personal bias is strongly reflected in the decisions regarding numerous routes in the South Park District, which were almost universally given excessively low recreational use benefit ratings in the South Park TAP Addendum.

When routes were given high enough recreational benefit scores to result in an MRS rubric recommendation to keep them open, that recommendation was frequently ignored by South Park District staff in the “site-specific review” the FEIS describes that allowed ranger district staff to override the MRS recommendations and select their own preferred management outcomes for individual routes. The result was that multiple entire trail systems in the South Park District were proposed for closure either by decommissioning or being converted to special use permit roads, the latter essentially privatizing large areas of public lands.

The massive disparity in outcomes across ranger districts provides clear evidence that the Travel Analysis Process, MRS Screening Process, and the “site-specific review” process referenced in the FEIS were not conducted in a science-based manner as required by the Travel Management Rule, and were unduly influenced by the subjective opinions and biases of ranger district staff.

In so doing, the Forest violated the key requirement of the Travel Management Rule to use a “science-based roads analysis” to determine the Minimum Road System, which:

is the 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). 36 C.F.R. § 212.55(a) separately provides:

In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider 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.

While the Travel Management Rule does require NFS units to identify the “minimum road system”, and determine which roads are unneeded, it notably does not require them to *minimize* road system mileage at all costs, but to determine the minimum amount of roads necessary to meet the Forest’s needs, which under 36 C.F.R. § 212.55(b) include provision of recreational opportunities. And while 36 C.F.R. § 212.55(b) requires that roads and trails be designated “with the objective of minimizing” certain negative impacts, it does not mandate *eliminating* those impacts entirely. The TMR is not a mandate solely for road closures, but also imposes an affirmative duty on the Forest to keep routes that *are* needed open to public use.

The Travel Management Rule recognizes that, “Motor vehicles are a **legitimate and appropriate** way for people to enjoy their National Forests,” and again, “Motor vehicles remain a **legitimate recreational use** of NFS lands.” Travel Management; Designated Routes and Areas for Motor Vehicle Use, 70 Fed. Reg. 68264, 68272 (November 9, 2005) (emphasis added). As the federal courts have held, the Forest Service’s multiple use mandate requires that Forests keep roads open to the public which serve valuable recreational needs and do not cause unjustifiable environmental impacts.

As discussed in *Minnesota Center for Environmental Advocacy v. US Forest Service*, 914 F. Supp. 2d 957, 982 - 983 (D. Minn. 2012) (emphasis added):

The regulation does not mandate that agency action minimize the particular negative outcomes; it mandates that the agency “consider” the effects of agency action, “with the objective of minimizing” certain negative outcomes. Thus, the minimization criteria do impose a mandate of sorts, but not one that mandates particular measurable results. The Forest Service itself appears to agree with this assessment. The 2005 Travel Management Rule explains that Section 212.55(b) “is mandatory with respect to addressing environmental and other impacts associated with motor vehicle use of trails and areas,” noting that the intent of the Executive Order was to “manage” motor vehicle use, **“but that motor vehicle use on Federal lands continue in appropriate locations.”** 70 Fed.Reg. 68264, 68281, 2005 WL 2986693. This is consistent with the overall policy of multiple—and often conflicting—uses on the SNF. As the Travel Management Rule further explains, **“[a]n extreme interpretation of ‘minimize’ would preclude any use at all**, since impacts always can be reduced further by preventing them altogether. Such an interpretation would not reflect ... [the] laws and policies related to multiple use of NFS lands.” Id. In other words, the “minimization criteria” only require that the Forest Service considers certain environmental factors, but **does not require it to ignore permissible recreational uses in order to eliminate certain negative environmental impacts.**

In ignoring the important permissible recreational uses of numerous roads (especially in the South Park District), the Pike San Isabel National Forest has taken precisely the extreme approach rejected by the Travel Management Rule. The Forest has considered only the TMR’s mandate to close roads which are determined to be unneeded, while disregarding the equally important mandates to treat motorized recreation as a legitimate use of National Forest lands and to keep routes where motorized recreation *is* appropriate open to public use.

As our route-specific objections demonstrate, though the proposed travel plan may result in “only” a 4% net decrease in motorized routes across the entire Pike San Isabel National Forest, those closures disproportionately affect highly desirable ML2 roads with close access from the Front Range and which

are highly valued for their scenic viewpoints, high alpine terrain, excellent dispersed camping, historic mining sites, critical hunting access, and high-quality recreational experience as technically challenging four-wheel-drive trails. Nearly all of the routes discussed below should have been converted to trails open to all vehicles, yet were improperly selected for closure instead.

These decisions violate the Travel Management Rule, as well as the APA and multiple other CFRs and Forest Service policies and regulations, and must be reversed as arbitrary and capricious. Because compliance with the Travel Management Rule was the main stated Purpose and Need of this project, the failure to properly follow the TMR means that the Draft Decision also fails to meet the Purpose and Need of the Project, and should be either reversed entirely or remanded to the Deciding Official with instructions to significantly modify the Final Decision to reopen all of the individual routes discussed below to public motorized use.

VI. South Park District Objections

OBJECTION #7: NFSR 228 LOOKOUT IS ERRONEOUSLY DECOMMISSIONED CONTRARY TO THE BADGER FLATS TRAVEL MANAGEMENT DECISION

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

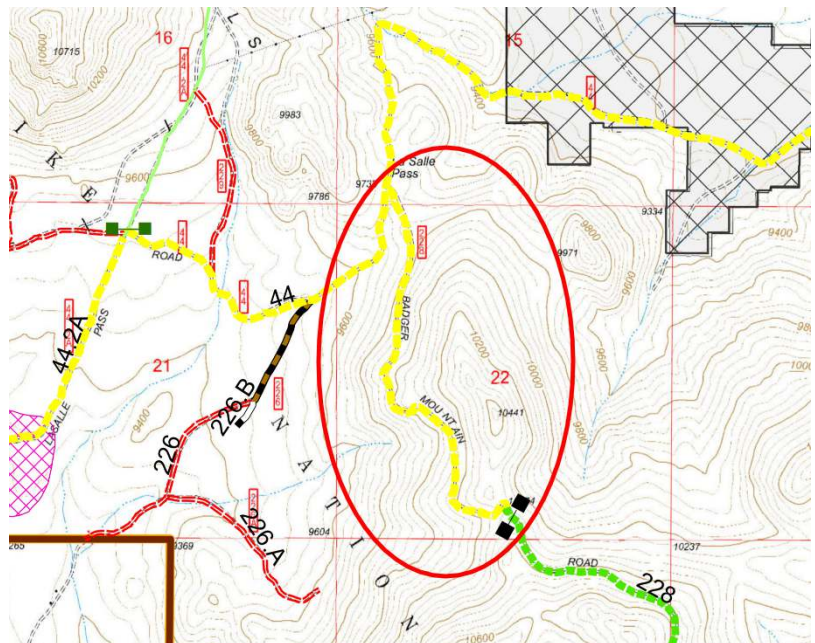
The Draft Decision erroneously decommissions the first 1.25 miles of NFSR 228 Lookout, contrary to the recent decision in the Badger Flats Management Project, which left that portion of the route open to the public. This issue was addressed in Patrick McKay's comment 328-14 in Appendix D of the FEIS, which corresponds to the comment titled "Misc routes" in the table above, submitted on 10/29/2019.

B. ANALYSIS

The Decision Notice and Finding of No Significant Impact for the Badger Flats Management Project was published on June 14, 2018, and was an area-specific travel management project for the Badger Flats area near Lake George in the South Park Ranger District. Because management of these roads was decided in a separate process, the roads within the Badger Flats Project boundaries were specifically excluded from the forest-wide MVUM analysis.

However, Alternative C in both the DEIS and the FEIS and Draft ROD erroneously included the proposed decommissioning of the first 1.25 miles

of NFSR 228 Lookout from the junction with NFSR 44 Puma (aka La Salle Pass), which was specifically left open as a "road open to highway legal vehicles only" under the Badger Flats decision. This is seen in the map⁵ above of the Proposed Action in the Badger Flats Project which was adopted in the final Decision Notice. NFSR 228 is shown in yellow which denotes an existing NFSR which is to be kept as-is, up to the existing gate where it changes to an admin road (shown in green):



Patrick McKay commented on this issue in comment 328-14. In response to this comment, the Forest appeared to indicate that the proposed decommissioning of NFSR 228 would NOT be included in the Draft Decision:

⁵ Available at https://www.fs.usda.gov/nfs/11558/www/nepa/102849_FSPLT3_4274621.pdf.

This EIS effort will not change designations or use types for routes included in the Badger Flats Management Project Decision Notice, except to add seasonal closures as required for wildlife and resource protection. The designations provided on the EIS maps will not be included in the final decision.

FEIS Appendix D at D-130. The Draft ROD likewise states that routes considered in the Badger Flats Project would be excluded from the MVUM Analysis Decision, with a few express exceptions:

5.1.2 Modifications to Alternative C to Be Implemented

Consistent with Section 11.23 of the National Environmental Policy Handbook (FSH 1909.15), I have found that portions of the PSI motorized route system have recent valid travel management NEPA decisions. As a result, I have decided to remove these routes from this Record of Decision.

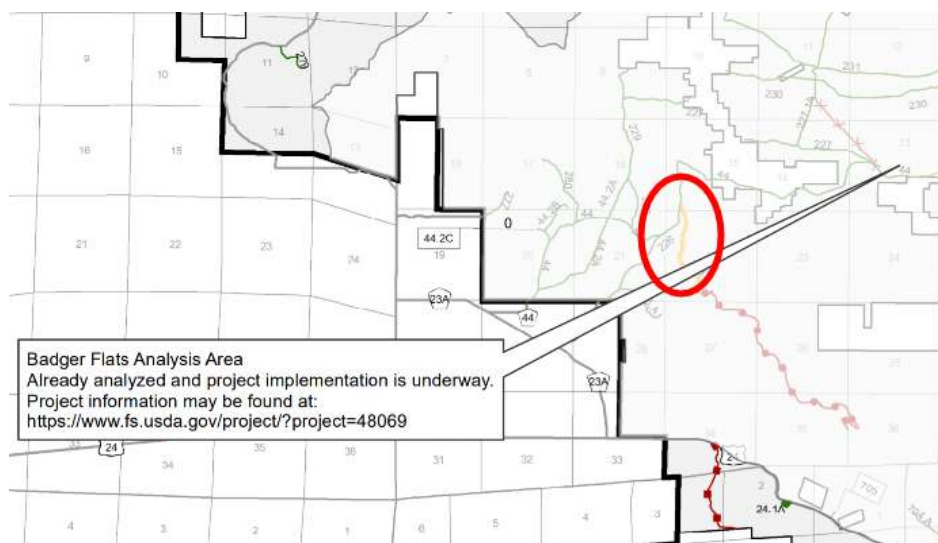
The Badger Flats Management Project addressed motorized access for a portion of the South Park Ranger District near Lake George, Colorado (Badger Flats Management Project Final Decision Notice, June 14, 2018). As shown on the maps for Alternative C in the FEIS, most routes in the Badger Flats project area are omitted from this decision and will continue to be managed as described in the Badger Flats Decision Notice.

A few routes that fall within that project area were not included in the Badger Flats Decision Notice, and I have decided to manage them as described in Alternative C. Those routes are NFSR 220.A, NFSR 220.B, and NFSR 540. In addition, I have decided to include one route from the Badger Flats project in this Record of Decision because it pertains to access through non-Forest Service land (NFSR 861.A).

Draft ROD at 14 - 15. NFSR 228 was not listed among the routes expressly called out in the text which the Deciding Official decided to include in the Decision from the Badger Flats area. Yet the list of route-specific designations in Appendix A of the Draft ROD directly contradicts the statement that these are the only routes in the Badger Flats area included in this Decision. On page A-72 of the Draft ROD, NFSR 228 is listed as being decommissioned from milepost 0.0 to 1.25:

SOUTH PARK	SOUTH PARK	220.A	CROSSOVER	0.20	1.33	1.13	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	220.A	CROSSOVER	1.33	1.40	0.07	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	220.B	WIDOW MAKER	0.00	0.80	0.80	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	220	HACKETT	3.90	4.74	0.84	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	228	LOOKOUT	0.00	1.25	1.25	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	233	GET AWAY	0.00	0.24	0.24	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	233	GET AWAY	0.24	0.30	0.06	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	234.B	ROCKY	0.00	0.08	0.08	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	240.A	DINGER	0.00	0.40	0.40	Decommissioned	Not applicable

It is also shown in the Decision maps as being decommissioned, even though it is in the grayed-out area excluded from the Decision because of the Badger Flats Project:



Based on the express statement in the response to comments that NFSR 228 would NOT be decommissioned in the final decision, and the fact that the Draft Decision's text did not list it among the routes from that area expressly included in the Decision, this action is clearly erroneous. If this error is not corrected, NFSR 228 will be decommissioned with no acknowledgement in the Decision that this was ever intended and no explanation ever provided for the blatant inconsistency with the Badger Flats decision.

An unexplained action contradicting a prior agency decision is inherently arbitrary and capricious ("Unexplained inconsistency between agency actions is a reason for holding an interpretation to be an arbitrary and capricious change." *Organized Village of Kake*, 795 F.3d at 966 (internal quotations omitted)). In order to comply with the APA, when an agency makes a decision that contradicts a past decision, it must display an "awareness that it is changing position," and articulate "good reasons for the new policy, which, if the new policy rests upon factual findings that contradict those which underlay its prior policy, must include a reasoned explanation for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Id.* (internal quotations omitted).

In regard to NFSR 228, the Forest has neither displayed any awareness that it is changing its position on this road (in fact it denied doing so even while doing it anyway), nor has it provided *any* reasons at all for that change in policy. Therefore decommissioning it contrary to the decision in the Badger Flats project is inherently arbitrary and capricious. As pointed out in Mr. McKay's original comment, the Badger Flats decision left this route open to the public, and this process should respect that decision rather than contradicting it and closing additional routes to the public.

Beyond that, this management decision is frankly nonsensical. Alternative C contradicts itself with respect to this route, as it decommissions the first 1.25 miles of the road and leaves the remaining 3.25 miles at the end of this dead-end road as an admin road. Because the entire purpose of decommissioning roads is to allow them to be naturally reclaimed and thus rendered impassable to vehicles, this action would leave the end of the road orphaned with no way for admin vehicles to access it. The first 1.25 miles of this route received a high recreational use benefit rating in the TAP report because it provides access to a highly scenic overlook off of La Salle Pass. It should therefore remain open to public motorized use.

C. CONCLUSION AND REQUESTED RESOLUTION

The proposed decommissioning of the first 1.25 miles of NFSR 228 Lookout is clearly erroneous and contradicts the decision in the recent Badger Flats Management Project. As such, the decision runs counter to the evidence before the agency (and indeed the agency's own statements to the contrary), and is therefore arbitrary and capricious.

We request that the Reviewing Officer remand the Draft Decision to the Deciding Official with instructions to correct this error and modify the final decision to be consistent with the Badger Flats decision, by keeping this section of the road open to the public with its current management as a road open to highway vehicles only.

OBJECTION #8: CLOSURE OF NSFR 436 SOUTH SALT CREEK

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the decision to designate the second section of NSFR 436 South Salt Creek (1.85 miles) as an admin road. Marcus Trusty commented on this road during the DEIS comment period and specifically pointed out the recreational benefit of this section of road for both hikers and hunters in comment 687-2. The Forest responded with a canned comment response:

Impacts on road management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. Revision of the TAP/TAR reports is beyond the scope of this undertaking.

FEIS Appendix D at D-97. If the Forest response is accurate, then why is this road slated for conversion to Administrative Use when it scored a H/L overall TAP rating for Benefit/Risk, which according to the FEIS description of the MRS Screening Criteria is an ideal candidate for inclusion in the MRS?

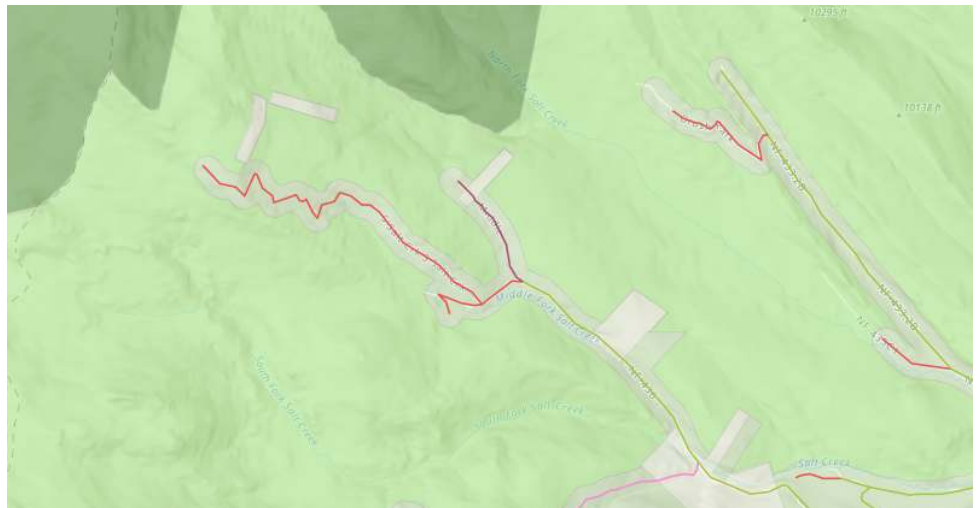
B. ANALYSIS

NSFR 436 is highly used by hikers, hunters and motorized recreators driving the route. The nearly 2 miles of this route segment is important to several facets of recreation. If you are accessing the East Buffalo Peaks hiking trail it saves hikers nearly 4 miles of round trip distance. If hikers are no longer allowed to park at the end of this segment of NSFR 436, it would add nearly 2 miles each way to their hike. Adding an additional 4 miles would render the hike unattainable for many and would require an overnight trip for others.

Because this section of road is an out-and-back for motorized users it would subtract 4 available miles from motorized opportunities. Possibly the worst affected groups would be hunters. Successful harvest via hunting is dependent upon access initially, but access is substantially more important for game retrieval. If 2 miles of road is made unavailable to public use, it makes big game retrieval of animals in this area nearly impossible. NSFR 436 is one of the most important access roads for Big Game Unit 49 and provides the only hunting access to the eastern and southern Buffalo Peaks Area.

The map below created using the PSI supplied GIS data shows the end segment of NSFR 436 and the access it provides to the Buffalo Peaks Wilderness Area and the Buffalo Peaks South Roadless Area.

As an H/L road, this route should have been considered an ideal candidate for the MRS. Indeed, the MRS screening rubric as described in the FEIS does not include any reason for why an H/L road should ever be closed to the public. It simply states, "H/L roads are ideal for an



MRS. Roads in this category that lack a specific management recommendation, such as from scoping comments or district input, remain as is, with no change in status.” FEIS at 2-6 (emphasis added). NFSR 436 did not have a specific TAP recommendation beyond adding a seasonal closure. Therefore this closure was not dictated by the MRS rubric, and NFSR 436 already has a seasonal closure so management of the road is currently consistent with the TAP recommendation.

As discussed in Objection #3, the primary reason why such a high value road would be closed to the public is because of the arbitrary opinion of the district ranger being substituted for the scientifically derived outcome of the MRS screening process. Alternatives A, B, and D would have kept this route open to the public. Only alternatives C and E considered closing it. Alternative C was subject to further changes based on alleged “route-specific information” known only to ranger district staff and never disclosed to the public, which as discussed in Objection #3 resulted in a disproportionate number of high benefit routes being closed with no apparent justification. As described in the FEIS, “the MRS management recommendations were subject to a further site-specific analysis for Alternative C. This could result in differing management for road status changes.” FEIS at 2-8.

It is highly likely, therefore, that the only reason this route was closed was because of the arbitrary and undisclosed recommendation of the South Park District Ranger, who is notoriously biased against motorized access to public lands. We object to all route closures based solely on arbitrary “district input,” which should never have been used to close high benefit routes to public use.

C. CONCLUSION AND REQUESTED RESOLUTION

Based on the above reasoning, we believe there is strong evidence that biased ranger opinions were improperly allowed to override the scientifically-derived outcome specified by the MRS Screening Process for NFSR 436, causing the decision to close it to the public to lack sufficient factual justification to satisfy the standard that an agency must articulate a “rational connection between the facts found and the choice made...” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43, and that a “bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103.

NFSR 436 is an extremely high value route which provides important public access to the Buffalo Peaks area as described above, and the FEIS and Draft ROD make no attempt to either explain or justify its closure. Accordingly, we request that the Reviewing Officer remand the Draft ROD to the Deciding Official with instruction to reverse the closure of the end segment of NFSR 436 and leave it open to the public in the final decision as specified by the MRS Screening Criteria.

OBJECTION #9: CLOSURE OF NFSR 452 COONEY LAKE

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the decommissioning of both segments of NFSR 452 Cooney Lake in the South Park Ranger District off of Mosquito Pass Road in the Draft ROD. This is a high value spur route off one of the most popular four-wheel-drive passes in Colorado, and the vast majority of it is outside of the Pike San Isabel National Forest boundaries on private or BLM land.

The closure of this route to the public is not justified by any environmental concerns, and is ultimately unenforceable as the Forest Service lacks jurisdiction over one entry point to the road and the entire middle segment outside of the National Forest. Even if the Forest does decommission the segments currently shown on the MVUM as Forest Service routes, it lacks the ability to actually prevent the public from using this road. Decommissioning the Forest Service segments will not produce any actual environmental benefits, but will only cause environmental harm.

Both Patrick McKay (see comment 176-4) and Marcus Trusty (see comment 2026-3) submitted comments on this route during the DEIS comment period and thus have standing to object to this closure.



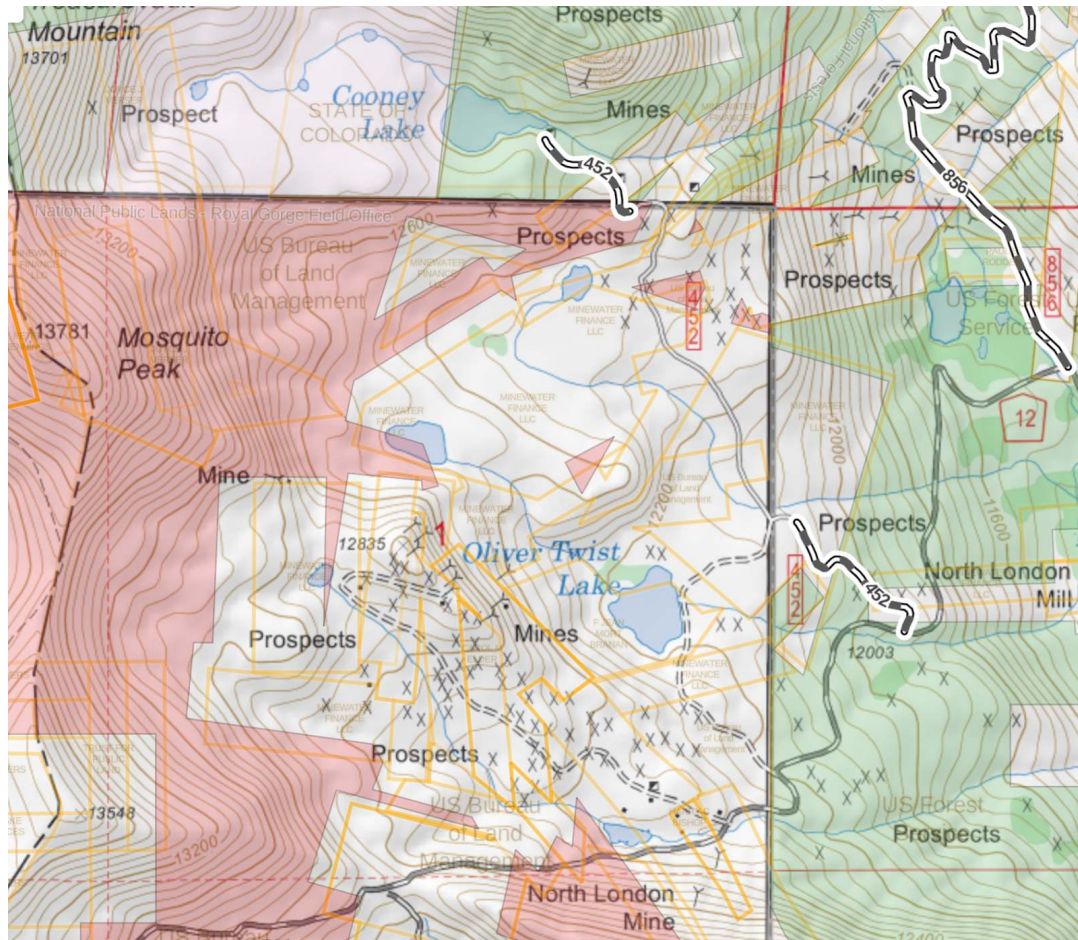
B. ANALYSIS

1. *Background and management challenges*

NFSR 452 Cooney Lake is a spur road off Mosquito Pass (CR 12) on the east side of the pass above Alma. It is situated on a relatively flat shelf on the slopes of Mosquito Peak. The current MVUM shows it as split into two separate segments, connected by a gray (other public road) segment in the middle (shown above right).

A critical thing that must be understood about NFSR 452 is that most of this route is not actually under Forest Service jurisdiction. It is a Y-shaped route with two entrances off of Mosquito Pass Road, with one entrance and most of the middle portion of the route outside of the National Forest boundaries. The Forest Service only has jurisdiction over one entrance and a short segment at the end of the road where it dead-ends at Cooney Lake.

If one were to only consider the two short Forest Service segments in isolation, the route would appear to be insignificant. However when viewed as a part of the broader trail system around Mosquito Pass, this route becomes much more important, and the inherent management challenges it presents become readily apparent.



As shown on the map above, the MVUM route portions are only the beginning and end segments of the Cooney Lake trail. It also includes an unmarked branch which begins at the National Forest Boundary at the intersection with Mosquito Pass and crosses several parcels of private and BLM land around Oliver Twist Lake, before joining with the main Cooney Lake road just outside of the National Forest Boundary. The road continues across a small marshy area with several creek crossings, then through the open tundra across more private and BLM lands,



Unmarked road near Oliver Twist Lake

before reentering the Pike National Forest for the final rocky climb up to Cooney Lake.

While the two MVUM segments of the road are only 0.2 and 0.3 miles, the total route including the branch past Oliver Twist Lake and the middle portion is approximately 1.6 miles. While we do not know the exact legal status of the non-MVUM sections of this route, they are marked on the MVUM as other public roads and are shown on USGS maps dating back to at least the 1970s. The public has routinely traveled all sections of this route, and as of August 2020 there were no signs of private landowners attempting to block the road where it crosses private lands. This leads us to believe the remainder of the route is a public road, likely under the jurisdiction of Park County or the BLM. Only the southeastern branch connecting to Mosquito Pass and the last 0.2 miles at the end are under Forest Service jurisdiction.



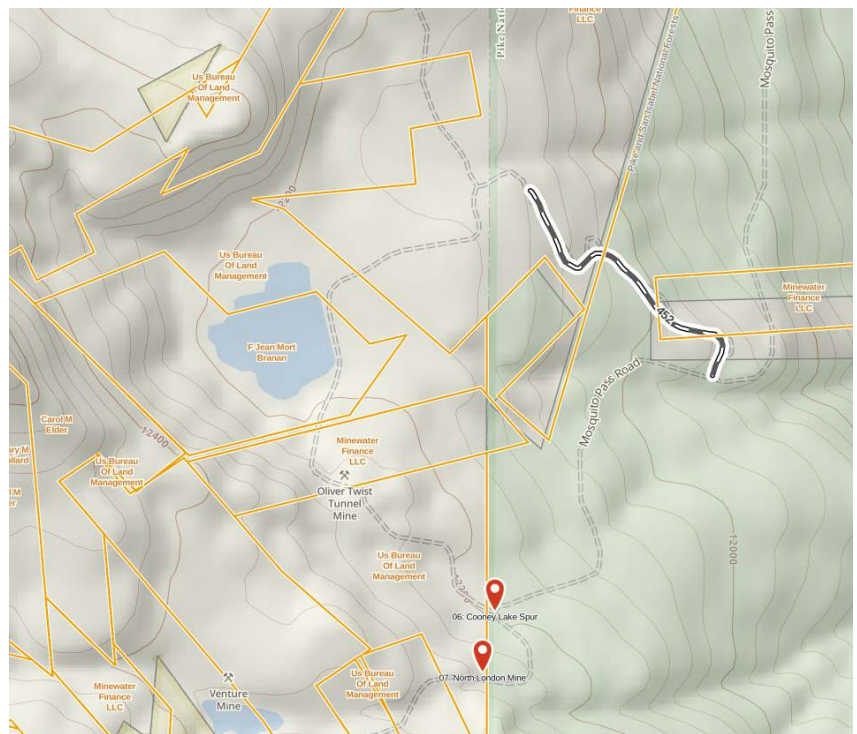
Lower MVUM segment of FR 452

A closer look at the non-Forest Service branch of the road is provided in the map to the right, showing it beginning at the National Forest boundary and remaining outside of the National Forest past the junction with the first MVUM segment. While closing the first MVUM segment would deprive the public of a convenient loop opportunity that currently exists off Mosquito Pass Road, it would not actually prevent anyone from driving the majority of this route by accessing it from outside the National Forest.

2. Closure not justified by environmental risks

The Cooney Lake trail has extremely high value for motorized recreation.

While the Travel Analysis Process report rated both segments of NFSR 452 moderate for recreational use benefits, that is appropriate



only if these segments are considered in isolation. When considered as part of the broader Mosquito Pass trail system and a full day motorized recreational experience, their value is much higher.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	M
Fire/Fuels Access Benefit	L
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	H
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	M

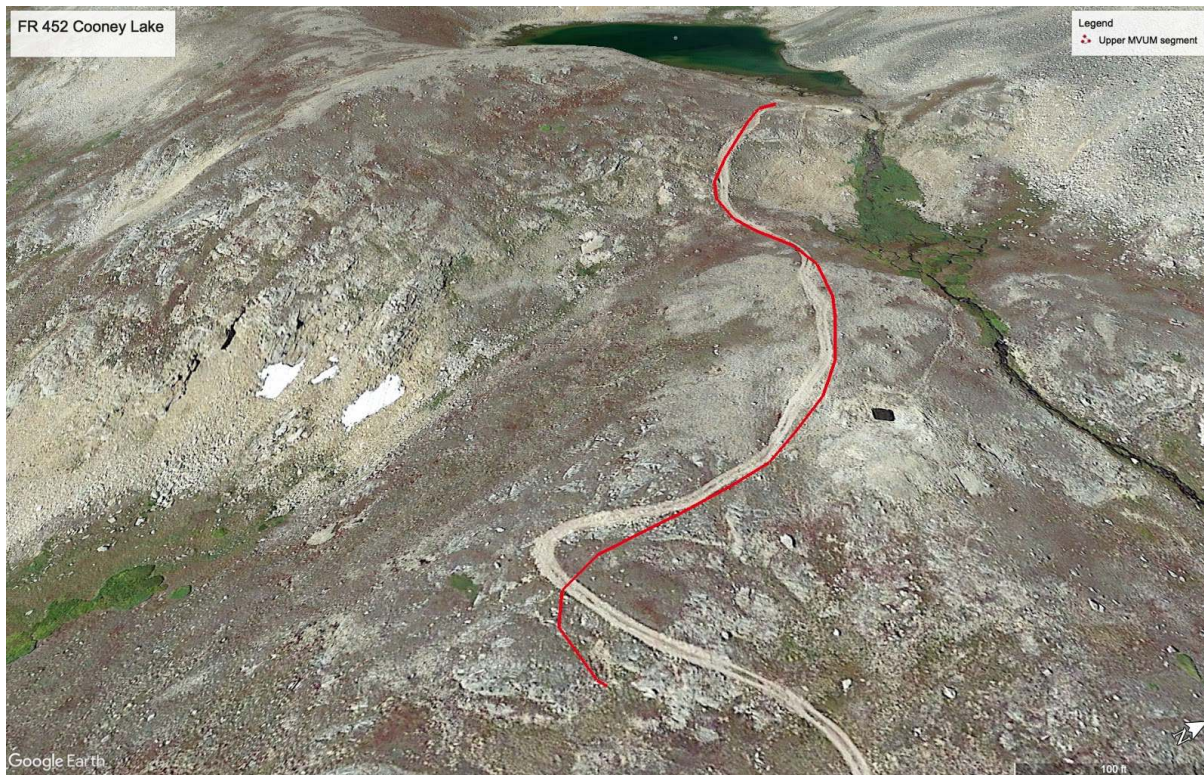
The two branches of the Cooney Lake trail provide access to two scenic high alpine lakes from Mosquito Pass. Both Cooney Lake and Oliver Twist Lake are popular sites for camping and fishing, and are surrounded by interesting historical mine ruins and spectacular high alpine views. When Cooney Lake is run together with Mosquito Pass road and other side roads including NFSR 856 Pirate, it makes for a pleasant full day experience four-wheeling and exploring the historic Mosquito Pass area.

Despite its high value to the public, all of the action alternatives considered in the FEIS and the decision adopted in the Draft ROD decommission both segments of NFSR 452. While this is the default management under the MRS Screening Process for a L/H route, an exception exists for routes with moderate or high recreational use benefit, and that exception should have been applied here.

Decommissioning these route segments would be unwise, unenforceable, and unresponsive to public demand to keep the full route open. It would also not be in accordance with the 1984 Forest Plan, which designates the entire area around Mosquito Pass as a 2B management area, which “provides opportunity for outdoor recreation in a roaded natural and rural setting, including developed recreation facilities and year-round motorized and non-motorized recreation.” Forest Plan Management Area Map.

There is no reason to close this road based on environmental impacts. While the TAP report rated both segments as high for watershed, wildlife, and botany risk, these high risk ratings appear to have made in error, as the MRS Screening Criteria for both segments shows they do not intersect with impaired watersheds or wetlands, are not in high-risk flood hazard areas, do not have highly erosive soils, do not intersect with invasive plant species, and do not intersect with critical habitat for any species that is threatened, endangered, or identified in the CPW Wildlife Species Activity Mapping Data.

Wildlife risk is minimal given that this area is naturally inaccessible during sensitive times in the winter due to snow. Regarding watershed risk, while part of the Cooney Lake road does cross a marshy area where that could be a concern, that area is on the section of road not on National Forest lands and outside of the control of the Forest Service. Closing the two segments on the MVUM would have no effect on that part of the road, which would remain open. Both route segments under consideration in this process are entirely on dry, rocky soil away from wetlands, with a well-defined roadbed and no notable braiding or off-trail impacts. This can be seen in the following Google Earth imagery from 2016:



As can be seen in these images, the two route segments at issue here do not have any creek crossings or marshy areas, have no trail braiding, and do not pose any significant risk to vegetation or watersheds.

These images also show that decommissioning these segments of the Cooney Lake trail would be difficult or impossible to enforce. It would be extremely difficult to keep people from traveling on the lower segment as both ends would be legally accessible either from Mosquito Pass road or from the alternate route on the unmarked road past Oliver Twist Lake. That branch, as well as the middle section across the tundra, will remain open to the public regardless of any action taken in this travel management process, as it is not under the Forest Service's jurisdiction. The final 0.2 miles to Cooney Lake is also in the middle of open tundra with no choke points to block, and it would be very difficult to prevent people from driving around any barriers placed there in order to reach Cooney Lake.

Finally, while there is currently a well-defined parking area at the end of the road at Cooney Lake, ending the road at the point the final MVUM segment begins would force motorists to drive on the open tundra to turn around, as there is no existing turn around point there. This would cause new resource damage to the delicate tundra vegetation where there is none now.

3. The Forest failed to provide legally sufficient justification for closure or consider an important aspect of the problem

All of the information above was presented in our comments on the DEIS. Unfortunately, the Forest entirely ignored our comments and did not make any changes with respect to it in the Draft ROD, responding in the FEIS with this canned statement:

Impacts on road management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. Revision of the TAP/TAR reports is beyond the scope of this undertaking.

Response to comment 176-4 by Patrick McKay, FEIS Appendix D at D-27. As discussed in Objection #1, this generic statement is legally insufficient to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. That objection applies here as well.

Because NFSR 452 did not have a specific management recommendation in the TAP comments and because decommissioning is the default action in the MRS Screening Criteria for L/H roads, it can be inferred that the decision for this route was most likely the result of the MRS Screening Process. As pointed out above, the TAP ratings for this route are incorrect, giving the management decision recommended by the MRS rubric a flawed factual basis. While the Forest is correct that revisions to the TAP reports are beyond the scope of this travel management process, as discussed in Objection #2 the TAP reports were only supposed to *inform* route-specific decisions in the travel management process, not *dictate* them.

Public comments received later in the travel management process were also supposed to inform route-specific decisions, and cannot simply be ignored because the TAP data is what it is. When the Forest was made aware through public comments that the data it relied upon to make route-specific

decisions is incorrect, it had a responsibility to reevaluate those routes based on the new information it has received, or at least respond to the specific evidence included in our comments. In the case of NFSR 452, the Forest failed to do this and therefore violated the Travel Management Rule. See *Idaho Conservation League*, 766 F. Supp. 2d at 1069 (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

Even assuming the TAP scores were correct, the MRS Screening process provides an exception for routes with moderate recreational use benefit as this route has:

Recreational use (moderate benefit TAP rating) – If the road has potential to provide a loop or connection to other trails open to public motor vehicle use, then the management recommendation is Convert to trail open to all vehicles.

FEIS at 2-9. NFSR 452 qualifies for this exception as it both connects to another route open to motor vehicle use (Mosquito Pass Road) and provides a loop opportunity with the second entrance outside of the National Forest boundary. The Forest should have applied this exception in the MRS rubric to keep this route open to public use as-is.

Finally, the Forest “entirely failed to consider an important aspect of the problem”, rendering the decision to close this route arbitrary and capricious per the holding in *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. The fact that the Forest lacks jurisdiction over most of this route and is legally incapable of preventing the public from using the majority of the route should have been an important factor considered in making the decision to decommission it.

The only acknowledgement the Forest made of this issue was in response to Marcus Trusty’s comment 2026-3 where it stated, “Management of non-NFS routes is beyond the scope of this undertaking. Further coordination with the BLM will occur.” FEIS Appendix D at D-214.

This statement at least acknowledged that the Forest lacks jurisdiction over the non-NFS portion of the route and that managing it would at minimum require coordination with the BLM. In this case, it is not clear if the BLM has jurisdiction over this side route either. It could be under the jurisdiction of Park County or private landowners. If it is under BLM jurisdiction, the BLM has not developed a designated route system for this area, but instead limits motorized use to existing routes. That management will continue until the Royal Gorge Field Office develops a travel plan for the Leadville and Alma areas, which it has no immediate plans to do.

The Forest is correct that management of non-NFS routes is beyond the scope of this undertaking, but in this case, the mere existence of those routes precludes effective implementation of the Forest’s decision. If the decision in the Draft ROD is dependent on the future actions of undetermined third-party landowners in order to be effective, no environmental benefits can be claimed from the Forest Service’s present decision to decommission the route. The entire route should instead remain open until a future management decision can be made involving all relevant landowners.

Under a travel management process such as this one, any decision to close a given motorized route is ostensibly done because it would be beneficial to the environment. When a decision would be inherently ineffective because the Forest lacks jurisdiction to enforce it, thereby negating any

environmental benefits claimed, that is a critical aspect of the problem the Forest should consider. The Forest's complete failure to consider the inherent management challenges with this route in its decision therefore renders that decision arbitrary and capricious, and it should be set aside.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, the Forest failed to satisfy its burden to provide a legally sufficient justification for decommissioning the two segments of NFSR 452 and failed to consider a critical aspect of the problem, namely that it lacks jurisdiction over the full length of this route including an alternate entrance outside of the National Forest. The decision to close it was also based on flawed underlying data from the TAP reports which is contradicted by both the MRS screening criteria and information provided to the Forest in public comments. These legal deficiencies render this decision arbitrary and capricious, and we ask for it to be reversed.

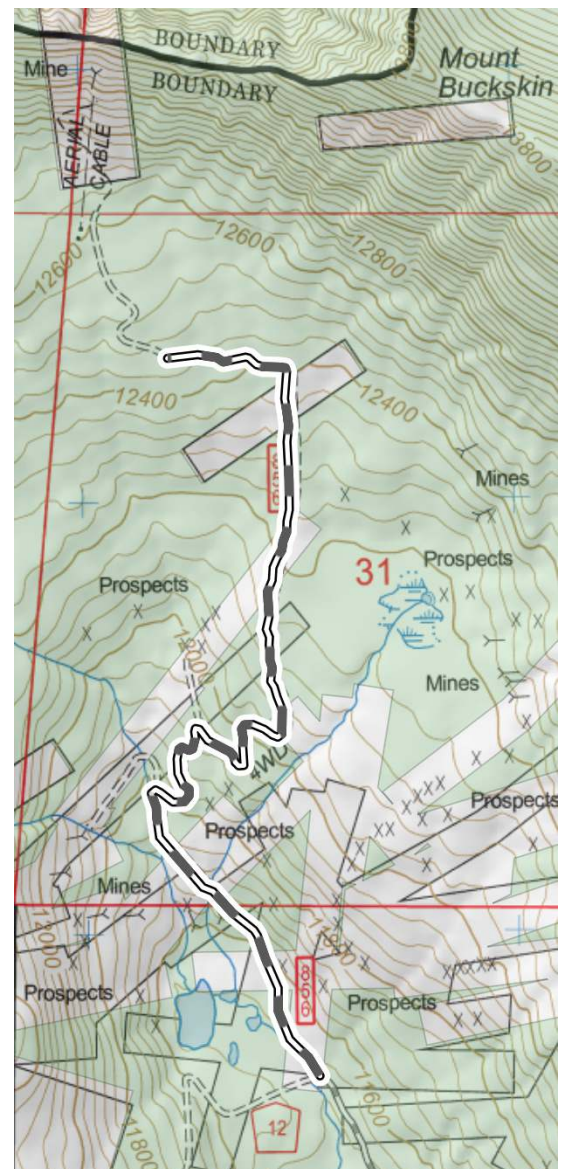
We therefore request that the Reviewing Officers reverse the decision to decommission these two route segments and remand the Draft ROD to the Deciding Official with instructions to modify the final decision to keep these segments open to the public under their current management as roads open to all vehicles. Designating them as trails open to all vehicles would also be acceptable.

OBJECTION #10: CLOSURE OF NFSR 856 PIRATE

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the decommissioning of the entirety of NFSR 856 Pirate, off Mosquito Pass Road, in the Draft ROD. This decision to close this route was unlawfully predetermined by the South Park TAP Addendum, which was based on erroneous mapping data, failed to evaluate this route properly for recreational benefit, and included a recommendation to close it to public use which improperly limited the range of alternatives with respect to this route. As a result, public input on the decision to close this route was effectively precluded in violation of multiple CFRs.

Both Patrick McKay (see comment 176-9) and Marcus Trusty (see comment 2026-13) commented on this route during the DEIS comment period.



B. ANALYSIS

1. Background and flawed TAP evaluation

NFSR 856 Pirate is another spur off Mosquito Pass Road, starting at the base of the pass along County Road 12 near Alma and climbing up the southern flank of Mount Buckskin before dead-ending at some collapsed mining ruins (the bottom of an old aerial tram system). It has been open to public motorized use for many decades, and the current MVUM lists it as a road open to all vehicles.

The route as listed in the MVUM is 1.6 miles long. However, as shown on the 2013 Forest Service raster map, the MVUM route erroneously ends short of the true endpoint of the road. The road continues past the MVUM endpoint for approximately 0.3 miles before disappearing into a talus field and becoming impassable just after the collapsed ruins of the old aerial tram station. The true total distance is approximately 1.9 miles. As can be seen in the following Google Earth imagery, the roadbed is well defined all the way to the tram station, though it does become fainter near the top. There is no defined turn-around point at the point where the MVUM route ends, and motorists typically turn around at the true endpoint at the tram ruins.



The South Park TAP Addendum erroneously rated this road as having low recreational use benefit and high risk and recommended closing it to the public. The TAP recommendation was “Recommend

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	L
Timber Access Benefit	L
Special Use Access Benefit	M
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	M
Botany Risk	H
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	H

eliminating public access and keeping as an SUP road.” While the actual action adopted in the Draft Decision was to decommission it, all action alternatives considered in the FEIS would have resulted in closing it to the public, either by decommissioning it or converting it to a special use permit road.

While this road may seem to have low recreational value when considered in isolation, if considered as part of the broader trail system around Mosquito Pass its recreational value is much higher. When combined with the rest of Mosquito Pass as well as side trails like Cooney Lake, Pirate serves as an important part of a full day adventure exploring the high alpine scenery and mining ruins around Mosquito Pass.

Not only does the road provide access to the aerial tram ruins at its end, there are several short side spurs to other mining ruins lower down. This makes it a wonderful way to explore a number of historical mining sites and appreciate Alma’s rich mining history. It also provides easy hiking access to the top of Mount Buckskin from the end of the road, and has spectacular high alpine views.

Like the rest of the Mosquito Pass area, NFSR 856 is in a 2B management area under the 1984 Forest Plan, which “provides opportunity for outdoor recreation in a roaded natural and rural setting, including developed recreation facilities and year-round motorized and non-motorized recreation.” Motorized recreation is entirely appropriate here, and this road plus others in the area provide a unique high quality motorized recreational experience unlike any other area of the PSI. This strongly favors keeping this road open to public use.

Despite its high recreational value as part of the Mosquito Pass trail system, all of the action alternatives considered in the FEIS closed the road to the public. This action is unjustified by any environmental need and contrary to the strong public demand for access to this road. While this road was rated high for watershed risk, it has only a couple small stream crossings that have not caused any significant harm to the watershed. There is no noticeable trail braiding or resource damage that would justify the high botany risk rating. While there are archaeological sites along the road with the various mining ruins, there is no evidence of any harm to these ruins caused by public access, and most of them have largely collapsed due to natural causes.



Scenic views from FR 856.



Collapsed tram station

The road is in good condition with no significant erosion or washouts, so we do not know why it was rated high for public safety and financial burden risk. While the road does cross several parcels of private property and we are not certain of its exact legal status with regards to easements, it has been shown on maps as a public road for many decades and should be considered a public road unless proven otherwise by landowners. The mining sites along the road are not active and public access does not in any way interfere with the rights of private landowners.

Converting NFSR 856 to a special use road is not justified by any risk or environmental concern. It has a high value to the public for motorized recreation and provides critical access to Alma's mining history and spectacular high alpine scenery. As pointed out in comments by Colorado Parks and Wildlife, it also has a high value for hunting access. Therefore it should have been evaluated as having a much higher recreational use benefit, which should have resulted in it being kept open to public use.

2. *The Forest failed to provide sufficient legal justification for closure*

All of the information above was presented in our comments on the DEIS, as well as numerous comments by other members of the public and Colorado Parks and Wildlife. Unfortunately, the Forest entirely ignored our comments and did not make any changes with respect to it in the Draft ROD, responding in the FEIS with this canned statement:

Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. The process used for TAP ratings is described in the relevant 2009 PSI TAP and 2015 South Park TAR. For example, watersheds risks are defined in the 2009 TAP as when there is a high risk of watershed function and/or aquatic species being affected by the road system, which does not require the route to intersect a stream or wetland. Additionally, the TAR specifically recommends eliminating public access and keeping NSFR 856 as an SUP road. Revisions to the TAP are beyond the scope of this undertaking.

Response to comment 176-9 by Patrick McKay, FEIS Appendix D at D-40. As discussed in Objection #1, this generic statement is legally insufficient to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. That objection applies here as well.

As pointed out above, the TAP ratings for this route are incorrect, giving the management decision recommended by the TAP a flawed factual basis. While revisions to the TAP reports themselves may be beyond the scope of this travel management process, the *decisions* made based upon them are very much in scope. Our comments called for a change in the management decision, not a revision of the TAP documents.

As discussed in Objection #2, the TAP reports were only supposed to *inform* route-specific decisions in the travel management process, not *dictate* them. Public comments received later in the travel management process were also supposed to inform route-specific decisions, and cannot simply be ignored because the TAP data is what it is. When the Forest was made aware through public comments that the data it relied upon to make route-specific decisions is incorrect, it had a responsibility to reevaluate those routes based on the new information it has received, or at least respond to the specific evidence in our comments. In the case of NFSR 856, the Forest failed to do this and therefore violated the Travel Management Rule. See *Idaho Conservation League*, 766 F. Supp. 2d

at 1069 (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

While the Forest did address Mr. McKay’s comment regarding watershed risk, it did so only in a general and exemplary fashion, and did not give any analysis of the watershed risk for *this* specific road. It also stated that this road is being closed primarily because of the TAP recommendation to convert it to a special use permit road (which is not actually being directly followed in the Draft ROD, though the effect of closing it to public use is the same).

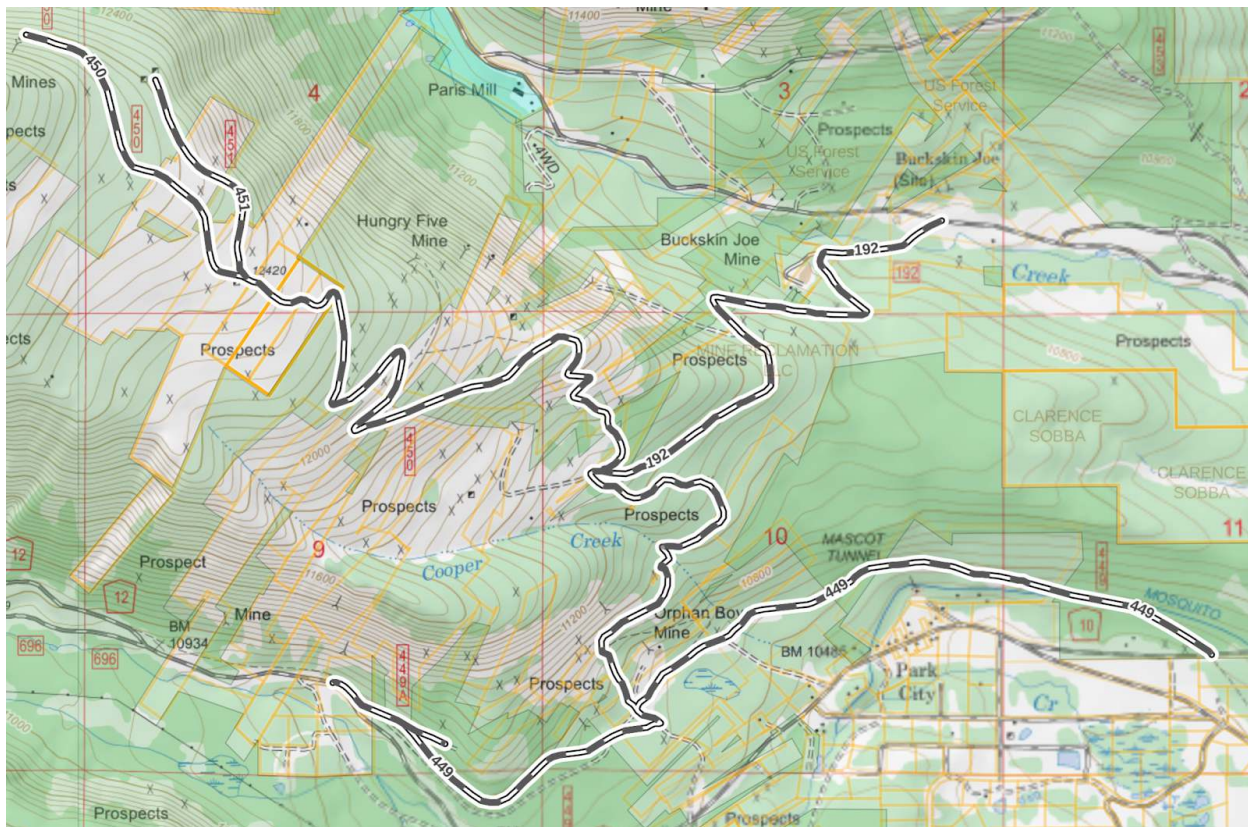
Neither in the original TAP Addendum nor anywhere in the FEIS or response to comments did the Forest explain the reasoning behind the TAP recommendation to close this route to the public. It has therefore failed to sufficiently articulate the connection between the facts found and the decision made as required by the APA. Moreover, all of the points in Objection #2 apply here, as it is clear that the decision to close this road to the public was effectively made during the non-decisional Travel Analysis Process, precluding any opportunity for public input on the actual decision to close it. The conclusory recommendation in the TAP report is merely the unsupported opinion of an agency expert and is not a valid basis for a decision under NEPA. *Great Basin Resource Watch*, 844 F.3d at 1103.

Treating the TAP recommendation as a final agency decision not subject to further evaluation under NEPA violated Forest Service policy and unlawfully limited the range of alternatives considered under this NEPA process, turning all subsequent analysis into simply an after-the-fact rationalization of the decision already made.

C. CONCLUSION AND REQUESTED RESOLUTION

Because of the legally deficient manner in which the decision to close NFSR 856 to the public was made, this decision was arbitrary and capricious, an abuse of agency discretion, and otherwise not in accordance with law. We therefore request that the Reviewing Officer remand the Draft Decision to the Deciding Official with instructions to reverse this closure and leave NFSR 856 open to the public in the final decision as either a road or trail open to all vehicles.

OBJECTION #11: CLOSURE OF THE BUCKSKIN JOE TRAIL SYSTEM (NFSRs 192, 450, AND 451)



A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the closure of NFSRs 192 Tabor, 450 Loveland, and 451 Faro on Loveland Mountain above the town of Alma - all of which are being converted to special use permit roads under the Draft Decision. The closure of these routes will effectively result in the closure of the entire Buckskin Joe trail system (named after a historic mine) that offers extremely valuable opportunities for motorized recreation in the Fairplay and Alma areas, and is enjoyed by locals and visitors alike. It will also effectively privatize and render inaccessible several isolated parcels of Forest Service land for which these routes provide the only access (see Objection #5).

The Forest erred in three ways with the closure of these routes: (1) The TAP scores and recommendations were flawed because of significant mapping errors rendering them invalid; (2) the Forest improperly evaluated these routes for recreational use benefits; and (3) the Forest automatically adopted the flawed TAP recommendations regarding these routes, limiting the selection of alternatives and precluding any effective opportunity for public comment.

Both Patrick McKay (see comment 176-15) and Marcus Trusty (see comment 2026-15) commented on these routes in the DEIS comment period and have standing to object regarding them.

B. ANALYSIS

1. *Background and trail system description*

The Buckskin Joe trail system includes NFSRs 449, 192, 451, and 450, all located on the eastern flank of Loveland Mountain above Alma. This trail system provides motorized access to multiple historic mining ruins as well as an overlook with spectacular views of Mount Bross and the entire Leadville/Alma area. Almost the entire trail system (with the exception of NFSR 449) is proposed to be closed to the public and converted to special use permit roads under the Draft Decision.



View of Mount Bross from overlook.

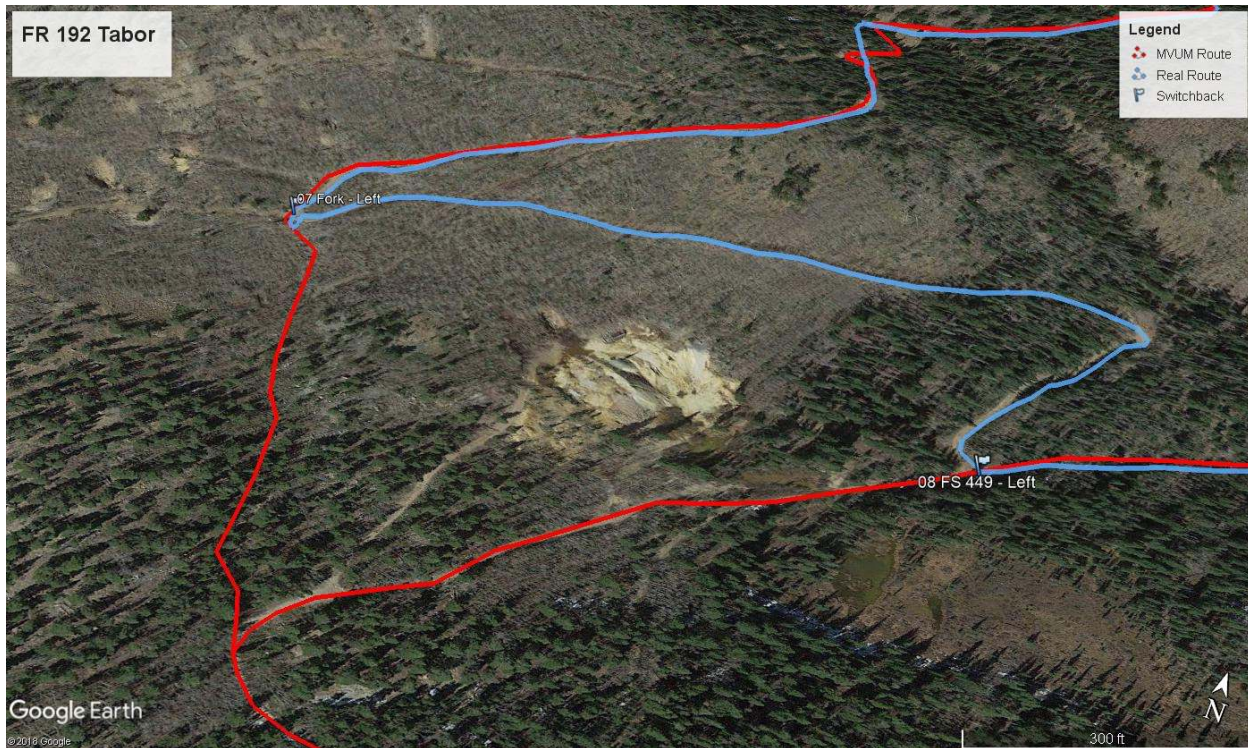
The current MVUM shows a total of approximately 8.1 miles of roads open to public use in this trail system. Of this, 5.8 miles are proposed for closure under the Draft ROD, leaving only 2.33 miles on FR 449 Narrow Gage open to the public (which is the least valuable of any of the routes in this system for motorized recreation). This trail system is the subject of the largest concentrated road closure contemplated in the new travel plan, and would constitute a significant and unacceptable loss of motorized access for the public. It is located in a 2B management area and is clearly visible in the 1984 Forest Plan map. While the Forest is not legally obligated to keep every motorized route in 2B areas open, closing such a large network of existing roads to the public would be contrary to the Forest Plan's intent of providing roaded motorized recreation opportunities in this area.

2. *Significant mapping errors prevented proper evaluation of these routes in the TAP reports and caused inflated risk scores*

All three routes on Loveland Mountain proposed for closure were subject to significant mapping errors carried over from the current MVUMs, which show both NFSRs 192 and 450 entirely in the wrong place for much of their length, show NFSR 451 as a separate route rather than part of NFSR 450, and show a naturally reclaimed spur route as part of NFSR 450 instead. These significant mapping errors were present in maps used for the South Park Ranger District TAP evaluation, and likely contributed to both the incorrect TAP scores and the TAP recommendations to close these three routes to the public and convert them to special use permit roads.

NFSR 192 Tabor is a 2.5 mile ML2 road connecting NFSR 449 and Mosquito Pass Road (CR 12) to CR 8 in the Buckskin Creek drainage. The current MVUM has a significant error in the location of this road. On the southern portion of the road between the junctions with NFSR 449 and NFSR 450, the MVUM shows the road going straight where it actually switch-backs. The junction with NFSR 449 is shown in the completely wrong place, and it is actually about 1000 feet further east. This difference is

shown in the following Google Earth screenshot, with the MVUM route shown in red and the actual road on the ground shown in blue:



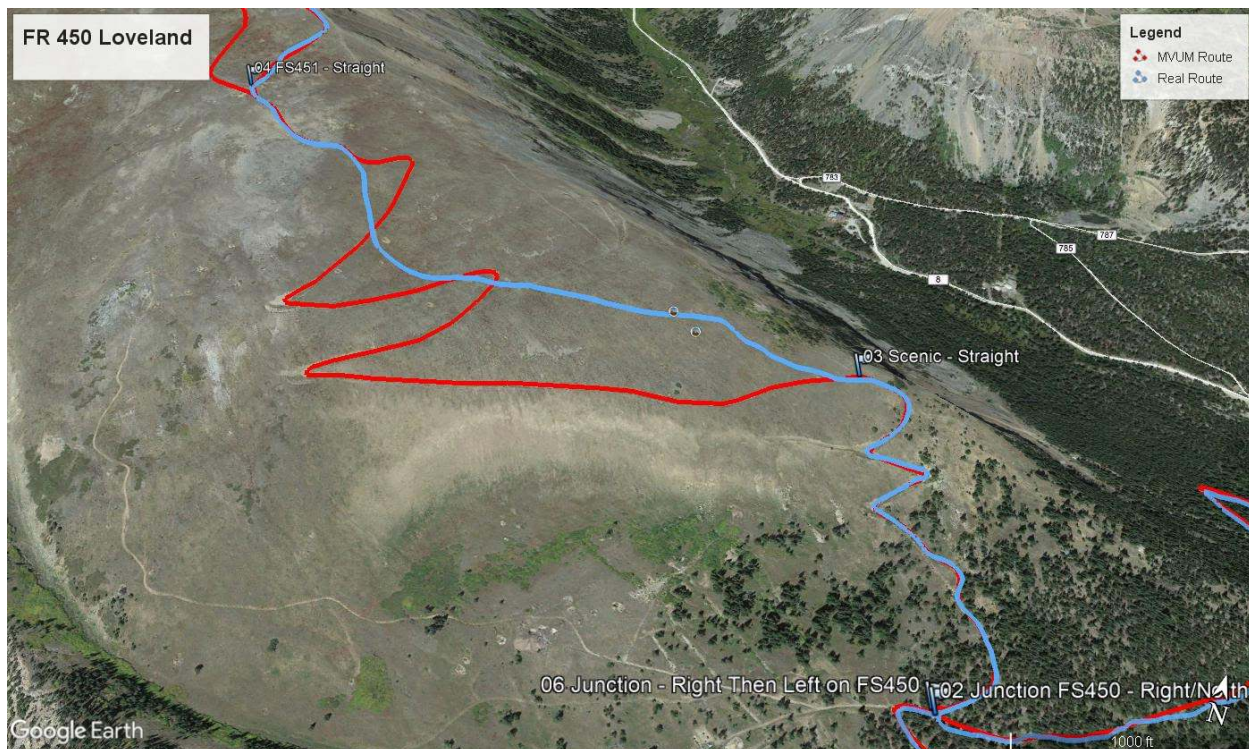
When Mr. McKay explored this route in August 2019, he discovered faint traces of a highly overgrown trail where the map shows this intersection, but it is completely impassable and naturally reclaimed. We can only surmise that the road was re-routed at some point in the past and maps were never updated to reflect this.

This mapping error likely contributed to the erroneous TAP scores for this road. The moderate watershed risk and high public safety / financial burden risk ratings were unjustified, as there are no water crossings on this route and it has a well-defined, well-maintained roadbed in good condition with no signs of road damage. Evaluating the wrong alignment for the road likely caused these risk scores to be artificially inflated.

NFSR 450 Loveland is a 2.8 mile old mining road which climbs Loveland Mountain before dead-ending at some mining ruins at approximately 12,700 feet. **NFSR 451 Faro** is a 0.5 mile road which is designated as a separate route but is actually a continuation of NFSR 450 and is in fact the primary route. It proceeds from the junction with NFSR 450 to a scenic overlook of Mount Bross next to an old tailings pile at around 12,600 feet.

These two routes are extremely confusing as what is shown on the MVUM does not match the conditions on the ground. While the route up Loveland Mountain on NFSR 450 that is shown on the MVUM does exist, it is not the primary route. Most of the path shown on the MVUM is highly overgrown and disused, while a much more defined and well-used route takes a more direct path up the mountain that leaves out most of the narrow switchbacks the MVUM route shows. The Google Earth screenshot

above shows the variance between the real route in blue (GPS track from TrailsOffroad.com) and the MVUM route in red.



At the upper junction, the main route veers right and inexplicably changes to NFSR 451, pictured below.



This well-defined route continues for another half mile to the overlook at the summit:



Back at the junction, the faint remnants of a trail cutting off through the tundra is barely discernible. This is the upper section of NFSR 450:



This segment continues as two tracks in the grass for about a half mile until turning into an increasingly narrow shelf road that quickly becomes too narrow for full-size vehicles. It then dead-ends at some collapsed mine ruins while still on a narrow shelf in a high alpine bowl.



Because this side-spur appears to be a separate route on the ground and is almost entirely naturally reclaimed, it should have been evaluated as a separate route from NFSR 450. Evaluating both segments as one route likely skewed the risk and benefit scores for NFSR 450 dramatically.

Based on how little conditions on the ground match the route shown on maps, we believe it is extremely likely that the TAP Report was based on inaccurate information. Both NFSRs 450 and 451 were rated L/H, with low recreational use benefit and high risk in every risk category. Both routes were recommended for conversion to SUP roads.

The risk ratings for both routes are highly exaggerated, and are quite possibly caused by them being mismapped. Watershed risk is minimal because there are no creeks or rivers anywhere near these roads, nor are there any water crossings. While we acknowledge that roads do not have to have stream crossings in order to have high watershed risk, the Forest has not provided any other explanation for the watershed risk rating here.

The primary risk to watersheds is from sediment loads being carried into streams from roads acting as channels. According to the screening criteria, these roads do not have highly erosive soils, and the fact that they are high on a mountain side nowhere near any streams makes that risk minimal. Leaving these routes open to the public would cause no harm that the mere existence of the roads on the ground would not cause. As special use permit roads, they would not be physically removed from the ground, so there is no significant benefit to that action.

Wildlife risk is also minimal because these roads are naturally inaccessible due to snow during sensitive times in the winter. Botany and public safety / financial burden risks are likely artificially inflated due to the inaccurate mapping. Other than the multiple route splits which are left over from the original mining roads and are not user-created braiding, there is no evidence of off-trail resource damage, and the primary route is in good condition with no obvious erosion or maintenance needs. Archaeology risk is also minimal, as the mining ruins along the route have mostly naturally collapsed and there is no evidence of harm caused by public access.

Because it relied on inaccurate mapping data showing incorrect alignments of NSFRs 192 and 450 and failed to consider the naturally reclaimed portion of NFSR 450 as a separate route segment, the South Park District TAP Addendum failed to properly evaluate the environmental impacts of these routes. It is impossible to properly judge the environmental risks for a route that you don't even know where it is.

Many of the risk scores were likely auto-generated based on GIS data about the surrounding terrain. Therefore inaccurate mapping would have directly caused improper risk scores if, for example, the mapping errors resulted in the route being placed in an area with different erosive soil or vegetation properties, or improperly showed it near a stream. Any decisions made with respect to these routes in the instant travel management process therefore have a flawed factual basis that renders them legally unjustified.

3. The Forest failed to properly evaluate the recreational use benefits of these routes, resulting in an improper TAP recommendation.

The South Park District TAP Addendum also failed to properly evaluate the recreational use benefit of these three roads. It erroneously rated **NFSR 192** as having low recreational use benefit even though it serves four important purposes:

- (1) It provides an alternate motorized route from Mosquito Pass to CR 8 without having to drive through the town of Alma, allowing motorized recreationists to run both Mosquito Pass and the trails around Kite Lake and Mount Bross as a continuous route.
- (2) It provides access to the upper portions of the Buckskin Joe trail system by connecting to NFSR 450.
- (3) It is used for dispersed camping, with several dispersed campsites near the junction of NFSRs 192 and 450.
- (4) It (together with NFSR 450) provides important hunting access to isolated parcels of Forest Service land on the slopes of Loveland Mountain.

Comments by other individuals and entities support these facts. Colorado Parks and Wildlife commented on the importance of this route for hunting access, stating "Roads 192/450- Keep open for hunter access. These roads give the public legal access through private property. If this road is closed there will be a lot of public land that will no longer be accessible to the public." Comment 3194-18, FEIS Appendix D at D-23 - D-24. These important recreational uses demonstrate that NFSR 192 deserved a higher recreational benefit score than low, and this rating was made in error.

The South Park District TAP Addendum also incorrectly rated **NFSRs 450 and 451** as having low recreational use benefit, for two reasons:

- (1) The upper segment of FR 450 after the junction with FR 451 should have been evaluated as a separate route, as it is clearly a separate branch on the ground that is in radically worse shape than the rest of the road and is rarely used.
- (2) The low recreational benefit rating does not appear to take into account the exceptional experience these roads offer for motorized recreation. They provide access to multiple interesting historical mining sites and a highly scenic overlook which provides spectacular views of Mount Bross and the Fairplay valley. Access to this overlook alone would merit a high recreational benefit rating.

Comments by the Mosquito Range Heritage Initiative (also submitted by numerous Fairplay/Alma area locals) discussed the high value of all of these routes for local recreational access:

FSR 192 TABOR and 450 LOVELAND are proposed to be changed to special use permit only and to be decommissioned. These roads are **heavily used by the local community** as both motorized and non-motorized year-round access to the Loveland ridgeline. These are **important connector roads between Buckskin Gulch (CR 8) and Mosquito Gulch (CR 12)** and have been in use for over 100 years as a pass between the two drainages. These roads are very important to our locals and are used for skiing, hiking, hunting, mountain biking, equestrian use, as well as motorized use. FSR 192 and 450 are also important winter trails used by snowmobiles, snow cats, skiers, and for snowshoeing. We recommend these roads be open to ALL USERS.

Comment 3024-2 by Cynthia Cole, FEIS Appendix D at D-82 (emphasis added).

In the case of these routes, the TAP Recommendation coincides with the likely recommendation of the MRS Screening Criteria for L/H roads with low recreational benefit and high special use benefit ratings. If these routes had been given a higher recreational use benefit rating, they likely would have qualified for one of the exceptions in the MRS rubric that would have allowed them to stay open, and they likely would have received different TAP recommendations as well.

The failure of the South Park Ranger District to properly evaluate the recreational use benefits of these routes constituted a critical factual error which shaped the ultimate management outcome for these roads, and in turn caused the decision adopted in the Draft ROD to lack any factual basis.

4. The Forest automatically adopted the flawed TAP recommendations without further analysis or opportunity for public input

All of the mapping errors and incorrect TAP scores discussed above were described in our prior comments during the DEIS comment period. However the Forest dismissed our comments with canned statements such as this:

Corrections to the NFSR 192 alignment were considered but not put forward in this analysis due to the recommendation to convert it to a special use permit only road not open to public use. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping,

MRS screening criteria, and site-specific information. Revision of the TAP/TAR reports is beyond the scope of this undertaking.

Response to comment 176-12 by Patrick McKay, FEIS Appendix D at D-20. In this statement, the Forest acknowledged that NFSR 192 is mismapped, but said that does not matter because it is simply following the TAP recommendation to close it to the public. The Forest likewise dismissed the many other public comments it received about the high value these roads have for both locals and visitors to the area, using similar language.

In response to comment 3180-1 by local residents John and Lisa Kunst, stating that NFSR 450 and the connecting road NFSR 192 were both highly popular routes used by locals to cross between the Buckskin Gulch and Mosquito Gulch drainages and to access the Loveland Mountain ridgeline, and requesting to keep those routes open, the Forest replied simply: “Route 450 conversion to a special use permit road is a management recommendation provided in the TAP, no further change made.” FEIS Appendix D at D-93 (emphasis added).

The Forest gave a similar canned response to local resident Catherine Starnes, who said, “This is a special, safe and out of the way area to take our families and enjoy our own backyards. It would be DEVASTATING to the community to lose these areas. I beg you to consider to keep these areas open to the public.” Comment 3032-1, FEIS Appendix D at D-82. The message to each of these residents was clear: it was too late for their comments to have any impact, as the decision to close them had been made for years.

From these responses, it is clear that the Forest had already made the decision to close each of these routes to the public in the supposedly non-decisional TAP process, as discussed in Objection #2. We incorporate all of the points of that objection here with respect to these routes.

To reiterate however, the inadequate public involvement in the creation of the South Park TAP Addendum (which received only two public comments), and the fact that the Forest automatically adopted the recommendations in that addendum in this travel management decision; precluded any effective opportunity for public comment on the actual decision to *designate* these routes as closed to public use, as required by 36 C.F.R. § 212.52(a):

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

While revisions to the TAP reports themselves may be beyond the scope of this travel management process, the designation *decisions* made based upon them are very much in scope. By effectively making the designation decisions for these routes in the predecisional travel analysis process, the Forest violated 36 C.F.R. § 212.52(a) and unlawfully limited the range of alternatives considered in the travel management process.

By the time the alternatives for this travel management process were formulated, every one of the action alternatives considered closing these routes to the public (with the exception of NFSR 192, which would have been kept open under Alternative E). The No Action Alternative would have kept

them open, but as typical in NEPA processes, that alternative received no serious consideration by the agency, and the Forest did not incorporate any of its actions into the Draft Decision with respect to these routes even though that was requested in numerous public comments.

As discussed above, the low recreational use benefit rating was likely dispositive for the TAP recommendation to convert these routes to special use permit roads. The recreational benefit of these roads was therefore a crucial aspect of the problem the Forest needed to consider. The Forest's failure to make any changes to the designations of these routes in response to public comments highlighting the recreational value of these routes indicates it "entirely failed to consider an important aspect of the problem", rendering the decision to close this route arbitrary and capricious per the holding in *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43.

As discussed in Objection #2 the TAP reports were only supposed to *inform* route-specific decisions in the travel management process, not *dictate* them. Public comments received later in the travel management process were also supposed to inform route-specific decisions, and cannot simply be ignored because the TAP data is what it is. The conclusory recommendations in the TAP report are merely the unsupported opinion of an agency expert and are not valid as the sole basis for a decision under NEPA. *Great Basin Resource Watch*, 844 F.3d at 1103.

When the Forest was made aware through public comments that the data it relied upon to make route-specific decisions is incorrect, it had a responsibility to reevaluate those routes based on the new information it has received, or at least respond to the specific evidence in those comments. In the case of these routes, the Forest failed to do this and therefore violated the Travel Management Rule. See *Idaho Conservation League*, 766 F. Supp. 2d at 1069 ("In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.")

The numerous public comments the Forest received stating that these roads have extremely high value to the local community should have caused the Forest to realize it had improperly evaluated the recreational use benefit of these roads and reconsider the decision to close them. They also should have caused the Forest to evaluate the significant impacts the closure of these routes would have on the communities of Fairplay and Alma. All three routes are listed in the MRS Screening Criteria as being within three miles of a gateway community. Closing an entire trail system the residents of that community have relied on for decades has significant impacts the Forest completely failed to consider.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons discussed above, the Forest's decision to close NFSRs 192, 450, and 451 to public use and convert them to special use permit roads lacks any factual basis and runs contrary to the evidence before the agency. In failing to properly consider the high recreational benefits of these roads and the impacts their closure would have on the local communities of Fairplay and Alma, the Forest entirely failed to consider an important aspect of the problem. By making the decision to close these routes during the non-decisional travel analysis process before the formal travel management process under NEPA began, the Forest precluded any effective public involvement in this decision, causing all subsequent analysis to be merely an after-the-fact rationalization of a decision already made.

Each of these failings constitutes reversible error and renders the decision to close these routes arbitrary, capricious, and otherwise not in accordance with law under the APA. We therefore request that the Reviewing Officer reverse these decisions and remand the Draft ROD to the Deciding Official with instructions to modify the final decision to leave NFSRs 192, 450, and 451 open to public motorized use as either roads or trails open to all vehicles.

OBJECTION #12: CLOSURE OF NFSR 285 PRIVATEER

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the Draft Decision's conversion to a special use permit road of NFSR 285 Privateer from mileposts 0.26 - 1. This is a short spur road on the side of Mount Bross which leads to an important scenic overlook into the Buckskin Gulch drainage and across to Loveland Mountain. Both Patrick McKay (comment 176-19) and Marcus Trusty (comment 2026-7) commented on this route in the DEIS comment period.

B. ANALYSIS

NFSR 285 Privateer provides access to a highly scenic overlook at the crest of the ridge on the southern flank of Mount Bross, with spectacular views down into the Buckskin Creek valley and across to Loveland Mountain. It also has a number of interesting historical mining sites. This overlook is pictured in the Google Earth screenshot below.



Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	M
Fire/Fuels Access Benefit	L
Timber Access Benefit	L
Special Use Access Benefit	H
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	M
Botany Risk	H
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	H

The South Park District TAP Addendum rated this road as L/H overall, with moderate recreational use benefit. There was no specific recommendation regarding it in the TAP report, and the recommendation to convert it to a special use permit road appears to be the result of the MRS Screening Criteria. Even though the MRS Rubric was properly applied to this route with the TAP scores it has, we believe the recreational use benefit and risk scores in the TAP report were given in error, and the closure of this route should be reconsidered.

According to the South Park Ranger District TAP Addendum's description of recreational use benefit scores:

A High (H) rating was assigned to roads that are the primary access routes to developed recreation sites/facilities, or primary access routes to popular dispersed recreation areas, or the road has high value as a recreation experience.

A Moderate (M) rating was assigned to roads that are the primary access routes to other dispersed recreation areas.

South Park District TAP Addendum at 5-1.

Even though this is a fairly short route that may not seem to be incredibly significant by itself, when considered with the rest of the roads on Mount Bross it makes for a scenic side trip and an important part of a full day recreational experience on Mount Bross. The scenic overlook at the end of this route also merited a higher recreational use benefit rating than it received. This overlook alone gives the road high value as a recreational experience, and there are few other trails in the Mosquito Range that offer a comparable view of the entire Fairplay and Alma areas. The ones that do (ie. NFSR 450) are also being closed by this travel plan.



Parking area at the viewpoint

The high watershed, botany, and public safety / financial burden risk ratings are also not justified, as there are no water crossings on the route, and it has a well-defined stable roadbed with no braiding or off-trail issues. While we acknowledge that a road does not have to have water crossings to have high watershed risk, the primary risk to watersheds is from sediment loads being carried into streams from roads acting as channels. According to the screening criteria, this road does not have highly erosive soils, and the fact that this road is high on a mountain side nowhere near any streams makes that risk minimal. Leaving this route open to the public would cause no harm that the mere existence of the road on the ground would not cause. As a special use permit road, it would not be physically removed from the ground, so there is no significant benefit to that action.

The South Park TAP Addendum therefore gave this road excessively high scores for watershed, botany, and public safety risk, which at most should have been 'moderate', and an inappropriately low recreational use benefit rating, which should have been 'high.' This road should have been evaluated as a L/L road or even a H/L road when recreational benefit is properly considered. This would have produced a different outcome from the MRS Screen Criteria which would have led to it being kept open to the public.

When presented with the erroneous TAP ratings for this route in our comments, the Forest dismissed these concerns with a boilerplate response:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Route management recommendations are based on TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information.

Response to comment 176-19 by Patrick McKay, FEIS Appendix D at D-137.

This statement fails to actually explain why this road was closed and is insufficient to articulate the connection between the facts found and the decision made (see Objection #1). It is likely the decision for this route was based on the MRS Screening Criteria, which in turn were based on the TAP scores. While revisions to the TAP reports themselves may be beyond the scope of this travel management process, the *decisions* which resulted from them are not. As discussed in Objection #2 the TAP reports were only supposed to *inform* route-specific decisions in the travel management process, not *dictate* them. Public comments received later in the travel management process were also supposed to inform route-specific decisions, and cannot simply be ignored because the TAP data is what it is.

When the Forest was made aware through public comments that the data it relied upon to make route-specific decisions is incorrect, it had a responsibility to reevaluate those routes based on the new information it has received, or at least respond to the specific evidence in our comments. In the case of NFSR 285 the Forest failed to do this and therefore violated the Travel Management Rule. *See Idaho Conservation League*, 766 F. Supp. 2d at 1069 (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

The Forest received multiple comments arguing that this route has both a higher recreational value and lower environmental risks than evaluated in the MRS Criteria, yet it failed to even consider changes to the management recommendation in the Draft Decision.

As discussed in Objection #2, the outcome for this route was effectively predetermined by the supposedly non-decisional travel analysis process, precluding any effective opportunity for public comment on the designation decision in this travel management process. All of the points made in Objection #2 apply here as well. This management decision was therefore arbitrary and capricious, or otherwise not in accordance with law.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, we believe the decision to convert this segment of NFSR 285 to a special use permit road was made in error, was arbitrary and capricious, and is in violation of law. We therefore request that the Reviewing Officer reverse this decision and remand the Draft ROD to the Deciding Official with instructions to leave this route open to public use under its current management as a road open to all vehicles.

OBJECTION #13: CLOSURE OF BEAVER RIDGE TRAILS (NFSRs 183 & 184)

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

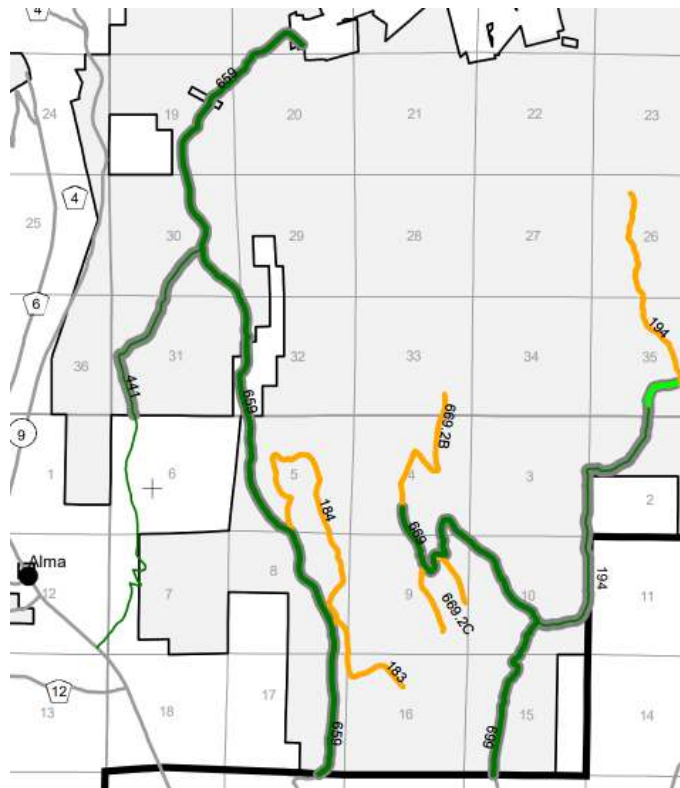
We object to the proposed action in the Draft ROD of decommissioning NSFR 183 Bear Park and NSFR 184 Ridge. These two routes near Fairplay comprise the Beaver Ridge trail system and provide extremely valuable opportunities for motorized recreation in this area. They have significant value to the local community and are used in mountain bike and cross country ski events. Patrick McKay commented on these routes during the DEIS comment period (see comment 176-24).

B. ANALYSIS

NFSR 184 Ridge and NFSR 183 Bear Park are proposed to be decommissioned under the Draft ROD. Together these roads form an approximately 3.6 mile loop off of NFSR 659 Beaver Creek. While NFSR 659 is an ML3 dirt road that is scenic but has no technical challenge, NFSRs 184 and 183 are more challenging ML2 roads which offer a much better experience for offroad vehicles. They are extremely scenic and great fall color trails, as there are several aspen groves in the area as well as willows along Beaver Creek. These roads also provide access to several historic mining ruins, multiple dispersed camping opportunities, and a bristlecone pine grove.

Both of these roads have a high recreational benefit rating in the South Park TAP Addendum, which indicates they are both important routes for motorized recreation that should be kept open to the public. NFSR 184 especially provides a high quality loop opportunity for full size vehicles, which the chosen Alternative C purports to value. As shown in satellite imagery, it also appears to provide access to a hiking route up Mount Silverheels via a closed four-wheel-drive road that intersects NFSR 184 about a fourth of the way around the loop. It is also used by local groups for mountain biking and cross country ski events under longstanding special use permits.

Despite these important recreational benefits, it is slated to be decommissioned under all action



Historic mining site along NFSR 184.

alternatives considered. This is unacceptable, and the range of alternatives considered in the FEIS was insufficient with regard to these two roads.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	H
Fire/Fuels Access Benefit	M
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	M
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	H

NFSR 184 TAP scores

While the TAP reports made no specific recommendation regarding either of these roads, we can only surmise that the proposed closure is because of their high watershed and public safety / financial burden risk ratings. There are two significant water crossings on NFSR 184, and motorists must cross at least one of them to access NFSR 183. Both of these water crossings are in good condition and well-maintained. They have been open to the public for decades and they pose no significant risk to the watershed. Any risk of these water crossings channeling sediment would be present by virtue of the mere existence of the road, regardless of whether or not it is open to the public.



South water crossing on NFSR 184.



North water crossing on NFSR 184.

We also see no reason why these roads were rated high for public safety / financial burden risk. They both appear to be in good condition with no significant maintenance needs. On a recent visit in September 2020, Patrick McKay observed that significant maintenance work had recently been done hardening the closure at the end of NSFR 183, where several unauthorized trails had been thoroughly

blocked off, probably during the work project by Wildlands Restoration Volunteers that same day (see picture below). Any needed maintenance work to prevent environmental impacts can be and has been effectively done by community volunteers at no cost to the Forest Service.



Hardened closure at the end of NFSR 183

Given the extremely high recreational benefit in providing a high quality scenic loop opportunity, dispersed camping, and access to historical mining sites, any risks these roads pose do not justify closing them to the public. Other mitigation strategies should be employed instead including seasonal closures, hardening water crossings, installing water bars, and installing fencing.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: H/H

Benefits

Category	Score
Recreational Use Benefit	H
Fire/Fuels Access Benefit	M
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	M

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	M
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	H

NFSR 183 TAP scores

The proposed action of decommissioning these roads is simply not appropriate for roads with significant recreational benefits under the Minimum Road System rubric described in the FEIS, indicating that it was either misapplied or overridden by arbitrary ranger district discretion as discussed in Objection #3. NFSR 183 is a H/H road, while NFSR 184 is L/H road. The default recommendation for NFSR 184 would be decommissioning, while NFSR 183 should have been kept open to the public by default as a strong candidate for inclusion in the MRS. For both of these roads, the high recreational use benefit ratings should have qualified them for exceptions or mitigation measures that would have resulted in conversion to trails open to all vehicles instead.

For High Benefit / High Risk roads like NFSR 183, converting a road to a motorized trail was one of the management recommendations to minimize risk for high watershed risk, and for high financial burden/public health and safety risk on ML2 roads. This exception applies perfectly here. For roads in the Low Benefit / High Risk category like NFSR 184, there were two separate exceptions depending on whether the recreational benefit rating was high or moderate:

- Recreational use (high benefit TAP rating) – Management recommendation is Convert to trail open to all vehicles.
- ...
- Recreational use (moderate benefit TAP rating) – If the road has potential to provide a loop or connection to other trails open to public motor vehicle use, then the management recommendation is Convert to trail open to all vehicles.

FEIS at 2-8, 2-9. The higher ranked special use exception is not applicable here, so NFSR 184 should have qualified for the high recreational benefit exception above. Even with a moderate recreational benefit score, it should have qualified for that exception because it provides a loop opportunity with NFSR 659.

The Forest's failure to properly apply the MRS Screening Criteria to these two routes to reach a recommendation for both of conversion to a trail open to all vehicles is inexcusable and unjustified. For unknown reasons, that management action was not even considered in a single alternative for either of these routes. NFSR 184 was decommissioned in all action alternatives in the FEIS, while NFSR 183 would have been converted to a road open to highway legal vehicles only in Alternative D, and closed in all other action alternatives.

Only Alternative A (the No Action Alternative) would have kept both open. As typical in a NEPA process, the No Action Alternative clearly received no serious consideration by the Forest, nor were any of its actions regarding these routes incorporated into the Draft Decision despite numerous public comments calling for these routes to be kept open to the public.

In response to our comments pointing out the above errors in application of the screening criteria, the Forest dismissed these concerns with the following statement:

Impacts on road management and recreation are respectively analyzed in Chapter 3 of the EIS (Transportation and Recreation) or the relevant specialist report. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. The process used for TAP ratings is described in the

relevant 2009 PSI TAP and 2015 South Park TAR. Revisions to the TAP are beyond the scope of this undertaking. Additionally, Alternative D proposes to keep NSFR 183 open to public motor vehicle use.

Response to comment 176-24 by Patrick McKay, FEIS Appendix D at D-39. This response completely failed to articulate the connection between the facts found and the decision made with respect to these routes as required by the APA (see Objection #1), and also failed to explain the clear discrepancy between the proper management outcome regarding these routes produced by the MRS rubric and the chosen actions under the Preferred Alternative.

While revisions to the TAP documents themselves may be beyond the scope of this undertaking, the *decisions* made using the TAP ratings are very much in scope. The Forest's failure to properly apply the MRS screening criteria using those scores, or to at least explain why the MRS rubric was not used and another management action was chosen, constitutes clear reversible error.

The complete failure of the Forest to consider public comments on the high importance of these routes to the local community also shows the Forest failed to consider a key aspect of the problem and violated both the NEPA and the Travel Management Rule. *See Idaho Conservation League*, 766 F. Supp. 2d at 1069 (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

In comment 3135-3, local Jennifer Gannon wrote:

FSR 184 RIDGE road in Beaver Creek is proposed to be decommissioned. MRHI currently holds a special use permit to use this road for our annual mountain bike and cross country ski events. This is a very important trail for our local community and is heavily used by both the motorized and non-motorized community. We recommend this road be open to All USERS. We understand that this road crosses Beaver Creek in two locations and recommend that these crossings are partially hardened to prevent trail widening and resource damage. As an alternative please consider conversion to a non-motorized trail rather than full decommissioning.

FEIS Appendix D at D-6. This comment demonstrated the extremely high value these two connected routes have for both motorized and non-motorized uses by the local community. The Forest responded:

Additional information related to allowed nonmotorized uses on routes closed to motor vehicle use incorporated in the EIS. Changes to motorized route designations are not intended to affect permitted nonmotorized activities. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. Access for administrative uses alone does not warrant conversion of a route to administrative or special use permit route.

Id. While the Forest clarified that non-motorized permitted uses will still be allowed on the route, it failed to acknowledge that the entire purpose of decommissioning a route is to allow it to be restored to a natural state--either by being naturally reclaimed over time or being mechanically recontoured and obliterated from the ground. If these routes are fully restored as inherently intended by decommissioning, they will no longer be available for either motorized or non-motorized uses.

Conversely, if they are left on the ground and continue to be heavily used for non-motorized uses, the environmental benefits claimed from decommissioning will not occur. Given that the stream crossings and watershed risk were likely key reasons for their closure, if the routes are not removed from the ground, they will remain hydrologically connected to Beaver Creek. They will continue to act as conduits for sediment loads, and there will have been no effective mitigation of the watershed risk.

In the latter case, while the action chosen may be labeled as decommissioning, what will actually have been accomplished is simply converting two highly valued motorized routes into non-motorized trails. As discussed in Objection #4, conversion of a motorized route to a non-motorized trail is inherently unfair to motorized users, treating motorized recreation as an illegitimate use of National Forest lands inferior to non-motorized use, contrary to the mandate of Travel Management Rule.

Ultimately, the Forest completely failed to justify its decision to decommission these two routes, either in the text of the FEIS and Draft ROD, or in the responses to public comments. Instead it simply stated in generic terms that route-specific decisions are a combination of the TAP scores, MRS Screening Criteria, and undefined “route-specific information.”

Given that the management of these routes is contrary to the outcome specified by the MRS Screening Criteria, it is likely these are routes that had their outcome changed by the arbitrary decisions of the ranger district staff, substituting their personal opinions about the proper management of these routes for the scientific outcome of the MRS rubric. As discussed at length in Objections #1 and #3, the undisclosed “expert opinion” of agency staff is an insufficient basis to justify the closure of important motorized routes that all other evidence before the agency indicates should be kept open. A “bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103.

C. CONCLUSION AND REQUESTED RESOLUTION

As discussed above, the Forest Service completely failed to justify its decision to decommission NFSRs 183 and 184 instead of converting them to trails open to all vehicles as recommended by the MRS Screening Criteria. The agency failed to adequately consider or respond to public comments describing their extreme importance to the local community and visitors to the Fairplay area alike.

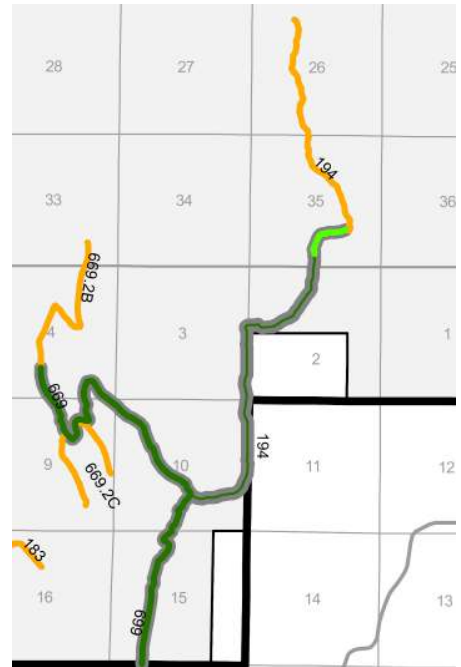
The closure of these routes is another example of the consistent pattern of bias against motorized recreation shown by the South Park Ranger District which resulted in more than twice as many route closures there as in any other district. The decisions with respect to these routes are simply based on the undisclosed “expert opinions” of district staff and are unsupported by scientific analysis. They are therefore arbitrary, capricious, an abuse of discretion, and not in accordance with law and fail to satisfy the requirements of the APA.

Accordingly, we request that the Reviewing Officer reverse these closure decisions and remand the Draft ROD to the Deciding Official with instructions to leave NFSRs 183 and 184 open to the public, either with their current management as roads open to all vehicles or by converting them to trails open to all vehicles.

OBJECTION #14: CLOSURE OF THE END OF NFSR 194 TROUT CREEK

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the action in the Draft Decision of decommissioning the last 1.83 miles (mileposts 2.9 - 4.73) of NFSR 194 Trout Creek, north of Fairplay. This route segment has extremely high value for motorized recreation and hunting access to Game Management Unit 500 and the Silverheels Roadless Area. It is proposed for decommissioning solely because of the arbitrary recommendation of the South Park Ranger District staff, contrary to the outcome specified Minimum Road System Screening Criteria and contrary to extremely high public demand for this full route to be kept open. Patrick McKay commented on this route in comment 176-28.



B. ANALYSIS

1. *Background and Route Description*

NFSR 194 Trout Creek provides a scenic drive up the Trout Creek drainage with numerous dispersed campsites popular with hunters in the fall. It is adjacent to the Silverheels Roadless Area and provides the only access to the drainage between Mount Silverheels and Little Baldy Mountain. It provides crucial access for hunters to Game Management Unit 500, as well as access to the Trout Creek hiking trail (NFST 614). It would also be possible to hike to the peak of Mount Silverheels (a 13'er) from the end of the road. Most of the entire route is in thick aspen groves, so it provides incredible fall color viewing. It also provides access to the ruins of a historical settlement site with several ruined cabins at the end of the route.

This travel management process analysed NFSR 194 in three separate segments. The first 2.55 miles of NFSR 194 is proposed under the Draft Decision to have a seasonal closure added but is otherwise left as a road open to all vehicles. The middle 0.35 miles is proposed to be converted to a trail open to all vehicles with an added seasonal closure and reinforced stream crossings. The last 1.84 miles of NFSR 194 between mileposts 2.9 and 4.73 is proposed to be decommissioned. Additionally, neither the current MVUM nor the GIS data provided by the Forest Service for this process shows the last 0.2 miles of the route to the existing signed and barricaded closure point at 39.332789, -105.972628.

The management of this route frankly makes no sense. Splitting the route into three separate segments was arbitrary and contrary to how the route was analyzed in the South Park TAP Addendum, which analyzed the entire route as one segment. Treating the middle 0.35 miles (which will become the new end) as a separate segment and converting it to a trail open to all vehicles while leaving the rest of the route as a road is particularly nonsensical, though we have no objection to that per se. In fact, we believe the best management option would be to convert the entire route, including the end segment, to a trail open to all vehicles. But it does underscore the arbitrary treatment of this route.

NFSR 194 begins at the junction with NFSR 669 Crooked Creek. Most of the first segment (0 - 2.55 miles) runs adjacent to a fence line for private property on the edge of the National Forest. After rounding the corner of the private property, it emerges from dense aspen forest into a long meadow which hosts multiple large dispersed campsites that, on a recent visit in September 2020, appear to be used as basecamps by hunters. The middle 0.35 mile segment is simply the portion rounding a corner along the tree line and entering the Trout Creek drainage, ending at the crossing of Trout Creek (pictured below).

South end of water crossing



North end of water crossing

The third segment (2.9 - 4.73 miles) that is proposed for decommissioning begins at the crossing of Trout Creek. The pictures above show both ends of this water crossing. While this crossing is fairly long and runs for approximately 200 feet in the streambed, it is a hardened crossing with a rocky bottom, with minimal risk of vehicles stirring up sediment.

From there, the road continues on a well-defined but noticeably rougher and more challenging roadbed through a series of meadows and forests (mostly aspen groves). The road gets rockier and there are some places with minor rutting, but no serious resource damage. There are several dispersed campsites along it, including one with a particularly great view (right center) just before the second crossing of Trout Creek. This crossing (right bottom) is barely a vehicle length wide and has a rocky bottom so there are no sediment concerns.

After crossing back over the creek, the route continues through a short section where the original trail washed out but there is a bypass around the washout. This section (pictured below) is the only part of the road that has any maintenance or resource concerns, but could easily be mitigated with some volunteer maintenance work to fill in the washout and block off the bypass.

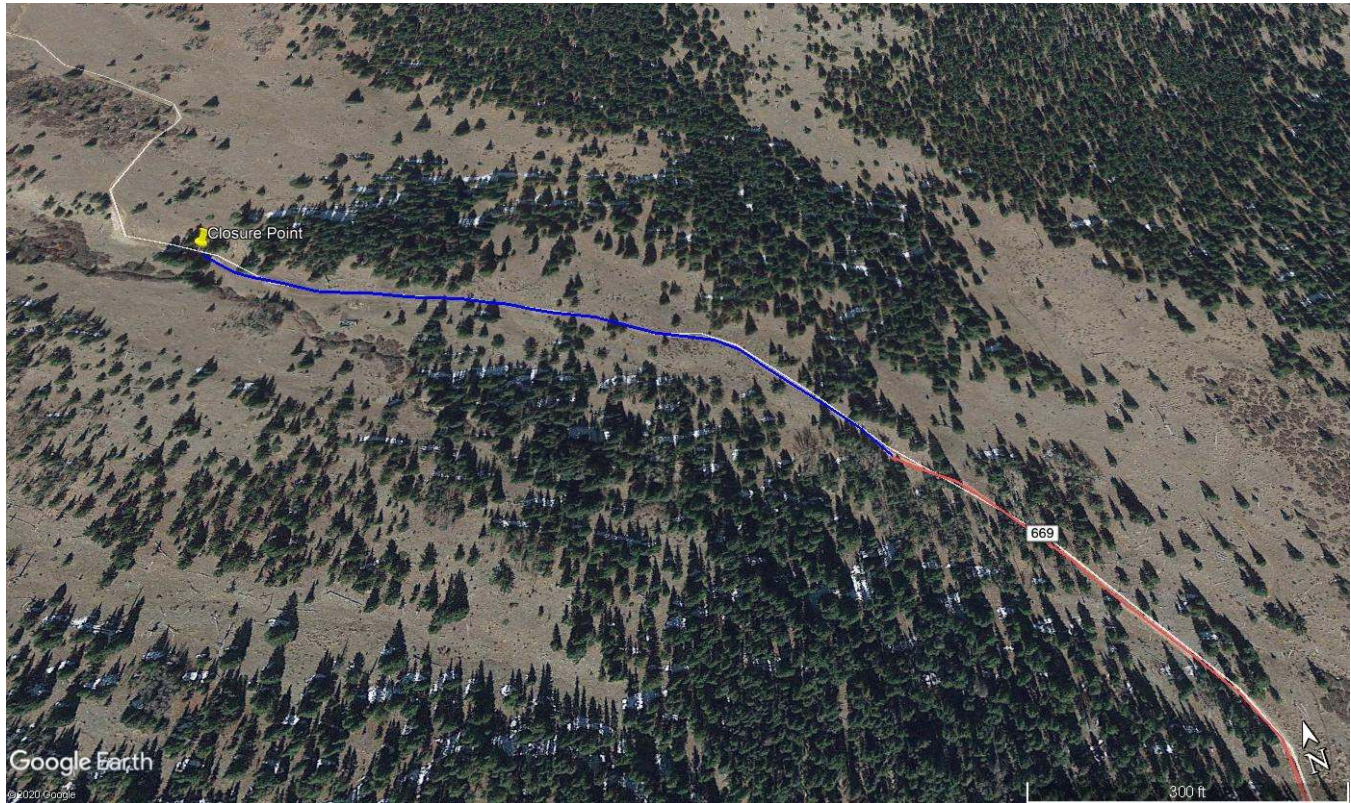




From there, the road continues through another patch of forest until it comes out in an open meadow where it ends at a strategically placed grove of trees with a signed and marked barrier (pictured below).



Here there is a slight mapping error. The MVUM shows the route ending approximately 0.2 miles earlier right where it enters the meadow. But it is signed and barricaded on the ground as ending at 39.332789, -105.972628. As shown in the Google Earth imagery below, the red line indicates the MVUM route, and the blue line indicates the omitted segment to the closure point on the ground.



The closure point is technically just inside of the Silverheels Roadless Area. While this could be problematic if this route is designated as a road, if it was converted to a trail open to all vehicles this would present no problem, as the Colorado Roadless Rule allows motorized trails and has no limitations on width or allowed vehicle classes.

The meadow where the road ends (pictured right) appears to be the site of an old settlement, and there are several ruined cabins scattered around it. It is also a highly scenic place for camping, and is often used by hunters and others seeking a quiet out of the way place to camp in a scenic location.



2. Closure not justified by MRS Screening Criteria

Notably, the decision to decommission the third segment of NFSR 194 does not come from either the MRS Screening Criteria or even the TAP report recommendation (of which there was none), but is stated in the responses to public comments to be based solely on the recommendation of the ranger district. While this is discussed thoroughly below, it is important to understand that chosen action is directly contrary to the action recommended by the scientific MRS Screening Process.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: H/H

Benefits

Category	Score
Recreational Use Benefit	H
Fire/Fuels Access Benefit	H
Timber Access Benefit	M
Special Use Access Benefit	L
Resource Management/Range Access Benefit	H

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	H

All of NFSR 194 from mile 0 to 4.99 (slightly longer than the route listed in the tabular and GIS data for the travel management process) was evaluated in the South Park TAP addendum as a single route. It was given an overall H/H rating, with high recreational use and fire access benefits, and high watershed, wildlife, and public health and safety / financial burden risks. Based on the description of the route above, we believe the benefits are accurate, while the risks are possibly exaggerated.

According to the TAP report, “A High (H) [Recreational Use Benefit] rating was assigned to roads that are the primary access routes to developed recreation sites/facilities, or primary access routes to popular dispersed recreation areas, or the road has high value as a recreation experience.” South Park District TAP Addendum at 5-1.

As the sole access route to the drainage on the eastern flank of Mount Silverheels and Game Management Unit 500, this route meets that description. It also has a high value as a recreational experience, based on its moderate technical four-wheel-driving challenges (only on the last segment--the rest is rated easy), spectacular dispersed camping opportunities, critical hunting access, fall color viewing, and hiking access to the area around Mount Silverheels.

As a High Benefit / High Risk road, NFSR 194 is considered a strong candidate for the Minimum Road System as described by the MRS rubric in the FEIS. High Benefit / High Risk roads are considered good candidates for the MRS with minimization or mitigation measures applied to reduce resource risk. These mitigation measures are applied cumulatively, not exclusively. Converting a road to a motorized trail is one of the management recommendations to minimize both high watershed risk and high financial burden/public health and safety risk on ML2 roads. For example, as a mitigation for high public health and safety risk, the FEIS states, “If the objective maintenance level score is ML 2 and the

recreational use benefit rating is moderate or high, add management recommendation of Convert to trail open to all vehicles.” FEIS at 2-8.

This recommendation is ideal here. NFSR 194 has both high watershed and public safety/financial burden risks. Though the latter risk category actually has two separate risks combined, the risk here is likely financial burden, as this route is on a flat valley floor and does not pose any particular safety risks such as those associated with shelf roads. Converting a road to a motorized trail reduces the maintenance standards a route is subject to and also qualifies it for maintenance grants from the Colorado Parks and Wildlife OHV fund. Wildlife risk can be mitigated by adding a seasonal closure, which is already being done for the first half of this route.

Combined with a recommendation to harden water crossings and install fencing as necessary to mitigate watershed risks, the ideal management outcome for this entire route under the MRS Screening criteria would be to convert it to a trail open to all vehicles, not decommission part of it. If the scientific analysis in the MRS Screening Process had actually been applied to this route, this is the management outcome it would likely have produced, and the entire route would have been kept open to public motorized use.

3. Arbitrary ranger opinion unlawfully decided the management outcome for this route

As discussed in Objections #1 and 3, routes in the Preferred Alternative C were subject to a site-specific screening process by ranger district staff which allowed them to override the MRS Screening Process outcome and specify a different preferred management option for individual routes. The FEIS describes this process:

For Alternative C, PSI staff reviewed on a site-by-site basis the changes to route status indicated by the MRS screening process. The purpose of the review was to be sure that any status changes would still ensure access to private parcels and facilities, correct errors in mapping, and address site-specific constraints. Changes that did not meet these needs were adjusted, for example to maintain a segment as a road instead of converting it to a trail.

This final screening resulted in some management for segments proposed under Alternative C deviating from the recommendations defined by the MRS; however, the changes remain consistent with the aim and emphasis of the alternative.

FEIS at 2-6. For H/H roads like NFSR 194, the FEIS specifically notes:

As described previously, the MRS management recommendations were subject to a further site-specific analysis for Alternative C. This could result in differing management for road status changes.

FEIS at 2-8.

Unlike most roads in this situation for which we have had to deduce (based on the mismatch between the likely MRS outcome and the action chosen) whether this was the case, the Forest outright admitted in response to public comments that the decision to close the third segment of NFSR 194 was based solely on the ranger district recommendation. In response to comment 176-28 by Patrick McKay, the Forest wrote:

Impacts on road management, recreation, watersheds, wildlife and public safety are respectively analyzed in Chapter 3 of the EIS (Transportation; Recreation; Soils and Hydrology; Biological Resources; and Social Interests, Economics, and Environmental Justice. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. **Specific recommendations for management of NSFR 194 Trout Creek were provided by the ranger district.**

FEIS Appendix D at D-40 (emphasis added). While the FEIS described these ranger district recommendations as applying only to Alternative C, in the case of NSFR 194 that recommendation appears to have been applied to *all* of the action alternatives, as the third segment is decommissioned in all action alternatives and only left open under Alternative A (the No Action Alternative).

As discussed in both Objections #1 and 3, basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the Administrative Procedure Act. To reiterate, the APA codified in 5 USC § 706 mandates that, “The reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... (A) **arbitrary, capricious, an abuse of discretion**, or otherwise not in accordance with law; [or] (E) **unsupported by substantial evidence**....” In order for a decision to be supported by substantial evidence, the agency:

must examine the relevant data and articulate a **satisfactory explanation for its action including a rational connection between the facts found and the choice made**....Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, **entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency**, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass’n., 463 U.S. at 43 (citations omitted) (emphasis added). These provisions of the APA therefore require that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a “rational connection between the facts found and the choice made.” *Id.*

Failing to disclose the factual basis of a decision also violates NEPA, which imposes various technical protocols including disclosure of methods, presentation of hard data, and disclosure of any “sources relied upon for conclusions” in an EIS. 40 C.F.R. § 1502.24. NEPA does not envision undocumented narrative exposition, but requires that “[a]gencies shall insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements.” *Id.*; *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006).

Critically, “NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data”. *Id.* A **“bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS.”** *Great Basin Resource Watch*, 844 F.3d at 1103 (emphasis added).

The Forest’s decision to close the end segment of NSFR 194 based solely on the recommendation of the ranger district staff, without disclosing any supporting reasoning or evidence, violates these provisions of the APA and NEPA, as well as other regulations, in multiple ways.

First, the agency has not provided any of the supporting data or reasoning behind the ranger district's recommendation. All it says is, "Specific recommendations for management of NSFR 194 Trout Creek were provided by the ranger district." FEIS Appendix D at D-40. This statement at most indicates the general source of the conclusion reached regarding management of this route, without articulating any of the facts the ranger district relied upon or the reasoning it used to reach that conclusion. Therefore the Forest has completely failed to articulate any connection between the facts found and the decision made as required by the APA and NEPA.

Second, the Forest admits that this decision was made based on the opinions of ranger district staff rather than any kind of scientific process. While the description of the site-specific review in the FEIS tries to couch this review in scientific sounding terms, it cannot obscure the fact that this review process inherently allowed district staff to substitute their own opinions for how a given route should be managed over the outcome derived from the MRS screening rubric.

Notably, while the FEIS gives examples of why a route may be kept open instead of closed as specified by the MRS rubric (preserving access to private property, etc.), it does not give any examples of why a route should be closed to public use when the MRS rubric would have dictated it remain open. If a given route had significant enough environmental risks or low enough benefits to merit closure, that should have shown up in the TAP data or TAP report recommendations, which were typically written by the same ranger district staff conducting the later review.

In the case of NFSR 194, as best we are aware, nothing changed between when the South Park District TAP Addendum was written in 2015 in such a manner as to cause an objective application of the MRS rubric to recommend keeping the full route open as a trail open to all vehicles, and 2019 when the Draft EIS proposed to close the end segment in all action alternatives. Whatever the reasons were for this clear discrepancy in management recommendations, they were not disclosed in the FEIS.

The Forest cannot escape the fact that the decision to close this route segment is based solely on the "bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS." *Great Basin Resource Watch*, 844 F.3d at 1103. This makes the decision inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

Third, in making this decision contrary to the recommendation produced by the TAP data and the MRS screening criteria, the Forest has also "offered an explanation for its decision that runs counter to the evidence before the agency". *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. The only actual evidence in the project record regarding this route is the TAP data and MRS Screening Criteria. A decision contrary to what that evidence supports without any explanation or further evidentiary support for the deviation inherently "runs counter to the evidence before the agency" and is both arbitrary and capricious and unsupported by substantial evidence.

Fourth, basing travel management decisions solely on ranger district staff opinions violates the Travel Management Rule (TMR) as codified in 36 C.F.R. § 212.5(b)(1), which states:

In determining the minimum road system, the responsible official must incorporate a **science-based roads analysis** at the appropriate scale and, to the degree practicable, **involve a broad spectrum of interested and affected citizens**, other state and federal agencies, and tribal governments.

The science-based analysis referenced in this CFR is the Travel Analysis Process and Minimum Road System screening criteria. While those are of course not the only allowable basis for deciding whether a given route should be included in the minimum road system, deviations from that scientific process must be adequately justified by clearly articulated facts and reasoning. If Forest Service staff are allowed to arbitrarily deviate from the recommendations of the MRS rubric at whim without justifying those decisions at all, the minimum road system could no longer be said to be science-based in any meaningful way.

The TMR also requires that public input from a “broad spectrum of interested and affected citizens” be considered when determining the minimum road system. This coincides with the related requirement in the TMR that “The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart.” 36 C.F.R. § 212.52(a). In the case of NFSR 194, the decision to designate the final segment for decommissioning had already been made by ranger district staff at least some time prior to the comment period on the DEIS, so the public was effectively deprived of any opportunity to give input on the decision to close this route segment before the decision had already been made, in violation of the Travel Management Rule.

All comments asking for a different management option to be chosen in the Draft Decision were dismissed with generic boilerplate statements which failed to address any of the specific evidence they presented regarding this route, also in violation of Travel Management Rule. *See Idaho Conservation League*, 766 F. Supp. 2d at 1069 (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

Because compliance with the TMR was the main stated Purpose and Need for this project, failing to comply with the TMR also fails to meet the purpose and need of the project, which is an independent reversible error.

C. CONCLUSION AND REQUESTED RESOLUTION

Because the decision to decommission the end segment of NFSR 194 was based solely on the unsupported and unexplained recommendations of South Park Ranger District staff contrary to the evidence before the agency in the form of the TAP scores and MRS Screening Criteria, this decision is inherently arbitrary and capricious, unsupported by substantial evidence, and in violation of multiple federal laws and regulations including the Administrative Procedure Act (5 U.S.C. § 706), NEPA, and the Travel Management Rule.

We therefore request that the Reviewing Officer reverse this decision and remand the Draft ROD to the Deciding Official with instructions to keep the end segment of NFSR 194 open to public motorized use in the Final Decision. This should be done by converting this segment to a trail open to all vehicles as recommended by the MRS rubric, and in order to be consistent with the management of the preceding segment.

OBJECTION #15: CLOSURE OF NFSR 603 PEERLESS MOUNTAIN



Summit of Peerless Mountain road at Horseshoe Pass

A. INTRODUCTION AND CONNECTION TO PREVIOUS COMMENTS

We object to the decision to convert all but the first 0.3 miles of NFSR 603 Peerless Mountain to a special use permit road as specified in the Draft ROD. Both Marcus Trusty (comment 2110-1) and Patrick McKay (comment 222-8) commented on this route in the DEIS comment period. These comments pointed out inaccuracies in the TAP scores, which were at odds with the screening criteria, specifically for recreational use benefit and watershed risk. The Forest responded with:

Impacts on road management, recreation, watersheds, and vegetation are respectively analyzed in Chapter 3 of the EIS (Transportation; Recreation; Soils and Hydrology; and Vegetation Management). Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. Revision of the TAP/TAR reports is beyond the scope of this undertaking. **NFSR 603 is located near a drainage and runoff from the road could affect that drainage.**

FEIS Appendix D at D-46 (emphasis added). As discussed below, this comment response shows two key legal deficiencies with the decision to close NFSR 603 to public use:

1. If the TAP/TAR is incorrect then the matrix suggesting management prescriptions based on these scores is also incorrect. In order to make informed management decisions, the Forest

needs correct information. The Forest should have gone back and corrected the TAP/TAR before making final decisions. Its failure to do so indicates that the decision to close this route runs counter to the evidence before the agency.

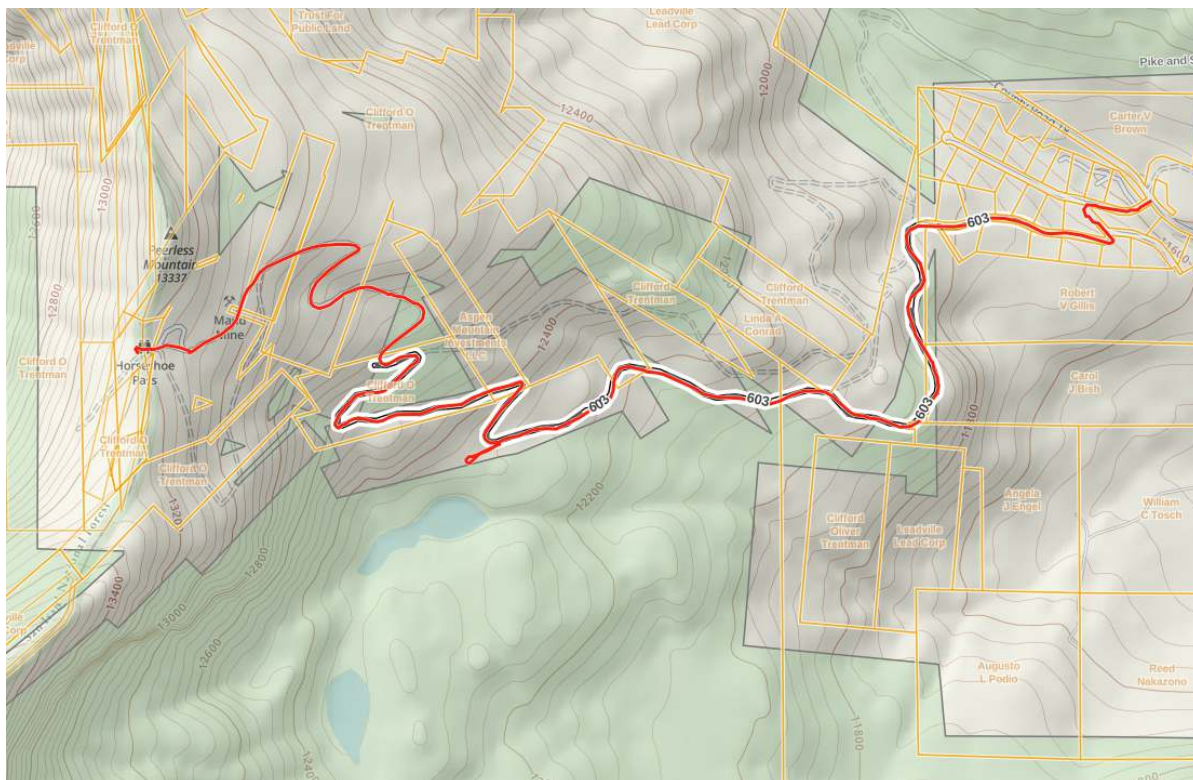
2. The Forest seems to acknowledge incorrect scoring and then appears to justify the scores by making a general assumption with no scientific evidence in the final bolded sentence. The Forest failed to demonstrate that the decision to close this route is based on actual scientific evidence or provide a rational connection between the facts found and the decision made.

For these reasons, as well as the agency's use of the TAP reports to predetermine the outcome for this route, the decision to close NFSR 603 is arbitrary and capricious and should be reversed.

B. ANALYSIS

1. *Background and route description*

NFSR 603 Peerless Mountain is an approximately two mile long four-wheel-drive road off County Road 18 near the hiking trailhead for Mount Sherman southwest of Fairplay. It runs from the valley floor up to the old Peerless Mine site high on the ridge that forms a saddle between Horseshoe Mountain and Mount Sheridan. While the MVUM route ends at the National Forest boundary, the road continues on a well-defined roadbed for another ~0.8 miles across private property to the crest of the ridge in this saddle, at the summit of Horseshoe Pass. While we are not certain of the exact legal status of the portion of the route beyond the MVUM endpoint, it has been regularly used by the public for many decades and would likely be found to be subject to a prescriptive public easement if the issue was ever litigated. The full route to the summit (red line) is shown on the map below.



The Google Earth imagery below shows the MVUM route in red, with the continuation of the route to the summit visible on the ground.



The Peerless Mountain Road is an extremely popular route to access the historic mine ruins at the Peerless Mine site (pictured below), as well as the high alpine scenery around Peerless Mountain.





In addition to scenic driving and sightseeing at the mine ruins, the end of the road at the saddle on the ridge provides easy hiking access to the summits of Horseshoe Mountain and Mount Sheridan (both 13'ers) as well as to the summit of 14'er Mount Sherman further along the ridge. Lower down along the road, there are side trails to hike to two scenic lakes, Horseshoe Mountain Lake (pictured above) and Leavick Tarn (pictured below).



2. *Closure based on erroneous TAP scores*

There was no specific management recommendation for this route in the South Park District TAP Addendum, so the decision to convert it to a special use permit road appears to be based solely on the TAP scores and the Minimum Road System rubric recommendation for a L/H road with high special use benefit and moderate recreational use benefit. Both the recreational use benefit rating and the risk ratings for this road were erroneous, making the TAP scores an improper basis for closing this road.

First regarding recreational use benefit, NFSR 603 is an important access route for four types of multi-use recreation:

1. It is a popular route for motorized recreation and provides motorized access to spectacular high-alpine terrain, mining ruins, and scenic lakes.

2. Fishermen use this road to access Horseshoe Lake.
3. Hunters use this road to access Big Game Management Unit 49.
4. Hikers use this road to access Horseshoe Mountain, Peerless Mountain and Mount Sheridan.

NFSR 603 is the only motorized access point in the entire Horseshoe Drainage, which is an extremely popular dispersed recreation area. Because of this and the fact that it services four distinct types of multi-use recreation, it should have been given a 'high' recreational use benefit rating in the TAP report. Instead, it was given only a 'moderate' recreational benefit rating, with a L/H overall rating.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	M
Fire/Fuels Access Benefit	L
Timber Access Benefit	L
Special Use Access Benefit	H
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	H
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	H

The risk scores in the TAP report were also made in error. These scores, which have the watershed risk as 'high', are at odds with the screening criteria. The first five analyzed factors result in a 'No' response for impaired watershed, intersecting with wetlands or a riparian area, high-risk for floods, and erosive soils. If none of these concerns apply here, there is no justification for the high watershed risk score.

The final sentence in the Forest's response to Marcus Trusty's comment indicates it was aware of these issues and inaccuracies. Instead of reevaluating this route and correcting those errors, the Forest's response was to make a general statement about watershed impacts which could be applied to nearly every road in the Pike and San Isabel National Forests. Every road in the Rocky Mountains is "located near a drainage." Both Forests are entirely in watersheds in Colorado where everything is a drainage and roads "could affect" those drainages. This generalized statement utterly failed to address the specific watershed impacts of this specific road, or respond to the evidence in our comments that the road is located high on a mountain side and does not actually intersect any streams.

As is abundantly clear from all scientific literature on the subject, the primary impacts from roads on watersheds and water quality comes from either vehicles driving through streams in water crossings or roads that are hydrologically connected to streams acting as conduits for sediment runoff. Both require that the road either directly cross or at least run very near to a stream or river.

The Forest's statement regarding watershed risk is without scientific merit and does not provide a rational basis for closing public routes. Also of note, the decision in the Draft ROD to convert this road to a special user permit road means the road will be left fully intact on the ground with enforcement left largely to the property owners. The property owners in the vicinity could choose to leave the road open to public use. Assuming a gate is placed, owners will still have access to their property via the road so if

there are concerns about runoff from the road entering the drainage, the final decision will have no actual effect on that impact. The road will still be present on the ground and will not be reclaimed or restored, therefore whatever sediment runoff occurs will continue to occur, negating any claimed reduction in watershed impacts.

The other high risk scores in the TAP report were likewise without merit. The wildlife risk is unmerited because this is a high alpine area that is naturally inaccessible due to snow during sensitive times in the winter and spring. Adding a seasonal closure could also have ensured that no motorized use takes place during those times.

The high botany risk is unjustified because this road has a well-defined roadbed along the main route with no off-trail issues or resource damage. There are multiple side roads and alternate routes that are leftover mining roads rather than user-created routes. These could easily be signed and barricaded to prevent motorists from mistakenly going off-trail. The area around the mine has been heavily impacted by historical mining, but there are no serious impacts from present-day motorized recreation. There are no maintenance issues that we are aware of which would justify the high public safety / financial burden risk. Most maintenance that needs to be done is likely done by the property owners in the area. And while this road is mostly above timberline, there are no narrow shelf road segments that could pose a significant safety risk.

Because both the benefit and risk ratings for this route in the TAP report were erroneous, this route was improperly evaluated as a L/H road. If the high recreational use benefit had been properly taken into account and the watershed, wildlife, and public health and safety risks had been properly evaluated, it would have at least been given an overall score of H/H or possibly H/L. This would have completely changed the final management recommendation considered in the FEIS. As a L/H road, the exception for high special use benefit outranked the exceptions for moderate or even high recreational use benefit, resulting in the chosen management option of converting it to a special use permit road. If this road had been evaluated as either a H/H, H/L, or even a L/L road with high recreational use benefit, the MRS rubric would have produced an outcome that kept it open to the public, likely by converting it to a trail open to all vehicles.

The erroneous TAP scores were therefore dispositive for the final management decision reached in the Draft ROD, which rests on an inaccurate factual foundation and lacks sufficient legal justification, as discussed below.

3. The Forest failed to provide a rational explanation for the closure of NFSR 603 and the decision runs counter to the evidence before the agency

Marcus Trusty, Patrick McKay, and multiple other commenters including both locals and frequent visitors to the area submitted numerous comments pointing out the high recreational value of NFSR 603 and asking for it to be kept open in the Draft Decision. Nevertheless, the Forest disregarded all comments on this route and failed to respond to any of the evidence included in these comments for why the TAP scores were erroneous. Instead it wrote mere boilerplate responses to comments on this route, such as the response discussed above or this one in response to a comment by Charles Severance:

Impacts on road management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. Revision of the TAP/TAR reports is beyond the scope of this undertaking.

Response to comment 2641-9, FEIS Appendix D at D-59. The Forest's response to these comments was utterly inadequate to meet its burden to respond to contrary evidence and articulate a rational basis for the decision to close this road. While the Forest did slightly modify this route in the Draft Decision as compared to the DEIS, all it did was add back 0.3 miles of public road at the very beginning, while still converting the rest of the route to a special use permit road. Nowhere in the Draft ROD, FEIS or associated documents did the Forest provide any explanation for this action.

The Forest's failure to explain its decisions with respect to NFSR 603 violates NEPA, the APA, and the Travel Management rule in multiple ways, rendering the decision arbitrary and capricious.

First, the Forest unlawfully failed to respond to the specific evidence in public comments, and failed to provide any explanation for its decision to close this route. As pointed out above, the TAP ratings for this route are incorrect (especially the recreational use benefit and watershed risk scores), giving the management decision produced by the MRS rubric a flawed factual basis.

While revisions to the TAP reports themselves may be beyond the scope of this travel management process, the *decisions* which resulted from them are not. As discussed in Objection #2 the TAP reports were only supposed to *inform* route-specific decisions in the travel management process, not *dictate* them. Public comments received later in the travel management process were also supposed to inform route-specific decisions, and cannot simply be ignored because the TAP data is what it is.

When the Forest was made aware through public comments that the data it relied upon to make route-specific decisions was incorrect, it had a responsibility to reevaluate those routes based on the new information it has received, or at least respond to the specific evidence in our comments. The Forest failed to do this and therefore violated the Travel Management Rule. *See Idaho Conservation League*, 766 F. Supp. 2d at 1069 ("In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.")

In the *Idaho Conservation League* case, a travel management plan very similar to this one was overturned by the courts because, "the Forest Service's failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA". *Id.* at 1074-1075. The court specifically found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs' comments were legally insufficient to meet the agency's burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.*

In the case of NFSR 603, the Forest failed to address any of the evidence in our comments regarding recreational use benefit and the flawed TAP ratings. Indeed, the Forest failed to provide *any* actual reasons why it decided to close these routes to public use. As discussed in Objection #1, under APA section 706(2) agency decisions that are "unsupported by substantial evidence" must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a "rational connection

between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision adopted, but also to the decisions made regarding individual routes. In *Idaho Conservation League*, the court overturned a Forest Service travel plan because of the Forest’s failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs.

Because the Forest has completely failed to provide *any* specific explanation of the reasons for its decision to close NFSR 603 to the public, this decision is arbitrary and capricious, counter to the evidence before the agency, and unsupported by substantial evidence. It must therefore be reversed.

Second, the Forest’s treatment of the TAP reports as decisional documents not subject to challenge or further evaluation under NEPA violated the Travel Management Rule, multiple Forest Service policies, and NEPA and the APA.

As described in Forest Service regulations, the Travel Analysis Process is the first step in determining the Minimum Road System (MRS), conducting an initial analysis of roads that are likely needed or not needed for the MRS. The actual determination of the MRS occurs during a formal travel management process subject to NEPA, which is informed by the Travel Analysis Reports. This two step process has been affirmed by the courts as the proper method of determining the MRS. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (D. Mont. 2020):

Identification and implementation of a minimum road system is a two-step process. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117 (9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

As discussed in Objection #2, the TAP reports were only the first step of this two-step process, and did not produce a final agency decision regarding the MRS. This travel management process was supposed to be the second step in designating the Minimum Road System for the PSI, subjecting the initial findings in the TAP reports to full NEPA review. From its comment responses, it is clear however that the Forest has decided to treat the TAP reports as a final decision not subject to further challenge or review. These responses demonstrate that the Forest had already made the decision to close this route to the public in the supposedly non-decisional TAP process.

The inadequate public involvement in the creation of the South Park TAP Addendum (which received only two public comments), and the fact that the Forest automatically adopted the recommendations in that addendum and carried over the TAP scores into the MRS Screening Process in this travel management decision without accepting any input that challenged them; precluded any effective opportunity for public comment on the actual decision to *designate* these routes as closed to public use, as required by the Travel Management Rule as codified in 36 C.F.R. § 212.52(a):

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

By effectively making the designation decisions for these routes in the predecisional travel analysis process and refusing to consider any comments which challenged the TAP scores or the management outcomes derived from them, the Forest violated both the Travel Management Rule and 40 C.F.R. § 1502.5 on the timing of NEPA actions involving Environmental Impact Statements, which states:

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can **serve as an important practical contribution to the decision-making process** and will **not be used to rationalize or justify decisions already made.....**

By the time the alternatives for this travel management process were formulated, every one of the action alternatives considered closing this route to the public. Only the No Action Alternative would have kept it open, but as typical in NEPA processes, that alternative received no serious consideration by the agency, and the Forest did not incorporate any of its actions into the Draft Decision with respect to this route even though that was requested in numerous public comments. Therefore public input was not allowed to serve as an important practical contribution to the decision making process.

If, contrary to Forest Service policy, the Forest wished to make final route designation decisions during the TAP process, then it should have prepared an Environmental Impact Statement at that stage of the process, which it did not. Instead, it simply made those decisions in the TARs -- either directly through the express recommendations in the TAP reports, or indirectly through the use of the TAP scores in the MRS rubric. The entire travel management process that followed has been a *post hoc* rationalization of decisions already made in the supposedly non-decisional TAP process.

Third, the improper use of the flawed TAP scores to dictate the range of alternatives considered with regard to this route caused the Forest to consider an insufficient range of alternatives contrary to NEPA.

By predetermining the designations for numerous routes based on the TAP recommendations, the Forest violated one of the basic requirements of NEPA processes as specified in 40 C.F.R. § 1502.14(a), to "Evaluate **reasonable alternatives** to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination." Under 40 C.F.R. § 1508.1, "Reasonable alternatives means a reasonable range of alternatives that are **technically and economically feasible, [and] meet the purpose and need for the proposed action....**"

The *only* option that was considered across all action alternatives for NFSR 603 was closing it to public use. There is no analysis in any of the documents associated with the FEIS and Draft ROD that explains why no other alternatives were considered or why considering at least one action alternative that kept it open was not technically or economically feasible or failed to meet the purpose and need of the proposed action. The only explanation ever given for failing to consider other management options for these routes was that the chosen option was the result of the MRS rubric and TAP scores.

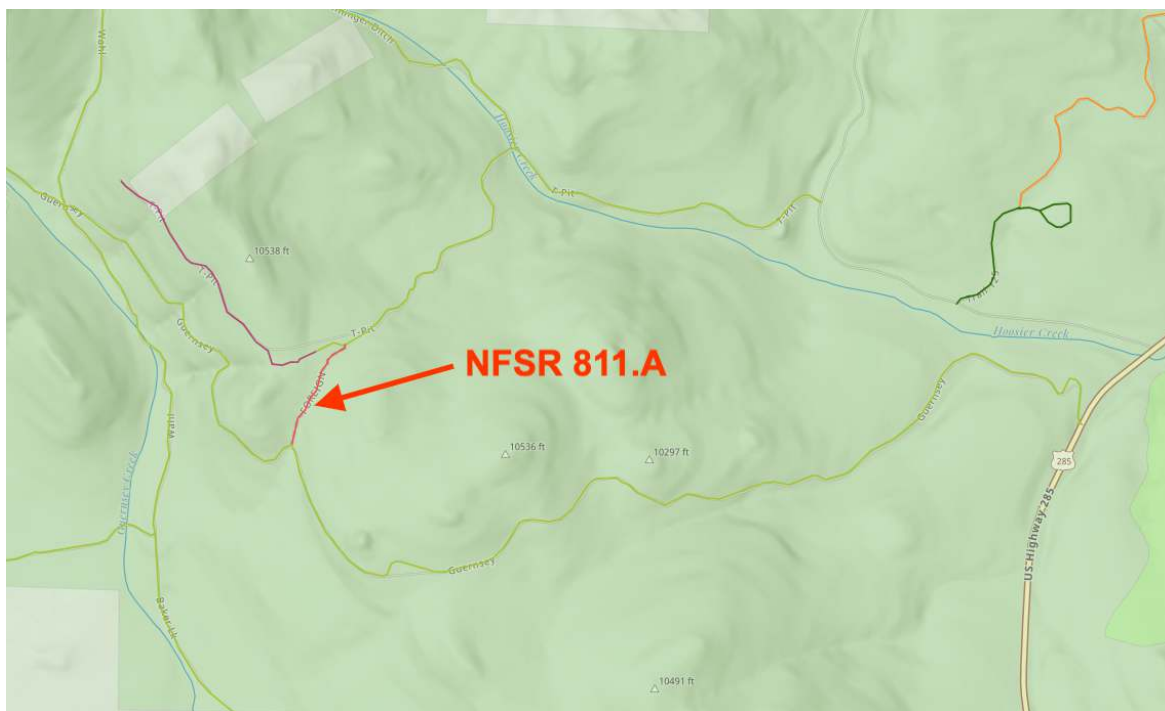
The forest therefore failed to consider a sufficient range of alternatives regarding this route, rendering the decision to close it arbitrary and capricious.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, the decision to convert all but a short segment at the beginning of NFSR 603 to a special use permit road violated the Administrative Procedure Act, NEPA, and the Travel Management Rule, and was arbitrary and capricious, unsupported by substantial evidence, and contrary to the evidence before the agency. The Forest also failed to sufficiently respond to public comments and address the route-specific evidence and concerns included in them, failing to articulate a rational connection between the facts found and decision made. The decision to close this route must be reversed.

We therefore request that the Draft ROD be remanded to the Deciding Official with instructions to leave the full length of NFSR 603 as shown on the current MVUM open to public motorized use as either a road or trail open to all vehicles.

OBJECTION #16: CLOSURE OF NFSR 811.A FOREIGN



A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the decommissioning of NFSR 811.A Foreign, in the trail system west of Kenosha Pass, as included in the Draft Decision. This is a short but critical connecting route between the West Kenosha Pass and Jefferson Lake trail systems, and which is necessary to complete an existing loop with NFSR 810 Guernsey and NFSR 811 T-Pit. In the map above, it is shown in red for decommissioning, while the surrounding routes shown in green are left open as-is under the Draft Decision. Patrick McKay commented on this route in comment 45-15.

B. ANALYSIS

As seen in the map above, NFSR 811.A is a 0.3 mile long connector route in the west Kenosha Pass Trail system. It comprises the middle link in an existing loop route with NFSRs 811 and 810. It also connects the trails at the top of Kenosha Pass in the South Platte Ranger District with the trails at the base of the pass near Jefferson Lake in the South Park Ranger District, via the lower portion of NFSR 810. While the route itself is insignificant, its role as a crucial connector to other trails should have been obvious simply from looking at a map of the area. Nevertheless, it was proposed for decommissioning in alternatives B, C, and E in the FEIS and that action is adopted in the Draft Decision.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	M
Fire/Fuels Access Benefit	L
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	M

As seen in the above TAP scores, the South Park District TAP addendum rated this road L/H overall with moderate recreational use benefit and high watershed and wildlife risks. There was no specific TAP recommendation, and the responses to public comments did not give any specific reason for its closure. Therefore the proposed action of decommissioning is likely because of the Minimum Road System criteria.

We believe the high risk scores for this route were given in error, as it is hard to imagine why a 0.3 mile long route in the middle of dense forest, not near any streams, and surrounded by other motorized routes has a high watershed or wildlife risk. Having driven this route this year, Patrick McKay observed that it is simply a short, easy forest road in good condition with nothing remarkable about its road surface. The only possible resource concern would be about 50 feet in the middle where the road was long ago rerouted around a fallen tree snag. While this bypass may have originally been unauthorized, it is now the established route and no trace of the original path remains.

It is likely the original high TAP risk scores were given in error. Nevertheless, even with the TAP scores it received, this route should have been kept open to public use if the MRS criteria had been properly applied to it.

As described in the FEIS section on MRS Screening Criteria, roads with high benefit ratings had a default management recommendation that would result in them being open to the public, while for roads with a low overall benefit rating, the default recommendation was decommission, *unless an exception applied*.

Both low overall benefit categories had exceptions for roads with high or moderate recreational value. For roads in the Low Benefit / High Risk category like NFSR 811.A, there were two separate exceptions depending on whether the recreational benefit rating was high or moderate:

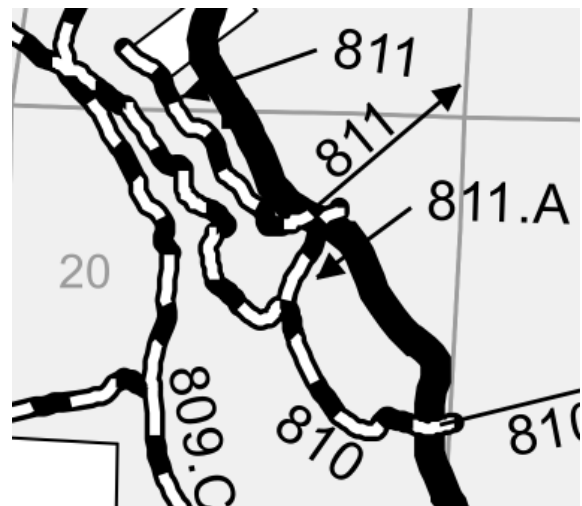
- Recreational use (high benefit TAP rating) – Management recommendation is Convert to trail open to all vehicles.
- ...
- Recreational use (moderate benefit TAP rating) – If the road has potential to provide a loop or connection to other trails open to public motor vehicle use, then the management recommendation is Convert to trail open to all vehicles.

FEIS at 2-8, 2-9.

For each of the low benefit categories, only one exception was supposed to apply, and they were supposed to be applied in the order listed. For L/H routes, the exception to convert a road with high special use access benefit to a special use permit road ranked higher than the high recreational benefit rating, and the exception to convert a road with high resource management benefit to an admin road ranked higher than the exception for moderate recreational use benefit.

NFSR 811.A has neither a high special use benefit score nor a high resource management benefit score. Therefore the exception for moderate recreational use benefit roads that provide a loop or connection to other trails should have been applied here, producing a recommendation of *“convert to trail open to all vehicles.”*

That this exception was not applied and this road was instead proposed for decommissioning under the default management recommendation for L/H roads indicates a clear error on behalf of the Forest Service, which apparently failed to recognize its role as critical connector in an existing loop opportunity. This could have been simply a mistake based on how this route is portrayed on the South Park District MVUM (pictured right), which shows it as ending at the South Park District Boundary. It may not have been clear to the Forest staff who evaluated this route that it is connected to other trails in the South Platte District.



According to the FEIS, the Preferred Alternative C was intended to emphasize loop opportunities:

Alternative C would include a more diverse motorized trail network, which would increase the motorized recreation user experience by providing opportunities for loops and varying degrees of difficulty.

FEIS at 2-38. Given this emphasis on maintaining loop opportunities, decommissioning this route and severing an existing loop opportunity is not consistent with the goals of Alternative C and does not meet the Purpose and Need of this project.

Closing this route would needlessly turn NFSR 811 T-Pit into an out-and-back route terminating at the point where it turns into a special use permit road just past the junction with NFSR 811.A. This would effectively double the impact of NFSR 811, since all vehicles that formerly drove it only once as part of a loop now will have to drive it twice. There is also a large dispersed campsite at that junction on NFSR 811, which would be cut off from the convenient access it currently enjoys to the lower trail system near Jefferson Lake via NFSR 810 Guernsey.

Decommissioning this route is therefore unwise, unmerited, and arbitrary and capricious.

C. CONCLUSION AND REQUESTED RESOLUTION

In conclusion, decommissioning NFSR 811.A would disrupt the excellent connectivity of the broader trail system around Kenosha Pass, sever an existing loop opportunity, and cause additional environmental impacts from concentrating use on out-and-back routes. This is a key aspect of the problem the Forest failed to consider.

As a result of the Forest's failure to recognize this route as a critical connector that facilitates an existing loop opportunity, the Forest failed to properly apply the MRS Screening Criteria to this route, including the exception for connecting and looping routes with moderate recreational value. If this exception had been properly applied, it would have resulted in this route being kept open to public motorized use as a trail open to all vehicles. The management option included in the Draft Decision was therefore arbitrary and capricious because it failed to consider an important aspect of the problem.

We request that the Draft Decision be remanded to the Deciding Official with instructions to correct this error and leave NFSR 811.A Foreign open to public use as either a road or trail open to all vehicles in the final decision, in accordance with the proper management outcome specified by the MRS rubric.

VII. South Platte District Objections

OBJECTION #17: CLOSURE OF THE UPPER PORTION OF NFSR 126 TWIN CONES

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the action in the Draft ROD of converting to an admin road the upper portion of NFSR 126 Twin Cones from 5.63 to 7.37 miles. This route is one of the most valuable motorized routes in this entire travel plan, and the justification for the chosen management action is directly contradicted by the Forest Plan amendment also adopted with respect to this route as part of the Draft Decision.

Both Marcus Trusty (for CORE) and Patrick McKay submitted extensive independent comments opposing closure of this route segment. Patrick McKay submitted a comment on this route on 10/8/2019 and Marcus Trusty submitted one on 11/1/2019, both listed in the table above. These comments can both be found split into multiple statements in Appendix D of the FEIS, such as comment 2140-9 (Marcus Trusty) and 45-3 (Patrick McKay). Standing to object on this route is therefore established independently for both objectors.

B. ANALYSIS

1. *Background*

NFSR 126 Twin Cones Road has long been one of the most popular four-wheel-drive trails close to Denver along Highway 285. It can be thought of as two separate trails--the lower section from the Kenosha Pass trailhead to the Draft ROD closure point at 5.63 miles, and the upper section from there to the summit of North Twin Cone Peak. The lower section is rated easy and is renowned for its spectacular fall colors, as the first five miles are almost entirely within a dense aspen grove. The middle portion of the road is a popular dispersed camping destination with multiple designated campsites, providing a free alternative to the paid campgrounds at Kenosha Pass. It also has an extremely popular overlook with spectacular views of South Park.

The last two miles of the upper section of the road comprise one only three difficult-rated trails in the South Platte Ranger District (the other two being Red Cone and Slaughterhouse Gulch), known for challenging rock gardens, steep climbs, and incredible scenic views at the top. The final climb to the repeater site at the summit of North Twin Cone Peak is particularly challenging and gives drivers a strong feeling of accomplishment to achieve it. Because the upper slopes of North Twin Cone Peak tend to melt out faster than surrounding peaks, this trail has historically been a popular destination in the early summer for early-season high altitude wheeling before most other trails are open.

Because of its close proximity to Denver and easy access off the highway, Twin Cones is a popular destination for trail runs by front range four-wheel-drive clubs, particularly in the fall and early summer. For example, the Mile-Hi Jeep Club held their annual Aspen Cades camping trip at the Kenosha Pass campground in 2019 and ran Twin Cones as one of their trail runs. The popularity of Twin Cones Road is evidenced by the fact that it was included in the 2010 Edition of the *Funtrek's Guide to Colorado Backroads & 4-Wheel-Drive Trails* as one of the 100 best 4WD trails in southwestern Colorado (scans were attached to Patrick McKay's comment on the DEIS). It has also been included in multiple online trail guides.

Though the road was originally built to service a communications tower at the summit of North Twin Cone Peak, it has been open to public motorized recreation for many decades. Under the 1984 Forest Plan, NFSR 126 is almost entirely within 4B and 7A management zones, which both allow dispersed motorized recreation. It is entirely inside a Roaded Natural ROS area, which also allows motorized recreation. While the road pre-dated 1984 and the management zones in the Forest Plan were originally intended to be drawn around it, a mapping error resulted in a short segment intruding into a 3A management zone. The last two miles of NFSR 126 have been closed as a temporary admin road since 2016 under the Forest Service order implementing the conditions of the settlement agreement which initiated this travel management process. The sole reason for this closure, and the entire reason this route has been controversial at all, is because of the 3A area intrusion.

2. *The proposed Forest Plan amendment negates the sole explanation given for converting upper NFSR 126 to an admin road*

In the 2015 Travel Analysis Process (TAP) Report Addendum for the South Platte Ranger District, the Forest Service correctly recognized the high recreational value of NFSR 126, and rated the section of

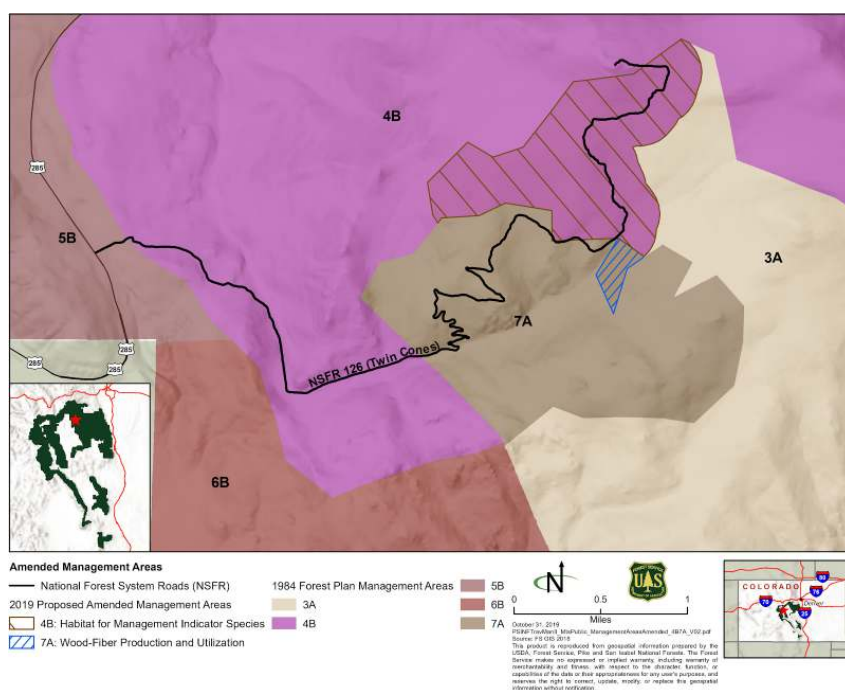
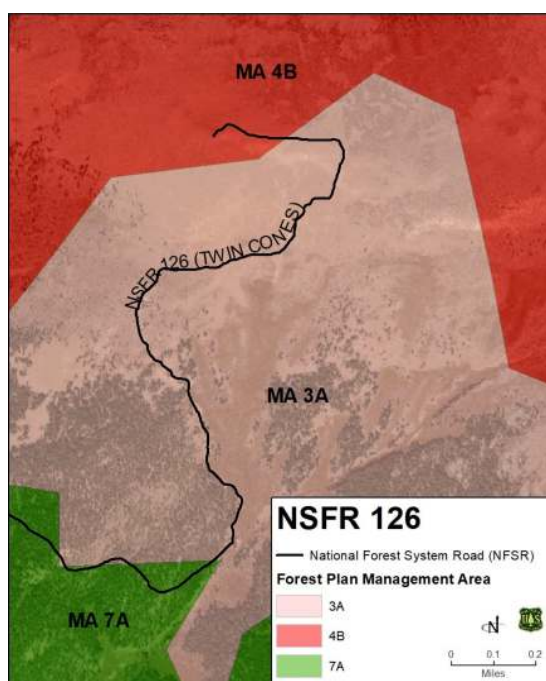
the road from milepost 1 to its terminus at milepost 7.37 as a H/H road with overall high benefit and high risk with a 'high' recreational use benefit rating.

Contrary to the normal recommendation for a H/H road with high recreational value, the TAP recommendation for this road was, **“Rec Site Access, Seasonal Rd, Recommend eliminating public access w/i 3A; from MP 5.13 to 7.37; keep as admin road.”** South Platte District TAP Addendum at A-2.

As stated above, a mapping error mistakenly placed a portion of Twin Cones Road within the boundaries of a 3A management area emphasizing semi-primitive non-motorized recreation. From this sentence in the TAP report, it is clear that the sole reason for the recommendation to convert the upper segment of NFSR 126 to an admin road was because of the 3A intrusion. This makes sense, because in 2015 when the TAP Addendum was written, no Forest Plan amendment to modify the 3A boundaries was on the table, as it is in this travel management process. Circumstances have since changed, rendering the sole reason for the TAP recommendation obsolete.

A Forest Plan amendment is included in the Draft ROD to adjust the boundaries of the 3A area to exclude the road. The images below (created by the Forest Service for the DEIS) show the current management areas (left) and the amended management area boundaries (right) under the Forest Plan amendment adopted in the Draft ROD. We confirmed with Forest staff that the amendment boundaries have not changed since the DEIS.

As seen below, with the Forest Plan amendment, the former 3A area the road intruded into is being changed to a 4B management area, managed for “Habitat for Management Indicator Species.” This type of management area fully allows motorized recreation, and much of the road that will remain open is already in a 4B area. With the road no longer in technical violation of the Forest Plan, there is no reason to close it. A mapping error that has since been corrected is no justification for excluding motorized recreationists from a historically valuable motorized route.



Because of the TAP recommendation to convert this route segment to an admin road, that action or decommissioning were the only actions considered for it across all alternatives. Both CORE and numerous other motorized groups submitted comments in both the scoping and DEIS comment periods containing detailed evidence about the desirability and current conditions of this route segment, requesting that the Forest consider at least one alternative that reopened it to the public.

The Forest refused to modify any of the alternatives to consider this, and failed to respond to any of the evidence in our comments supporting reopening it to the public. This in itself violated the Travel Management Rule. See *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1069 (D. Idaho 2011) ("In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.")

In response to our DEIS comments pointing out that the proposed Forest Plan amendment eliminates the entire reason for closing the upper portion of the road to the public, the Forest Service replied:

Route management recommendations, including seasonal restrictions, are based on TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. **The South Platte TAR recommends** NFSR 126 (Twin Cones) from MP 5.13 to 7.37 (the point at which NFSR 126 first intersects Forest Plan **Management Area 3A** wherein no public motor vehicle use is allowed) be converted to an administrative use only road. **Alternative C analyzes adding 0.5 miles of public access with a Forest Plan amendment to revise the MA 3A boundaries and keep MP 5.13 to 5.63 open to public motor vehicle use. The remainder of the route within FPMA 3A (MP 5.63 to 7.37) would be converted to administrative use only to conform with the Forest Plan.**

Response to comment 45-3 by Patrick McKay, FEIS Appendix D at D-96 (emphasis added). The bolded statements in this comment response reflect an astonishing ignorance of what the Draft Decision actually does. The Forest appears to be implying that the Forest Plan amendment only covers the half mile segment that is proposed to be reopened to the public from mileposts 5.13 to 5.63, when as shown by the Forest's own maps, the amended management area boundaries place the entire route from milepost 5.13 to its end at milepost 7.37 within a 4B area where public motorized use is allowed. The Forest may not be *required* to allow motorized recreation on this specific route, but the statement that closing this portion of the route to public use is necessary to conform to the Forest Plan is factually incorrect, as the Forest Plan will have been amended in a manner that allows motorized recreation.

Once the Forest Plan amendment is adopted, the sole stated reason in the TAP report for recommending conversion of the upper segment of NFSR 126 to an admin road will no longer be valid. Yet in its comment response, the Forest insists that this route is being closed to the public *because* of the TAP recommendation. This is circular logic. The TAP report recommended closing this route segment because of the 3A intrusion, which the Forest Plan amendment eliminates. Yet the Forest asserts it must close this segment simply because the TAP report recommended it, and because of the 3A intrusion which no longer exists.

As discussed in Objection #2, that TAP process was fatally flawed and the TAP recommendations are not a sufficient legal basis in themselves to justify route closures. However beyond that, for this specific route there is the added irrationality of the fact that the Forest's reasoning in closing this route segment based on the TAP recommendation is blatantly self-contradictory.

Returning to the standard of review discussed at the beginning of our objections, APA section 706(2) provides: a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) **unsupported by substantial evidence....**”

In order for a decision to be supported by substantial evidence, the agency:

must examine the relevant data and articulate a **satisfactory explanation for its action including a rational connection between the facts found and the choice made....**Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, **entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency**, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

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

With regard to the decision to close the upper portion of NFSR 126 to the public and convert it to an admin road, the Forest utterly fails this test. It has failed to articulate a satisfactory explanation for its decision including a rational connection between the fact found and the choice made. The only explanation it has provided for this decision runs directly *counter to the plain evidence before the agency*--namely that the 3A intrusion which it provides as the sole justification to close the road will no longer exist as soon as the proposed Forest Plan amendment is adopted. This also shows that the agency entirely failed to consider an important aspect of the problem--that its own decision to amend the Forest Plan would bring about a fundamental change in circumstances surrounding this road, eliminating its sole justification for closure.

Without another reason besides either the 3A intrusion or the TAP recommendation (which relies on the 3A intrusion), the Forest has failed to articulate any rational basis for its decision at all, and a court would likely hold that this action violates the Administrative Procedure Act.

3. *Treating the TAP recommendation as a final decision was arbitrary and capricious*

In addition to the fact that the sole basis for the TAP recommendation to closure the upper portion of NFSR 126 is negated by the Forest Plan amendment, the Forest’s treatment of the TAP reports as decisional documents not subject to challenge or further evaluation under NEPA violated the Travel Management Rule, multiple Forest Service policies, and NEPA and the APA.

As described in Forest Service regulations, the Travel Analysis Process is the first step in determining the Minimum Road System (MRS), conducting an initial analysis of roads that are likely needed or not needed for the MRS. The actual determination of the MRS occurs during a formal travel management process subject to NEPA, which is informed by the Travel Analysis Reports. This two step process has been affirmed by the courts as the proper method of determining the MRS. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (D. Mont. 2020):

Identification and implementation of a minimum road system is a two-step process. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117

(9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

As discussed in Objection #2, the TAP reports were only the first step of this two-step process, and did not produce a final agency decision regarding the MRS. This travel management process was supposed to be the second step in designating the Minimum Road System for the PSI, subjecting the initial findings in the TAP reports to full NEPA review. From its comment responses, it is clear however that the Forest has decided to treat the TAP reports as a final decision not subject to further challenge or review. These responses demonstrate that the Forest had already made the decision to close this route to the public in the supposedly non-decisional TAP process.

The inadequate public involvement in the creation of the TAP Addendums (see Objection #2), and the fact that the Forest automatically adopted the recommendations in that addendum in this travel management decision without accepting any input that challenged them; precluded any effective opportunity for public comment on the actual decision to *designate* this route as closed to public use, as required by the Travel Management Rule as codified in 36 C.F.R. § 212.52(a):

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

By effectively making the designation decisions for this route in the predecisional travel analysis process and refusing to consider any comments which challenged the TAP recommendations or the management outcomes derived from them, the Forest violated both the Travel Management Rule and 40 C.F.R. § 1502.5 on the timing of NEPA actions involving Environmental Impact Statements, which states:

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can **serve as an important practical contribution to the decision-making process** and will **not be used to rationalize or justify decisions already made.....**

If, contrary to Forest Service policy, the Forest wished to make final route designation decisions during the TAP process, then it should have prepared an Environmental Impact Statement at that stage of the process, which it did not. Instead, it simply made those decisions in the TARs -- either directly through the express recommendations in the TAP reports, or indirectly through the use of the TAP scores in the MRS rubric. The entire travel management process that followed has been a *post hoc* rationalization of decisions already made in the supposedly non-decisional TAP process.

The Travel Analysis Reports were not decisional documents and the agency improperly treated them as final decisions which could not be challenged. In order to create a Minimum Road System as prescribed by the Travel Management Rule, the Forest must both conduct a predecisional Travel Analysis Process *and* subject the findings of that process to NEPA review. This travel management plan *is* that NEPA review and the Forest was obligated to consider evidence which contradicts the

findings in the TAP reports, which it did not. The automatic adoption of the TAP recommendation with respect to NFSR 126 violated the Travel Management Rule and was therefore arbitrary and capricious.

Additionally, the improper use of the TAP recommendation to dictate the range of alternatives considered with regard to this route caused the Forest to consider an insufficient range of alternatives contrary to NEPA.

By predetermining the designations for numerous routes based on the TAP recommendations, the Forest violated one of the basic requirements of NEPA processes as specified in 40 C.F.R. § 1502.14(a), to “Evaluate **reasonable alternatives** to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.” Under 40 C.F.R. § 1508.1, “Reasonable alternatives means a reasonable range of alternatives that are **technically and economically feasible, [and] meet the purpose and need for the proposed action....**”

Despite numerous comments requesting this during the scoping period, no alternatives considered in this process would have reopened all of Twin Cones Road, including the upper section, to public motorized use. There is no analysis in any of the documents associated with the FEIS and Draft ROD that explains why no other alternatives were considered or why considering at least one action alternative that opened it to the public was not technically or economically feasible or failed to meet the purpose and need of the proposed action.

The only explanation ever given for failing to consider other management options for this route was that the chosen option was the result of the TAP recommendation (plus the MA 3A intrusion). The forest therefore failed to consider a sufficient range of alternatives regarding this route, rendering the decision to close the upper portion arbitrary and capricious.

Finally, as discussed in Objection #2, the TAP recommendations were created through an inherently subjective and non science-based process that was unduly influenced by the subjective preferences, opinions, and impressions of ranger district staff. Basing route-specific management decisions on the conclusory recommendations of ranger district staff with no supporting evidence or reasoning violates the APA. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43.

Critically, “NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data”. *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006). Basing the decisions to close this route segment on the conclusory and unsupported recommendation in the TAP report caused that decision to be based solely on the “bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103. This makes the decision inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

4. All actual evidence in the record supports opening upper NFSR 126 to the public

Because this segment of NFSR 126 had a specific TAP recommendation, the Forest would never have applied the MRS Screening Criteria to it. If the MRS Screening Criteria were applied to it, it would likely result in a recommendation to convert this segment to a trail open to all vehicles.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: H/H

Benefits

Category	Score
Recreational Use Benefit	H
Fire/Fuels Access Benefit	M
Timber Access Benefit	L
Special Use Access Benefit	H
Resource Management/Range Access Benefit	H

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	M

The TAP evaluated all of NFSR 126 from mileposts 1 - 7.37 as a single route, and rated the entire segment High Benefit / High Risk with a ‘high’ recreational use benefit rating and ‘high’ watershed and wildlife risks. Under the MRS rubric, this would be a strong candidate for the MRS with appropriate minimization actions. These include:

- Identify and implement appropriate, targeted road maintenance techniques to minimize areas of watershed impacts.
- Increase maintenance interval and techniques
- Add seasonal closure
- Convert to trail open to all vehicles

FEIS at 2-7. A seasonal closure is already being added to the lower portion of NFSR 126. Due to its technically challenging nature for four-wheel-drive vehicles and much greater difficulty level than the lower section, the upper segment of NFSR 126 is well-suited for designation as a trail open to all vehicles. This is likely the management action that an objective application of the MRS Screening criteria would recommend.

The Forest’s actual analysis in the FEIS (aside from the earlier quoted comment response in the appendix) regarding the Forest Plan amendment further supports managing the upper segment of NFSR 126 as open to the public. In Chapter 3, Section 3.16, it compares the screening criteria of the three routes subject to Forest Plan amendments to remove erroneous 3A area intrusions: NFSRs 126, 398, and 398.B:

Table 3-71
Screening Criteria Results

Screening Criteria	Route 126	Route 398	Route 398.B
Does the route intersect with impaired watersheds? ¹	Yes	Yes	Yes
Does the route intersect with wetlands? ¹	No	No	No
Does the route or area intersect with riparian areas? ¹	No	Yes	No
Does the route or area intersect with FEMA high-risk flood hazard areas? ¹	No	No	No
Does the route or area intersect with soils having erosion potential of 0.43 or greater (erosive soils)? ¹	No	Yes	No
Does the route or area intersect with invasive plant species? ¹	No	No	No
Does the route or area intersect with riparian or alpine vegetation communities (these data are used as proxies for special status plant occurrence data, which are unavailable)? ²	Yes	Yes	Yes
Does the route or area intersect with critical habitat for species federally listed as threatened or endangered? ²	No	No	No
Does the route or area intersect with the wildlife habitat identified in the Colorado Parks and Wildlife Species Activity Mapping Data (includes Abert's squirrel range, elk concentration areas, and many other species)? ²	Yes	Yes	No
Is the route or area located within 0.5 miles of a nonmotorized trail? ³	No	No	No
Is the route, area, or parking location within 3 miles of a gateway community? ³	No	Yes	Yes

Screening Criteria	Route 126	Route 398	Route 398.B
Is the route a trail open to all vehicles, with the potential conflict among different classes of motor vehicles? ³	No	No	No
Is the route a road where the desired maintenance level is not the same as the current maintenance level, and the motor vehicle use may not be compatible with existing conditions? ³	No	No	No
Is the route a ML3 road (or higher maintenance level) where the surface is native rather than gravel or paved and the motor vehicle class may not be compatible with the road surface? ³	No	No	No
Is the route a road where the desired maintenance level is not the same as the current maintenance level, and the speed, volume, composition, and distribution of traffic on this road may not be compatible with existing conditions? ³	No	No	No
Is the route a road that intersects major non-Forest Service roads such as country roads or state and federal highways? ³	No	No	No
Is the route a special use permit road? ³	No	No	No
Does the route or area intersect with wilderness areas? ³	No	No	No
Does the route or area intersect with Colorado Roadless Areas? ³	No	No	No
Does the route or area intersect with Forest Service Research Natural Areas? ³	No	No	No
Does the route or area intersect with National Scenic Trails? ³	No	No	No
Does the route or area intersect with Gold Medal Waters? ³	No	No	No
Does the route or area intersect with Browns Canyon National Monument? ³	No	No	No
Does the route or area intersect with wildland-urban interface areas? ³	No	No	No
Is the route a ML 3 road (or higher maintenance level), allowing for typical emergency medical services? ³	No	No	No
Does the route intersect with suitable timber lands? ⁴	No	No	No

Source: Forest Service GIS 2018

¹36 CFR 219.8: substantive requirements related to sustainability

²36 CFR 219.9: substantive requirements related to diversity of plant and animal communities

³36 CFR 219.10: substantive requirements related to multiple use

⁴36 CFR 219.11: substantive requirements related to timber

FEIS at 3-232, 3-233. In this table, NFSR 126 compares favorably with the other two routes in the Lost Canyon trail system in the Leadville District, both of which are kept open to motorized use in the Draft Decision. Additionally, the FEIS contains the following detailed analysis of these three routes in support of adopting the Forest Plan amendments:

None of the Management Area 3A routes occur in any designated critical habitat; however, routes do occur in areas with riparian or alpine vegetation communities, which may contain special status plant species. In addition, routes occur in wildlife habitat identified in the Colorado Parks and Wildlife Species Activity Mapping Data. Impacts on biological resources may include behavioral responses, direct mortality, trampling, or removing vegetation around routes, and invasive plant establishment and spread as described in greater detail in Section 3.4. The magnitude of these impacts, however, would be minor and be minimized through application of the design criteria in Appendix B. This is because the area affected by these routes is minor compared with all alpine, riparian, and other wildlife habitats identified by the Colorado Parks and Wildlife Species Activity Mapping Data. In addition, the Management Area 3A routes already exist on the landscape, and there would be no construction of new routes in undisturbed areas.

Lynx habitat (primary and secondary) does occur in, or near, the Management Area 3A route segments (NFSRs 126, 398, and 398.B). The plan amendment may result in localized avoidance impacts; however, summer use of NFS roads has not been shown to be a significant issue for lynx (Ruediger et al. 2000), and all route segments already exist on the landscape. In addition, impacts would be minimized [through] the application of design criteria found in Appendix B. The proposed plan amendment would not alter Forest Plan components and would not substantially lessen protection of lynx or lynx habitat. Therefore, impacts are expected to be minor

Species of conservation concern have not yet been identified in the PSI; however, no substantial adverse impacts on any specific species are anticipated as a result of the plan amendment, and the plan amendment would not substantially lessen protections for any specific species. The proposed plan amendment would have no effects on biological resources during future projects other than those described above. This is because allowing public motor vehicle use on routes NFSRs 126, 398, and 398.B would not alter standards or guidelines for biological resources, nor would it change how biological resources are managed. In addition, application of the design criteria found in Appendix B would allow for seasonal restrictions if necessary, which would minimize impacts. Because these routes already occur on the landscape, there would be no new impacts associated with habitat fragmentation or removal from this plan amendment.

...

All routes occur in impaired watersheds, and NFS 398 occurs in an area with erodible soils. Public motor vehicle use on these routes and associated maintenance would lead to direct losses in soil productivity, concentrated runoff, erosion, and sedimentation, as described in Section 3.12.2. However, the magnitude of these impacts would be minor. This is because these are extant routes and the amendment would affect less than 3 miles of routes. The proposed plan amendment would have no effects on soil and hydrology resources during future projects, other than those impacts described above. Application of design criteria found in Appendix B would minimize potential future impacts.

FEIS at 3-233 - 3-235. While the FEIS only contemplated public motorized use on the additional half-mile segment of NFSR 126 being open to the public under Alternative C, most of the analysis above applies to the entire area covered by the Forest Plan amendment, which as described above actually includes the entire upper portion of NFSR 126 all the way to its endpoint at the summit of North Twin Cone Peak. This analysis does not make any distinction between the segment proposed to be open to public motorized use and the segment being converted to an admin road. Much of its reasoning supporting minimal impacts relies on the fact that the road is already present on the ground. Therefore

it is likely that the impacts of opening the entire route to public use would be the same or very similar as those described above.

If the arbitrary TAP recommendation to convert the upper segment of NRSR 126 to an admin road is removed and the false assertion that closing it is necessary for Forest Plan compliance is disregarded, all of the analysis the FEIS contains regarding this route actually supports a decision to open the entire route to public use, rather than opening only part of it and closing the rest. The facts on the ground support this. In our personal observation during visits to the Twin Cones trail within the last year, there are no significant resource management issues on the upper portion that would justify closure. There is some minor trail braiding above timberline typical of such trails, but in CORE's experience, such braiding is easily dealt with by signing or fencing unauthorized braided paths as closed, keeping motorists on the main roadway.

In making this decision contrary to the recommendation produced by the TAP scores and the MRS screening criteria, as well as the analysis contained in the FEIS itself, the Forest has "offered an explanation for its decision that runs counter to the evidence before the agency". *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. A decision contrary to what that evidence in the record supports without any explanation or further evidentiary support for that deviation inherently "runs counter to the evidence before the agency" and is both arbitrary and capricious and unsupported by substantial evidence.

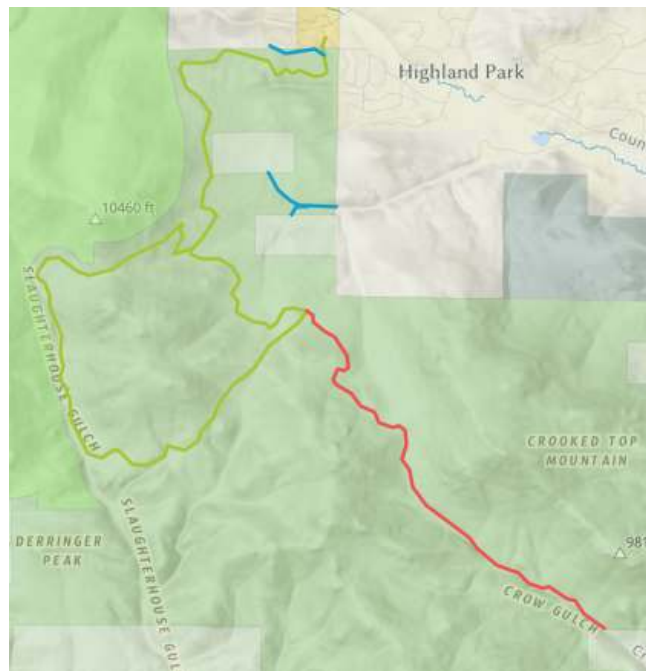
C. CONCLUSION AND REQUESTED RESOLUTION

In conclusion, the chosen management action in the Draft ROD to convert the upper segment of NRSR 126 Twin Cones to an admin road is utterly unsupported by the analysis in the FEIS or anywhere in the project record. The only reasons given for closing it to the public in responses to comments are (1) Forest Plan compliance with the 3A management area, and (2) the TAP recommendation, which also relied on the 3A intrusion as its sole reason for recommending closure. The Forest Plan amendment adopted in the Draft Decision eliminates the 3A intrusion by placing the entirety of NRSR 126 from beginning to end outside of the 3A area, which was only ever an issue in the first place because of an inadvertent mapping error. Nevertheless, the Forest erroneously asserts that the upper segment cannot be open to the public because of the 3A intrusion which will no longer exist, and because the decision to convert to an admin road was recommended by the TAP report, also because of the 3A intrusion.

As shown above, the Forest's reasoning is logically invalid, "offer[s] an explanation for its decision that runs counter to the evidence before the agency" (*Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43), and fails to articulate any rational basis for the closure decision in violation of the APA. Moreover, the MRS Screening Criteria and the analysis in the FEIS supporting the Forest Plan amendment both support a management action which reopens the entire upper segment to the summit of North Twin Cone Peak to public motorized use, most suitably as a trail open to all vehicles.

For these reasons, we believe that the decision to convert the upper segment of NRSR 126 Twin Cones to an admin road was made in error and is legally unjustified. Accordingly, we request that the Reviewing Officer reverse this decision and remand the Draft Decision to the Deciding Official with instructions to designate the upper portion of NRSR 126 from mileposts 5.67 to 7.37 as open to public motorized use as either a road or (ideally) a trail open to all vehicles.

OBJECTION #18: CLOSURE OF NFSR 101 END SEGMENT, SEASONAL CLOSURE OF SLAUGHTERHOUSE GULCH TRAIL



A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the actions in the Draft ROD of (1) closing the end segment of NFSR 101 Crow Creek (4.03 - 7.02 miles) and converting it to an admin road; and (2) imposing a seasonal closure on the main Slaughterhouse Gulch loop (NFSRs 101 and 105). Both of these actions are unmerited and were unlawfully predetermined by the South Platte Ranger District TAP recommendations. Patrick McKay commented on these routes in comments 328-2 and 328-1, specifically opposing the closure of the Crow Creek spur and the imposition of seasonal closures on the remainder of the trail system.

B. ANALYSIS

The Slaughterhouse Gulch trail system consists of an extremely popular loop composed of NFSR 105 Slaughterhouse and NFSR 101 Crow Creek near the town of Bailey. It is a moderate to difficult four-wheel-drive trail and one of only three more challenging trails in the South Platte District (the other two being the upper portion of NFSR 126 Twin Cones and NFSR 565 Red Cone). It has long been one of the most popular four-wheel-drive routes in the South Platte District and has been featured in multiple editions of the *Funtreks* four-wheel-drive guidebook series as one of the best offroad trails in Colorado. It is only about an hour away from Denver and is a popular destination trail for group trail runs by Denver area 4x4 clubs.

In the past, an additional 3 mile long segment of NFSR 101 provided a fun side trail to explore off the main loop, traveling down Crow Gulch. While this trail has been closed for several years for rehabilitation, with proper maintenance it is a fun and challenging trail that, as a 3 mile long out-and-back route, effectively adds 6 additional miles of driving to the main Slaughterhouse Gulch

loop, making for a high quality full-day experience. This segment is unjustifiably proposed for permanent closure in the Draft ROD and is being converted to an admin road.

With a maximum elevation of only 9800 feet, the Slaughterhouse Gulch trail system gets much less snow than higher elevation areas in the Colorado mountains, and is passable to vehicles all year. This area gets very little snow in the winter and has been a popular destination for winter snow wheeling when it does have snow. Resource damage from wheeling when wet or muddy has been minimal, and the off-roading community enjoys the challenge presented by the few mud holes and ruts it has. This is a more difficult rated trail, and ruts and mud holes are natural obstacles that make it fun.

This trails system has traditionally been managed as open year-round, but a winter seasonal closure from January 1 - May 15 was added in 2016 because of the settlement agreement in the lawsuit which precipitated this travel planning process. For the last few years, it has also been subject to a temporary "mud season" seasonal closure imposed by order of the South Platte Ranger district during the spring melt-off season, usually April through May. The Draft Decision would make the winter seasonal closure permanent and adjust the dates to January 1 - April 1. It would likely continue to be subject to the mud season closure from April 1 to mid-May.

Neither the permanent closure of the spur segment of NFSR 101, nor the winter seasonal closure imposed by the Draft ROD for this entire trail system are justified by any genuine environmental or resource need, and the Forest failed to provide any explanation or evidence supporting these decisions in the FEIS or DROD. Closing the Crow Creek spur and seasonally closing this trail system for as much as five months out of the year causes unacceptable harm to the quality of motorized recreation in the South Platte District and is arbitrary and capricious for multiple reasons.

First, the Forest unlawfully failed to respond to the specific evidence in our comments, and failed to provide any explanation for its decision to close the NFSR 101 spur or impose a seasonal closure on the rest of the Slaughterhouse Gulch loop route. As discussed in Objection #1, under APA section 706(2) agency decisions that are "unsupported by substantial evidence" must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983). In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision adopted regarding the alternative chosen, but also to the decisions made regarding individual routes.

In *Idaho Conservation League*, 766 F. Supp. 2d at 1074-1075, a travel management plan very similar to this one was overturned by the courts because, "the Forest Service's failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA". The court found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs' comments were legally insufficient to meet the agency's burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.* The court concluded, "the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period." *Id.* at 1069.

The Forest did not provide any reason for imposing a seasonal closure on this trail system other than a generalized statement giving examples for why seasonal closures are added in this travel plan, without providing any specific explanation for why a seasonal closure was added for *these specific routes*. It merely said:

Seasonal closures are proposed across all the action alternatives for various reasons, such as protecting breeding wildlife, nesting birds, and winter big game habitat or taking into consideration road surfaces where travel in wet spring conditions could damage routes.

Response to comment 328-1 by Patrick McKay, FEIS Appendix D at D-112.

This statement failed to respond to Patrick McKay's specific comments as to why a seasonal closure for this area is not justified and was historically unneeded, nor does it say which of the several *possible* reasons for seasonal closures actually motivated *this specific seasonal closure*. This explanation is legally insufficient to justify the Forest's decisions with respect to the specific routes at issue in this objection by providing a "rational connection between the facts found and the decision made," and is thus arbitrary and capricious.

The Forest provided even less information about the reasons for closing the spur segment of NFSR 101, but replied to comments on that route with the generic boilerplate statement:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information.

Response to comment 328-2 by Patrick McKay, FEIS Appendix D at D-377. This likewise failed to provide any specific reasons for the decision to close this specific route, and failed to meet the requirements of the APA and NEPA to articulate a "rational connection between the facts found and the decision made," and is therefore arbitrary and capricious.

Second, the Forest's treatment of the TAP reports as decisional documents not subject to challenge or further evaluation under NEPA violated the Travel Management Rule, multiple Forest Service policies, and NEPA and the APA.

From the little information we have on the reason for the decisions regarding these specific routes, it appears both the conversion of the spur section of NFSR 101 to an admin road and the imposition of a seasonal closure on the remaining routes was the result of the recommendations in the South Platte District TAP Addendum. The TAP comments for the main Slaughterhouse Gulch loop segments stated "Seasonal Rd", while the TAP comment for the spur segment of NFSR 101 was, "Seasonal Rd, Recommend eliminating public access at S. intx with 105, MP 4.03, and keeping as an Admin road."

As discussed in Objection #2, the FEIS states that all route-specific recommendations in the TAP reports were adopted in the Draft Decision, and routes that had such recommendations were not subject to any further screening under the MRS rubric. The agency also did not consider any public comments on these routes asking for a different management outcome, but simply replied that the TAP recommendation was dispositive.

As described in Forest Service regulations, the Travel Analysis Process is the first step in determining the Minimum Road System (MRS), conducting an initial analysis of roads that are likely needed or not needed for the MRS. The actual determination of the MRS occurs during a formal travel management process subject to NEPA, which is informed by the Travel Analysis Reports. This two step process has been affirmed by the courts as the proper method of determining the MRS. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (D. Mont. 2020):

Identification and implementation of a minimum road system is a two-step process. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117 (9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

As discussed in Objection #2, the TAP reports were only the first step of this two-step process, and did not produce a final agency decision regarding the MRS. This travel management process was supposed to be the second step in designating the Minimum Road System for the PSI NF, subjecting the initial findings in the TAP reports to full NEPA review. From its comment responses, it is clear however that the Forest has decided to treat the TAP report recommendations as a final decision not subject to further challenge or review. These responses demonstrate that the Forest had already made the decision to close this route to the public in the supposedly non-decisional TAP process.

The inadequate public involvement in the creation of the South Platte District TAP Addendum (which received only one public comment), and the fact that the Forest automatically adopted the recommendations in that addendum and carried over the TAP scores into the MRS Screening Process in this travel management decision without accepting any input that challenged them; precluded any effective opportunity for public comment on the actual decision to *designate* the spur segment of NFSR 101 as closed to public use and impose a seasonal closure on the rest of the Slaughterhouse Gulch loop, as required by the Travel Management Rule as codified in 36 C.F.R. § 212.52(a):

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

By effectively making the designation decisions for these routes in the predecisional travel analysis process and refusing to consider any comments which challenged the TAP recommendations or the management outcomes derived from them, the Forest violated both the Travel Management Rule and 40 C.F.R. § 1502.5 on the timing of NEPA actions involving Environmental Impact Statements, which states:

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can **serve as an important practical contribution to the decision-making process** and will **not be used to rationalize or justify decisions already made.....**

By the time the alternatives for this travel management process were formulated, every one of the action alternatives except Alternative B considered closing the Crow Creek spur to the public, and the

Forest did not incorporate any of its actions (or the No Action Alternative A) into the Draft Decision with respect to this route, even though that was requested in numerous public comments. Therefore public input was not allowed to serve as an important practical contribution to the decision making process. The same was true of the seasonal closures, where the Forest did not even provide the dates until the last week of the DEIS public comment period, and did not consider any comments opposing them.

If, contrary to Forest Service policy, the Forest wished to make final route designation decisions during the TAP process, then it should have prepared an Environmental Impact Statement at that stage of the process, which it did not. Instead, it simply made those decisions in the TARs -- either directly through the express recommendations in the TAP reports, or indirectly through the use of the TAP scores in the MRS rubric. The entire travel management process that followed has been a *post hoc* rationalization of decisions already made in the supposedly non-decisional TAP process.

The Travel Analysis Reports were not decisional documents and the agency improperly treated them as final decisions which could not be challenged. In order to create a Minimum Road System as prescribed by the Travel Management Rule, the Forest must both conduct a predecisional Travel Analysis Process *and* subject the findings of that process to NEPA review. This travel management plan *is* that NEPA review and the Forest was obligated to consider evidence which contradicts the findings in the TAP reports. See Objection #2 for further discussion of this point. The automatic adoption of the TAP recommendations with respect to these routes violated the Travel Management Rule and was therefore arbitrary and capricious.

Third, in making the decision to close the end segment of NFSR 101 contrary to the recommendation produced by the TAP data and the MRS screening criteria, the Forest has also “offered an explanation for its decision that runs counter to the evidence before the agency”. *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. The only actual evidence in the project record regarding this route is the TAP data and MRS Screening Criteria. A decision contrary to what that evidence supports without any explanation or further evidentiary support for the deviation inherently “runs counter to the evidence before the agency” and is both arbitrary and capricious and unsupported by substantial evidence.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: H/L

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	H
Timber Access Benefit	H
Special Use Access Benefit	L
Resource Management/Range Access Benefit	M

Risks

Category	Score
Watershed Risk	M
Wildlife Risk	M
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	M

The spur segment of NFSR 101 Crow Creek was given an overall High Benefit / Low Risk TAP rating, which under the MRS rubric should have resulted in its automatic inclusion in the Minimum Road

System with a designation that would have made it open to public motorized use. The FEIS states that High Benefit / Low Risk roads were ideal candidates for the MRS and were supposed to remain as-is with no change in status. FEIS at 2-6. Nowhere in the MRS screening section does the FEIS give any reason why a H/L road should be closed to public use. Therefore the decision to convert it to an admin road could not have been produced by the MRS rubric, and could only have come from the arbitrary recommendation of the ranger district in the TAP Report.

We also note that the recreational use benefit score of this road was improperly marked as 'low'. The same error was made for the segment of NFSR 101 that is remaining open as a road open to all vehicles, which provides both the sole access to the main Slaughterhouse Gulch loop and comprises the entire eastern half of the loop. The other half of the loop, NFSR 105 Slaughterhouse, was given a 'high' recreational use benefit, which is the appropriate score for a route that is one of the most popular 4x4 trails in the South Platte District. While the Crow Creek spur section of NFSR 101 was appropriately evaluated as a separate route segment, it should have been given the same (proper) 'high' recreational use benefit rating as the main segment of NFSR 101, as they are both part of the same trail system and are typically run together as part of a full-day recreational experience.

The Crow Creek spur segment might also have been improperly rated 'low' solely because it is currently 'temporarily' closed to public use. We believe this closure was unlawful as it did not comply with the requirements of the Travel Management rule for emergency temporary closures (see 36 C.F.R. § 212.52(b)). Regardless, as discussed in other objections (see Objection #38 on Wildcat Canyon), a temporary closure is not a valid reason for rating the recreational use benefit of a road as 'low' solely because it is not currently open to public use. The recreational use benefit should have been scored based on the value the road had for motorized recreation when it was open to public motorized use.

While this route segment should not have been recommended for closure to begin with because of its H/L overall score, the erroneously low recreational benefit score compared to the high administrative use benefit scores may have played a role in producing the TAP recommendation to convert it to an admin road, therefore this blatant factual error likely prejudiced the outcome chosen for this segment.

While the TAP scores were not the only proper basis for final route designation decisions, they were supposed to be used to inform such decisions. The Forest's failure to consider the TAP scores for this route at all while instead basing the decision to close it to the public solely on the arbitrary, one sentence recommendation in the TAP report, contrary to the MRS rubric's recommended management for H/L roads, was arbitrary and capricious and contrary to the evidence before the agency.

Fourth, as discussed in both Objections #1 and 3, basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the APA. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43.

Critically, "NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data". *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006). Basing the decisions to close the spur segment of

NFSR 101 and impose seasonal closures on the rest of the Slaughterhouse Gulch loop solely on the conclusory and unsupported recommendations in the TAP report caused that decision to be based solely on the “bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103. This makes the decision inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

Fifth, basing travel management decisions solely on ranger district staff opinions also violates the Travel Management Rule (TMR) as codified in 36 C.F.R. § 212.5(b)(1), which states:

In determining the minimum road system, the responsible official must incorporate a **science-based roads analysis** at the appropriate scale and, to the degree practicable, **involve a broad spectrum of interested and affected citizens**, other state and federal agencies, and tribal governments.

The science-based analysis referenced in this CFR is the Travel Analysis Process and Minimum Road System Screening Criteria. While those are not the only allowable basis for deciding whether routes should be included in the minimum road system, deviations from that scientific process must be adequately justified by clearly articulated facts and reasoning. If Forest Service staff are allowed to arbitrarily deviate from the recommendations of the MRS rubric at whim without justifying those decisions at all, the minimum road system could no longer be said to be science-based in any meaningful way.

Because compliance with section 212.5(b)(1) of the TMR was part of the main stated Purpose and Need for this project, failing to comply with the TMR also fails to meet the purpose and need of the project, which is an independent reversible error.

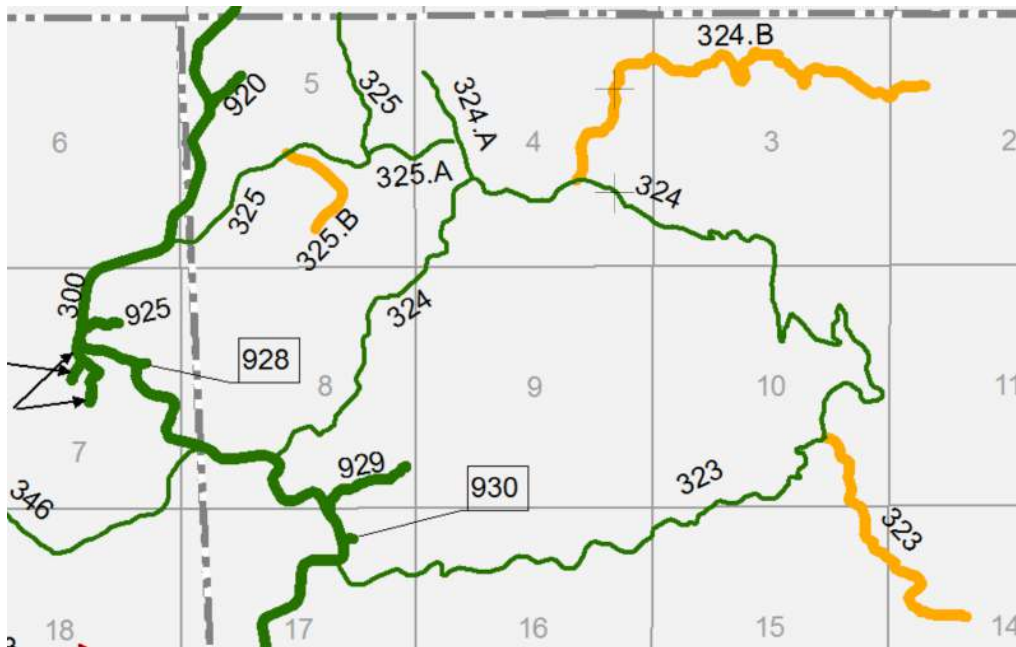
C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons above, the decisions to (1) convert the end spur segment of NFSR 101 Crow Creek to an admin road and close it to the public, and (2) add a winter seasonal closure to the remaining routes in the Slaughterhouse Gulch trail system, were arbitrary and capricious, unsupported by substantial evidence, contrary to the evidence before the agency, and otherwise contrary to law.

We request that these decisions be reversed and that the Draft ROD be remanded to the Deciding Official with instructions to modify the Final Decision to (1) reopen the end segment of NFSR 101 to public motorized use as either a road or trail open to all vehicles, and (2) remove the seasonal closure from the remaining segments of NFSRs 101 and 105.

VIII. Pikes Peak District Objections

OBJECTION #19: CLOSURE OF NFSR 324.B COUNTY LINE AND THE END SPUR SEGMENT OF NFSR 323 WINDING STAIRS



A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the action in the Draft Decision of decommissioning all of NFSR 324.B County Line and the end segment of NFSR 323 Winding Stairs. These are both spur routes off of the popular Winding Stairs/Ice Cave Creek loop route in Rampart Range. While they are spur roads rather than loops themselves, these spurs are the main attractions on this highly valuable loop, which is one of the main named trails in the Rampart Range area and is included in four-wheel-drive guide books such as the *Funtreks Guide to Colorado Backroads & 4-Wheel-Drive Trails*. These spurs provide access to multiple scenic overlooks, highly desirable dispersed campsites, and hiking trails in the Rampart East Roadless Area. NFSR 324.B County Line was proposed to be closed under all action alternatives, while the end spur segment of NFSR 323 Winding Stairs was only proposed for closure under Alternative C.

These routes were not properly evaluated in the TAP reports and all public comments on them were disregarded in FEIS. Neither the FEIS nor supporting documents give any justification for closing them beyond the TAP recommendation for NFSR 324.B, failing to satisfy the requirements of NEPA and the APA that the Forest articulate a rational connection between the facts found and the decision made.

Patrick McKay commented on these routes in comments 183-8 and 183-9, requesting that they both be kept open to public motorized use.

B. ANALYSIS

1. *Background and route descriptions*

The Winding Stairs / Ice Cave Creek Loop is one of the most popular trails in the Rampart Range area. It is open year-round, and is popular for dispersed camping in the summer and snow wheeling in the winter. As a loop route, it is one the high quality opportunities for motorized recreation that one of the main goals of Alternative C was to preserve. While none of the roads in this area are technically challenging, their primary value is for scenery.

The main loop has some scenic views, but the spectacular viewpoints, campsites, and rock formations along the two horn-like spur routes have always been the real attractions of this trail system. While Alternative C does preserve the main loop, it closes both side spurs, leaving the main loop as mostly just a boring drive through the forest.



Of the two, **NFSR 323 Winding Stairs** is the more significant. The Pikes Peak District TAP Addendum evaluated this entire route as one segment, but Alternative C in the FEIS split it into two segments: the main route from the intersection with NFSR 300 Rampart Range Road to the junction with NFSR 324 Ice Cave Creek, and the 1.19 mile long spur section from mileposts 2.68 - 3.87, which was proposed for decommissioning under Alternative C and the Draft Decision. As can be seen in the map above, this spur runs along the top of a ridge just outside the boundary of the Rampart East Roadless Area, ultimately dead-ending at an extremely scenic overlook of a rocky canyon in the North Monument Creek drainage, with towering rock formations all around and spectacular views to the east looking down on the Front Range. While the road used to continue a little further down the ridge to a turnaround at the next flat spot, the MVUM shows it ending at the roadless area boundary.

The last quarter mile of this spur includes several extremely scenic dispersed campsites perched on the edge of cliffs looking down into the canyon, and surrounded by towering rock formations and boulders which are fun for both children and adults to climb on. These are without question some of the best campsites in the entire Rampart Range region, and they are almost always occupied in the summer. When Patrick McKay last visited the area in early May 2020, most of these campsites were occupied even in the late afternoon on a Sunday. The following images show the views and rock formations around several of the campsites and overlooks near the end of this spur.





As should be evident from these photos, the Winding Stairs spur is incredibly scenic and offers excellent opportunities for dispersed camping, rock climbing and bouldering, and spectacular views. Combined with the loop opportunity offered by the main Winding Stairs Road, this road (which was evaluated as a single segment in the TAP) certainly deserved a high recreational use benefit rating. Nevertheless, the Pikes Peak District TAP Addendum gave it only a moderate recreational benefit rating, with an overall rating of Low Benefit / Low Risk.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/L

Benefits

Category	Score
Recreational Use Benefit	M
Fire/Fuels Access Benefit	M
Timber Access Benefit	M
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	L
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	L

Under the definitions of recreational use benefit scores used in the TAP reports:

A High (H) rating was assigned to roads that are the primary access routes to developed recreation sites/facilities, or primary access routes to popular dispersed recreation areas, or the road has high value as a recreation experience.

A Moderate (M) rating was assigned to roads that are the primary access routes to other dispersed recreation areas.

Pikes Peak District TAP Addendum at 5-1. The entire length of NFSR 323 unquestionably offers a high value as a recreational experience, especially the spur segment. It is also the primary access route to a popular dispersed recreation area. Therefore the moderate recreational use benefit rating was made in error, and this score should have been high.

Even with these TAP scores however, the Minimum Road System rubric contained an exception for L/L roads with moderate or high recreational use benefit, which should have resulted in this route being kept open as a trail open to all vehicles if the MRS rubric had been properly applied to it.

- Recreational use (**moderate** or **high** benefit TAP ratings) – Management recommendation is Convert to trail open to all vehicles.

FEIS at 2-9 (emphasis added). This exception should have been applied here, and indeed was for Alternatives B and D. Even the environmentally focused Alternative E would have kept it open as a road open to highway legal vehicles only. Alternative C was the only alternative which closed this spur segment to the public. Notably, the preferred alternative in the since-canceled South Rampart Travel Management Plan also would have kept the spur segment of NFSR 323 open to the public, noting

“POPULAR FOR 4X4, GOOD ROUTE CONNECTIONS.” Environmental Assessment for the South Rampart Travel Management Plan (August 2011) (“South Rampart EA”), Appendix B, at 2. Since there was no specific TAP recommendation for this route, it is likely this closure decision came from the recommendation of the ranger district in the “site-specific review” referenced in the FEIS that was conducted for Alternative C (see Objection #3).

NFSR 324.B County Line is the northern spur in the Winding Stairs / Ice Cave Creek loop. As seen in the map to the right, it is cherry-stemmed into the Rampart East Roadless Area. While it is not quite as scenic as the Winding Stairs spur, its primary attractions are the highly scenic campsite and overlook at the end of the road, and the fact that it provides access to the southern end of the hiking trail to the Sidney Harrison plane crash site (red line). This site (pictured below right) is where a WWII-era fighter pilot crashed a military trainer aircraft during the 1950s.



There are two possible ways to reach the crash site. It is either an 11 mile out-and-back hike from Palmer Lake, or a 5 mile out-and-back hike from NFSR 324.B. The much shorter distance makes it a far easier hike from NFSR 324.B to reach the crash site, and this end of the trail had the added benefit of being less well-known and significantly less crowded. If NFSR 324.B were closed as proposed in the Draft Decision, it would add approximately 0.8 miles each way to this hike, bringing the total distance to 6.6 miles round trip.

The second primary attraction of NFSR 324.B is the highly scenic campsite and overlook at the very end of the route (pictured next page). This campsite offers great views of the front range and large boulders to climb on. There are several other dispersed campsites along the route, but the one at the end is by far the best. It is a hidden gem enjoyed by locals who know the area well. NFSR 324.B is also a fun snow-wheeling trail in the winter, and



CORE did a group snow run on it this past winter.



Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/L

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	L
Timber Access Benefit	L
Special Use Access Benefit	M
Resource Management/Range Access Benefit	M

Risks

Category	Score
Watershed Risk	M
Wildlife Risk	L
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	L

Despite the excellent dispersed camping opportunities and hiking access, the Pikes Peak TAP Addendum rated NFSR 324.B L/L overall and low recreational use benefit. The TAP report contained the specific recommendation of, “Recommend eliminating public motorized access”. According to the responses to public comments in the FEIS, the TAP recommendation was the primary reason it was closed, and it was considered for either decommissioning or conversion to a special use permit road in all action alternatives.

2. The forest has failed to justify or explain the closure of these routes, rendering the decision arbitrary and capricious

Both Patrick McKay and another CORE Advisory Board Member, Luke Gilginas, commented extensively on these two spur routes and explained their high value for motorized recreation. The Forest Service dismissed our comments with this boilerplate statement:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Route management recommendations are based on TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. The TAP/TAR specifically recommends decommissioning [the] last segment of NSFR 327 Gove Creek and eliminating public motorized access for NSFR 324.B.

Response to comment 183-9 by Patrick McKay, FEIS Appendix D at D-42. The Forest gave the same generic response to Patrick McKay’s comment on NFSR 323. While this response does indicate the *source* of the decision to close NFSR 324.B (the TAP recommendation), nowhere did the Forest even attempt to explain the *reasons* for closing both of these routes. Nor did the Forest make any effort to address the specific evidence presented in our comments for why these routes had high recreational value and should not be closed. Instead, the Forest treated the TAP scores and recommendations as dispositive final decisions not subject to further evaluation. In doing so, the Forest violated the Administrative Procedure Act, NEPA, and the Travel Management Rule in multiple ways.

First, the Forest unlawfully failed to respond to the specific evidence in our comments, and failed to provide any explanation for its decision to close these routes. As pointed out above, the TAP ratings for both of these routes are incorrect (especially the recreational use benefit scores), giving the management decision recommended by the TAP a flawed factual basis. While revisions to the TAP reports themselves may be beyond the scope of this travel management process, the *decisions* which resulted from them are not.

As discussed in Objection #2 the TAP reports were only supposed to *inform* route-specific decisions in the travel management process, not *dictate* them. Public comments received later in the travel management process were also supposed to inform route-specific decisions, and cannot simply be ignored because the TAP data is what it is. When the Forest was made aware through public comments that the data it relied upon to make route-specific decisions is incorrect, it had a responsibility to reevaluate those routes based on the new information it has received, or at least respond to the specific evidence in our comments. The Forest failed to do this and therefore violated the Travel Management Rule.

As discussed in Objection #1, under APA section 706(2) agency decisions that are “unsupported by substantial evidence” must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision adopted regarding the alternative chosen, but also to the decisions made regarding individual routes.

In *Idaho Conservation League*, 766 F. Supp. 2d at 1074-1075, a travel management plan very similar to this one was overturned by the courts because, “the Forest Service’s failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA”. The court found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs’ comments were legally insufficient to meet the agency’s burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.* The court concluded, “the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.” *Id.* at 1069.

In the case NFSRs 323 and 324.B, the Forest failed to address any of the evidence in our comments regarding scenic overlooks, campsites, recreational use benefit, and the flawed TAP ratings. Indeed, the Forest failed to provide any actual reasons why it decided to close these routes to public use, other than the conclusory TAP recommendation for NFSR 324.B. Because the Forest completely failed to provide *any* specific explanation of the reasons for its decisions to close NFSRs 323 and 324.B, these decisions are arbitrary and capricious and unsupported by substantial evidence, and must be reversed.

Second, from what little we do know of the basis for the Forest’s decision to close these routes, it appears both decisions were based solely on the arbitrary opinions of the ranger district staff. In the response to public comments, the Forest indicated that the decision to close NFSR 324.B was based on the recommendation in the TAP report to eliminate public motorized access. For the spur segment of NFSR 323, it appears likely the decision to close it was the result of the “site-specific review” conducted by ranger district staff specifically for Alternative C, which was used to overrule management outcomes

from the MRS Screening Process that the ranger district staff disagreed with. Given that every alternative considered *except* Alternative C would have kept this route segment open to the public, that is the most likely reason for this deviation. Both the TAP recommendations and these site-specific recommendations by the ranger districts ultimately represent the mere opinions of district staff rather than any kind of scientifically-derived management decision. Both also consist of mere conclusions unsupported by any specific evidence or reasoning.

As discussed in both Objections #1 and 3, basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the Administrative Procedure Act. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43.

Critically, “NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data”. *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006). A **“bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS.”** *Great Basin Resource Watch*, 844 F.3d at 1103 (emphasis added).

While the description of the site-specific review in the FEIS tries to couch this review in scientific sounding terms, it cannot obscure the fact that this review process inherently allowed district staff to substitute their own opinions for how a given route should be managed over the outcome derived from the MRS screening rubric. This was the case with NFSR 323. The same is true for the decision to close NFSR 324.B based on the arbitrary TAP recommendation.

The Forest cannot escape the fact that the decision to close these routes is based solely on the “bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103. This makes the decision inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

Third, in making the decision to close the end segment of NFSR 323 contrary to the recommendation produced by the TAP data and the MRS screening criteria, the Forest has also “offered an explanation for its decision that runs counter to the evidence before the agency”. *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. The only actual evidence in the project record regarding this route is the TAP data and MRS Screening Criteria. A decision contrary to what that evidence supports without any explanation or further evidentiary support for the deviation inherently “runs counter to the evidence before the agency” and is both arbitrary and capricious and unsupported by substantial evidence.

While the decision to decommission NFSR 324.B may have been in accordance with the TAP scores and MRS rubric, as we pointed out in our comments, the TAP scores were erroneous and failed to recognize the significant recreational use benefit of that route. That decision also was contrary to the evidence before the agency, as presented in our comments. The Travel Analysis Reports were not decisional documents and the agency improperly treated them as final decisions which could not be challenged. In order to create a Minimum Road System as prescribed by the Travel Management Rule,

the Forest must both conduct a predecisional Travel Analysis Process *and* subject the findings of that process to NEPA review. This travel management plan *is* that NEPA review and the Forest was obligated to consider evidence which contradicts the findings in the TAP reports. See Objection #2 for further discussion of this point.

Fourth, basing travel management decisions solely on ranger district staff opinions violates the Travel Management Rule (TMR) as codified in 36 C.F.R. § 212.5(b)(1), which states:

In determining the minimum road system, the responsible official must incorporate a **science-based roads analysis** at the appropriate scale and, to the degree practicable, **involve a broad spectrum of interested and affected citizens**, other state and federal agencies, and tribal governments.

The science-based analysis referenced in this CFR is the Travel Analysis Process and Minimum Road System screening criteria. While those are not the only allowable basis for deciding whether a given route should be included in the minimum road system, deviations from that scientific process (such as with NFSR 323) must be adequately justified by clearly articulated facts and reasoning. If Forest Service staff are allowed to arbitrarily deviate from the recommendations of the MRS rubric at whim without justifying those decisions at all, the minimum road system could no longer be said to be science-based in any meaningful way.

The TMR also requires that public input from a “broad spectrum of interested and affected citizens” be considered when determining the minimum road system. This coincides with the related requirement in the TMR that “The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart.” 36 C.F.R. § 212.52(a). In the case of these two roads, the decision to close them had already been made by ranger district staff at least some time prior to the comment period on the DEIS, so the public was effectively deprived of any opportunity to give input on the decision to close these routes before the decision had already been made, in violation of the Travel Management Rule.

Because compliance with the TMR was the main stated Purpose and Need for this project, failing to comply with the TMR also fails to meet the purpose and need of the project, which is an independent reversible error.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, the decisions to close the end spur segment of NFSR 323 and all of NFSR 324.B were arbitrary and capricious, unsupported by substantial evidence, and in violation of multiple laws and regulations. The Forest has utterly failed to provide an adequate justification or explanation for why these routes were closed.

Additionally, if the decision to close these routes was in any way based on their proximity to the Rampart East Roadless Area, that is an invalid reason for closing a motorized route to the public. The Colorado Roadless Rule allows for the presence of motorized trails *within* roadless areas, and certainly does not require the closure of motorized routes outside of them. To the extent that some nebulous concept of “enhancing roadless values” played any role in the decision to close these roads, such reason was legally invalid.

Therefore we request that the Reviewing Officer reverse these route-specific decisions and remand the Draft ROD to the Deciding Official with instructions to modify the final decision to leave them open to public motorized use as either roads or trails open to all vehicles.

OBJECTION #20: CLOSURE OF THE SECOND HALF OF NFSR 327 GOVE CREEK

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the decommissioning of the final 2.85 miles of NFSR 327 Gove Creek in the Rampart Range area, as proposed in the Draft Decision. This is an important route for motorized recreation and dispersed camping, and also has the potential to provide access to future hiking trails connecting to the Sandstone Ranch Douglas County Open Space. The decision to close half of this route was arbitrary and capricious and lacking science-based justification.

Patrick McKay commented on this route in comments 130-1 and 183-9 opposing this closure.

B. ANALYSIS



As depicted in the map above, the second half of NFSR 327 Gove Creek (shown in red) is proposed to be decommissioned in the Draft ROD, from mileposts 1.85 - 4.7. The closure point appears to have been arbitrarily chosen solely because it coincided with the intersection with a new single-track motorcycle trail (dashed light green line) that was proposed to be added in Alternative D. That

motorcycle trail was not included in either Alternative C or the draft decision, and therefore is irrelevant to the final decision reached regarding NFSR 327. Though this road is cherry-stemmed into the Rampart East Roadless Area (light green opaque shading), it does not enter it and does not conflict with the roadless area in any way.

NFSR 327 is a scenic drive through a more remote part of Rampart Range, winding through several valleys and ridgelines, and ends at a large dispersed campsite which looks down on the Front Range. It is an easy route for any 4WD vehicle, and its main use is dispersed camping in the summer and snow-wheeling in the winter. While it is not heavily trafficked, it is a fun route to explore and has some good dispersed camping opportunities. The campsite at the end of the route is pictured below.



NFSR 327 is another route where the final management decision was predetermined by the TAP report with no public input accepted on its value.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/L

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	H
Timber Access Benefit	L
Special Use Access Benefit	M
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	L
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	L

It was given a Low Benefit / Low Risk overall TAP rating, with 'low' recreational use benefit, 'high' fire access benefit, and 'high' watershed risk ratings. The Pikes Peak TAP Addendum also included a specific recommendation of "Recommend Decommissioning approximately the last three miles." Given its value for dispersed camping, snow wheeling, and general exploration in the Rampart Range area, the 'low' recreational use benefit rating was given in error and should have been at least 'moderate'. The 'high' watershed risk rating was also likely erroneous, as this route does not cross any significant streams and only has a couple places where it is adjacent to any kind of water. There is one place where it runs next to a small pond (pictured below), but this is at the bottom of a flat valley and there is minimal risk of sediment runoff from the road. The roadbed itself is in good condition with no signs of significant rutting or erosion. Thus the high watershed risk rating was likely unmerited.



In response to Patrick McKay's comment 130-1 on this route, the Forest replied, "The TAP/TAR specifically recommends decommissioning [the] last 3 miles of NSFR 327 Gove Creek--both segments being rated L/L." FEIS Appendix D at D-37. Therefore this is another example of a route where the TAP scores and recommendation were treated as a dispositive final decision not subject to further review in the travel management process under NEPA (see Objection #2).

There were several public comments submitted during the DEIS comment period containing important new information the Forest should have considered regarding this route. In addition to Patrick McKay and other motorized recreationists who commented on this route's recreational use benefit for dispersed camping, both the Larkspur Fire Protection District and the Douglas County Government submitted comments on this road's high value for firefighting and search & rescue access to an otherwise un-roaded area of the Rampart Range.

There have been many calls for rescue in this area over the years. The Larkspur Fire District uses RD 327 for SAR operations frequently. Some years back, a pilot flew into the mountain at night. The US Forest Service used RD 327 to bring in Tenders & Brush Trucks to fight the subsequent fire. Larkspur Fire

used RD 327 to extricate the deceased pilot. The Fire Marshal said without the use of RD 327, extrication would have been exceedingly difficult.

Comment 2800-5 by Andy Hough (Douglas County Environmental Resources Coordinator), FEIS Appendix D at D-65. In response to the County's concerns the Forest Service merely stated, "In accordance with the Forest Plan, closed and restricted roads may be used for and to accomplish administrative purposes in case of emergency (Forest Plan, page III-75)." *Id.*

This response completely ignored the obvious fact that when a road is decommissioned as proposed, the goal is for it to be restored to its natural state, either through being naturally reclaimed or mechanically obliterated and recontoured. Either way, if the road is reclaimed, it would no longer be passable to vehicles, and would thus be unavailable for emergency vehicle access for search and rescue or firefighting, at least not without significant reconstruction work. In a heavily forested area such as this, the only way to ensure a road remains passable and clear of downed trees and debris is for it to be regularly traveled by the public.

Douglas County also commented on the fact (which Patrick McKay referenced in his comments) that their long-term plan for the new Sandstone Ranch Open Space (which just opened this summer and was still under construction during the DEIS comment period in fall 2019) included building hiking trails which connect to NFSR 327:

Douglas County recently acquired the Sandstone Ranch as a County Open Space parcel. Douglas County has an active application to the Pikes Peak District for two nonmotorized trails from the 2030-acre Sandstone Ranch connecting to FS RD 327. We have been working with various District Rangers for years to gain public access along the eastern edge of the Pike National Forest where there is currently very little. Historically, Trail 627 ran from RD 327 down to the private property at Sandstone Ranch. Trail 627 was designated on the Pike National Forest Map two iterations back.

Comment 2800-6, FEIS Appendix D at D-65. The Forest's response to this comment was simply, "Managing nonmotorized recreation is beyond the scope of this undertaking." *Id.* That of course ignored that entire point of Douglas County's comment, which is that they wished the second half of this road to be kept open for *motorized* use, in order to provide *motorized* access to the upper ends of the proposed hiking trails. Douglas County's acquisition of the Sandstone Ranch property and the creation of an open space park there were new events that occurred after the completion of the Pikes Peak Ranger District TAP Addendum. If the proposed hiking trails are built, it would significantly increase the recreational use benefit of this road, which should have caused the Forest Service to reevaluate the chosen management option in Alternative C in light of changed circumstances.

The Forest's failure to even consider these comments by Douglas County and others violates two separate requirements of the Travel Management Rule--the requirement to allow the public to be involved in the actual *decisions* to designate individual routes in a proposed travel plan (36 C.F.R. § 212.52(a)), and the requirement for the Forest Service to "coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads" (36 C.F.R. § 212.53). The Forest's complete dismissal of Douglas County's comments constitutes a clear violation of the latter CFR.

The Forest also failed to explain its reasons for closing the second half of NFSR 327 beyond the fact that it was a L/L road recommended for closure in the TAP report. Nor did the Forest make any effort to address the specific evidence presented in public comments for why this route has high recreational value and other benefits and should not be closed. Instead, the Forest treated the TAP scores and recommendations as dispositive final decisions not subject to further evaluation under NEPA. In doing so, the Forest violated the Administrative Procedure Act, NEPA, and the Travel Management Rule in multiple ways, rendering the decision arbitrary and capricious.

First, the Forest unlawfully failed to respond to the specific evidence in public comments, and failed to provide any explanation for its decision to close this route. As pointed out above, the TAP ratings for this route are incorrect (especially the recreational use benefit and watershed risk scores), giving the management decision produced by the MRS rubric and TAP recommendation a flawed factual basis.

While revisions to the TAP reports themselves may be beyond the scope of this travel management process, the *decisions* which resulted from them are not. As discussed in Objection #2 the TAP reports were only supposed to *inform* route-specific decisions in the travel management process, not *dictate* them. Public comments received later in the travel management process were also supposed to inform route-specific decisions, and cannot simply be ignored because the TAP data is what it is.

When the Forest was made aware through public comments that the data it relied upon to make route-specific decisions was incorrect, it had a responsibility to reevaluate those routes based on the new information it has received, or at least respond to the specific evidence in our comments. The Forest failed to do this and therefore violated the Travel Management Rule. *See Idaho Conservation League*, 766 F. Supp. 2d at 1069 (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

In the *Idaho Conservation League* case, a travel management plan very similar to this one was overturned by the courts because, “the Forest Service’s failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA”. *Id.* at 1074-1075. The court specifically found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs’ comments were legally insufficient to meet the agency’s burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.*

In the case of NFSR 327, the Forest failed to address any of the evidence in public comments regarding recreational use benefit and the flawed TAP ratings. Indeed, the Forest failed to provide *any* actual reasons why it decided to close these routes to public use other than the TAP reports. As discussed in Objection #1, under APA section 706(2) agency decisions that are “unsupported by substantial evidence” must be set aside as unlawful.

Both NEPA and the APA require the Forest Service to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision adopted, but also to the decisions made regarding individual routes as well. In *Idaho Conservation League*, the court overturned a Forest Service travel plan because of the Forest’s failure to adequately explain its

decisions with regards to the individual routes of concern to the Plaintiffs. Because the Forest has completely failed to provide *any* specific explanation of the reasons for its decision to close the second half of NFSR 327 to the public, this decision is arbitrary and capricious, counter to the evidence before the agency, and unsupported by substantial evidence. It must therefore be reversed.

Second, the Forest's treatment of the TAP reports as decisional documents not subject to challenge or further evaluation under NEPA violated the Travel Management Rule, multiple Forest Service policies, and NEPA and the APA.

As described in Forest Service regulations, the Travel Analysis Process is the first step in determining the Minimum Road System (MRS), conducting an initial analysis of roads that are likely needed or not needed for the MRS. The actual determination of the MRS occurs during a formal travel management process subject to NEPA, which is informed by the Travel Analysis Reports. This two step process has been affirmed by the courts as the proper method of determining the MRS. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (D. Mont. 2020):

Identification and implementation of a minimum road system is a two-step process. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117 (9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

As discussed in Objection #2, the TAP reports were only the first step of this two-step process, and did not produce a final agency decision regarding the MRS. This travel management process was supposed to be the second step in designating the Minimum Road System for the PSI NF, subjecting the initial findings in the TAP reports to full NEPA review. From its comment responses, it is clear however that the Forest has decided to treat the TAP reports as a final decision not subject to further challenge or review. These responses demonstrate that the Forest had already made the decision to close this route to the public in the supposedly non-decisional TAP process.

The inadequate public involvement in the creation of the Pikes Peak TAP Addendum (which received only one public comment), and the fact that the Forest automatically adopted the recommendations in that addendum and carried over the TAP scores into the MRS Screening Process in this travel management decision without accepting any input that challenged them; precluded any effective opportunity for public comment on the actual decision to *designate* this route as closed to public use, as required by the Travel Management Rule as codified in 36 C.F.R. § 212.52(a):

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

By effectively making the designation decision for this route in the predecisional travel analysis process and refusing to consider any comments which challenged the TAP scores or the management outcomes derived from them, the Forest violated both the Travel Management Rule and 40 C.F.R. § 1502.5 on the timing of NEPA actions involving Environmental Impact Statements, which states:

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can **serve as an important practical contribution to the decision-making process** and will **not be used to rationalize or justify decisions already made.....**

By the time the alternatives for this travel management process were formulated, every one of the action alternatives considered closing this route to the public. Only the No Action Alternative would have kept it open, but as typical in NEPA processes, that alternative received no serious consideration by the agency, and the Forest did not incorporate any of its actions into the Draft Decision with respect to this route even though that was requested in numerous public comments. Therefore public input was not allowed to serve as an important practical contribution to the decision making process.

If, contrary to Forest Service policy, the Forest wished to make final route designation decisions during the TAP process, then it should have prepared an Environmental Impact Statement at that stage of the process, which it did not. Instead, it simply made those decisions in the TARs -- either directly through the express recommendations in the TAP reports, or indirectly through the use of the TAP scores in the MRS rubric. The entire travel management process that followed has been a *post hoc* rationalization of decisions already made in the supposedly non-decisional TAP process.

Third, the improper use of the flawed TAP scores to dictate the range of alternatives considered with regard to this route caused the Forest to consider an insufficient range of alternatives contrary to NEPA.

By predetermining the designations for numerous routes based on the TAP recommendations, the Forest violated one of the basic requirements of NEPA processes as specified in 40 C.F.R. § 1502.14(a), to "Evaluate **reasonable alternatives** to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination." Under 40 C.F.R. § 1508.1, "Reasonable alternatives means a reasonable range of alternatives that are **technically and economically feasible, [and] meet the purpose and need for the proposed action....**"

The *only* option that was considered across all action alternatives for the second half of NFSR 327 was closing it to public use. There is no analysis in any of the documents associated with the FEIS and Draft ROD that explains why no other alternatives were considered or why considering at least one action alternative that kept it open was not technically or economically feasible or failed to meet the purpose and need of the proposed action. The only explanation ever given for failing to consider other management options for this route was that the chosen option was the result of the TAP recommendation.

The forest therefore failed to consider a sufficient range of alternatives regarding this route, rendering the decision to close it arbitrary and capricious.

Fourth, as discussed in both Objections #1 and 3, basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the APA. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a

“rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43.

Critically, “NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data”. *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006). Basing the decision to close the second half of NRSR 327 solely on the conclusory and unsupported recommendations in the TAP report caused that decision to be based solely on the “bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103. This makes the decision inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, the decision to decommission the last half of NFSR 327 Gove Creek was arbitrary and capricious, unsupported by substantial evidence, and contrary to law. The Forest failed to sufficiently respond to the site specific evidence provided by both Patrick McKay and the Douglas County Government regarding the significant current and future benefits offered by this road, or provide any justification for its closure.

Additionally, if the decision to close this route was in any way based on its proximity to the Rampart East Roadless Area, that is an invalid reason for closing a motorized route to the public. The Colorado Roadless Rule allows for the presence of motorized trails *within* roadless areas, and certainly does not require the closure of motorized routes outside of them. To the extent that some nebulous concept of “enhancing roadless values” played any role in the decision to close this road, such reason was legally invalid.

We therefore request that the Reviewing Officer reverse this decision and remand the Draft ROD to the Deciding Official with instructions to modify the Final Decision to keep the full length of NFSR 327 open to public motorized use as either a road or trail open to all vehicles.

OBJECTION #21: CLOSURE OF NFSR 348.C AROUND HILL

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the closure of NFSR 348.C Around Hill in the Rainbow Falls trail system in Rampart Range, which is proposed for conversion to an admin road under the Draft Decision. This is a fun but short loop route that at one time was proposed for designation as a 4x4 Challenge Trail under the now-defunct South Rampart Travel Plan. The MRS rubric was either improperly applied to this route or else overridden by arbitrary ranger district decision, rendering the decision to close this route arbitrary and capricious. Patrick McKay commented on this route in comment 183-7.

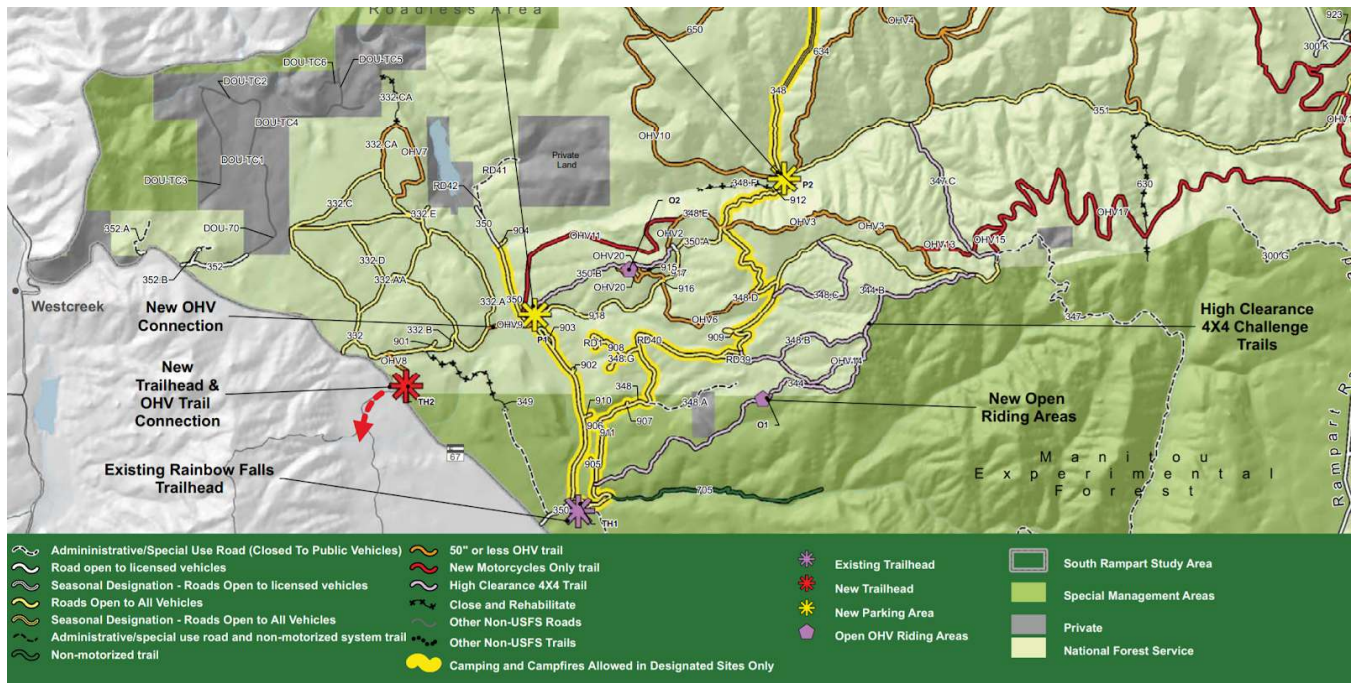
B. ANALYSIS

NFSR 348.C Around Hill is an approximately 1.2 mile long loop road in the middle of the Rainbow Falls OHV trail system of Rampart Range. It is severely mismapped on the current MVUM (as well as the maps and GIS data for this travel management process), which shows it as only 0.9 miles long and has the entire southern leg of the loop mapped in the wrong place. A comparison of the MVUM route from the Forest Service's Roads and Trails layer (sourced from official FS GIS data) in Gaia GPS (double dashed lines), and the route on the ground from a GPS track (blue line) recorded by Patrick McKay is shown below:



As shown above, where the Forest Service mapping data shows the southern leg of the loop ascending straight up the hill, the actual route on the ground follows a gully up and around to the east, before rejoining the mapped route at the top of the hill. This serious mapping error also appears in the TAP report maps, and likely contributed to erroneous risk scores.

Though it is a relatively short route, NFSR 348.C provides a valuable loop opportunity and helps disperse users around the frequently crowded Rainbow Falls trail system. It was previously proposed for designation as a 4x4 Challenge Trail in the now-defunct South Rampart Travel Management Plan, which was canceled after publication of the EA in 2011 but before a final decision was reached. It can be seen in the following map of the preferred alternative in that travel plan (South Rampart EA at 2-15).



While the South Rampart Travel Management Plan was never completed, it evaluated the southern Rampart Range area in far greater detail than the instant Forest-wide travel management plan, and the Pikes Peak District Ranger at that time proposed to designate NFSR 348.C as one of the High Clearance 4x4 Challenge Trails in the Missouri Gulch area of Rainbow Falls. These were equivalent to the many routes proposed for conversion to trails open to all vehicles in the instant travel plan, which continues to be the most appropriate management option for NFSR 348.C.

NFSR 348.C was given an overall TAP rating of L/L, with a moderate recreational use benefit and a high fire access benefit, and moderate watershed and wildlife risk ratings. The moderate watershed risk rating could likely be attributed to the mapping error highlighted above, which shows a portion of the route climbing straight up a steep and erosion-prone hillside rather than taking a more gradual path up the hill around through a gully. The actual path has much less erosion risk. This gully is dry and does not usually contain a stream, though it may during spring runoff or after heavy rain. Thus it is likely the watershed risk rating was given in error.

The 'moderate' recreational use benefit score is too low, and should have been 'high'. While this is not a main route within the Rainbow Falls trail system, it is a fun side loop that winds up through the hills. While it is consistently narrow, it is wide enough for a full size vehicle, with some rutted and steep sections to provide some moderate challenges. It would be the most fun in the winter with a little snow to make the hill climbs more challenging. The roadbed is in good shape, and there were no off-trail resource damage concerns as of May 2020 when Patrick McKay last visited this route.

As an important route in the extremely popular and crowded Rainbow Falls trail system, this route plays a crucial role in dispersing traffic and ensuring there is an adequate number of trails for the OHV enthusiasts who visit the area to explore. The loss of even one shorter route in that trail system would be a significant loss that would concentrate traffic on the remaining routes and significantly increase

impacts on them. This route's location in the Rainbow Falls trail network alone should have been sufficient for it to have received a 'high' recreational use benefit score.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/L

Benefits

Category	Score
Recreational Use Benefit	M
Fire/Fuels Access Benefit	H
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	M
Wildlife Risk	M
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	L

As a L/L road with at least moderate recreational use benefit, NFSR 348.C should have been recommended for conversion to a trail open to all vehicles under the Minimum Road System rubric. As described in the FEIS section on the MRS Screening Criteria, L/L roads were slated to be decommissioned by default *unless an exception applied*. There was a list of several possible exceptions, which were supposed to be applied in the order they were listed, and only one exception could apply to a given road.

For the Low Benefit / Low Risk category, the first exception in the list was:

- Recreational use (**moderate** or **high** benefit TAP ratings) – Management recommendation is Convert to trail open to all vehicles.

FEIS at 2-9 (emphasis added). This exception clearly should have been applied to NFSR 348.C. Yet for reasons not explained in the FEIS, it is slated to be converted to an admin road under the Draft ROD. The Decision action of converting it to an admin road is only reachable if you skip over the recreational benefit exception to the resource management exception, which only applies if the resource management benefit is high or moderate, which it is not. The chosen management option could not have been produced by the MRS screening criteria, but only through the arbitrary decision of the agency staff to ignore the MRS rubric and substitute their own subjective opinions for the best management option, as discussed at length in Objection #3.

Patrick McKay commented on this route during the DEIS comment period and discussed its high value for motorized recreation and the fact that this route would have been left open under the proposed alternative in the South Rampart Travel Management Plan, asking for Alternative C to be modified to keep it open. In response, the Forest failed to address any of the specific evidence he or other commenters brought up regarding this route, and instead responded with the boilerplate statement, "Road management is analyzed in Chapter 3 of the EIS, Transportation. Recommendations for road management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information." Response to comment 183-7, FEIS Appendix D at

D-42. This response was completely inadequate to provide a rational basis for the decision to close this route as required by NEPA and the APA.

The decision to close this route was arbitrary and capricious and violated multiple CFRs in multiple ways:

First, the Forest unlawfully failed to respond to the specific evidence in our comments, and failed to provide any explanation for its decision to close this route. As pointed out above, the TAP ratings for this route are incorrect (especially the recreational use benefit and watershed risk scores), giving the management decision recommended by the TAP a flawed factual basis. While revisions to the TAP reports themselves may be beyond the scope of this travel management process, the *decisions* which resulted from them are not.

As discussed in Objection #2 the TAP reports were only supposed to *inform* route-specific decisions in the travel management process, not *dictate* them. Public comments received later in the travel management process were also supposed to inform route-specific decisions, and cannot simply be ignored because the TAP data is what it is. When the Forest was made aware through public comments that the data it relied upon to make route-specific decisions was incorrect, it had a responsibility to reevaluate those routes based on the new information it has received, or at least respond to the specific evidence in our comments. The Forest failed to do this and therefore violated the Travel Management Rule.

As discussed in Objection #1, under APA section 706(2) agency decisions that are “unsupported by substantial evidence” must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision adopted regarding the alternative chosen, but also to the decisions made regarding individual routes.

In *Idaho Conservation League*, 766 F. Supp. 2d at 1074-1075, a travel management plan very similar to this one was overturned by the courts because, “the Forest Service’s failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA”. The court found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs’ comments were legally insufficient to meet the agency’s burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.* The court concluded, “the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.” *Id.* at 1069.

In the case NFSRs 348.C, the Forest failed to address any of the evidence regarding recreational use benefit and the flawed TAP ratings. Indeed, the Forest failed to provide any actual reasons why it decided to close this route to public use. Because the Forest completely failed to provide *any* specific explanation of the reasons for its decisions to close this route, this decision is arbitrary and capricious and unsupported by substantial evidence, and must be reversed.

Second, from what little we do know of the basis for the Forest's decision to close this route, it appears it was based solely on the arbitrary opinions of the ranger district staff. As discussed above, the chosen management option could not have been reached on the basis of the MRS rubric. It appears likely the decision to close it was the result of the "site-specific review" conducted by ranger district staff which was used to overrule management outcomes from the MRS Screening Process that the ranger district staff disagreed with. However, given that every alternative except Alternative A considered closing it, it may not have been the same route-specific review as used for Alternative C, but one that occurred earlier in the process. Regardless, the clear deviation from the MRS rubric's recommended outcome indicates that either the MRS rubric was applied improperly, or else it was overridden by the district staff.

As discussed in both Objections #1 and 3, basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the Administrative Procedure Act. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43.

Critically, "NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data". *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006). A **"bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS."** *Great Basin Resource Watch*, 844 F.3d at 1103.

While the description of the site-specific review in the FEIS tries to couch this review in scientific sounding terms, it cannot obscure the fact that this review process inherently allowed district staff to substitute their own opinions for how a given route should be managed over the outcome derived from the MRS screening rubric. The Forest cannot escape the fact that the decision to close this route is based solely on the "bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS." *Great Basin Resource*, 844 F.3d at 1103. This makes the decision to close it inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

Third, in making the decision to close NFSR 348.C contrary to the recommendation produced by the TAP data and the MRS screening criteria, the Forest has also "offered an explanation for its decision that runs counter to the evidence before the agency". *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. The only actual evidence in the project record regarding this route is the TAP data and MRS Screening Criteria. A decision contrary to what that evidence supports without any explanation or further evidentiary support for the deviation inherently "runs counter to the evidence before the agency" and is both arbitrary and capricious and unsupported by substantial evidence.

Fourth, basing travel management decisions solely on ranger district staff opinions violates the Travel Management Rule (TMR) as codified in 36 C.F.R. § 212.5(b)(1), which states:

In determining the minimum road system, the responsible official must incorporate a **science-based roads analysis** at the appropriate scale and, to the degree practicable, **involve a broad spectrum of interested and affected citizens**, other state and federal agencies, and tribal governments.

The science-based analysis referenced in this CFR is the Travel Analysis Process and Minimum Road System screening criteria. While those are not the only allowable basis for deciding whether a given route should be included in the minimum road system, deviations from that scientific process (such as with NFSR 348.C) must be adequately justified by clearly articulated facts and reasoning. If Forest Service staff are allowed to arbitrarily deviate from the recommendations of the MRS rubric at whim without justifying those decisions at all, the minimum road system could no longer be said to be science-based in any meaningful way.

The TMR also requires that public input from a “broad spectrum of interested and affected citizens” be considered when determining the minimum road system. This coincides with the related requirement in the TMR that “The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart.” 36 C.F.R. § 212.52(a). In the case of this road, the decision to close it had already been made by ranger district staff at least some time prior to the comment period on the DEIS, so the public was effectively deprived of any opportunity to give input on that decision before it had already been made, in violation of the Travel Management Rule.

Because compliance with the TMR was the main stated Purpose and Need for this project, failing to comply with the TMR also fails to meet the purpose and need of the project, which is an independent reversible error.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, the decision in the Draft ROD to convert NFSR 348.C to an admin road was arbitrary and capricious, unsupported by substantial evidence, and not in accordance with law. We therefore request that the Reviewing Officer reverse this decision and remand the Draft ROD to the Deciding Official with instructions to leave it open to public use in the Final Decision, either with its current management as road open to all vehicles, or as a trail open to all vehicles as recommended by the MRS rubric.

OBJECTION #22: SEASONAL CLOSURE OF NFSR 348 LONG HOLLOW

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

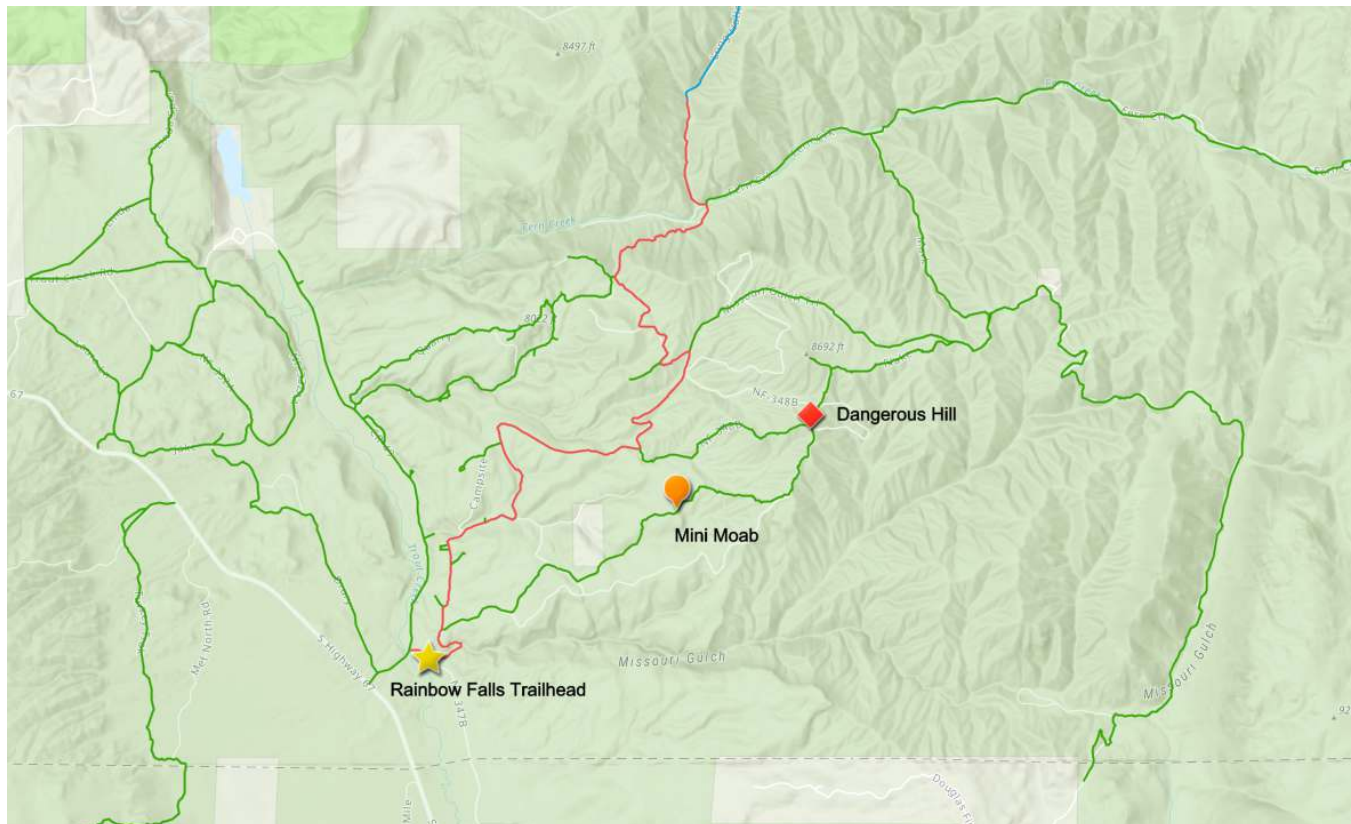
We object to the arbitrary and irrational new seasonal closure added in the Draft Decision for the segment of NFSR 348 Long Hollow from 0 - 4.48 miles, in the Rainbow Falls OHV Area near Rampart Range.

The Rainbow Falls area has long been managed as open year-round, and it is an extremely popular area for motorized recreation in the winter. Under the Draft ROD, the main connector route for this trail system will be seasonally closed from December 1 - March 31 every year, while all other surrounding

routes will remain open year-round. This seasonal closure is completely inconsistent with how the rest of the roads and trails in that area are managed, needlessly complicating management of the area and causing significant public safety and environmental risks.

The Rainbow Falls and Rampart Range areas were discussed in Patrick McKay's comment submitted on 10/21/2019, listed as "Rampart Range area roads" in the table at the beginning of this document. This comment specifically opposed any new seasonal closures in these areas.

B. ANALYSIS



The Rainbow Falls trail system is an extremely popular area for motorized recreation in the winter. Due to its low elevation and west facing slopes, it has little to no snow for most of the winter. Even when there is snow, all of the roads and trails in the area remain passable to vehicles and it is a popular destination for snow wheeling. As one of the few areas in the Pike National Forest that is not seasonally closed in the winter, Rainbow Falls receives its heaviest use during the winter and early spring months. Its trails are normally accessed from the Rainbow Falls Trailhead off Highway 67 between Woodland Park and Deckers, though they can also be accessed from Rampart Range Road via NFSR 351 Fern Creek, or from Woodland Park via County Road 79 and NFSR 347 Missouri Gulch.

One need only look at a map of the Rainbow Falls area to see why the proposed seasonal closure of NFSR 348 is both arbitrary and nonsensical. The map above (created using the GIS data provided by the Forest Service for the FEIS) shows the seasonal closure status of all the roads in the Rainbow Falls

area. Blue denotes an existing seasonal closure, red indicates a new seasonal closure, and green indicates roads with no seasonal closures.

The segment of NFSR 348 from 0 - 4.48 miles is the only road in the entire Rainbow Falls area in the Pikes Peak Ranger District that will be subject to a seasonal closure. The blue line at the top of the map is the northern part of NFSR 348 in the South Platte District leading to the trail system in the Rampart Range Motorized Recreation Area in the north part of Rampart Range. All of the roads and trails in the South Platte District portion of Rampart Range are subject to existing seasonal closures which have been managed successfully because that is a distinct trail system that is easily isolated from routes with no seasonal closure. That is not the case with the southern portion of NFSR 348 at issue here.

As is apparent from the map above, NFSR 348 Long Hollow Road is the main connector and arterial road for the entire Rainbow Falls trail system. The Rainbow Falls Trailhead and OHV staging area is located off of it near milepost 0, at the intersection with NFSR 350 Rainbow Falls (which has no seasonal closure). Nearly every other road and trail in the Rainbow Falls area connects to it, and it also provides the most direct route out of this trail network up to Rampart Range road via its connection to NFSR 351 Fern Creek. It is not however the ONLY way to access any of the other roads in the network (other than a few short spurs), just the most convenient; and it is a critical connector for multiple loop opportunities.

This fact alone makes the proposed seasonal closure of just this one road under the Draft ROD completely nonsensical. Its closure will not result in the entire Rainbow Falls trail network being seasonally closed. It will only fragment the trail system and make access to the remaining open routes in the system considerably more difficult for four months of the year.

Closing just the primary connector route through the trail system will turn multiple loops with convenient access to the highway into out-and-back routes that require long detours to access via either Rampart Range Road or Missouri Gulch Road. This closure will also deprive motorists of the use of the Rainbow Falls Trailhead and OHV staging area, forcing users who trailer unlicensed OHVs to find other less suitable locations to park and unload, such as the residential neighborhood along Missouri Gulch Road.

There are two primary loops in the Rainbow Falls trail network. The first loop is off NFSR 344 Flake, which is the most technically challenging route in the area and includes the popular rock ledge obstacle and play area called "Mini Moab" (shown on the map above) by local offroaders. It connects back to NFSR 348 to form several possible loops, depending on which connecting route is used. The second main loop in the area is formed by NFSRs 350.A Illinois Gulch and 350.B Quarry. It is a shorter loop but is also popular for technical challenges posed by several rock ledge obstacles. All three of these routes will be converted to trails open to all vehicles under the Draft Decision, which we support.

With the proposed seasonal closure on Long Hollow Road (NFSR 348), the smaller loop off Illinois Gulch will still be accessible from Highway 67 via Rainbow Falls Road (NFSR 350), which will not and cannot have a seasonal closure because it accesses private property in Rainbow Falls Park. It will however be isolated and cut off from the rest of the Rainbow Falls trail system, and users of this loop will be deprived of the use of the Rainbow Falls Trailhead, being forced to stage off Rainbow Falls Road instead of the perfectly good trailhead and parking area nearby. The loop off Flake Road (NFSR 344)

will however be cut off from Rainbow Falls Road by the seasonal closure of the 0.4 mile long section of NFSR 348 between Rainbow Falls Road and the start of Flake Road (pictured below).



As a result of this nonsensical management, motorists who wish to drive NFSR 344 Flake will have to detour miles around on either Missouri Gulch Road or Rampart Range road and access Flake from above and to the east. Then they will have to drive out the way they came in, rather than driving the few hundred yards of closed road back to the trailhead (the yellow star on the map) and Rainbow Falls Road.

This is not just a matter of convenience, but is also a significant public safety issue. Assuming that seasonal gates are installed at the intersection between NFSR 348 and Rainbow Falls Road, as well as the intersections with all routes that do not have seasonal closures, emergency services will be unable to reach anyone in need of assistance on the non-seasonally closed trails without driving all the way around.

There is another larger safety issue as well. With this seasonal closure in place, the only way to access the lower portion of NFSR 344 Flake where the Mini Moab area is (the main destination on this trail) will be to come in from the east on the upper portion of NFSR 344, via either NFSR 347 or 347.C. There is a steep hill climb (marked on the map above as "Dangerous Hill") at 39.14952, -105.07645. When snow covered this hill can become extremely icy and dangerous, and there were multiple accidents on it last winter with vehicles sliding down it into a tree. During snowy conditions, many users prefer to avoid this hill and take a different route to the Mini Moab obstacle, usually coming straight up NFSR 344 from the Rainbow Falls Trailhead and then taking an alternate route such as NFSR 348.B Overlook back down.

With the proposed seasonal closure, the only way to the Mini Moab obstacle will be to climb this dangerous hill and the only way back out will be to go down it, because both NFSRs 344 and 348.B will dead-end at the seasonally closed road. NFSR 348.B has its own steep icy hill, which while not as dangerous as the other one, could possibly put drivers in a situation where having driven down it, they are unable to get back up, stranding them at the bottom of the trail blocked by the seasonal gate at the junction with NFSR 348. All drivers that make it up the Dangerous Hill will have no choice but to go down it, even though that is often more dangerous since it has a higher risk of sliding out of control. The seasonal closure in the Draft ROD will therefore cause significantly increased public safety risks and result in even more accidents on this hill.

Finally, the seasonal closure of NFSR 348 is not justified for environmental reasons, but will result in greater environmental impacts, not less. In addition to being the primary connector route for the Rainbow Falls trail network, it is also the lowest elevation route in an already low elevation trail system. Even when the trails on the surrounding hilltops are snow covered, it is often just wet or even entirely dry. It is a smooth dirt road barely qualifying as ML2, and even when wet it does not experience significant rutting or erosion. It does not need a seasonal closure for road conditions. There is also no benefit to wildlife from having it seasonally closed, as the dense motorized route network in the area (which will still be open year-round) ensures the entire area is permeated with motor vehicle noise, causing any noise-sensitive wildlife to avoid the area. So there is no strong environmental reason to impose a seasonal closure on this route.

If a seasonal closure is imposed, however, it will only cause greater environmental impacts on surrounding trails which remain open year-round. Many of these routes will turn into out-and-back trails for four months of the year during the time they are most heavily used. This will cause significantly more wear and tear on the roads as everyone will have to drive them twice, rather than once as a loop or straight through route. As the only open trails easily accessible from Highway 67 and Rainbow Falls Road, the Illinois Gulch loop will get significantly more traffic, increasing impacts there as well.

C. CONCLUSION AND REQUESTED RESOLUTION

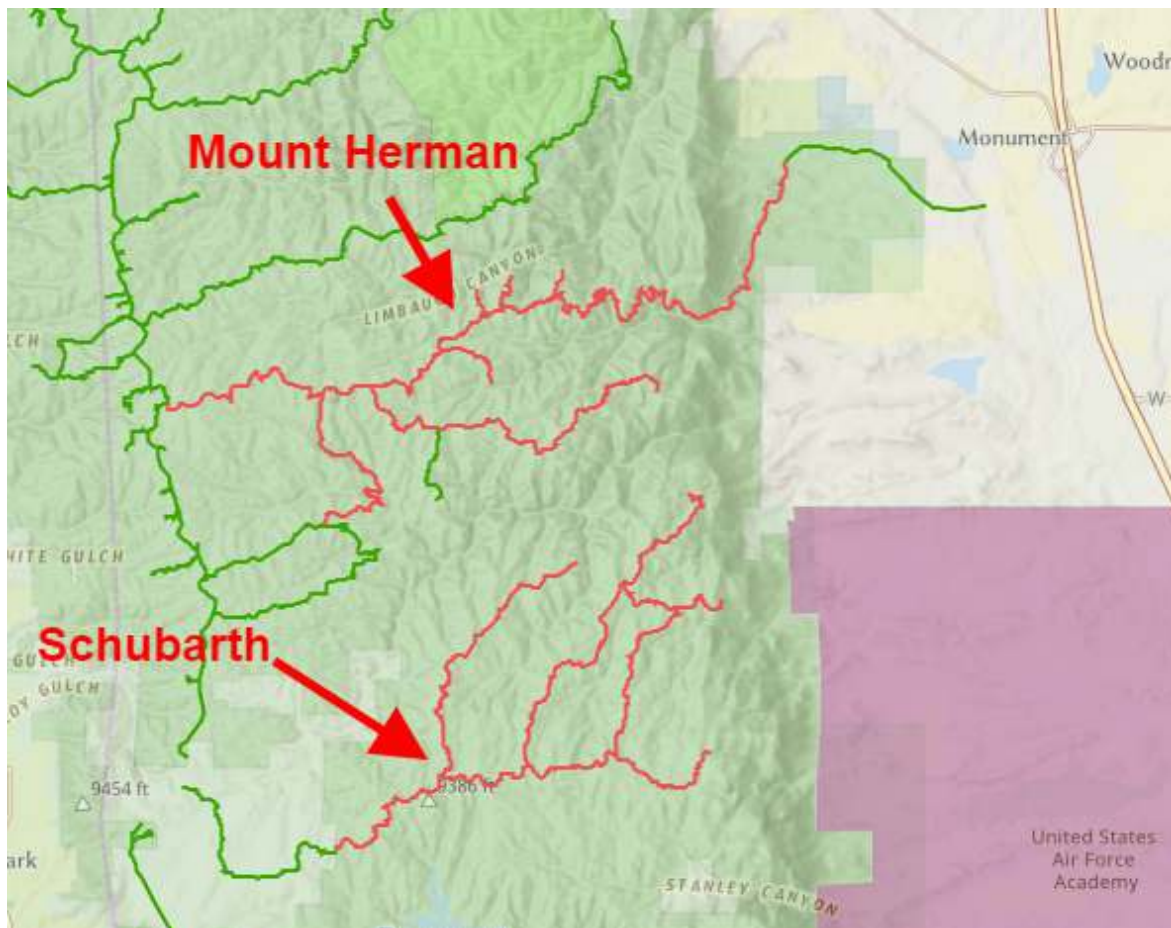
For the reasons above, there is no reasonable justification for imposing a new seasonal closure on NFSR 348 Long Hollow but not on any of the roads and trails surrounding it. Doing so arbitrarily closes the primary connector route for the Rainbow Falls trail system for four months out of the year precisely when that area is the most heavily used. Seasonally closing this route will not actually prevent users from accessing any of the surrounding trails, but will only make accessing them significantly less convenient and more dangerous.

It is critical that this segment of NFSR 348 be managed consistently with all the surrounding routes it connects to, or else the currently well-managed Rainbow Falls area will turn into a management nightmare. Either all routes in Rainbow Falls must be open year-round, or they must all be subject to the same seasonal closure. There is no other effective management option for this area. This fact is so obvious simply from looking at a map of this area, we believe this seasonal closure must have been added in error. Perhaps the Forest only meant to add a seasonal closure to the short segment of NFSR 348 between the intersection with NFSR 351 and where the existing seasonal closure begins at the South Platte District boundary, while leaving the segment south of that junction open year-round.

Regardless, we believe the seasonal closure adopted in the Draft Decision is plainly irrational and unsupported by substantial evidence. Notably, the Forest did not provide any reasons for specific seasonal closures on individual routes in any of the documents associated with the Draft Decision and FEIS. It therefore failed to meet its burden to articulate a rational connection between the facts found and the decision made as required by NEPA and is by definition arbitrary and capricious.

We ask that the Reviewing Officer reverse this decision and remand the Draft Decision to the Deciding Official with instructions to remove the seasonal closure from NFSR 348 between mileposts 0 and 4.48 in the final decision.

OBJECTION #23: SEASONAL CLOSURE OF MOUNT HERMAN ROAD, SOUTH RAMPART RANGE ROAD, AND THE SCHUBARTH TRAILS



A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the new seasonal closures that are added in the Draft Decision for the Mount Herman trail system (NFSR 320 Mount Herman Road and side spurs), and the Schubarth trail system (NFSR 307 Schubarth Road and side spurs). These routes (shown in red in the map above) are proposed to be

seasonally closed from December 1 through March 31 every year. We also object to the new seasonal closure added/made permanent to the southern end of NFSR 300 Rampart Range Road, from mileposts 0 - 16.92. All surrounding routes (shown in green) have no seasonal closures.

All of these routes are in the central/southern parts of Rampart Range west of Monument and Colorado Springs. These are all low elevation routes immediately adjacent to the Front Range that have traditionally been open year-round, and are highly popular in the winter for snow-wheeling. Mount Herman Road also provides crucial hiking access and is the sole access route to Rampart Range road from the east that is currently open in the winter. Patrick McKay submitted multiple comments on the DEIS specifically opposing new seasonal closures on all of these routes (see comment 183-5).

B. ANALYSIS

NFSR 300 Rampart Range is a ~60 mile long ML3 road that runs the length of the Rampart Range from Highway 67 in Douglas County to Garden of the Gods Park in Colorado Springs. It is managed in three segments: the northern segment in Rampart Range Recreation Area in the South Platte District, the middle segment, in the Pikes Peak District, and the southern segment from Garden of the Gods Park to milepost 16.92 at the turnoff to Rampart Reservoir. The northern section in the South Platte District has long been seasonally closed in the winter, while the southern segments in the Pikes Peak District have traditionally had no seasonal closure. For the last few years, the Pikes Peak District has implemented a “temporary” seasonal closure on the southernmost segment, which the Draft ROD would make permanent.

NFSR 320 Mount Herman and **NFSR 307 Schubarth** are both major arterial routes in the central part of Rampart Range, which each host their own system of associated side trails. They are both adjacent to each other in the area directly west of the city of Monument and the US Air Force Academy. They are on the eastern edge of the Pike National Forest and are some of the closest off-road trails to southern Denver, Castle Rock, Monument, and northern Colorado Springs.

Under the Draft Decision, Mount Herman Road is being downgraded from an ML3 road to ML2, while the main loop off Schubarth Road is being converted to a trail open to all vehicles. These actions recognize that these roads are already mostly used by motorized recreationists driving high-clearance vehicles, and we approve of those management decisions. However, we object to the new seasonal closures being implemented for these roads, which will cause them to be closed for four months out of the year from December 1 - March 31. The southernmost segment of Rampart Range Road will have the same closure dates. These are all extremely important areas for winter recreation, and these seasonal closures will result in a significant loss of recreational opportunities for multiple user groups.

Both Mount Herman and Schubarth trail systems are located at low elevations between 7400 feet at the Mount Herman trailhead to 9400 feet at the top of the Rampart Range. Much of the southern segment of Rampart Road is at an even lower elevation, as it starts in Garden of the Gods Park at 6400 feet. As a result, these areas all get much less snow than higher areas of the Rocky Mountains, and are passable to wheeled vehicles all year. All of these roads have traditionally been managed as open year-round with no seasonal closure, and are popular trail systems for winter snow-wheeling trips by Front Range 4x4 clubs. With existing seasonal closures in place for the northern half of Rampart Range in the South Platte Ranger District, as well as the temporary seasonal closure on southern end of

Rampart Range Road, the central area of Rampart Range is one of the few areas open to winter offroad recreation in the Pike National Forest, and is thus extremely popular. The southern end of Rampart Range Road used to be similarly popular for winter recreation until the Pikes Peak Ranger District began seasonally closing it around the time it reopened after the 2012 Waldo Canyon Fire.



Winter snow wheeling off Mount Herman Road

Mount Herman Road is especially critical for winter use, as it is currently the sole access route to Rampart Range Road from the east that is open in the winter. Both the northern and southern ends of Rampart Range Road are currently seasonally closed during the winter, as are the only other two eastern access routes, NFSR 563 Dakan Mountain and NFSR 502.2 Jackson Creek North. Anyone from the Front Range cities wishing to recreate in the Rampart Range area during the winter must drive up Mount Herman Road to access any other roads in the area. If it is also seasonally closed and the seasonal closure on the southern end of Rampart Range Road is kept in place, all winter users of the Rampart Range area must drive around through Woodland Park and come up from the west.

Mount Herman Road also provides critical access to multiple hiking trails such as the trail to the summit of Mount Herman and the hiking trails in Limbaugh Canyon, which receive heavy use year-round by residents of Monument and Palmer Lake. Because of this crucial hiking access, both pro-motorized groups and anti-motorized groups like the Colorado Mountain Club had a rare point of agreement in the DEIS public comments, with both factions united in opposition to a seasonal closure on this road and asking for it to be kept open all year. This proposed seasonal closure generated the most comments of any in the entire travel plan, with a strong public consensus that seasonal closure is unacceptable and inappropriate for this route.

In response to public comments opposing the seasonal closure of NFSR 320 Mount Herman, the Forest Service merely gave this boilerplate response which failed to provide any specific reasons for the proposed seasonal closure on *this specific road*:

Seasonal closures are proposed across all the action alternatives for various reasons, such as protecting breeding wildlife, nesting birds, and winter big game habitat or taking into consideration road surfaces where travel in wet spring conditions could damage routes.

Response to comment 3129-1, FEIS Appendix D at D-8. Such a general comment is utterly insufficient to satisfy the Forest Service's burden under the APA and NEPA to articulate a "rational connection between the facts found and the decision made" (*Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)) with respect to this route. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision regarding the alternative adopted, but also to the decisions made regarding individual routes.

In *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1077 (D. Idaho 2011), the court overturned a Forest Service travel plan because of the Forest's failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs. The court specifically found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs' comments were legally insufficient to meet the agency's burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.* at 1074 - 1075.

A list of *possible* reasons for seasonal closures in general does not give the public any meaningful information as to the reasons for *this* seasonal closure. Nor does it sufficiently address the specific evidence offered in ours and others' comments regarding the high value of this route for winter motorized and non-motorized recreation, or give any reason why the Forest believed the loss of winter recreational access was justified by other resource concerns that necessitated a seasonal closure. Nowhere else in the Draft ROD or FEIS and associated documents does the Forest make any attempt to explain its reasons for adding a new seasonal closure on Mount Herman, Schubarth, South Rampart Range, and associated roads. Nor does it give any explanation for the specific closure dates chosen. The Forest has therefore failed to provide a rational explanation for its decision to impose seasonal closures on these routes, rendering that decision arbitrary and capricious.

Since the Forest did not provide any specific reason for these seasonal closures, we can only guess at the possible reason based on the list in the Forest's comment response. Though Mount Herman Road was listed in the Pikes Peak TAP Addendum as having a 'high' wildlife risk score, species habitat data provided by Rocky Mountain Wild attached to the Colorado Mountain Club's DEIS comment does not list any winter range concerns for big game or other wildlife. Schubarth only has 'moderate' wildlife risk rating and also has no concerns about winter wildlife habitat. While we are not wildlife experts, it seems unlikely that these seasonal closures were motivated by wildlife concerns. If they were, these closures would be ineffective at protecting wildlife, as the many roads that remain open year-round in the same area will ensure the entire area is permeated with human noise from vehicles, shooting, etc.

These seasonal closures are likewise unjustified by road surface or maintenance concerns. Under the Draft Decision, most of the motorized routes in the surrounding area will remain open year-round with no seasonal closure. This includes routes like NFSR 322 Balanced Rock and NFSR 323 Winding Stairs that are frequently run together with Mount Herman Road during group snow wheeling trips. All of the roads in this area are at similar elevation and receive similar amounts of snowfall. They are also mostly ML2 roads with the same management standards that Mount Herman Road will have. Mount Herman Road is already unmaintained in the winter and only infrequently graded in the summer. With the

downgrade to ML2, it will need even less maintenance, as a rougher road surface will be acceptable. According to the TAP comment, it is not even maintained by the Forest Service, but by El Paso County.

The Mount Herman and Schubarth roads have been used for winter motorized recreation for many years, and while heavy use while wet does cause some impacts, rutting and erosion is not serious. Moreover, some degree of rutting is acceptable for ML2 roads, and simply makes these roads more fun and challenging for offroad recreation. While closing these roads seasonally could reduce impacts on the road surface, it would come at the cost of significantly diminished recreational opportunities for multiple user-groups, and is not worth the tradeoff.

The Forest has also failed to show how these roads are any different than the surrounding roads with the same kind of terrain, soils, and road surfaces and that should have nearly identical maintenance concerns, yet are not subject to seasonal closure. Finally, the seasonal closure dates in the Draft ROD are in the middle of the winter from December through March, not during the spring runoff “mud season” (April through May) when road damage concerns are the highest. Therefore these closures are not justified by road surface concerns either.

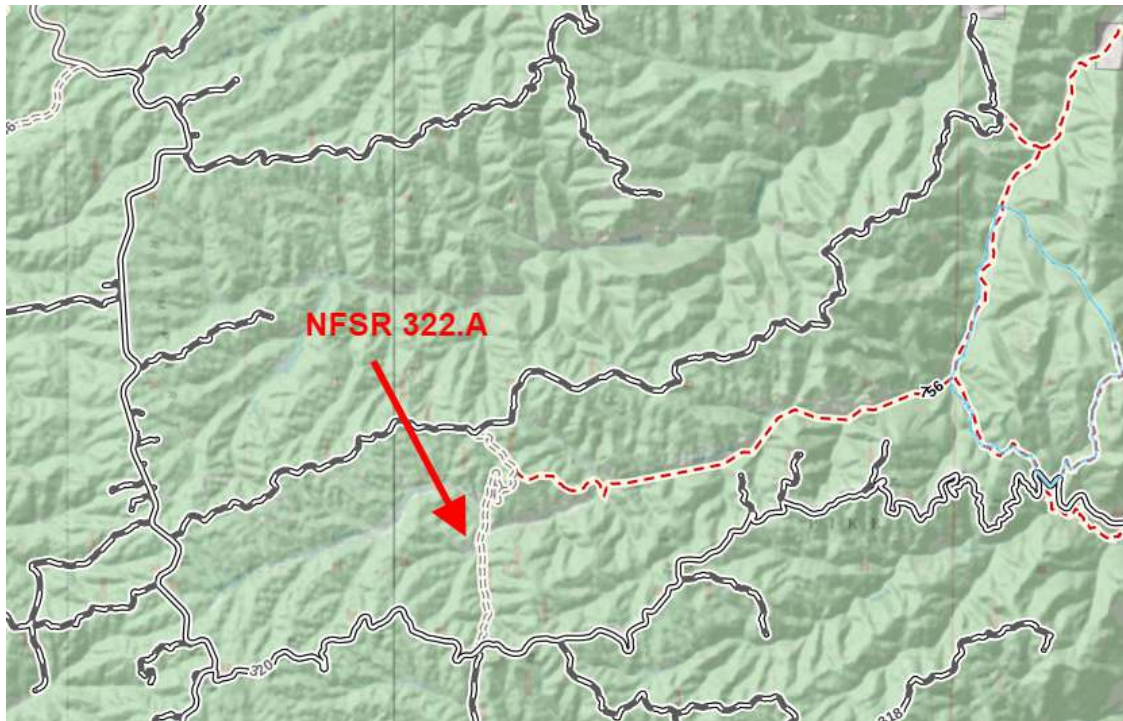
The same arguments also apply to the southernmost segment of Rampart Range Road, which is mostly at even lower elevation than the other roads in that area and receives even less snowfall in the winter. Prior to the 2012 Waldo Canyon Fire, this section of Rampart Range also had no seasonal closure. The seasonal closure that has been in place for the last few years is not justified by any reasonable resource or wildlife concern, and has deprived residents of Colorado Springs of a key access route to the entire Rampart Range area for four months out of the year. The current seasonal closure also only applies to motorized vehicles and not to non-motorized recreation such as mountain bikes. If wildlife impacts are the primary reason for the closure, those impacts will still be caused by other user groups, and singling out motorized recreation for discriminatory treatment does not achieve the stated goal. The current seasonal closure on the southern end of Rampart Range Road should therefore also be removed, rather than made permanent as proposed in the Draft Decision.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons above, the Forest has failed to provide sufficient justification for adding new seasonal closures of NFSR 320 Mount Herman, NFSR 307 Schubarth, the southern segment of NFSR 300 Rampart Range, and all connecting roads. The Forest’s failure to provide *any* specific reasons for the seasonal closures added on these routes and the specific closure dates chosen, plus its failure to specifically respond to any of the evidence in public comments, means it has failed to provide a “rational connection between the facts found and the decision made” with respect to these seasonal closures as required by the APA, and they should therefore be reversed as arbitrary and capricious.

We request that the Reviewing Officer remand the Draft ROD to the Deciding Official with instructions to modify the Final Decision to remove the seasonal closures from all routes in these two trail systems, including NFSRs 320, 320.A, 320.C, 320.D, 318, 319, 315, 307, 307.A, 311, 311.A, 313, and the southern segment of NFSR 300.

OBJECTION #24: DECOMMISSIONING NFSR 322.A LIMBAUGH



A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the action in the Draft ROD of decommissioning NFSR 322.A Limbaugh Road. This is a valuable connector route between NFSR 320 Mount Herman and NFSR 322 Balanced Rock Road, which if open to public use would facilitate multiple loop opportunities and allow unlicensed vehicles such as UTVs and ATVs to ride both Mount Herman and Balanced Rock Roads (both roads open to all vehicles) without illegally driving on a short section of Rampart Range Road, which is open to highway legal vehicles only. This road was “temporarily” closed approximately 10 years ago by the Pikes Peak Ranger District and placed in ML1 status with no NEPA decision, which unlawfully prejudiced the outcome of this travel management process. The Forest did not conduct any actual scientific analysis supporting the decision to decommission this road and acted arbitrarily and capriciously in closing it.

Patrick McKay explored this route on foot in November 2019 and found that there is no longer any sign of the off-trail resource damage which originally motivated this supposedly “temporary” closure. While the actual NFSR 322.A route has deteriorated somewhat and washed out in a few places, most of it is still present and well-defined on the ground and could be reopened to vehicles with some minor reconstruction and repair work done by volunteers.

Patrick McKay commented on this route in comment 183-10, pointing out that the preferred alternative in the since-canceled South Rampart Travel Management Plan proposed to reopen this road road to public use, and asked that Alternative C in this travel plan be modified to do the same.

B. ANALYSIS

NFSR 322.A Limbaugh is a 1.8 mile long road connecting NFSR 320 Mount Herman Road to NFSR 322 Balanced Rock Road. It is a highly desirable connector that has been closed for around 10 years for rehabilitation, but was proposed for reopening in the Preferred Alternative B of the draft South Rampart Travel Management Plan. The Forest Service conducted a Travel Analysis Process as part of this travel plan, which included this description of NFSR 322.A in its TAP report:

NFSR 322.A (Limbaugh Road) is a road normally open to all vehicles. This road was closed by administrative order to prevent resource impacts associated with off-system route creation and use. Motorized vehicles were creating new routes on hillsides, wetlands, and meadows and causing severe resource damage. This road is located in the Monument Creek watershed, which requires watershed protection per the Forest Plan. The Pikes Peak Ranger District has been restoring damage in the area and intends to reopen the road when it can be properly managed with access barriers, such as post and cable.

Travel Analysis Process Report for South Rampart Travel Management Plan (July 2011) ("South Rampart TAP") at 2-3.

The South Rampart EA further noted regarding this route, "CURRENTLY CLOSED FOR RESTORATION AND DANGEROUS ROAD CONDITIONS, GOOD ROUTE CONNECTIONS, NONSYSTEM WATER ISSUES, IMPORTANT PALMER SOURCE WATERSHED." South Rampart EA Appendix B at 2.

The Preferred Alternative B under the South Rampart Travel Plan proposed to reopen this route, concluding that its high recreational value as a connector between two significant routes and the resulting formation of a desirable loop opportunity justified reopening it despite high environmental risk:

NFSR 322.A: This route across Monument Creek would be opened to licensed vehicles. Monument Creek is a brook trout fishery. By opening this road to motorized use, the risk of adverse effects of sediment delivery from the road prism into the Monument Creek fishery is high based on use levels, as is the possibility of off-road use and damage to riparian vegetation.

Environmental Assessment for South Rampart Travel Management Plan at 3-12.

In this travel management process, only Alternative D would have followed the recommendation made in the preferred alternative of the South Rampart Travel Management Plan to reopen this road to the public and convert it to a trail open to all vehicles. Alternative C proposed decommissioning it, and this action was adopted in the Draft ROD. In response to Patrick McKay's comment pointing out the inconsistency with the South Rampart Travel Plan, the Forest Service wrote:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. The South Rampart TMP did not complete analysis and result in a FONSI or record of decision to complete the NEPA process. Additionally, the deciding official at the PSI can choose pieces of various alternatives when issuing their record of decision.

Response to comment 183-10, FEIS Appendix D at D-41. This response is invalid and failed to justify or provide any specific reasons for decommissioning this route. While the South Rampart Travel Plan was canceled and never reached a final decision, the quoted statements from the EA that was completed in 2011 remain the most thorough recent scientific analysis done of the impacts and benefits of this road, and there is nothing in the Draft ROD or FEIS to justify or explain why the Forest is now choosing to decommission it contrary to its prior analysis.

There has been no further science-based analysis done since 2011 justifying this change, and even the TAP scores given to this route in the 2014 Pikes Peak TAP Addendum (which, as discussed in Objection #2, was not science-based) should have produced a MRS rubric recommendation to convert it to a trail open to all vehicles. The Pikes Peak TAP Addendum rated this road 'high' for recreational use benefits and the TAP comment allowed for reopening it to public use, though it recommended, "substantial mitigations to protect resources if public use is allowed on this road."

As a High Benefit / High Risk road with 'high' recreational use benefit and 'very high' (HH) watershed risk ratings, the minimum road system rubric would have produced a management recommendation to convert NFSR 322.A to a trail open to all vehicles and harden water crossings. This in fact was the management option considered in Alternative D, which applied the MRS rubric straight up. Decommissioning this route would only have been appropriate if there was no possible way to mitigate the watershed risk, which the conclusions in the South Rampart Environmental Assessment, albeit non-final, demonstrate is not the case.

The fact that Alternative C proposed to decommission the route instead means the management option in that alternative was likely the result of the subjective and unscientific "site-specific review" process discussed in Objection #3 which allowed ranger district staff to override MRS rubric outcomes they did not like and substitute their own personal opinion of the proper management for a given route. The subjective opinions of Forest Service staff are not valid grounds for a decision under NEPA. Decommissioning this road instead of reopening it without new science-based analysis justifying this decision is inherently arbitrary and capricious, for multiple reasons.

First, the Forest unlawfully failed to respond to the specific evidence in our comments, and failed to provide any explanation for its decision to close this route. As discussed in Objection #1, under APA section 706(2) agency decisions that are "unsupported by substantial evidence" must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision adopted regarding the alternative chosen, but also to the decisions made regarding individual routes.

In *Idaho Conservation League*, 766 F. Supp. 2d at 1074-1075, a travel management plan very similar to this one was overturned by the courts because, "the Forest Service's failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA". The court found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs' comments were legally insufficient to meet the agency's burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.* The court concluded, "the decision adopting the Travel Plan violates the 2005 Travel

Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.” *Id.* at 1069.

In the case NFSRs 322.A, the Forest failed to address any of the evidence regarding recreational use benefit as a critical connector and loop route, or the prior findings in the South Rampart EA and South Rampart TAP Report. Indeed, the Forest failed to provide any actual reasons why it decided to close this route to public use. Because the Forest completely failed to provide *any* specific explanation of the reasons for its decisions to close this route, this decision is arbitrary and capricious and unsupported by substantial evidence, and must be reversed.

Second, from what little we do know of the basis for the Forest’s decision to close this route, it appears it was based solely on the arbitrary opinions of the ranger district staff. As discussed above, the chosen management option could not have been reached on the basis of the MRS rubric. It appears likely the decision to close it was the result of the “site-specific review” conducted by ranger district staff which was used to overrule management outcomes from the MRS Screening Process that the ranger district staff disagreed with.

As discussed in both Objections #1 and 3, basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the Administrative Procedure Act. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43.

Critically, “NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data”. *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006). A **“bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS.”** *Great Basin Resource Watch*, 844 F.3d at 1103 (emphasis added).

While the description of the site-specific review in the FEIS tries to couch this review in scientific sounding terms, it cannot obscure the fact that this review process inherently allowed district staff to substitute their own opinions for how a given route should be managed over the outcome derived from the MRS screening rubric. The Forest cannot escape the fact that the decision to close this route is based solely on the “bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS.” *Id.* This makes the decision to close it inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

Third, in making the decision to close NFSR 322.A contrary to the recommendation produced by the TAP data and the MRS screening criteria, the Forest has also “offered an explanation for its decision that runs counter to the evidence before the agency”. *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. The only actual evidence in the project record regarding this route is the TAP data and MRS screening criteria, as well as the analysis that was done for the 2011 South Rampart Travel Management Plan EA. A decision contrary to what that evidence supports without any explanation or further evidentiary

support for the deviation inherently “runs counter to the evidence before the agency” and is both arbitrary and capricious and unsupported by substantial evidence.

Fourth, basing travel management decisions solely on ranger district staff opinions violates the Travel Management Rule (TMR) as codified in 36 C.F.R. § 212.5(b)(1), which states:

In determining the minimum road system, the responsible official must incorporate a **science-based roads analysis** at the appropriate scale and, to the degree practicable, **involve a broad spectrum of interested and affected citizens**, other state and federal agencies, and tribal governments.

The science-based analysis referenced in this CFR is the Travel Analysis Process and Minimum Road System screening criteria. While those are not the only allowable basis for deciding whether a given route should be included in the minimum road system, deviations from that scientific process (such as with NFSR 322.A) must be adequately justified by clearly articulated facts and reasoning. If Forest Service staff are allowed to arbitrarily deviate from the recommendations of the MRS rubric at whim without justifying those decisions at all, the minimum road system could no longer be said to be science-based in any meaningful way.

The TMR also requires that public input from a “broad spectrum of interested and affected citizens” be considered when determining the Minimum Road System. This coincides with the related requirement in the TMR that “The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart.” 36 C.F.R. § 212.52(a). In the case of this road, the decision to close it had already been made by ranger district staff at least some time prior to the comment period on the DEIS, so the public was effectively deprived of any opportunity to give input on that decision before it had already been made, in violation of the Travel Management Rule.

Because compliance with the TMR was the main stated Purpose and Need for this project, failing to comply with the TMR also fails to meet the purpose and need of the project, which is an independent reversible error.

Fifth, the actions of the Pikes Peak Ranger District roughly 10 years ago in administratively closing this route and placing it in ML1 status with no NEPA evaluation justifying that decision unlawfully predetermined the selection of alternatives in this travel management plan. At that time, the ranger district purchased and installed two large metal barricades similar to guardrails and installed them at both entrances to this road, permanently barricading it and effectively decommissioning it. Though at the time they asserted this action was “temporary” and that the road would be reopened when resource damage to the creek had been resolved, the permanence of these barriers belies that claim. The photo to the right shows the barrier installed at the north end of NFSR 322.A at the intersection with NFSR 322 Balanced Rock Road.



The legal basis for emergency route closures for purposes of resource protection is 36 C.F.R. § 212.52(b), which requires that such closures be “temporary” and “short-term”. It also provides that, “The responsible official shall provide public notice of the closure pursuant to 36 CFR 261.51, including reasons for the closure and the estimated duration of the closure, as soon as practicable following the closure.” The Pikes Peak Ranger District never did this, and it is beyond plausibility that a 10+ year closure qualifies as “temporary” under this regulation. Given that the ranger district failed to comply with 36 C.F.R. § 212.52(b), and that the FEIS itself states that “Blocking the entrance to a route is the minimum requirement for decommissioning” (FEIS at 3-2), this was an unlawful decommissioning, straight out, without any EA or other NEPA decision to justify it.

The unlawful decommissioning of NFSR 322.A effectively predetermined the outcome of this travel management project with respect to this route, in violation of NEPA. In *Forest Guardians v. US Fish and Wildlife Service*, 611 F.3d 692, 715 (10th Cir. 2010), the Tenth Circuit held that “predetermination has occurred only when an agency has made ‘an irreversible and irretrievable commitment of resources’ based upon a particular environmental outcome, prior to completing its requisite environmental analysis.”

A NEPA process was required to decommission this road, which the Forest never did. The Forest’s purchase and installation of hardened barriers to permanently block both ends of NFSR 322.A, combined with its refusal to consider reopening the road in the intervening years while allowing the roadbed to deteriorate, certainly constituted an “irreversible and irretrievable commitment of resources” that caused pre-decisional prejudice to the outcome of this travel management plan, and is the likely reason why the Forest did not select the Alternative D management option and reopen it as a trail open to all vehicles.

C. CONCLUSION AND REQUESTED RESOLUTION

As described above, the decision to Decommission NFSR 322.A was unlawfully predetermined by the actions of the Pikes Peak Ranger District roughly 10 years ago in illegally decommissioning it without a supporting NEPA analysis. The Draft ROD in turn decided to decommission this road without any support reasons or science-based analysis, contrary to the only evidence in the record in the form of the TAP evaluation and the analysis done in the 2011 EA for the South Rampart Travel Management Plan. While the South Rampart Travel Plan never reached a final decision, that EA remains the most recent science-based analysis done of this route, yet the FEIS dismisses it entirely.

Instead, the Forest chose to allow the ranger district staff to substitute their own subjective opinions regarding this route for a science-based analysis under NEPA, and proposed it for closure contrary to the recommendation produced by the Minimum Road System rubric and all evidence in the public comments. For these reasons, this decision was arbitrary capricious, unsupported by substantial evidence, and contrary to law, and must be reversed.

Accordingly, we request that the Reviewing Officer remand the Draft ROD to the Deciding Official with instructions to modify the Final Decision to reopen NFSR 322.A as a trail open to all vehicles as specified in Alternative D.

OBJECTION #25: CLOSURE OF NFSR 372 EAST BEAVER

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the action in the Draft Decision of converting NFSR 372 off Gold Camp Road west of Colorado Springs to a special use permit road. This action unacceptably privatizes a large area of National Forest land, and will deprive the public of a valuable road that is extremely popular for dispersed camping. This road appears to be slated for closure solely at the request of the utility operator of the Penrose Rosemont Lake and the private ranch owner at the end of the road, contrary to the action recommended by the MRS rubric and solely by the arbitrary decision of the ranger district.

Patrick McKay commented on this route in a comment submitted on 10/16/2019 that does not appear to have been included in Appendix D of the FEIS, but is still available on the Forest Service website [here](#). (Note, one sentence accidentally referred to “FR 327” when it meant to refer to “FR 372”).

B. ANALYSIS

As shown in the map to the right, NFSR 372 East Beaver (shown in purple) is a 2.15 mile ML3 road that runs from Gold Camp Road past the dam of the Penrose Rosemont Reservoir along East Beaver Creek, until it dead-ends at the gate of a private ranch. The entire length of this road is slated for conversion to a special use permit road under the Draft Decision. As an ML3 road in an area where most roads are ML2 high clearance roads, it is one of the few roads in this area that all vehicles can access, which makes it extremely popular for dispersed camping in a number of scenic campsites along the river.

NFSR 372 was given an H/H overall rating by the Pikes Peak District TAP Addendum, with a ‘high’ recreational use benefit rating. This rating properly reflected its extremely high popularity for dispersed camping. With its high recreational use benefit rating and the high watershed risk rating, the Minimum Road System rubric would have produced a recommendation to convert it to a trail open to all vehicles and harden water crossings, while the high wildlife risk rating would have produced an additional recommendation of adding a seasonal closure.



Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: H/H

Benefits

Category	Score
Recreational Use Benefit	H
Fire/Fuels Access Benefit	H
Timber Access Benefit	L
Special Use Access Benefit	H
Resource Management/Range Access Benefit	H

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	L

This combination of scores should not have resulted in closing the route to the public by converting it to a special use permit road. Indeed for this route, all alternatives *except* Alternative C would have kept it open to the public. Only Alternative C would close it and convert it to a special use permit road. This road then has especially strong evidence that the MRS rubric outcome was overridden by the arbitrary decision of the ranger district, as discussed in Objection #3.

Because closing this route to the public is contrary to the recommendation produced by the MRS Rubric, it appears likely the decision to close it was the result of the “site-specific review” conducted by ranger district staff specifically for Alternative C. This review process was used to overrule management outcomes from the MRS Screening Process that the ranger district staff disagreed with. Given that every alternative considered *except* Alternative C would have kept this route segment open to the public, that is the most likely reason for this deviation.

These site-specific recommendations by the ranger districts ultimately represent the mere opinions of district staff rather than any kind of scientifically-derived management decision. They consisted of mere conclusions that were unsupported by any specific evidence or reasoning disclosed to the public as part of the project record. Neither the Draft Decision nor any documents associated with the FEIS provide any reasons for the closure of this route, though given the number of comments in Appendix D from the Penrose Rosemont dam operator and the owner of the ranch at the end of the road complaining about unruly campers, it is likely this closure was ultimately motivated by pressure from those landowners. However the fact that neighboring landowners do not like the public using a Forest Service road on nearby Forest Service land is not sufficient justification for locking the public out of public lands. Unruly campers would have been better dealt with by increasing law enforcement presence in the area and better enforcement of existing land-use rules.

Even if this was the reason for closing this road, that was never actually disclosed to the public. The complete failure of the Forest to provide any reasons for closing this road, especially when that choice contradicts the MRS rubric that the Forest claimed most route-specific management decisions were based on, constitutes a failure to articulate a “rational connection between the facts found and the choice made” as required by the Administrative Procedure Act, and is therefore arbitrary and capricious for multiple reasons set forth below.

First, as discussed in both Objections #1 and 3, basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the APA. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983).

Critically, “NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data”. *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006). A **“bare assertion of opinion from an [agency] expert, without any supporting reasoning, would not pass muster in an EIS.”** *Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1103 (9th Cir. 2016).

While the description of the site-specific review in the FEIS tries to couch this review in scientific sounding terms, it cannot obscure the fact that this review process inherently allowed district staff to substitute their own opinions for how a given route should be managed over the outcome derived from the MRS screening rubric. This was the case with NFSR 372. The Forest cannot escape the fact that the decision to close this route is based solely on the “bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103. This makes the decision inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

Second, in making the decision to close NFSR 372 contrary to the recommendation produced by the TAP data and the MRS screening criteria, the Forest has also “offered an explanation for its decision that runs counter to the evidence before the agency”. *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. The only actual evidence in the project record regarding this route is the TAP data and MRS Screening Criteria. A decision contrary to what that evidence supports without any explanation or further evidentiary support for the deviation inherently “runs counter to the evidence before the agency” and is both arbitrary and capricious and unsupported by substantial evidence.

Third, basing travel management decisions solely on ranger district staff opinions violates the Travel Management Rule (TMR) as codified in 36 C.F.R. § 212.5(b)(1), which states:

In determining the minimum road system, the responsible official must incorporate a **science-based roads analysis** at the appropriate scale and, to the degree practicable, **involve a broad spectrum of interested and affected citizens**, other state and federal agencies, and tribal governments.

The science-based analysis referenced in this CFR is the Travel Analysis Process and Minimum Road System screening criteria. While those are not the only allowable basis for deciding whether a given route should be included in the minimum road system, deviations from that scientific process (such as with NFSR 372) must be adequately justified by clearly articulated facts and reasoning. If Forest Service staff are allowed to arbitrarily deviate from the recommendations of the MRS rubric at whim without justifying those decisions at all, the minimum road system could no longer be said to be science-based in any meaningful way.

The TMR also requires that public input from a “broad spectrum of interested and affected citizens” be considered when determining the minimum road system. This coincides with the related requirement in

the TMR that “The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart.” 36 C.F.R. § 212.52(a). In the case of this road, the decision to close it had already been made by ranger district staff at least some time prior to the comment period on the DEIS, so the public was effectively deprived of any opportunity to give input on the decision to close these routes before the decision had already been made, in violation of the Travel Management Rule.

Because compliance with the TMR was the main stated Purpose and Need for this project, failing to comply with the TMR also fails to meet the purpose and need of the project, which is an independent reversible error.

C. CONCLUSION AND REQUESTED RESOLUTION

In conclusion, the decision to convert NFSR 372 to a special use permit road was arbitrary and capricious, unsupported by substantial evidence, and otherwise contrary to law. We therefore request that the Reviewing Officer reverse this decision and remand the Draft ROD to the Deciding Official with instructions to modify the Final Decision to leave NFSR 372 open to public motorized use as either a road or trail open to all vehicles.

IX. Leadville District Objections

OBJECTION #26: CLOSURE OF THE UPPER PORTION OF NFSR 381 CLOYSES LAKE 4WD

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the decision to keep the entire final segment (.45 miles) of NFSR 381 Cloyses Lake 4WD restricted to administrative use. This segment provides access to the hiking trail to Clohesy Lake, as well as a hiking trail to the summit of Missouri Mountain.

In comments submitted by both Marcus Trusty and Patrick McKay, we specifically discussed the historic closure point near the middle of this road segment at .25 miles. The exact location is at coordinates 38.950853, -106.407496. This motorized closure point has been used by hunters, fishermen, hikers and motorized users for well over two decades. This closure point is managed with a gate and a sign and is in a heavily timbered area making the closure manageable and contained.

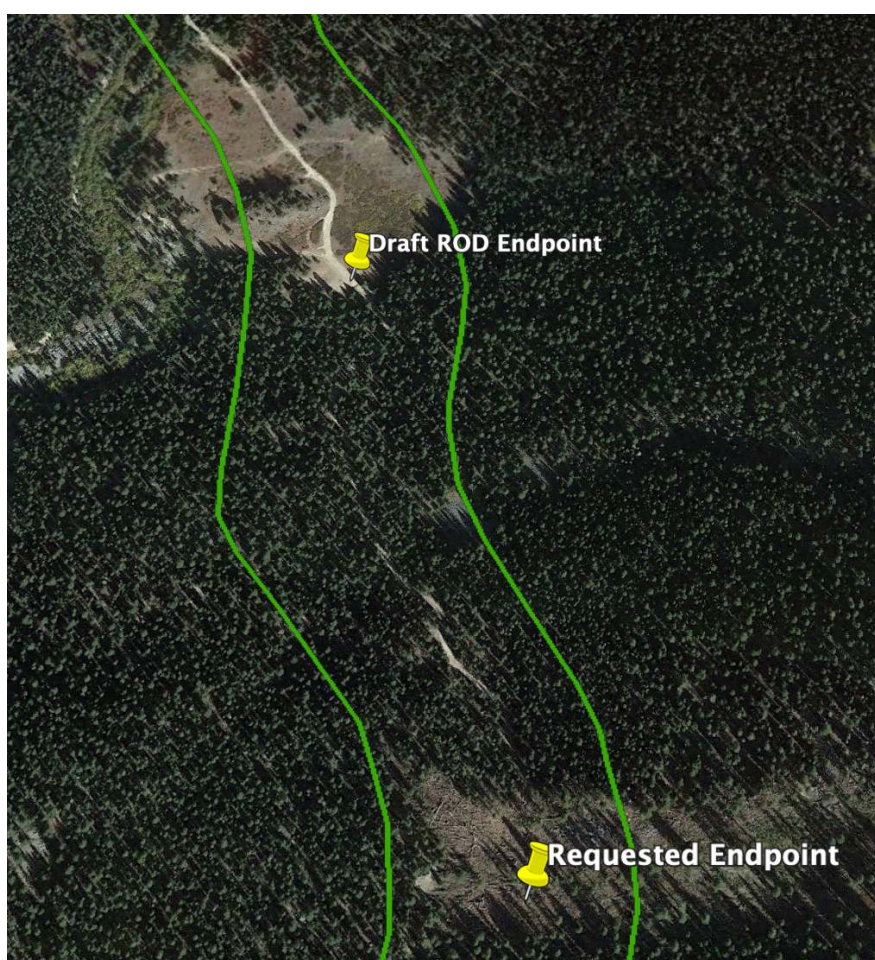
B. ANALYSIS

At some point it appears there has been a conflict in the INFRA data and the management prescription on the ground for the final segment of NFSR 381. The existing closure is shown in the following photos. We are assuming this closure location was chosen for strategic reasons as it still allows users within reasonable walking access to Clohesy and the network of trails surrounding and beyond the lake. This location is also extremely manageable as it is located in heavy timber so users are contained at the end of the road. There is a nice open area to park and turnaround (pictured on the next page).

This parking area was buried by avalanche debris from the spring of 2019 until CORE cleared it during a work project in September 2020. It is now fully usable again, and provides an ideal endpoint for this trail. From this point, Clohesy Lake is only a short five minute walk away across mostly level terrain, providing ideal fishing access and access for people with disabilities. If the road is closed where it is in the Draft Decision, it would require a strenuous half mile uphill hike to reach the lake from the designated endpoint in the meadow below.



If this 0.25 mile segment of road is closed to public motor vehicle use, it would place the end of the road at an impossible management location. This location would be at the edge of a meadow with no natural barriers in place to contain parking, camping and turning around. The Collegiate Peaks Wilderness Boundary (Green Line) is about 250' on either side of the NFSR 381 Road. The meadow at the proposed end point of the road is substantially larger than this wilderness buffer. This could eventually present a management problem, and it is much easier to keep all users moving through this area so as to not cause damage. The most difficult management area for out-and-back trails is the end point. We are confident these reasons were the deciding factor to placing the gate and end of the motorized route at its current location. That location accomplishes good management practices, while also protecting all the outlined concerns.



The TAP Scores and MRS screening criteria reflecting potential negatives do not apply to the 0.25 mile section we are requesting to be open. The high TAP score for Archaeology Risk and for Watershed Risk are at the end of the third section of NFSR 381 near Clohesy Lake and are not located within the 0.25 mile section discussed here. Also, the MRS screening criteria for the route intersecting with a riparian area is closer to the lake and is not located within the requested 0.25 mile section. The Lynx

Mapping area Habitat Data related to this section of road will not be a concern as this section of road is never open during the winter because it is inaccessible due to snow.

Additionally, this is the last section of road at the highest elevation and due to the natural snow and melting cycles for this area, this section of road is the first to close, restricting vehicular use typically in October, and is the last section of road to open to vehicular use typically in late June/early July. Lynx denning and winter habitat concerns will not be negatively affected by continuing the summer motorized use on this 0.25 mile section of NFSR 381.

The screening criteria also noted that the desired maintenance level of this segment of road is not consistent with current management, however, as shown above, it's important to note that only about half the segment (0.25 miles) is not the same as the desired maintenance state and it is not the full third segment.

Is the route a road where the desired maintenance level is not the same as the current maintenance level, and the motor vehicle use may not be compatible with existing conditions?	Yes*
Is the route a ML3 road (or higher maintenance level) where the surface is native rather than gravel or paved and the motor vehicle class may not be compatible with the road surface?	No
Is the route a road where the desired maintenance level is not the same as the current maintenance level, and the speed, volume, composition, and distribution of traffic on this road may not be compatible with existing conditions?	Yes*

C. CONCLUSION AND REQUESTED RESOLUTION

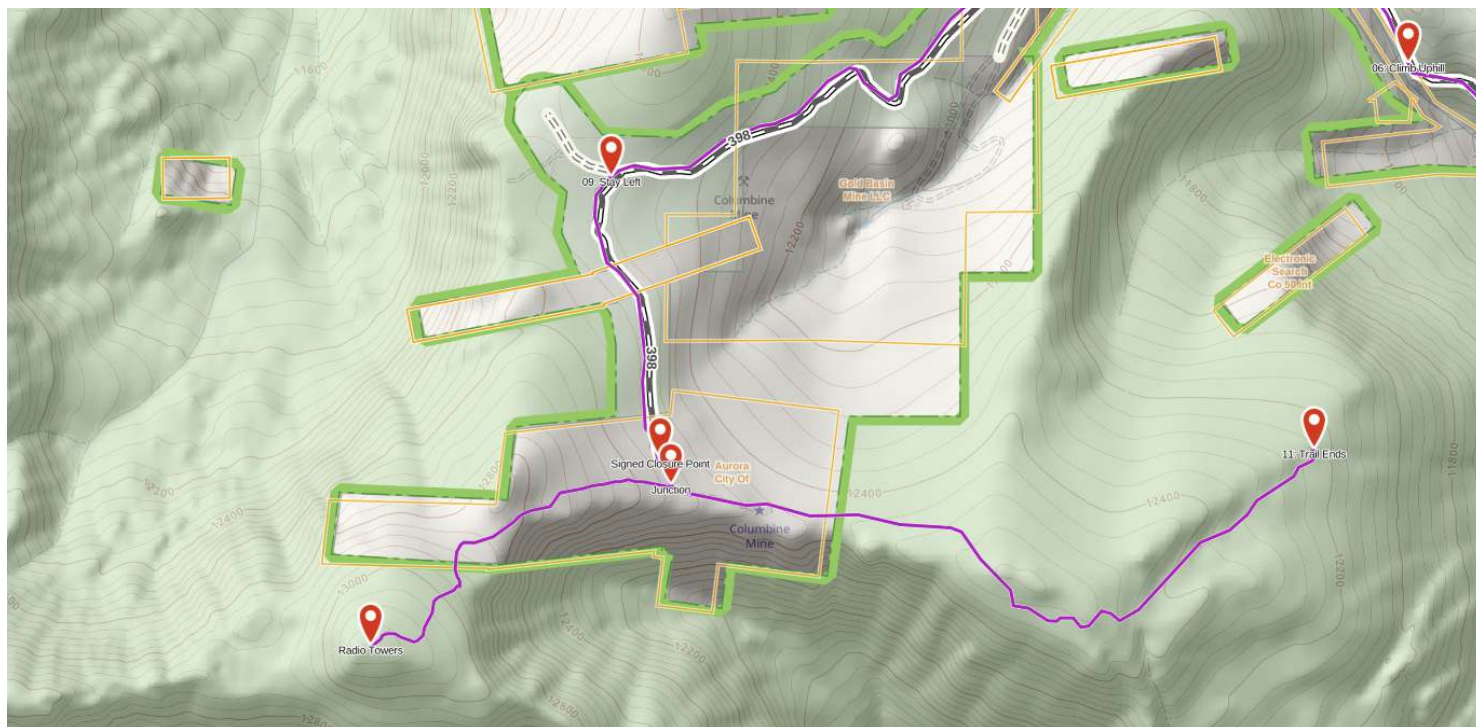
We request that the Draft Decision be remanded to the Deciding Official with instructions to modify the Final Decision to designate the initial 0.25 mile section of the third segment of NFSR 381 as open to public motor vehicle use. This will allow for historic use and management to continue and will place the endpoint in a heavily timbered area allowing for continued management success. CORE is the trail adopter for this trail and we have worked successfully with the Leadville District office for the past 4 years managing NFSR 381 at this historic endpoint. We have an agreed upon management plan going forward and adding this 0.25 mile section for public use will allow us to successfully implement that management plan in the future.

This segment of NFSR 381 is also a route for which Objection #2 applies, as the selection of alternatives regarding it was unlawfully limited by the TAP recommendation from the Leadville District TAP Addendum, which said, "Admin Rd, Op ML2". Even though CORE previously commented requesting that this segment be opened to public use to reflect its historic status, the Forest refused to consider our comments because of the TAP recommendation, and all alternatives considered in the FEIS left this segment closed to the public.

The Leadville Ranger District no longer agrees with the management action recommended in the TAP report, and the District Ranger supports our request to open the 0.25 mile length segment between the meadow and the existing gate at 38.950853, -106.407496.

We therefore request that the Draft Decision be remanded to the Deciding Official with appropriate instructions to open this segment in the Final Decision.

OBJECTION #27: OMITTED SEGMENTS OF NFSR 398 LOST CANYON, INCOMPLETE 3A AREA CORRECTION IN FOREST PLAN AMENDMENT



A. INTRODUCTION AND CONNECTION TO PREVIOUS COMMENTS.

We object to the decision in the Draft ROD not to correct the endpoint of NFSR 398 Lost Canyon in order to designate the full historical route shown in the map above (purple line) as open to public use. We also object to the decision not to modify the proposed Forest Plan amendment for this route in order to exclude the full route from the 3A management area. This objection applies to both the Travel Management Plan and the Forest Plan amendment.

Marcus Trusty commented on this route in comments 2139-5 and 2139-6, requesting the full route be added to the MVUM and designated for public motorized use. Patrick McKay also commented in comment 2176-1 requesting that both the MVUM route and the Forest Plan amendment be corrected to reflect the entire historical route.

The Forest has failed to articulate why the full and historic route, which is well documented and preceded the 1984 Forest Plan, was not corrected and designated for public use. It dismissed all evidence regarding the proper endpoint in public comments, while failing to provide any specific reasons for this decision, rendering it arbitrary and capricious and contrary to the evidence before the agency.

B. ANALYSIS

1. Background and route description

Lost Canyon has long been a popular four-wheel-drive route near Leadville and is renowned for its scenic high-alpine views and historic mining ruins. Its difficulty level is rated as moderate and it can be accessed by most stock four-wheel-drive vehicles. The Travel Analysis Report for the Leadville Ranger District rated it as having 'high' recreational benefit, with an overall benefit/risk rating of H/H. While both the current MVUM and the route maps and tabular data for the FEIS show NFSR 398 ending at milepost 10.1, the main route on the ground continues for almost another two miles, looping around to the east past the ruins of the Columbine Mine to a point overlooking Clear Creek Reservoir, located at 39.02631, -106.34168. A secondary side route branches off to the southwest and goes about 0.7 miles to an overlook of Quail Mountain and communications site, located at 39.02147, -106.37156.

Both of these additional route segments have been open to public motorized travel for decades and predate the 1984 Forest Plan. A mapping error caused part of the road to be located in a 3A management area by mistake. This was clearly an error as the intended goal of the 1984 Forest Plan was to keep all existing roads out of 3A areas. The Draft Decision in this travel management process already includes a Forest Plan amendment to correct this error and adjust the boundaries of the 3A area to exclude this route. We strongly support this adjustment, but requested in our comments on the DEIS that the final Forest Plan amendment adopted at the end of this process also exclude both the last ~2 miles of NFSR 398 and the side spur to the Quail Mountain overlook from the 3A areas.

Here is a Google Earth map showing the Lost Canyon area:



The red line represents the official MVUM route as shown in the official shapefiles provided by the Forest Service on the travel planning website. The blue line represents the actual main route as it exists on the ground using GPS tracks downloaded from TrailsOffroad.com. The green line represents the side spur to the Quail Mountain overlook and communications site, following the track clearly visible on the ground in satellite imagery.

As can be seen on the map, the official MVUM route ends just before the fork in the route at the top of the ridge, where the road splits into separate east and west branches. Here is a photo from summer 2019 showing this endpoint as newly signed on the ground by the Forest Service a few weeks prior:



As this photo shows, the current endpoint occurs at an arbitrary point along the road in the middle of the open tundra above timberline, which as shown on the map at the top of this objection is in the middle of a parcel of land owned by the City of Aurora. The road can be seen continuing on to the crest of the ridge, with no noticeable decrease in road quality or definition. There is not even a wide point in the road at the marked endpoint for vehicles to properly turn around. Instead, vehicles are forced to drive onto the tundra adjacent to the road in order to park or turn around, causing unnecessary damage to the delicate vegetation. If the legal route did not arbitrarily end at this point but continued to its natural endpoints, or even to the fork at the crest of the ridge, this would not be an issue. The following photo from June 2020 shows the resource damage that has already been done in just one year from vehicles being forced to turn around at this point.



The following series of photos show the remainder of the main route to its true endpoint around milepost 11.7.



The fork between east and west routes.



The main route continuing east along the ridge, past the ruins of the Columbine Mine.

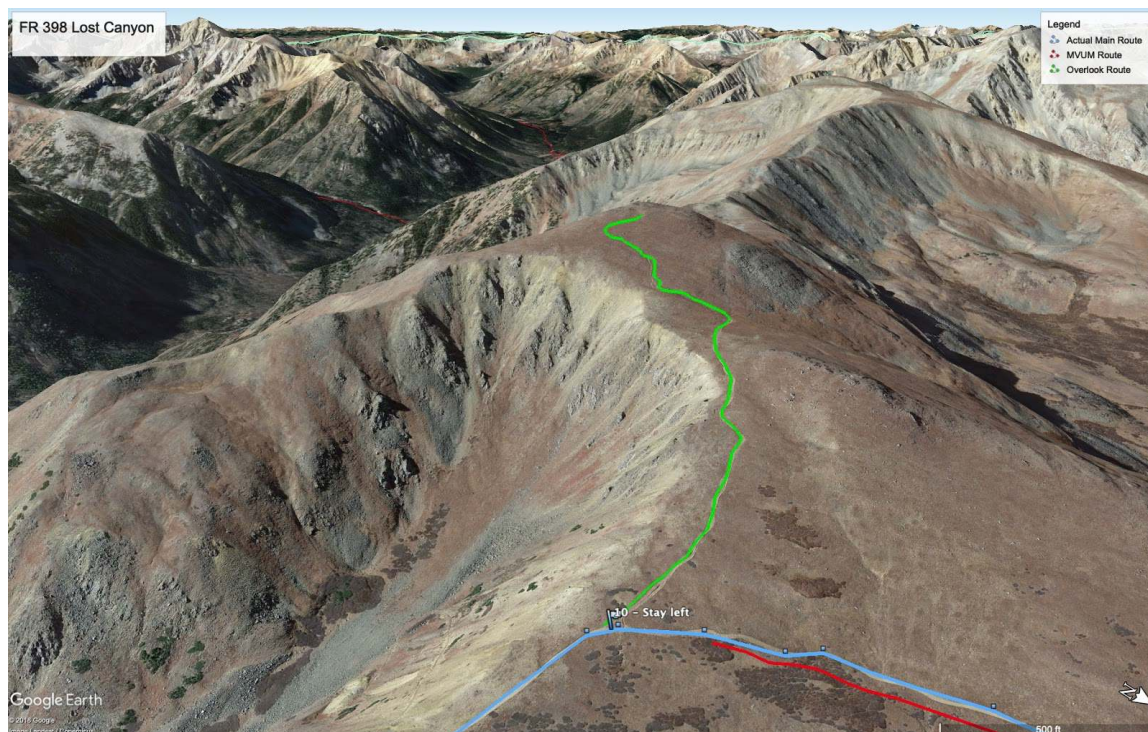


The true endpoint looking north.



The true endpoint looking southeast.

The western spur continues approximately 0.7 miles from the fork up to a high point with a couple radio towers and a weather station overlooking Quail Mountain, with spectacular views of the valleys to both the north and south. This path is shown in more detail in the following Google Earth image.



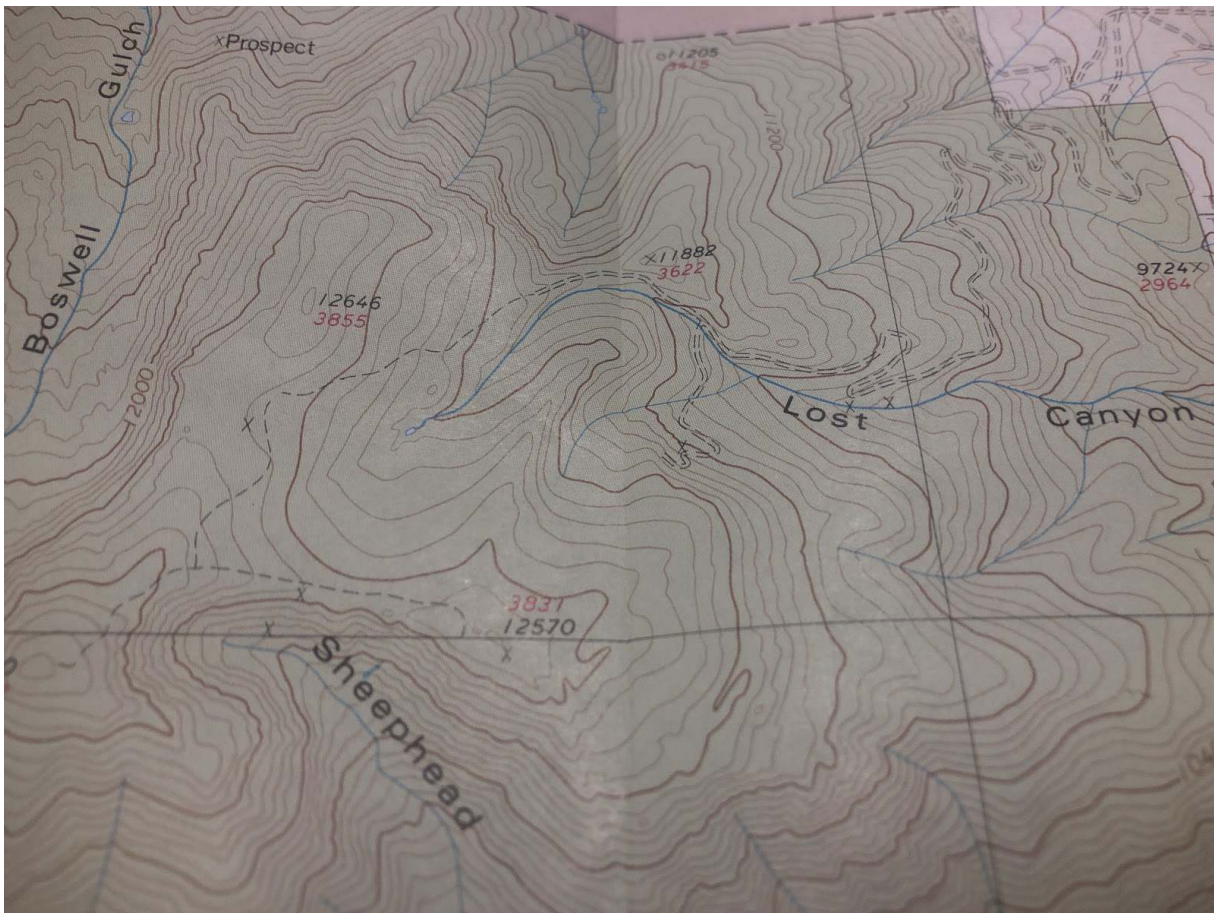
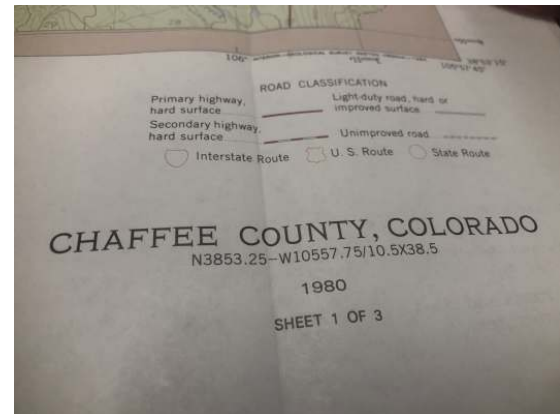
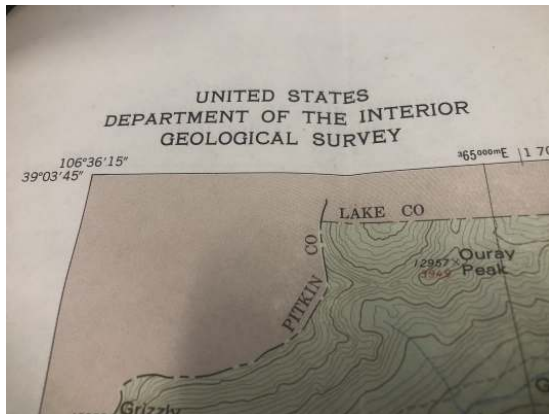
The road leading up to the communications site shown below.



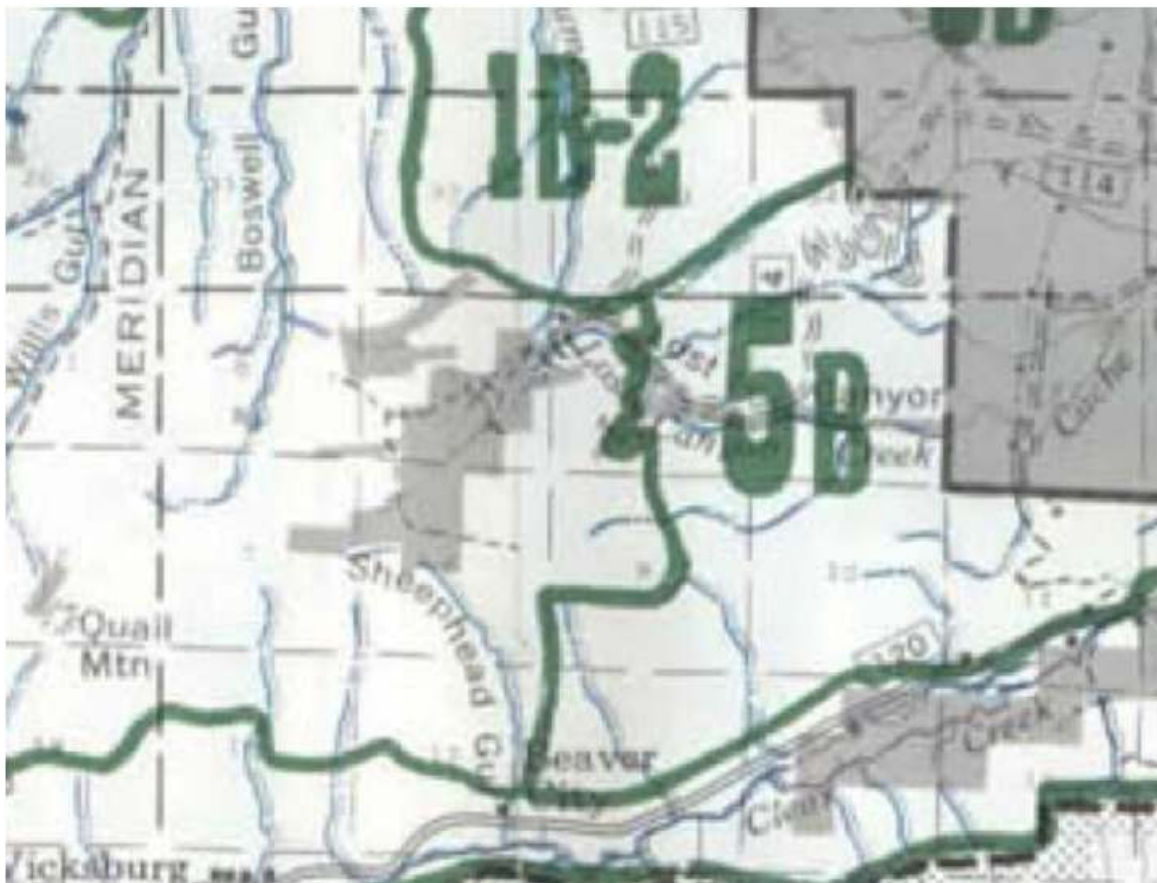
As evidenced by these images, the unmapped portions of the Lost Canyon route are well-defined, stable roadbeds that have existed on the ground for many decades. They are not illegal user-created routes, but rather old mining roads that have been there forever yet were inexplicably mapped in a 3A management area likely due to a drafting error. These portions of the route have been continuously driven by the public for decades, and it was only in summer 2019 that the Forest Service placed signs marking the official endpoint of the road and signing the remainder of the road as an admin road (though it is not shown as such in any publicly available Forest Service GIS data or the GIS data provided with the FEIS). This endpoint is at an arbitrary location along a road that clearly continues much further, and is actively causing environmental harm where there was none before by forcing people to drive on the tundra to turn around.

2. The full route for NFSR 398 was shown in the 1984 Forest Plan map and other contemporaneous maps

As described above, the full NFSR 398 route continues south from the current MVUM endpoint to the edge of Sheephead Ridge before turning east and ending at an established parking area with an overlook of Clear Creek Reservoir. The intact section of route is shown on a 1980 USGS map and is also shown on the 1984 Forest Plan Map. See below photos:



Both branches of the route are shown in this map marked as trails (dashed lines), as is a long section of the current MVUM route. In USGS maps from this time period, motorized routes were often marked as trails. These maps typically did not distinguish motorized trails from non-motorized trails.

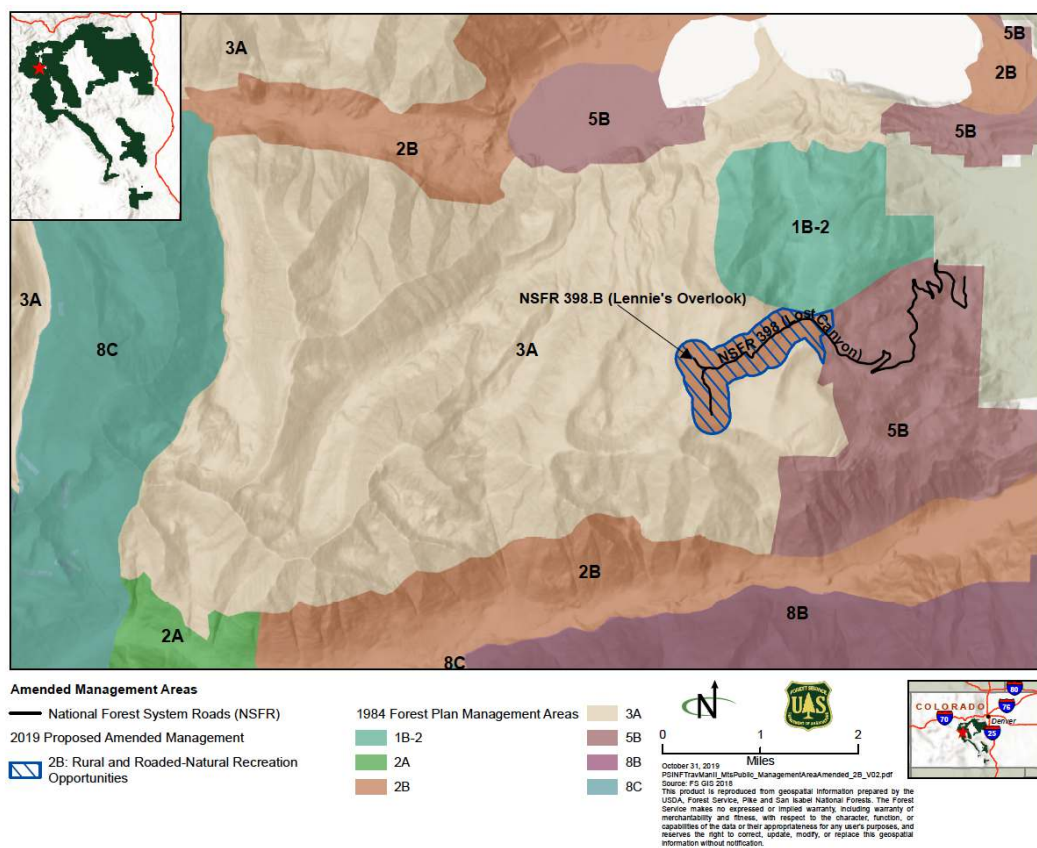


On both the 1980 USGS map and the 1984 Forest Plan Map (above) the road is depicted as a dashed 'Jeep Trail'. The 1980 USGS map also includes the route segment heading west at the Sheephead Ridge intersection, which goes west toward Quail Mountain. This shows that not only was the '84 map 3A polygon incorrect for the current MVUM portion NFSR 398, but was also incorrect for the full route. The 1980 USGS map would have surveyed roads and Jeep trails before the published date of 1980. There is ample evidence to show over 40 years of public use.

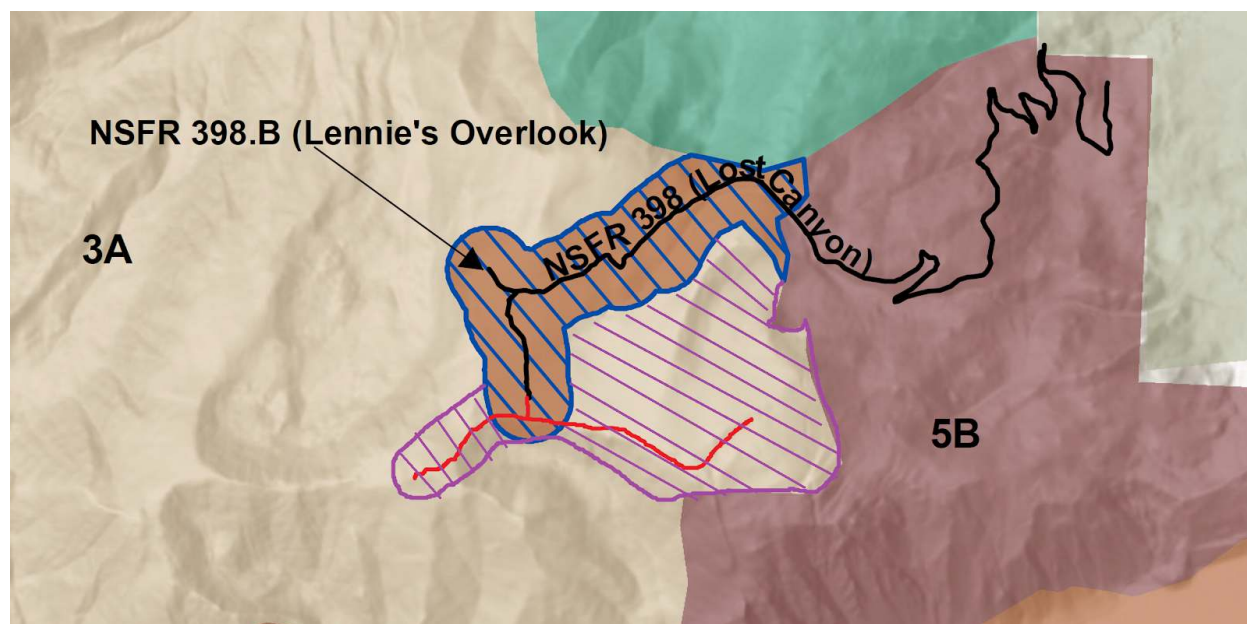
3. Sustainable management requires designating the full route as open to public use, and amending the Forest Plan accordingly

As previously stated, the authorized MVUM portion of NFSR 398 ends arbitrarily in the middle of an open section of tundra, which is in the middle of a property owned by the City of Aurora. There is no way to manage this endpoint, as the full road continues on to the endpoints described above. If the Forest was to place a gate, or 'close' the road at this point, users would have no problem bypassing the closure and continuing to use the roads. Our comments recommended designating the full length of NFSR 398 as a legal MVUM route and modifying the Forest Plan amendment to exclude the full historic route from the 3A management area.

The image below shows the amended management area boundaries proposed in the Forest Plan amendment included in the Draft Decision. In order to designate the entirety of this route, the new 2B management area will need to be expanded a short distance more to both the east and west.



In order to fully exclude the entirety of the main NFSR 398 route, plus the western spur to the communications site (which should be given a separate route number), the management area boundaries would need to be amended to look something like this.



The erroneously omitted portion of the remainder of the road is shown in red. The new 2B area around the road should be expanded to encompass the area with the purple diagonal lines, filling the gap on the plateau between the road and the 5B management area to the east. Expanding the 2B zone to fill this area would allow for the entire length of NFSR 398 to be open to the public and would result in less irregularity in the 3A boundary line.

4. The Forest's failure to designate the entirety of NFSR 398 was arbitrary and capricious

As described above, amending the Forest Plan management areas to exclude the entire historic route from the 3A area and designating the full historic route (including both branches) as a legal MVUM route open to public motorized use is the only sustainable way to manage this route. Anything else will result in continued illegal use of the undesignated portions of this road, and continued motorized intrusions into the 3A management area, which the entire goal of the Forest Plan amendment is to prevent.

This fact, as well as the fact that the full route was shown on maps predating the 1984 Forest Plan, was pointed out in both Marcus Trusty's and Patrick McKay's comments on the DEIS. In response to these comments, the Forest merely stated:

The MVUM includes authorized NFS routes. Unauthorized routes are not mapped.

Response to comment 2139-6 by Marcus Trusty, FEIS Appendix D at D-171. And:

The presence of a route on the 1984 forest map or other previously published maps does not preclude the PSI from closing or restricting public access.

Response to comment 2176-1 by Patrick McKay, FES Appendix D, at D-185.

While both of these statements are true, the Forest utterly failed to respond to the actual arguments and evidence in our comments as to why designating the full length of the historic NFSR 389 road is the only sustainable and acceptable management option for this route. While the presence of a route on historic maps does not mean the Forest is *legally required* to designate that full route as open to motorized use in the present, it does prove that (a) the currently "unauthorized" portion of the route is not simply a recent illegal user-created route, and (b) that the proposed action to only designate part of the historic route is inconsistent with the way this route has historically been managed.

The historical maps show that the Forest's failure to evaluate the omitted segments of this route *at all* in this process (it is not even shown in any of the alternative maps or GIS data) constituted a significant factual error and a critical omission from the baseline route inventory. Many other admin roads that are not currently open to the public were considered in this travel management process, which was not limited solely to publicly open routes on the current MVUM. The additional portions of NFSR 398 are signed on the ground as admin roads, just like many other routes this process evaluated, yet they were omitted from this process entirely. That is indicative of an error in the route inventory considered in this process at the very least. The Forest may not have been obligated to open the omitted segments of this route to the public, but it was obligated to at least consider them as part of the baseline route inventory.

The only possible reason the Forest provided as to why it did not consider the omitted segments of NFSR 398 is the response it gave to comment 2224-2 by Richard Kruenegel:

One intent of the Forest Plan amendment addressing this route and the 3A Management Area boundary is to make this route legal and remap the route ending it at the private land boundary. The Forest Service has no legal authorization to cross the private land.

FEIS Appendix D at D-188. Based on this, it seems the Forest does not believe it has an easement to cross the parcel of land owned by the City of Aurora. This however runs contrary to the evidence before the agency. Under Colorado law, C.R.S. § 43-2-201(1) states that, “All roads over private lands that have been used adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years” “are declared to be public highways”.

As shown by the historical maps, this route has been continuously used by the public for over 40 years, more than satisfying the requirements under Colorado law for a prescriptive easement. According to the Chaffee County Assessor website⁶, the City of Aurora only acquired the land in 2006, and it was owned by private individuals before that. The prescriptive easement was likely already established by the time the city acquired it, so the fact that it is currently owned by a governmental entity poses no barrier to the existence of a prescriptive easement either.

Even if the Forest Service does not have an express easement to cross this parcel, it may safely assume that at the very least a prescriptive easement for public access exists. There is no regulation that prohibits the Forest Service from assuming such an easement exists and designating the full route as open to the public, and in fact the Forest Service travel planning manual encourages the Forest Service to consider whether it has jurisdiction over roads through prescriptive easements. FSM 7700, Ch. 7710, sections 7715.72(2) and 7715.72(3) state:

Units and districts should consider rights acquired through appropriation, **prescriptive rights**, and other rights which may not be documented when determining jurisdiction over a forest transportation facility under applicable law. Evidence of acquired but undocumented rights might include a history of maintenance, depiction of a route on a visitor or travel map, signing, and other indicators of assertion of ownership. ... Roads and trails over which the Forest Service has jurisdiction may be considered for designation.

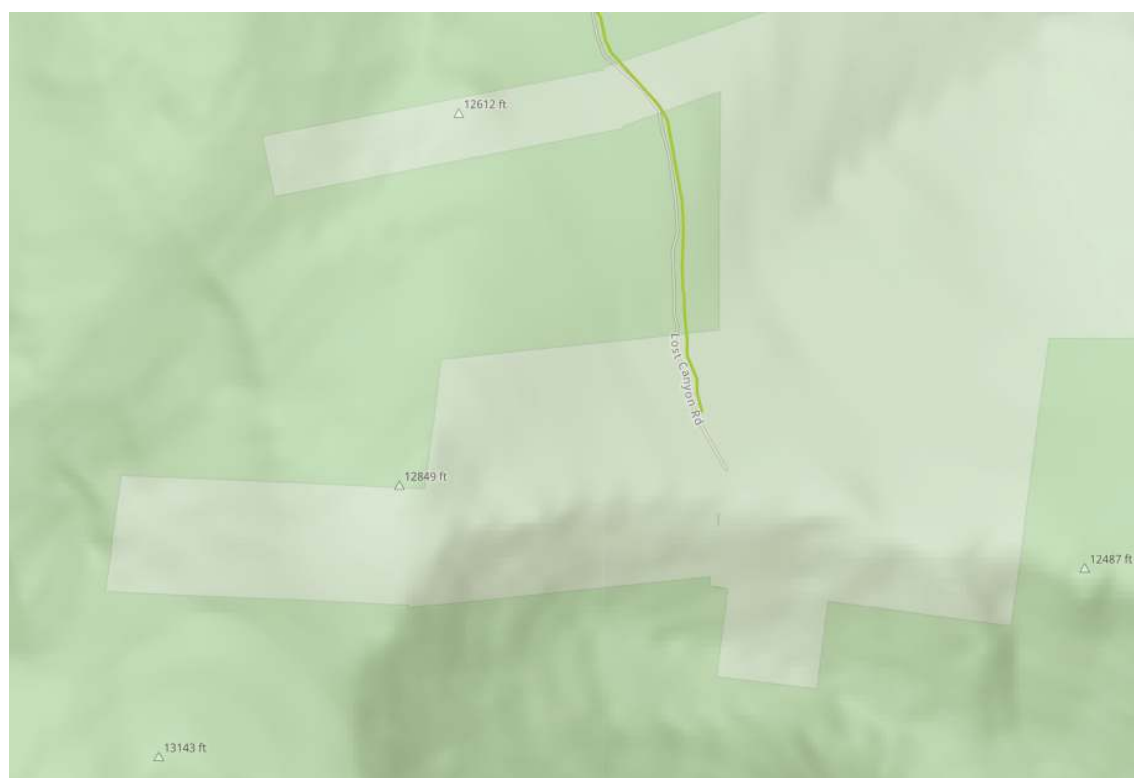
Indeed, the Forest itself has recognized that prescriptive rights exist for other parts of the Lost Canyon road. The spreadsheet entitled “II_ROAD_ROE_V_12_27_2019” which is available on the Forest’s travel planning website under the “Pre-Scoping” tab, in the folder for “PSI INFRA Reports, January 2020,” lists an entry spread across pages 527 and 528 dated 9/30/2009 by “NPalider.” This entry notes a change in jurisdiction for the segment of NFSR 398 from 6.5 - 9.7 miles, and the remarks column states, “changed all Pvt segments from P to FS with prescriptive rights per BMullholland...” (remainder cut off). If prescriptive rights exist for other segments of NFSR 398, they should also exist for the omitted portion at issue here, which has been traveled by the public just as long.

The existence of the full route on 1980s era maps should have been sufficient evidence for the Forest Service to claim jurisdiction over the section of the route crossing the City of Aurora’s land by prescriptive right. Alternatively, the Forest could have designated only the portions of NFSR 398 on Forest Service land on the MVUM and marked the portion crossing private land in gray as a non-Forest Service road, as it has done in other areas where routes cross private land and easement rights are

⁶<https://qpublic.schneidercorp.com/Application.aspx?AppID=928&LayerID=18090&PageTypeID=4&PageID=8092&KeyValue=R300708200811>.

unclear. This was not a valid reason to leave the remainder of NFSR 398 out of the route inventory for this travel management process, especially the other sections on Forest Service land.

The Forest's assertion that it has no right to cross this parcel of land is also contradicted by the fact that both the current MVUM and the GIS data associated with this travel plan show the Forest Service MVUM route continuing about 400 feet into the parcel of land owned by the City of Aurora and ending at an arbitrary point in the middle of it, just short of the fork in the road, as shown in the map below generated using the GIS data provided by the Forest Service for the FEIS. The green line is the route designated as open under the selected Alternative C, which passes from the dark green area (NFS land) into the light green area (private land) just before it terminates.



If the Forest does not have legal rights to enter the Aurora parcel, the endpoint designated by the Draft Decision is also incorrect for that reason, and should be about 400' earlier. As the Forest's only explanation for why it did not consider the omitted segments of this route in the baseline inventory for this process or consider designating it as open to public use, this explanation runs counter to the evidence before the agency, and indeed the agency's own actions in designating a short portion of the route inside the Aurora parcel anyway. This reason is therefore invalid, rendering decisions based on it arbitrary and capricious.

The Forest's complete failure to address the specific evidence in our comments, including photographic evidence that the arbitrary endpoint chosen for this route was in fact causing environmental harm, constitutes an additional error which renders this decision arbitrary and capricious as a matter of law. As discussed in Objection #1, under APA section 706(2) agency decisions that are "unsupported by substantial evidence" must be set aside as unlawful. Both NEPA and the APA require the Forest

Service to to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983).

In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision regarding the alternative adopted, but also to the decisions made regarding individual routes. In *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d at 1069, the court overturned a Forest Service travel plan because of the Forest’s failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs. (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

When the Forest was made aware through public comments that the route inventory data it relied upon to make decisions for this route was incorrect, and that the chosen endpoint was actively causing environmental harm, it had a responsibility to reevaluate the route based on the new information it received, or at least respond to the specific evidence in our comments. The Forest failed to do this and therefore violated the Travel Management Rule.

In the *Idaho Conservation League* case, a travel management plan very similar to this one was overturned by the court because, “the Forest Service’s failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA”. *Id.* at 1074-1075. The court specifically found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs’ comments were legally insufficient to meet the agency’s burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.*

In the case of NFSR 398, the Forest failed to address any of the evidence in public comments regarding the omission of the historical route segments and the unsustainability of the arbitrary endpoint designated under the proposed travel plan. Because the Forest has completely failed to provide *any* specific explanation of the reasons for its failure to consider designating the omitted portions of NFSR 398 as open to the public (other than the private land issue discussed above), or to consider amending the Forest Plan to exclude the entire historic route from the 3A management area, this decision is arbitrary and capricious, counter to the evidence before the agency, and unsupported by substantial evidence.

Finally, the Forest’s failure to consider the unsustainable endpoint of this route demonstrates that it “entirely failed to consider an important aspect of the problem”, rendering the decision to close this route arbitrary and capricious per the holding in *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. The Travel Management Rule, as codified in 36 C.F.R. § 212.55(a) requires that:

In designating National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider **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.

36 C.F.R. § 212.55(b) further provides:

In addition to the criteria in paragraph (a) of this section, in designating National Forest System trails and areas on National Forest System lands, the responsible official shall consider effects on the following, with the objective of minimizing:

- (1) **Damage to soil, watershed, vegetation,** and other forest resources;...

Our comments pointed out that the chosen endpoint in the middle of a flat area of open tundra was unsustainable and indefensible, and was actively causing harm to the soil and delicate tundra vegetation by causing vehicles to drive across the tundra to turn around at a place where there was no previous wide spot in the road. Over time, this will cause a large parking area/turnaround to form here, completely destroying the tundra grasses and reducing this spot to bare dirt. The image above from June 2020 proves this is already happening. This will also widen the route and make it even easier to drive around any signs or barriers placed at the MVUM endpoint. As a result, law-abiding trail users who turn around where they are required to will actively cause environmental harm, while law-breaking users will continue to use the unauthorized portions of the route unhindered.

The Forest utterly failed to consider these significant impacts, or the fact that the best way to *minimize* impacts to the soil and vegetation in this area would be to not place the endpoint at an arbitrary location in the middle of open tundra, but to instead designate the full historic route to both of the existing and established parking areas / turnaround points. The Forest's failure to even consider this shows that it failed to consider an important aspect of the problem as required by both the APA and the Travel Management Rule, rendering its decision regarding the endpoint of this route arbitrary and capricious on these grounds as well.

C. CONCLUSION AND REQUESTED ACTION

For the reasons discussed above, the additional segments of NFSR 398 beyond the current MVUM endpoint were a clear case of missed route inventory for the PSI MVUM Analysis. This error was pointed out in comments by CORE and others, yet the Forest failed to correct this inventory error and evaluate the omitted segments in any form throughout this process.

The Forest's failure to provide any valid explanations for this omission renders the decision to designate this route as open only to the endpoint on the current MVUM arbitrary and capricious and unsupported by substantial evidence. In addition, the Forest's failure to consider or respond to evidence in public comments regarding the unsustainability of the current endpoint and the environmental harm it is actively causing violated the requirements of NEPA, the APA, and the Travel Management rule in multiple ways. The decision to not designate, or even consider for designation, the remainder of the historic NFSR 398 route therefore was arbitrary and capricious and not in accordance with law, and must be corrected.

We therefore request that the Draft Decision be remanded to the Deciding Official with instructions to correct the mapping errors regarding NFSR 398 and designate the full route to its two historical endpoints at 39.02631, -106.34168 and 39.02147, -106.37156. We further request that the Forest Plan amendment be modified to ensure that the full length of NFSR 398 is not inside of a 3A management area, and that the new 2B area surrounding the rest of the route be extended to encompass the additional segments that were previously omitted from the route inventory.

OBJECTION #28: CLOSURE OF NFSR 174 & NFSR 174.A (WILLOW STUMP & WILLOW STUMP SPUR)

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the action in the Draft Decision of decommissioning NFSR 147 Willow Stump and NFSR 174.A Willow Stump Spur. These are two extremely valuable motorized routes just west of Twin Lakes that provide the only motorized access to the banks of Lake Creek upstream of Twin Lakes as well as the southern shore of West Twin Lake. They provide important fishing access to Lake Creek and West Twin Lake and also provide critical hiking and hunting access to the Continental Divide Trail and the Willis Gulch Trail.

NFSR 174 is severely mismapped on the current MVUM which shows most of the route hundreds of yards away from where it actually is, which likely caused it to be erroneously evaluated in the TAP report and improperly recommended for decommissioning. In the responses to public comments in the FEIS, the Forest Service stated that these routes are proposed for decommissioning because of the TAP recommendation, which is not a valid basis for this decision and is arbitrary and capricious.

Patrick McKay (see comment 186-1) and Marcus Trusty (see comment 2131-1) both commented on these routes in the DEIS comment period, asking that they be open to public motorized use.

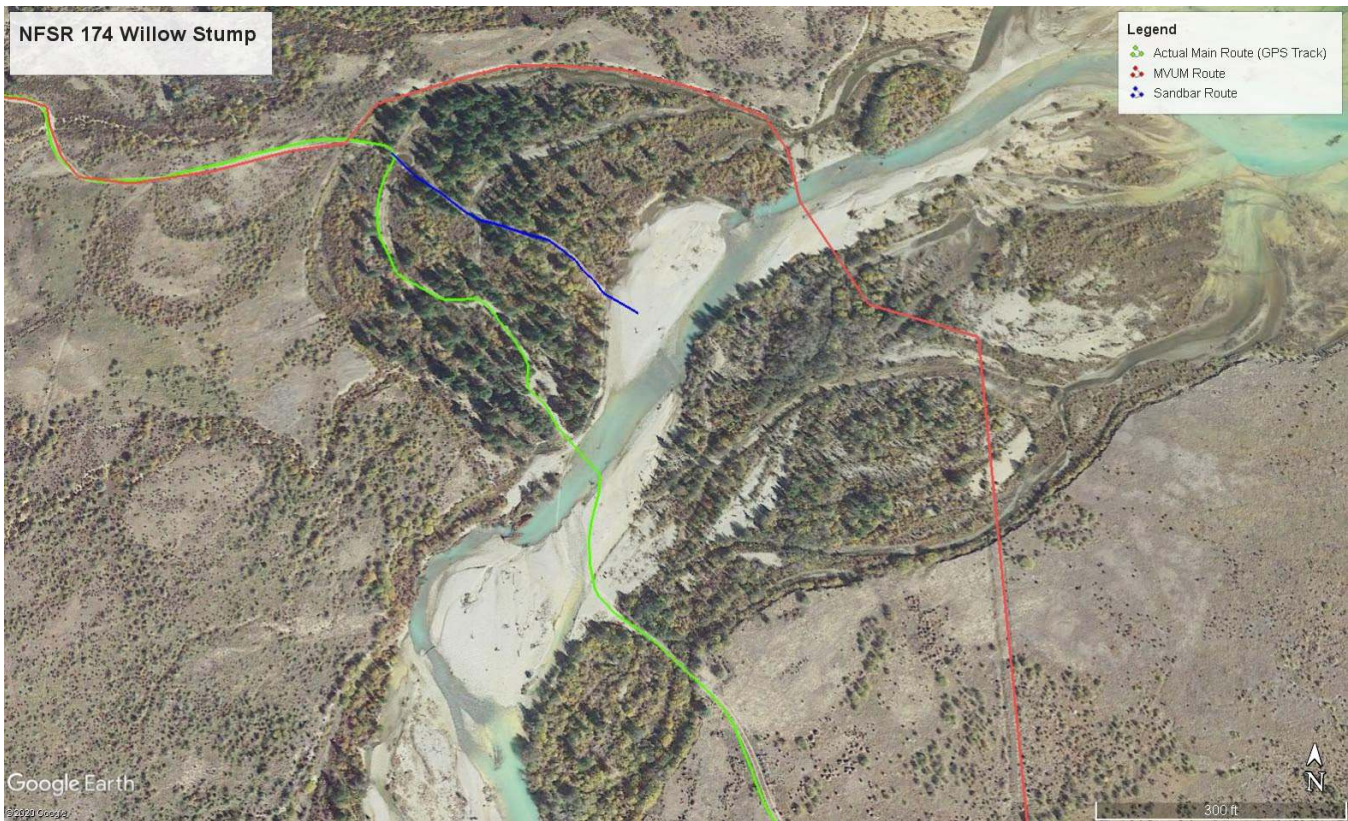
B. ANALYSIS

1. Route description and mapping error

NFSR 174 Willow Stump is located off Highway 82 just west of Twin Lakes near Leadville. It is the only motorized route across Lake Creek upstream of Twin Lakes Reservoir. All current maps of this route, including the current Motor Vehicle Use Map, the Forest Service Raster Maps, and the various alternative maps under this travel planning process, contain significant mapping errors with respect to this route.

In every case, existing maps show most of the middle portion of the route in the completely wrong place, putting it about 200 yards to the east where no road exists. Existing maps also do not show that the route splits into two separate forks as it approaches the north bank of Lake Creek, with the eastern route dead-ending at a sandbar at the edge of the river, and the western route proceeding across the river at a signed crossing point before continuing to the south and eventually converging with the route marked on maps.

The significant variance between the officially mapped route and the route on the ground can be seen in the following Google Earth images, with the official MVUM route from the shapefiles provided on the Forest Service website shown in red, the actual main route using a GPS track Patrick McKay recorded while driving the route shown in green, and the secondary route to the sandbar on the riverbank shown in blue. NFSR 174.A is shown in pink. The first map shows the entire route, while the second map focuses on the river crossing.



From the point where it diverges from the green route on the north side of the river to the point where the two tracks reconverge on the south bank, the official MVUM route shown in red does not exist on the ground. There is no roadbed along that route at all, though the first part after diverging from the real route does appear to follow some kind of drainage channel. Meanwhile, the actual route on the ground forks just past the point where the official route diverges. This fork occurs at a large permanent puddle (or small pond) in the road (pictured below).



If you travel straight through it, the road continues until it dead-ends at a rocky sandbank in the riverbed, still on the north side of the main river channel. There is no obvious crossing point there, though it would theoretically be possible to drive upstream in the river to reach the actual main crossing point (as shown in the following picture).



Back at the junction in the middle of the water crossing, if you turn right and follow the green route, it follows a path lined with dense willow bushes to the edge of the creek, passing an official sign referring pedestrians to a footbridge 1.5 miles further upstream off Highway 82 at Willis Gulch (pictured below).



Upon reaching the edge of the river, one must drive straight across the main channel of the river (about 3 feet deep in mid-August), before continuing onto the bank on the opposite side. The road exits the riverbed through an obvious opening in the bushes with another official sign.



It then makes its way out of the bushes and onto an open meadow, where it continues as a 2-track road until dead-ending in a grove of trees at the edge of the forest, right after reconverging with the officially mapped route.



While the entire route is extremely wet, crossing frequent puddles and small streams, and is somewhat overgrown with grass and intruding bushes, it is nevertheless well-defined and easy to follow once you know the proper way. Both the main route and the fork to the sandbank are clearly visible in satellite imagery in Google Earth. It is a mystery how this route was so badly mismapped, though it obviously has not had an on-the-ground survey in a long time. These significant mapping errors likely contributed to the erroneous Travel Analysis Process evaluation discussed below, as it was quite possible the TAP report analyzed a route that does not actually exist on the ground.

2. NFSRs 174 & 174.A were improperly evaluated in the TAP report

As mentioned above, NFSR 174 Willow Stump provides the only motorized access across Lake Creek upstream of Twin Lakes Reservoir. It provides critical access for fishermen to the north and south banks of Lake Creek, and also allows hunters, hikers, and campers to access the forests and trails on the south side of the reservoir in Big Game Management Unit 48. It connects to the Continental Divide Trail, the Willis Gulch Trail, and the Upper Twin Lake Trail, allowing hikers to access an extensive trail network with many backcountry recreation opportunities including climbing several 13'ers.

NFSR 174.A Willow Stump Spur is a side road that splits off from the southern end of NFSR 174, and connects to the southwestern shore of Twin Lakes Reservoir. It is currently designated as an admin road though it has been open to the public in the past. There is no indication on the ground that it is not currently open, and it is still frequently driven by the public.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	M
Timber Access Benefit	L
Special Use Access Benefit	M
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	HH
Wildlife Risk	HH
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	L

Despite its high value for public access across Lake Creek, NFSR 174 was erroneously labeled in the TAP report as having low overall benefit and high overall risk, with a low recreational benefit rating and HH risk ratings for both watershed and wildlife risk. It was recommended for decommissioning in the TAP report, which stated “Seasonal, Recommend for decommissioning.” All of the action alternatives in the FEIS, including the Preferred Alternative C, proposed decommissioning both NFSR 174 and 174.A, ignoring the strong public demand in public comments to keep it open to the public.

While it is true that Willow Stump is a lesser known route in the PSI that does not receive heavy recreational use, that does not justify closing it or mean it is of low value. Routes can have extremely high value for the opportunities and connectivity they provide, even if relatively small numbers of people take advantage of those opportunities. In the case of Willow Stump, it provides the sole motorized access route to a large area around the river delta where Lake Creek flows into Twin Lakes Reservoir. This area is used for fishing, hunting, camping, and hiking. The Forest received numerous public comments from both locals and visitors to the Twin Lakes area who commented on the key fishing and hunting access it provides.

When Patrick McKay explored this route on a Monday morning in August 2019 (not exactly a peak use time), he encountered one other vehicle parked on a sandbank at the river, which appeared to belong to someone who was fishing there. Many more people likely use this road to access the river for fishing on weekends. Besides fishing, the road can also be used as an alternative access route to the Continental Divide Trail and several other hiking trails. We therefore do not believe the ‘low’ recreational benefit rating is accurate, and a ‘moderate’ rating or ‘high’ rating would have been more appropriate.

In terms of watershed risk, it is true that this route runs largely across a swampy river delta and thus has numerous water crossings, including the fairly deep crossing of Lake Creek itself. However, these water crossings occur only about 500 yards upstream from the westernmost lake of the Twin Lakes Reservoir, which is managed to allow motorized watercraft. Any sediments and oils that get into the river from the small number of vehicles using the water crossings along Willow Stump Road would immediately flow downstream into the reservoir, where they would be dwarfed by sediments and oils caused by motorboats, or by vehicles backing into the lake to launch boats from the boat ramps. It

would be inappropriate, inconsistent, and arbitrary and capricious to allow motorboats and boat ramps in the lake while closing a road just upstream of the lake because of concerns about water quality.

While the roadbed is mostly somewhat overgrown 2-track, it is well defined and there are no places where people have gone off trail tearing up meadows. The fact that this road is lightly trafficked works in its favor, because the light use poses less risk of damage to vegetation or harm to the watershed. Access to the south side of Lake Creek is further naturally limited to modified 4x4s with exceptional fording capacity, as the crossing is too deep for most vehicles. While any four-wheel-drive vehicle could make it through the puddles and small streams before the creek, only those vehicles with good fording depth (at least 36 inches) would attempt the main river crossing, keeping the numbers of vehicles actually crossing the river low enough to make any impacts minimal.

As for wildlife risk, that is already managed effectively through seasonal closures. There is an existing gate at the entrance to NFSR 174 off Highway 82 that is closed in the winter, and can also be closed during high water periods when the river crossing would be unsafe for vehicles. Any concerns about wildlife impacts could be mitigated through revising the existing seasonal closure, if necessary.

NFSR 174.A Willow Stump Spur, meanwhile, actually has less environmental concerns than the main NFSR 174 route. It only received a H watershed risk rating instead of HH, which reflects the fact that it is outside of the swampy area in the river delta and runs mostly across an open meadow. It is subject to the same existing seasonal closures as NFSR 174, and there is no reasonable justification for either decommissioning it or continuing to manage it as an admin road.

The public has benefited from access to this road in the past, and they could do so again. It provides an important route back over to the southwestern shore of Twin Lakes reservoir and would increase the trail mileage by 0.85 miles if it was open to the public. It also makes little sense to have this road closed while NFSR 174 is open, as there is no gate or other markings at the junction between the two, and the public has no way of even knowing it is closed. As a result, there are doubtless many people who mistakenly drive it today without knowing it is closed.

3. Decommissioning these routes based on the TAP recommendation is arbitrary and capricious

It is highly likely that the faulty TAP scores and recommendations for NFSR 174 were influenced by the significant mapping error in current Forest Service maps and GIS data with respect to this route. Watershed risk could have especially been rated higher than truly merited, as the MVUM route depicts this route as taking a much different course through the swampy area in the river delta and shows it crossing Lake Creek in an entirely different place about 500 feet downstream of where it actually crosses. The MVUM route also shows it traveling through an additional large section of swampy river delta on the south bank of the river, when it actually is nowhere near that area and exits the river delta into dry open fields almost immediately after crossing the creek. This can be seen clearly in the satellite images above.

That fact, plus the information discussed above as to why the recreational use benefit rating was excessively low while the risk ratings were all excessively high, was discussed extensively in Patrick McKay's comment on the DEIS. In response, the Forest Service acknowledged the serious mapping

error regarding this route, but asserted this error did not matter because it was proposed for decommissioning under Alternative C. The Forest wrote:

The Forest Service is aware of the mapping error of this route. The route is proposed for decommissioning under Alternative C, the Proposed Action.

Response to comment 186-1, FEIS Appendix D at D-141.

Based on the description of the Travel Analysis Process in the TARs, the route evaluations performed in that process consisted entirely of ranger district staff sitting in a conference room looking at maps and using their own personal knowledge to determine a route's value. Environmental risks were based largely on where a route was depicted on maps and whether that coincided with riparian areas, wildlife habitat, etc. A route being severely mismapped was highly material to whether it was properly evaluated in the TAP reports. Even though the mapping error likely caused this route to be improperly evaluated in the TAP report, the Forest claimed it was non-issue because the route was proposed for decommissioning.

As the Forest clearly stated in multiple other comment responses, the reason this route was proposed for decommissioning was *because of the TAP recommendation*. In response to comments 1919-2 and 1919-4 by Terry Swindell, the Forest stated:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Route management recommendations are based on TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information, and the **TAP/TAR specifically recommends decommissioning NSFRs 174 and 174.A. ... Specific management recommendations are provided in the TAP, no further change made.**

FEIS Appendix D at D-144 (emphasis added). From this it is clear that these two routes fall into the category discussed in Objection #2 where routes that had specific recommendations in the TAP reports had those recommendations automatically adopted in Alternative C, with no further evaluation under NEPA. The MRS rubric was not applied to them, and the Forest refused to consider any public comments which disputed the TAP data or recommendations and called for a different management outcome than specified in the TAP recommendation. Instead the Forest replied simply, "Revision of the TAP/TAR reports is beyond the scope of this undertaking." Response to comment 2131-1 by Marcus Trusty, FEIS Appendix D at D-165.

If these routes had been given higher recreational benefit ratings and lower watershed and wildlife risk ratings, and if the MRS rubric had actually been applied to them instead of the TAP recommendation being automatically adopted, it would have likely produced a recommendation to convert them to trails open to all vehicles instead of closing them. The Forest's treatment of the TAP reports as dispositive final actions with respect to these routes and its failure to consider or respond to public comments offering contrary evidence predetermined the closure of these routes and was arbitrary and capricious for multiple reasons.

First, the Forest unlawfully failed to respond to the specific evidence in public comments, and failed to provide any explanation for its decision to close these routes. As pointed out above, the TAP ratings for

these routes are incorrect (especially the recreational use benefit and watershed risk scores), giving the management decision produced by the TAP recommendation a flawed factual basis.

While revisions to the TAP reports themselves may be beyond the scope of this travel management process, the *decisions* which resulted from them are not. As discussed in Objection #2 the TAP reports were only supposed to *inform* route-specific decisions in the travel management process, not *dictate* them. Public comments received later in the travel management process were also supposed to inform route-specific decisions, and cannot simply be ignored because the TAP data is what it is.

When the Forest was made aware through public comments that the data it relied upon to make route-specific decisions was incorrect, it had a responsibility to reevaluate those routes based on the new information it has received, or at least respond to the specific evidence in our comments. The Forest failed to do this and therefore violated the Travel Management Rule. *See Idaho Conservation League*, 766 F. Supp. 2d at 1069 (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

In the *Idaho Conservation League* case, a travel management plan very similar to this one was overturned by the courts because, “the Forest Service’s failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA”. *Id.* at 1074-1075. The court specifically found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs’ comments were legally insufficient to meet the agency’s burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.*

In the case of NFSRs 174 and 174.A, the Forest failed to address any of the evidence in our comments regarding recreational use benefit, the flawed TAP ratings, and the serious mapping errors which likely contributed to them. Indeed, the Forest failed to provide *any* actual reasons why it decided to close these routes to public use. The closest it came was its response to Patrick McKay’s comments on the erroneous watershed risk rating, to which the Forest replied:

The process used for TAP ratings is described in the relevant 2009 PSI TAP and 2015 Leadville TAR. For example, watersheds risks are defined in the 2009 TAP as when there is a high risk of watershed function and/or aquatic species being affected by the road system, which could include such impacts as increased erosion and turbidity.

Response to comment 186-3, FEIS Appendix D at D-142. A generalized description of the criteria the Leadville District TAR used to evaluate watershed risk does not explain the reason for the watershed risk rating of *these specific routes*, nor does it constitute a sufficient response to the route-specific evidence provided in Patrick McKay’s comment. The Forest’s complete failure to respond to this evidence or reconsider the TAP recommendation in light of the serious mapping errors pointed out in our comments also indicates that the Forest “entirely failed to consider an important aspect of the problem”, as required by NEPA and the APA, rendering the decision to close this route arbitrary and capricious per the holding in *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43.

As discussed in Objection #1, under APA section 706(2) agency decisions that are “unsupported by substantial evidence” must be set aside as unlawful. Both NEPA and the APA require the Forest

Service to to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision adopted, but also to the decisions made regarding individual routes as well. In *Idaho Conservation League*, the court overturned a Forest Service travel plan because of the Forest’s failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs.

Because the Forest has completely failed to provide *any* specific explanation of the reasons for its decision to close NFSRs 174 and 174.A to the public or respond to contrary evidence in public comments, this decision is arbitrary and capricious, counter to the evidence before the agency, and unsupported by substantial evidence. It must therefore be reversed.

Second, the Forest’s treatment of the TAP reports as decisional documents not subject to challenge or further evaluation under NEPA violated the Travel Management Rule, multiple Forest Service policies, and NEPA and the APA.

As described in Forest Service regulations, the Travel Analysis Process is the first step in determining the Minimum Road System (MRS), conducting an initial analysis of roads that are likely needed or not needed for the MRS. The actual determination of the MRS occurs during a formal travel management process subject to NEPA, which is informed by the Travel Analysis Reports. This two step process has been affirmed by the courts as the proper method of determining the MRS. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (D. Mont. 2020):

Identification and implementation of a minimum road system is a two-step process. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117 (9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

As discussed in Objection #2, the TAP reports were only the first step of this two-step process, and did not produce a final agency decision regarding the MRS. This travel management process was supposed to be the second step in designating the Minimum Road System for the PSI, subjecting the initial findings in the TAP reports to full NEPA review. From its comment responses, it is clear however that the Forest has decided to treat the TAP reports as a final decision not subject to further challenge or review. These responses demonstrate that the Forest had already made the decision to close this route to the public in the supposedly non-decisional TAP process.

The inadequate public involvement in the creation of the Leadville District TAP Addendum (which received only four public comments), and the fact that the Forest automatically adopted the recommendations in that addendum and carried over the TAP scores into the MRS Screening Process in this travel management decision without accepting any input that challenged them; precluded any effective opportunity for public comment on the actual decision to *designate* these routes as closed to public use, as required by the Travel Management Rule as codified in 36 C.F.R. § 212.52(a):

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations

pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

By effectively making the designation decisions for these routes in the predecisional travel analysis process and refusing to consider any comments which challenged the TAP scores or the management outcomes derived from them, the Forest violated both the Travel Management Rule and 40 C.F.R. § 1502.5 on the timing of NEPA actions involving Environmental Impact Statements, which states:

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can **serve as an important practical contribution to the decision-making process** and will **not be used to rationalize or justify decisions already made.....**

By the time the alternatives for this travel management process were formulated, every one of the action alternatives considered closing these routes to the public. Only the No Action Alternative would have kept NFSR 174 open, but as typical in NEPA processes, that alternative received no serious consideration by the agency, and the Forest did not incorporate any of its actions into the Draft Decision with respect to this route even though that was requested in numerous public comments. No alternative at all considered opening NFSR 174.A to the public. Therefore public input was not allowed to serve as an important practical contribution to the decision making process.

If, contrary to Forest Service policy, the Forest wished to make final route designation decisions during the TAP process, then it should have prepared an Environmental Impact Statement at that stage of the process, which it did not. Instead, it simply made those decisions in the TARs -- either directly through the express recommendations in the TAP reports, or indirectly through the use of the TAP scores in the MRS rubric. The entire travel management process that followed has been a *post hoc* rationalization of decisions already made in the supposedly non-decisional TAP process.

The Travel Analysis Reports were not decisional documents and the agency improperly treated them as final decisions which could not be challenged. In order to create a Minimum Road System as prescribed by the Travel Management Rule, the Forest must both conduct a predecisional Travel Analysis Process *and* subject the findings of that process to NEPA review. This travel management plan *is* that NEPA review and the Forest was obligated to consider evidence which contradicts the findings in the TAP reports. See Objection #2 for further discussion of this point. The automatic adoption of the TAP recommendations with respect to these routes violated the Travel Management Rule and was therefore arbitrary and capricious.

Third, the improper use of the flawed TAP scores and recommendation to dictate the range of alternatives considered with regard to these routes caused the Forest to consider an insufficient range of alternatives contrary to NEPA.

By predetermining the designations for numerous routes based on the TAP recommendations, the Forest violated one of the basic requirements of NEPA processes as specified in 40 C.F.R. § 1502.14(a), to "Evaluate **reasonable alternatives** to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination." Under 40 C.F.R. § 1508.1, "Reasonable alternatives means a reasonable range of alternatives that are

technically and economically feasible, [and] meet the purpose and need for the proposed action....”

The *only* option that was considered across all action alternatives for these routes was closing them to public use. There is no analysis in any of the documents associated with the FEIS and Draft ROD that explains why no other alternatives were considered or why considering at least one action alternative that opened them to the public was not technically or economically feasible or failed to meet the purpose and need of the proposed action. The only explanation ever given for failing to consider other management options for these routes was that the chosen option was the result of the TAP recommendation. The forest therefore failed to consider a sufficient range of alternatives regarding these routes, rendering the decision to close them arbitrary and capricious.

Fourth, as discussed in both Objections #1 and 3, basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the APA. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43.

Critically, “NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data”. *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006). Basing the decisions to close these routes on the conclusory and unsupported recommendations in the TAP report caused that decision to be based solely on the “bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS.” *Great Basin Resource Watch*, 844 F.3d at 1103. This makes the decision inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

C. CONCLUSION AND REQUESTED RESOLUTION

As described above, NFSRs 174 and 174.A were improperly evaluated in the Leadville District TAP Addendum based on a serious mapping error which the Forest acknowledged in its response to Patrick McKay’s comment. Instead of re-evaluating this route in light of this error and the evidence presented in our comments, the Forest chose to ignore those issues and automatically adopt the TAP recommendation to decommission these routes, even though that recommendation was made based on erroneous data. The Forest therefore failed to consider an important aspect of the problem or to adequately explain the reasons for its decision as required by NEPA, and the decision was arbitrary and capricious, contrary to the evidence before the agency, and otherwise not in accordance with law.

We therefore request that the Draft ROD be remanded to the Deciding Official with instructions to modify the Final Decision to open both NFSR 174 and 174.A to public motorized use as either roads or trails open to all vehicles.

OBJECTION #29: CLOSURE OF THE UPPER SEGMENT OF NFSR 394 McNASSAR GULCH 4WD

A. INTRODUCTION AND CONNECTION TO PREVIOUS COMMENTS

We object to the decision to keep the upper section of NFSR 394 McNassar Gulch 4WD designated for administrative use only. Marcus Trusty commented on this route during the DEIS, in comments 2128-2 and 2128-3. Patrick McKay also commented on this route in comment 328-20. We specifically asked the Forest to restore public access to the second section, 1.6 miles in length, of NFSR 394 due to some screening criteria being incorrect and the TAP score being incorrect as a result. The first comment discussed one incorrect screening criteria, classifying the route as not complying with the 1984 Forest Plan. The Forest replied to this comment with:

The first segment of NFSR 394 (MP 0-1.1) is located in MA 2A, which is Semi-Primitive Motorized Recreation Opportunities, as is most of the second segment (MP 1.1-2.7), however the final portion of the second segment intersects MA 8C. Provides for Semi-Primitive Recreation Opportunities.

Response to comment 2128-2, FEIS Appendix D at 163. The Forest responded to the second comment, which questioning the screening criteria for categorizing the second section NFSR 394 as intersecting with a riparian area and intersecting with wetlands:

Watersheds risks are defined in the 2009 TAP as when there is a high risk of watershed function and/or aquatic species being affected by the road system, which does not require a road to cross a creek. Revisions to the TAP/TAR reports are beyond the scope of this undertaking.

Response to comment 2128-3, FEIS Appendix D at 163. Both responses are still subject to questions as neither appear to be correct, as shown in the following analysis.

B. ANALYSIS

NFSR 394 is part of the South Lake Fork Creek Trail System. This system also includes NFSRs 391, 382, 393. NFSR 394 is shown in two segments, 0-1.1 miles and 1.1 - 2.7. The second section is shown as an Administrative road. Administrative routes are not available for public use. NFSR 394 does not intersect with private property along the route and does **NOT** intersect with the Collegiate Peak Wilderness Area.

The Forest stated the second section intersects with an 8C management area of the Forest, which in this case was clearly intended to coincide with the Collegiate Peaks Wilderness Area. Based on the GIS data provided by the Forest Service, it appears that the 8C area was mismapped and does not exactly follow the boundary of the Wilderness area. Because of this mapping error with the Forest Plan management areas, there are two points where NFSR 391 slightly enters the 8C area even though it does NOT enter the Wilderness Area. See the ArcGIS map below with the Wilderness area in dark green, Forest Service land outside of the Wilderness in light green, and NFSR 394 in orange. The road is a slight cherry stem into the Wilderness Area but does not encroach into or touch the Wilderness. The Wilderness boundary map data is sourced from the "National Wilderness Areas" feature layer on the Forest Service's public GIS portal⁷.

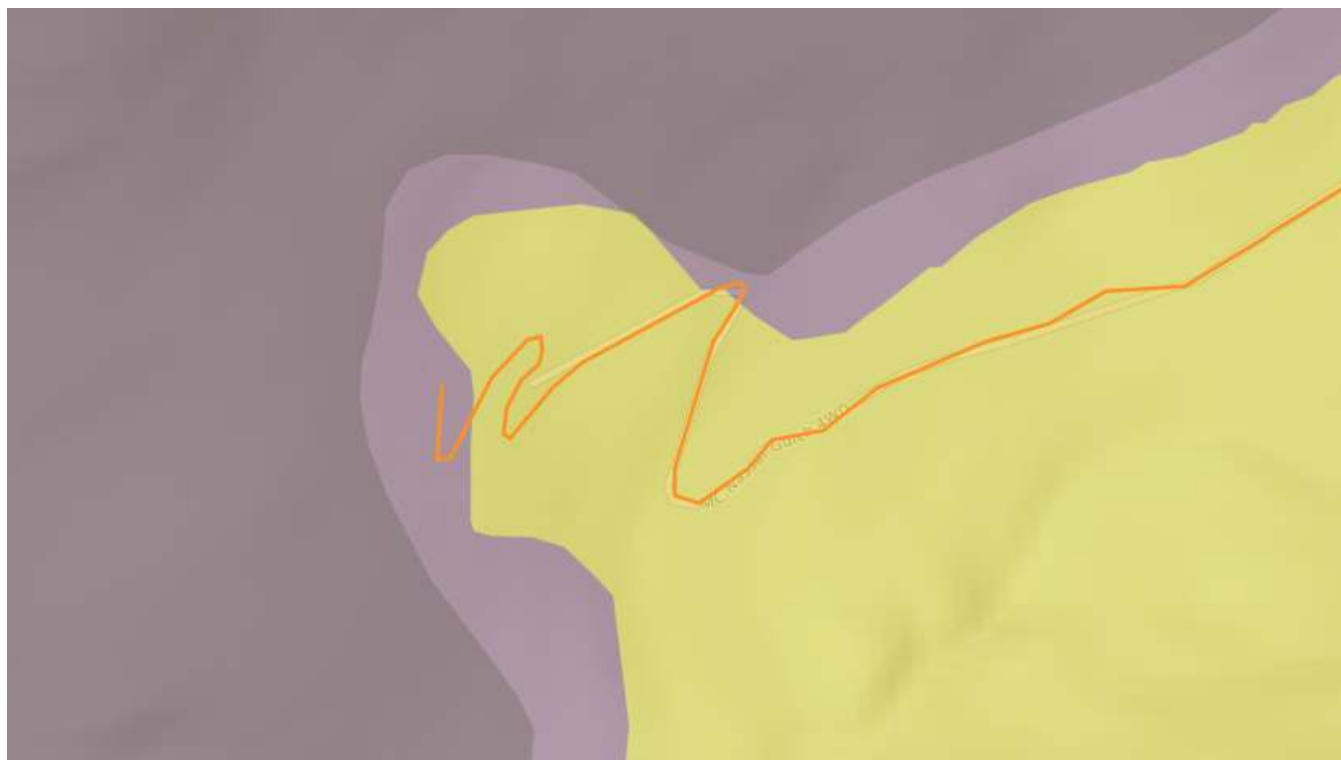
⁷ Available at <https://data-usfs.hub.arcgis.com/datasets/national-wilderness-areas-feature-layer>.



Here is the same mapping data plotted in Google Earth. Notice the Wilderness boundary in bright green. NSFR 394, the red line, does not encroach into Wilderness and it appears the Collegiate Peaks Wilderness Boundary was specifically drawn to go around NSFR 394.



However, as seen in the following map created using the Forest Management Areas layer included in the GIS dataset provided by the Pike San Isabel NF during the Draft EIS comment period, the MA 8C boundaries do not precisely follow the Wilderness boundary, but fall slightly outside of it. This causes a couple short sections of NFSR 394 to briefly cross into the 8C area, all in the last 1/4 mile of the route. In this map, NFSR 394 is shown in orange. The dark purple area is the 8C management area inside of the Wilderness boundary, while the light purple area is the portion of the 8C area that is outside of the Wilderness Area. The yellow shading is the 2A management area, which is intended to provide for “Semi-Primitive Motorized Recreation Opportunities”.



While the Forest Service is technically correct about the MA 8C intrusions, the Forest failed to consider that this occurs only because of a mapping error with the 8C management area boundaries, which by their shape on the map were clearly intended to be drawn to coincide with the Wilderness Area boundary. The Forest’s failure to draw the management area boundary correctly when it was first mapped in the Forest’s GIS software is the sole reason for this intrusion. This error could likely be corrected by a simple administrative correction, as was done for multiple other routes considered in this travel planning process where other Forest management areas were similarly mismapped.

However, given that both these minor intrusions happen in the last quarter mile of the route, and the rest of this 1.6 mile long route segment has no such intrusions, there is no reason the Forest couldn’t simply end the public motorized route a quarter mile or so earlier, and reopen the rest of this route to the public while avoiding the 8C intrusion issue. The Forest’s failure to consider this obvious solution to this problem was arbitrary and capricious, and demonstrates that the Forest failed to properly consider or respond to the evidence in our comments. Based on Google Earth imagery shown below, it appears there is an existing pull-out/parking area that would serve as a good endpoint and turnaround spot, at

39° 2'33.31"N, 106°34'23.25"W. We would consider designating the route as open to this spot an acceptable resolution of this objection.



Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

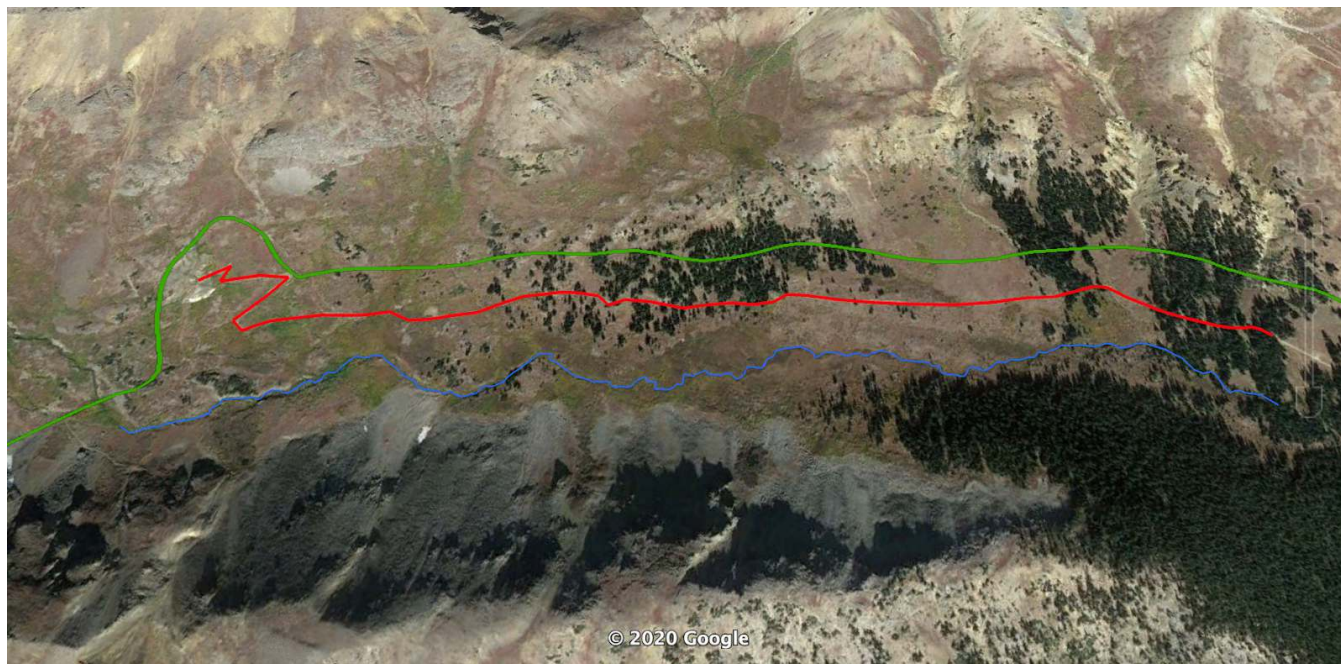
Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	L
Timber Access Benefit	L
Special Use Access Benefit	M
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	HH
Wildlife Risk	L
Botany Risk	M
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	L

Turning to the TAP scores, this segment of NFSR 394 was given a L/H overall rating, with a ‘low’ recreational use benefit score and an HH rating for watershed risk. Both of these scores were given in error. Both the first segment and second segment of NFSR 394 were noted in the screening criteria as intersecting with wetlands and riparian areas, but that is factually inaccurate for both segments of road.

As seen in the Google Earth imagery below, NFSR 394 is shown in red, located between the Wilderness in green and the creek channel in blue. NFSR 394 does not come into contact with the creek at any point, and the road is located over 300 feet from the channel. While the Forest may be correct that roads do not necessarily have to cross a creek in order to have a high watershed risk rating, they were supposed to be within at least 300 feet of one, which this route is not. The best available science indicates that risk to watersheds from motorized routes comes from the route either crossing a stream or being hydrologically connected to it such that the route serves as a channel for sediment delivery into the stream. Both of those risks require the route to be within at least 300 feet of a stream, which this route is not. The HH ('very high') watershed risk rating was therefore erroneous.



The low recreational use benefit score was likewise erroneous, and was clearly given solely because this segment of the road is not currently open to public motorized use. The currently open segment of NFSR 394 from mileposts 0 - 1.1 was given a 'moderate' recreational use benefit rating, and this rating should have been applied to the entire road. The failure of the Forest to rate the recreational use benefits of currently closed roads by the value they would have if they were open to public use rather than closed is a consistent flaw with the PSI TAP scores we have noted elsewhere in our objections (see discussion of this issue in relation to the Wildcat Canyon roads in Objection #38). The Forest's choice to rate the recreational use benefit of these two route segments differently even though they are both part of the same road was clearly erroneous as well as arbitrary and capricious. This segment should also have been rated 'moderate' for recreational benefit, which for the first segment of the road helped give it an overall H/H rating instead of L/H for the second segment.

These two errors in the TAP scores causing it to have an excessively low benefit score and excessively high risk score, plus the mapping error with the 8C intrusion, are likely the reasons why the Forest failed to reopen the second segment of NFSR 394 to public use as requested in our comments. The Forest's response to our comments was inadequate to actually address the evidence we presented or

provide a rational explanation for the decision to keep this route segment closed to public use, as required by the APA and NEPA, rendering this decision legally invalid for multiple reasons.

First, as discussed in Objection #1, under APA section 706(2) agency decisions that are “unsupported by substantial evidence” must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983).

In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision regarding the alternative adopted, but also to the decisions made regarding individual routes. In *Idaho Conservation League*, 766 F. Supp. 2d at 1069, the court overturned a Forest Service travel plan because of the Forest’s failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs. (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

When the Forest was made aware through public comments that the TAP scores and recommendations it relied upon to make decisions for this route was incorrect, it had a responsibility to reevaluate the route based on the new information it received, or at least respond to the specific evidence in our comments. The Forest failed to do this and therefore violated the Travel Management Rule. In the *Idaho Conservation League* case, a travel management plan very similar to this one was overturned by the court because, “the Forest Service’s failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA”. *Id.* at 1074-1075. The court specifically found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs’ comments were legally insufficient to meet the agency’s burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.*

As discussed above, the Forest failed to explain why the MA 8C intrusions in the last quarter mile of the route justify keeping the full 1.6 mile segment closed to public use as an admin road, or why the MA 8C boundaries are mapped incorrectly. It also failed to justify the implausibly high watershed risk score that caused this route to be given such a high overall risk rating. The Forest has therefore failed to articulate a rational connection between the facts found and the decision made with respect to this route, rendering the decision arbitrary and capricious.

Second, the Forest’s treatment of the TAP reports as decisional documents not subject to challenge or further evaluation under NEPA violated the Travel Management Rule, multiple Forest Service policies, and NEPA and the APA.

As described in Forest Service regulations, the Travel Analysis Process is the first step in determining the Minimum Road System (MRS), conducting an initial analysis of roads that are likely needed or not needed for the MRS. The actual determination of the MRS occurs during a formal travel management process subject to NEPA, which is informed by the Travel Analysis Reports. This two step process has been affirmed by the courts as the proper method of determining the MRS. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (D. Mont. 2020):

Identification and implementation of a minimum road system is a two-step process. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117 (9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

As discussed in Objection #2, the TAP reports were only the first step of this two-step process, and did not produce a final agency decision regarding the MRS. This travel management process was supposed to be the second step in designating the Minimum Road System for the PSI, subjecting the initial findings in the TAP reports to full NEPA review. From its comment responses, it is clear however that the Forest has decided to treat the TAP reports as a final decision not subject to further challenge or review. These responses demonstrate that the Forest had already made the decision to close this route to the public in the supposedly non-decisional TAP process.

The inadequate public involvement in the creation of the Leadville TAP Addendum (which received only four public comments), and the fact that the Forest automatically adopted the recommendations in that addendum and carried over the TAP scores into the MRS Screening Process in this travel management decision without accepting any input that challenged them; precluded any effective opportunity for public comment on the actual decision to *designate* this route segment as closed to public use, as required by the Travel Management Rule as codified in 36 C.F.R. § 212.52(a):

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

By effectively making the designation decision for this route in the predecisional travel analysis process and refusing to consider any comments which challenged the TAP scores or the management outcomes derived from them, the Forest violated both the Travel Management Rule and 40 C.F.R. § 1502.5 on the timing of NEPA actions involving Environmental Impact Statements, which states:

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can **serve as an important practical contribution to the decision-making process** and will **not be used to rationalize or justify decisions already made.....**

By the time the alternatives for this travel management process were formulated, every one of the alternatives kept this route closed to the public. Therefore public input was not allowed to serve as an important practical contribution to the decision making process.

If, contrary to Forest Service policy, the Forest wished to make final route designation decisions during the TAP process, then it should have prepared an Environmental Impact Statement at that stage of the process, which it did not. Instead, it simply made those decisions in the TARs -- either directly through the express recommendations in the TAP reports, or indirectly through the use of the TAP scores in the MRS rubric. The entire travel management process that followed has been a *post hoc* rationalization of decisions already made in the supposedly non-decisional TAP process.

Third, the improper use of the flawed TAP scores to dictate the range of alternatives considered with regard to this route caused the Forest to consider an insufficient range of alternatives contrary to NEPA.

By predetermining the designations for numerous routes based on the TAP recommendations, the Forest violated one of the basic requirements of NEPA processes as specified in 40 C.F.R. § 1502.14(a), to “Evaluate **reasonable alternatives** to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.” Under 40 C.F.R. § 1508.1, “Reasonable alternatives means a reasonable range of alternatives that are **technically and economically feasible, [and] meet the purpose and need for the proposed action....**”

The *only* option that was considered across action alternatives for this segment of NFSR 394 was keeping it closed to public use. There is no analysis in any of the documents associated with the FEIS and Draft ROD that explains why no other alternatives were considered or why considering at least one action alternative that opened it to public use was not technically or economically feasible or failed to meet the purpose and need of the proposed action. The only explanation ever given for failing to consider other management options for these routes was that the chosen option was the result of the MRS rubric and TAP scores.

The forest therefore failed to consider a sufficient range of alternatives regarding this route, rendering the decision to close it arbitrary and capricious.

C. CONCLUSION AND REQUESTED ACTION

For the reasons stated above, the decision to keep the second segment NFSR 394 closed to public use as an admin road was arbitrary and capricious, unsupported by substantial evidence, and otherwise contrary to law. We therefore request that the Reviewing Officer reverse this decision and remand the Draft ROD to the Deciding Official with instructions to designate this segment as open to public motorized use, at least to the potential endpoint identified above, as a road open to all vehicles consistent with the management of the first section of this route.

XI. Salida District Objections

OBJECTION #30: ERRONEOUS CLOSURE OF THE UPPER SEGMENT OF NFSR 349 GRASSY GULCH



A. INTRODUCTION AND CONNECTION TO PREVIOUS COMMENTS

We object to the decision to move the endpoint of NFSR 349 Grassy Gulch to 1.6 miles from the start of the road, which was a change made in the FEIS and Draft Decision as compared to Alternative C in the DEIS. Both Marcus Trusty and Patrick McKay submitted comments on this route (see, e.g., comment 2917-16), arguing that the proposed endpoint in the DEIS was untenable as it ended in the middle of a shelf road section with no room to turn around.

We requested that the endpoint for this route be moved to where it has historically ended at the top of the ridge on the flank of Jones Mountain, which has a large established parking area at 38.767406, -106.387482 next to a large rock formation, and is located at a high scenic overlook of the surrounding valleys. This is marked as the “Historic Endpoint” in the Google Earth map above, along the section of road currently designated as an admin road, and is pictured below. We continue to believe this is the most appropriate endpoint for this route.



In response to our DEIS comments, the Forest agreed that the DEIS endpoint was unworkable, but decided to move the endpoint of the route lower down the mountain rather than to the top of the ridge as we had asked:

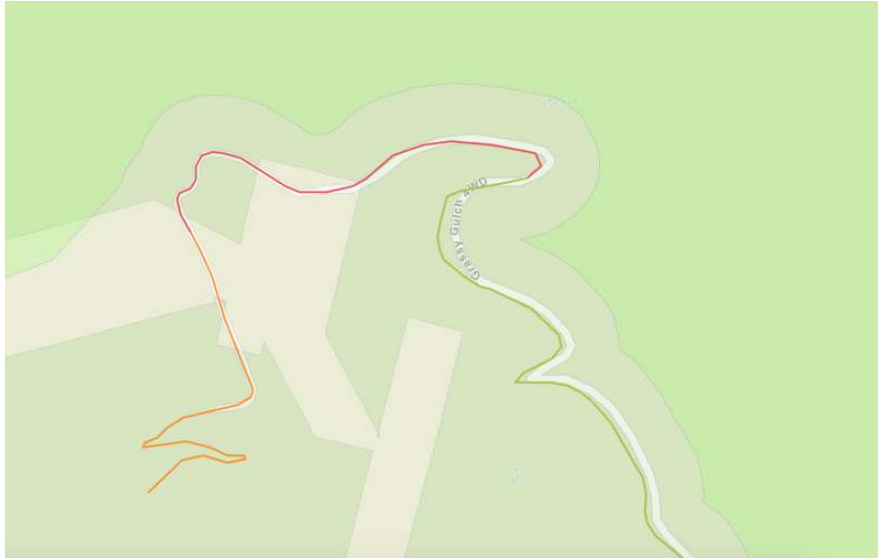
The Forest Service recognizes the management challenges here. Additionally, the current Public segment (MP 0.0 - 1.93) ends in an area with no safe turnaround. The Forest Service prefers to keep the road segment for administrative and management purposes. However, the Forest Service prefers to modify the route section (MP 1.93 - 2.4) and change transition to approximately MP 1.6 where a safe and logical turnaround can be constructed.

Response to comment 2917-16 by Patrick McKay, FEIS Appendix D at D-292.

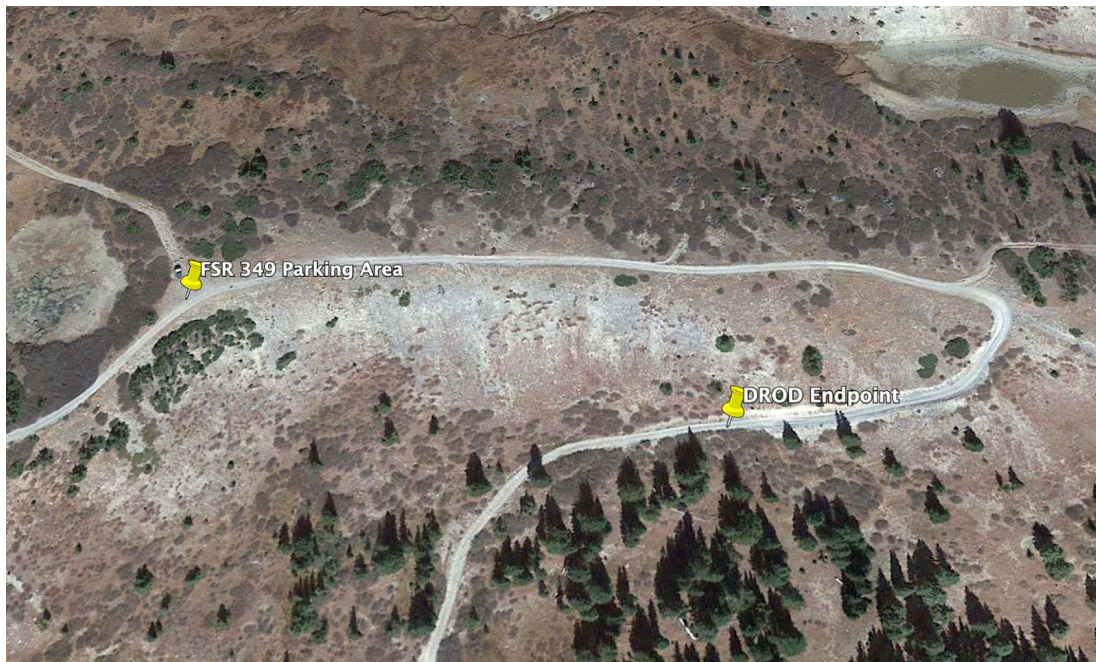
The Forest claimed that moving the public motorized endpoint of NFSR 349 to 1.6 miles would allow for users to continue to a turnaround, parking area, and a natural endpoint of the road. This decision is in error and placing the endpoint of the NFSR 349 route at 1.6 miles will cause it to end in the middle of *another* shelf road section with no turnaround. We believe the Forest intended to have the route end at the established parking area and hiking trailhead for Ptarmigan Lake, located at 38.770933, -106.38495. If the Forest wishes to end the motorized route at that parking area, the mileage to do so would be 1.9 miles from the start of the road. We request that this error be corrected in the Final Record of Decision.

B. ANALYSIS

NFSR 349 is a desirable motorized route because it takes users up towards the southern edge of Jones Mountain and to the Ptarmigan Lake Hiking Trail. The Ptarmigan Lake hiking trailhead is at 1.9 miles from the start of NFSR 349.



The GIS data accompanying the DROD shows the modified endpoint at 1.6 miles, at 38.770582, -106.382557. The image below shows this DROD endpoint compared to the actual location of the parking area and trailhead at 38.770933, -106.38495.



We continue to believe that the best endpoint for this route would be its historical endpoint at the top of the ridge. This has a large existing parking area at a highly scenic overlook which provides the main “payoff” for driving this route. We believe the Forest’s failure to consider moving the endpoint to this location (possibly because it crosses a small parcel of private land which is likely covered by a prescriptive easement) was arbitrary and capricious and insufficiently explained by the Forest to satisfy its legal burden under the API to articulate a “rational connection between the facts found and the decision made.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43.

However we do agree that one acceptable location to end NFSR 349 is at the Ptarmigan Lake trailhead parking area and turnaround. The mileage numbers and mapping error must be corrected in order for the route to end where the Forest likely intended. As can be seen from the above satellite photo, there is a clear discrepancy between the DROD endpoint and the location of the Ptarmigan Lake Trailhead parking area. Also notice the vehicle parked at this location just to the left of the pushpin.



The Red section on the image above is the 0.3 miles of NFSR 349 which should be added back to the MVUM route for the desired endpoint to be correct. On the ground this parking area at 1.9 miles is clearly marked and has been signed by the Salida Ranger District designating the start of the Ptarmigan Lake hiking Trail. There is plenty of room to park several vehicles and to turn around at this location. See the photos below.



C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons described above, the modified endpoint for NFSR 349 was clearly erroneous and fails to meet the stated goal in the response to public comments of moving the endpoint to a location where there is sufficient room for vehicles to turn around. The established parking area at the Ptarmigan Lake hiking trailhead was likely the intended endpoint, and is the most suitable place to end the motorized route near the Forest's newly chosen endpoint.

We continue to maintain that the best management option for this road would be to designate its full historic length to the established parking area at the top of the ridge, and designating this as the endpoint would be our preferred resolution to this objection. However we would also accept a resolution in which the route data is modified in the Final Decision to add 0.3 miles back to NFSR 349 to allow motorized users to reach the other natural endpoint of the road at the Ptarmigan Lake hiking trailhead. This would change the designated motorized route to a total of 1.9 miles and would achieve the objective stated in the DROD for NFSR 349.

We request that the Draft Decision be remanded to the Deciding Official with instructions to change the endpoint of this route in the final decision to either 38.767406, -106.387482 (the parking area at the top of the ridge), or 38.770933, -106.384952 (the Ptarmigan Lake trailhead), the latter of which is the location we believe the Forest intended the route to end.

OBJECTION #31: NFSR 348 HOPE GULCH 4WD MAPPING ERROR

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the Forest's failure to correct the mapping error regarding the endpoint of NFSR 348 Hope Gulch, which was incorrectly shown in the maps for Alternative C in both the DEIS and FEIS, and now the Draft ROD Maps and GIS data as well, as not matching the tabular data for the route.

There is a clear discrepancy in the length of this road between how it is shown in both the current MVUM and the action alternative maps in the FEIS, and how it is shown in the map for the No Action Alternative and the tabular data for this route in both the FEIS spreadsheets and the Draft ROD. The tabular data in both the FEIS Appendix C and the Draft ROD lists the endpoint of this route at 5.1 miles, which is approximately where the endpoint is signed on the ground, just past the summit of the road at the saddle between two unnamed peaks. The current Salida Ranger District MVUM and the maps for Alternatives B - E all show this route ending at approximately 2.65 miles, only halfway up the mountain.

Both Patrick McKay and Marcus Trusty commented on the mapping error with respect to this route, and asked that the maps be corrected to properly designate its full length, at least to the saddle but preferably all the way to the actual endpoint on the ground about 2 miles past it. In comment 2030-1, Marcus Trusty wrote:

FSR 348 provide[s] the only access to the Hope Gulch Basin and the Roby Gulch Basin for hunting. FSR 348 has a mapping error that has omitted the last 5 miles from the road.

FEIS Appendix D at D-149. To this the Forest Service responded:

The no action alternative shows an additional 5 miles; **unclear if removal of this segment was correct/intentional**. The authorized routes are mapped correctly on the MVUM. Unauthorized routes are not mapped.

Id. (emphasis added). In this response, the Forest blatantly admitted it was unsure if the discrepancy regarding this route was intentional, yet the Forest categorized this comment as "Comment considered but no changes needed", and no changes were made to correct the obvious mapping error with respect to this route in the FEIS or DROD.

Patrick McKay also commented on this route in comment 2917-15, pointing out that the full route past the summit was shown on historical maps including the 1984 Forest Plan Map, and that this route was clearly supposed to be longer than portrayed in the alternative maps. To this the Forest replied:

Presence of a route within the 1984 forest map or other map does not preclude the forest from closing or restricting public access.

FEIS Appendix D at D-292. These two comment responses indicate a blatant refusal by the Forest to correct a clear mapping error, and as a result there continues to be a significant discrepancy between the tabular data in the Draft ROD and how this route is portrayed in the alternative maps and GIS data accompanying that decision. Our concern is that if the maps are viewed as authoritative, this route will end up being shortened to half its proper length with no clear decision by the Forest Service to actually do so. We therefore request that this mapping error be corrected in the Final Decision.

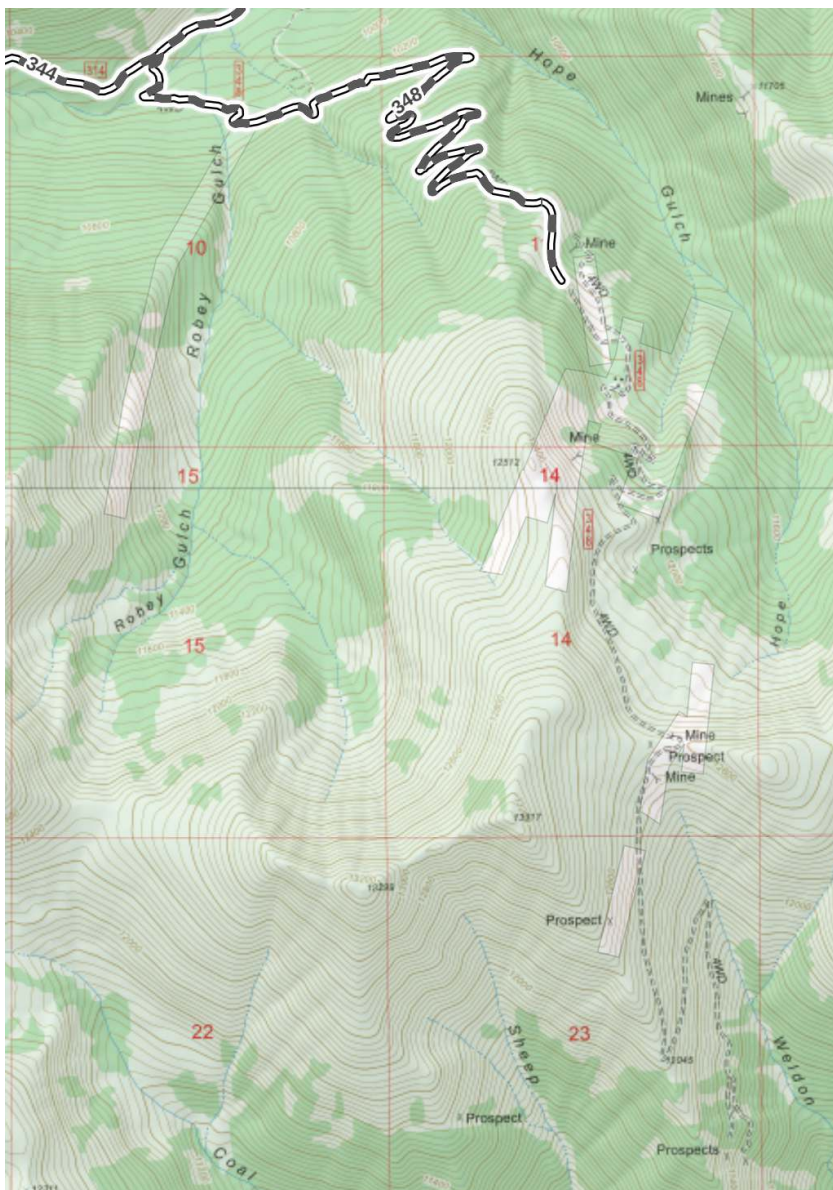
B. ANALYSIS

1. Description & mapping error

NFSR 348 Hope Gulch is a moderate difficulty four-wheel-drive road in the South Cottonwood Creek drainage west of Buena Vista. It is a popular road for both full-size 4WD vehicles and side-by-sides and ATVs to explore, with many fantastic high alpine views. It was given an H/H rating in the TAP report with a moderate recreational use benefit score, and is proposed to be kept as a road open to all vehicles under the Draft Decision, with an added seasonal closure but no other management changes.

After splitting off from NFSR 344 South Cottonwood, it crosses South Cottonwood Creek and then ascends up the steep mountainside on the same ridge as 14'er Mount Princeton. It crosses through several private mining claims before cresting the ridge at a saddle between two unnamed peaks, where there is a private cabin. From there it continues about 0.86 miles down the other side of the ridge to a spectacular scenic overlook at a switchback looking across the Chalk Creek Valley toward Mount Antero. After that switchback, the road continues about another mile switchbacking down the hillside, becoming increasingly narrow, rocky, and faint, before dead-ending at a mine site. The full route can be seen on the 2016 Forest Service Raster Map above.

For unknown reasons, the current MVUM, also shown on the map above as the overlaid route with black and white stripes, depicts this route as ending just before it crosses several parcels of private property on its way up the ridge. As measured in Gaia GPS, that endpoint is at approximately 2.65 miles. The distance to the high point and cabin at the saddle is 4.56 miles, to the switchback and scenic overlook is 5.4 miles, and to the end of the route portrayed on the Forest Service map is 6.46 miles. As shown in the following Google Earth image and photograph taken at the approximate location of the endpoint shown on the MVUM, it occurs on a section of narrow shelf road with no room to turn around. There are also no signs on the ground at that point marking the end of the route.





The road continues past this point in good condition to the summit at the saddle, where there is a private cabin at 38.74037, -106.29704, shown in the following image.



Just past this cabin, where the road starts to descend the other side of the ridge, is a Forest Service sign which reads, "NO TURN AROUND, DEAD END, TURN AROUND HERE, MOTORIZED ROUTE ENDS". The wording of this sign is a little unclear as to whether the designated motorized route ends right at this sign, or whether it ends further on but the sign is advising motorists to turn around here because there is no room to turn around at the actual endpoint.



From the cabin, the road continues 0.86 miles to the switchback and scenic overlook across to Mount Antero. The road to this point is well-defined and easily passable for all vehicles. There is enough room for a few vehicles to park and turn around at this overlook, pictured below, at 38.72858, -106.29792.



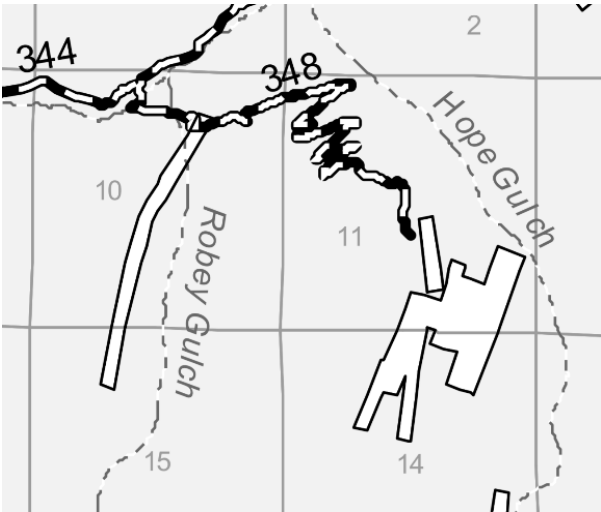
After this switchback, the road becomes increasingly rocky and narrow and would be difficult but not impossible to drive in a full-size vehicle like a Jeep.



When Patrick McKay visited this route in late June 2020, he observed several side-by-sides parked at the bottom of this descent, at the switchback at 38.73431, -106.29551. Beyond that, the road appeared too faint for vehicles to continue, though it might be possible. This was the first day that vehicles had been able to make it past a snow blockage on the north side of the pass, and only side-by-sides could get through at that time.

Based on Mr. McKay’s observations, it appears this route is fully open on the ground and routinely driven by vehicles at least to the first switchback on the southern side of the ridge, though the only Forest Service sign (notably placed to the side of the road rather than in the middle of the road as is typical with a sign marking a hard closure), appeared to imply the road was closed past the cabin at the summit. There was one other Forest Service sign beyond that, marking as closed an illegal side spur going up the side of the mountain to the west. That sign was in the middle of the track, making it clear it is closed. So while it is not entirely clear from signage on the ground where the actual designated endpoint is, it is marked on the ground as a legal route *at least* to the cabin at the summit of the pass.

Thus there is a clear discrepancy between on-the-ground signage and how the route is marked on the current Salida Ranger District MVUM, shown right. As previously noted, the approximate mileage to the endpoint shown on the MVUM is 2.65 miles.



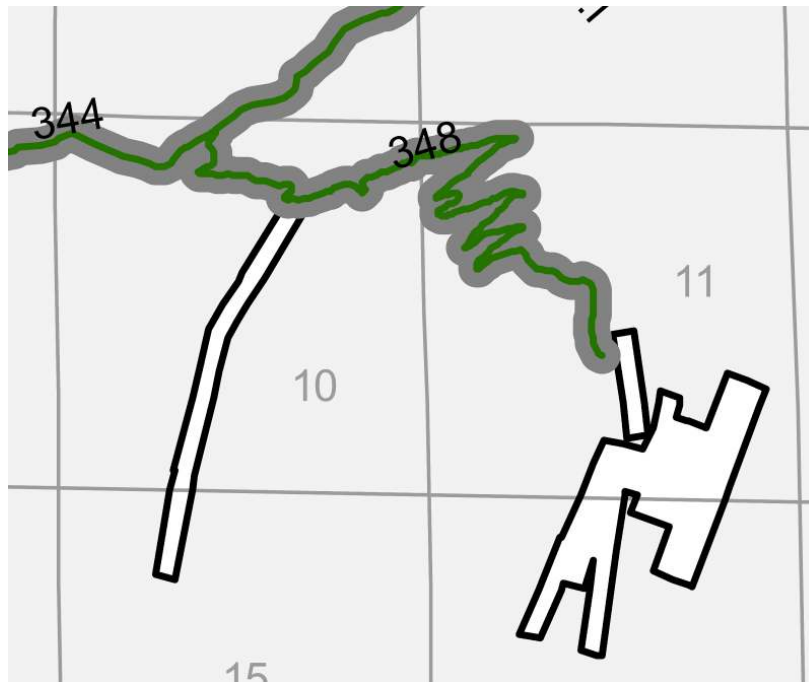
This discrepancy carries over into the FEIS and Draft ROD. The tabular route data in the FEIS Appendix C, Table C-2, page 16 for the Action Alternatives lists only one segment for NFSR 348 Hope Gulch 4WD, beginning at milepost 0 and ending at milepost 5.1, for a total route length of 5.1 miles. The values for ‘Ending Milepost in INFRA,’ ‘Route Segment Length in INFRA,’ and ‘Route Segment Length Evaluated in the TAP’ are all listed as 5.1 miles.

ROAD	SALIDA	SALIDA	348	HOPE GULCH 4WD	yearlong	0	5.1	5.1	5.1	0-5.1
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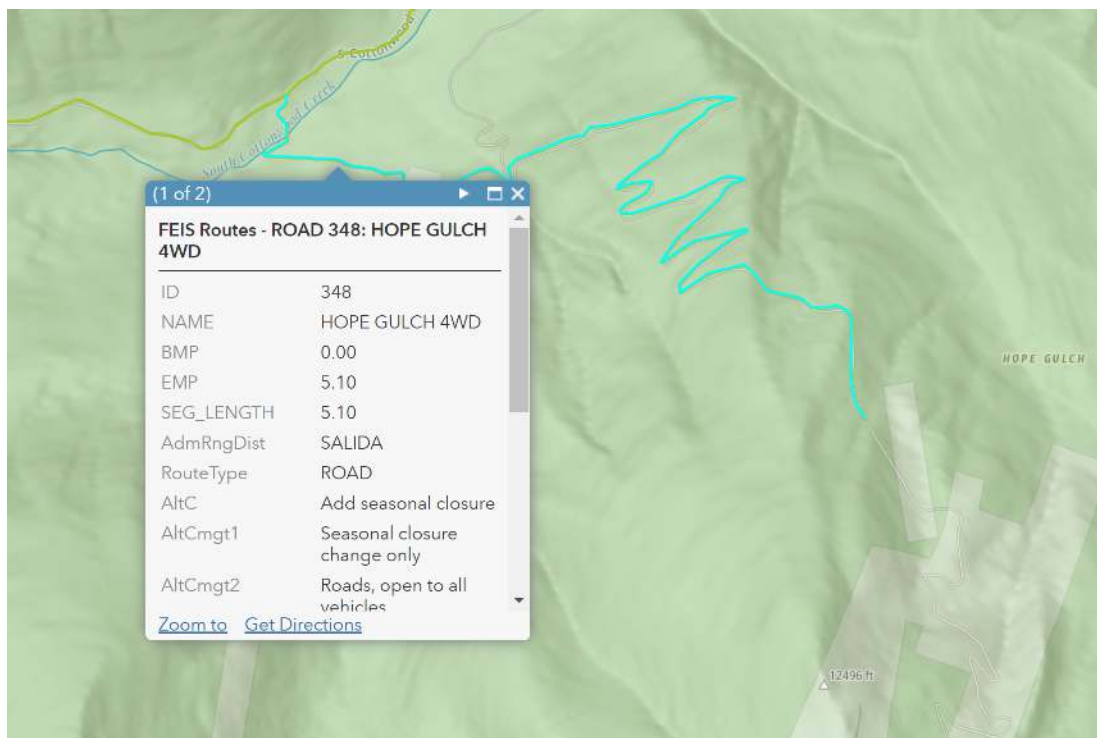
This matches the length shown in the table on page A-21 of Appendix A of the Draft ROD, which designates NFSR 348 as a road open to all vehicles from milepost 0 to 5.1, total length 5.1 miles.

SALIDA	SALIDA	346	PTARMIGAN CREEK	0.00	0.05	0.05	Road, open to all vehicles	None
SALIDA	SALIDA	348	HOPE GULCH 4WD	0.00	5.10	5.10	Road, open to all vehicles	Seasonal closure
SALIDA	SALIDA	349	GRASSY GULCH 4WD	0.00	1.60	1.60	Road, open to all vehicles	None
SALIDA	SALIDA	345	NORTH COTTONWOOD	2.40	5.20	2.80	Road, open to all vehicles	None

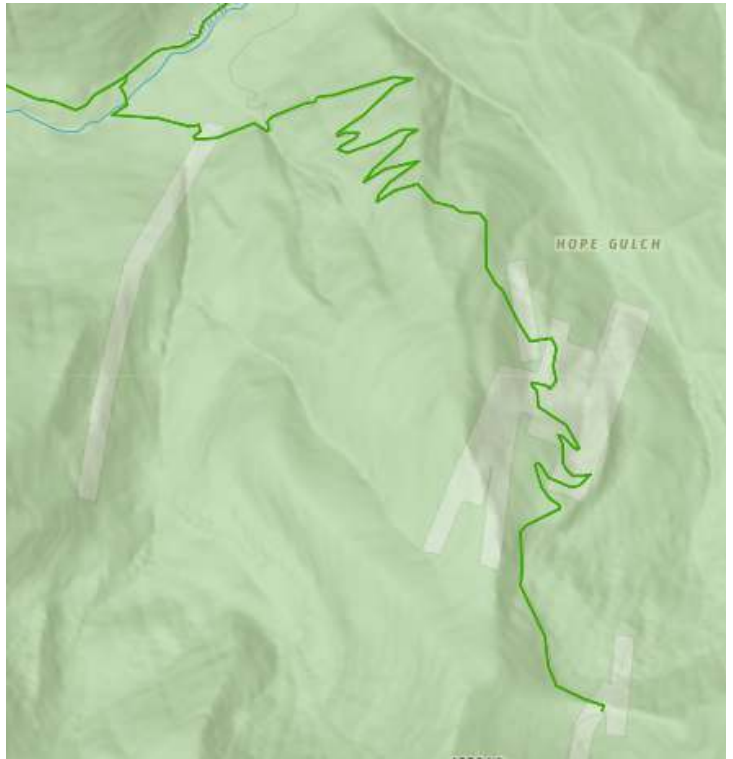
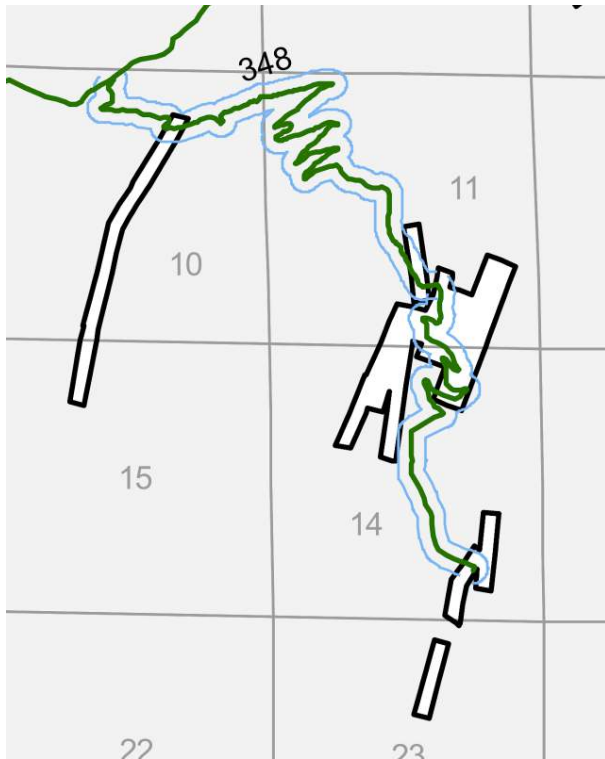
These numbers do not match the current MVUM endpoint at approximately 2.65 miles, yet the Corrected Decision Maps file uploaded to the Forest Service project website on November 11, 2020 shows this route the same as it is depicted on the current MVUM.



The GIS dataset provided by the Forest Service for the FEIS action alternatives also depicts the route this way when plotted in ArcGIS. However the tabular data included for it still lists the endpoint as 5.1 miles. Under the management information for Alternative C it notes “Seasonal closure change only.” There is no route segment at all in the GIS data for the remainder of this route for Alternative C.



The only map that shows the full route at least to where the sign on the ground is near the summit, is the map for the No Action Alternative A in Appendix A of the FEIS (below left). When plotted in ArcGIS (below right), the Alternative A GIS data shows the route ending just past the cabin, where the sign in the photograph above is. This can be more clearly seen in the Google Earth image below.

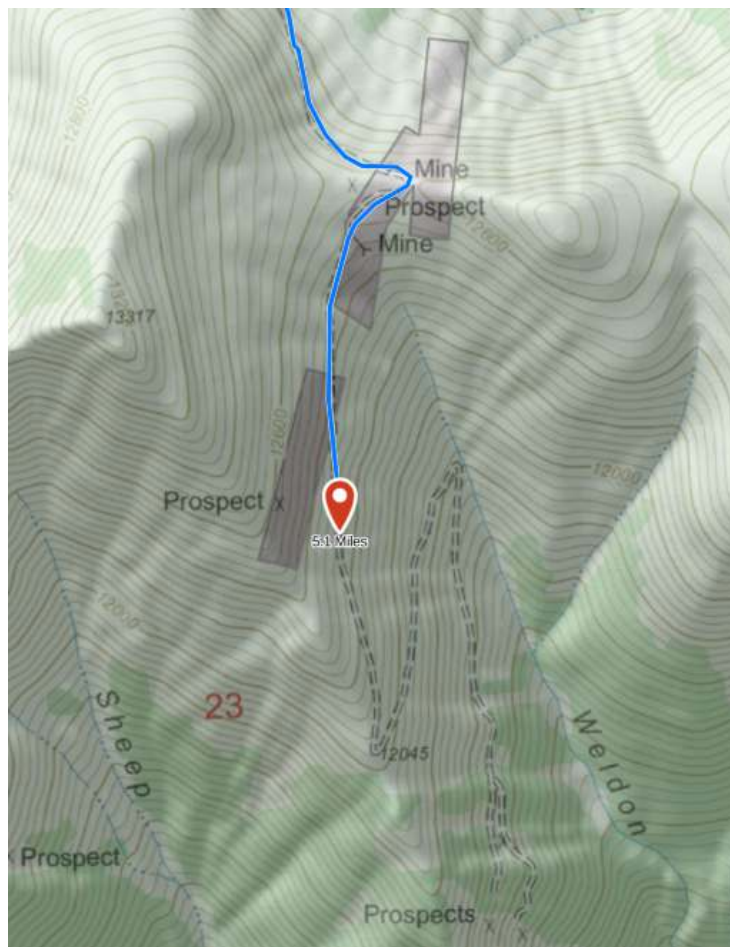


All of the action alternative maps in the FEIS are the same as the MVUM, showing the route ending at approximately 2.65 miles. Only the No Action Alternative map actually appears to match how the route is signed on the ground. This is the closest any of the alternative maps come to showing the endpoint at 5.1 miles as it is listed in the tabular route data, though we are not certain that is correct either. When the route is measured in Gaia GPS, 5.1 miles is a point approximately halfway down the leg of the road descending the south side of the ridge between the cabin and the first switchback / scenic overlook, shown on the map to the right. This discrepancy could just be a slight difference between where the route is mapped in Gaia GPS vs. the Forest Service's track for the route. Regardless, there is a clear discrepancy between the route mileage listed in the tabular route data in the FEIS and DROD and the maps for the Draft Decision/Alternative C as compared to the maps for Alternative A.

Given that the Draft ROD as written designates this route as a road open to all vehicles from mileposts 0 - 5.1, and the tabular data for the modified version of Alternative C considered in the FEIS and adopted by the Draft ROD lists the type of management action chosen as "Seasonal closure change only," it is a reasonable assumption that the length of this route was intended to remain unchanged as compared to Alternative A, with the endpoint at 5.1 miles. If, as the tabular data states, the INFRA database lists this route as ending at 5.1 miles, then the current MVUM and the action alternative maps drawn based on it which show the endpoint at 2.56 miles must be incorrect.

The Decision maps and GIS data should therefore be corrected to show the endpoint at 5.1 miles to match the tabular data and the designated route table in the Draft ROD, and the MVUM should be updated to reflect the actual route length from the Forest's INFRA database of 5.1 miles, rather than showing only half of the legal route.

We would prefer, however, that the legal motorized route be slightly extended in order to end at the scenic overlook at the first switchback, at approximately 5.4 miles (38.72858, -106.29792). This would allow motorists to reach the overlook across to Mount Antero where the greatest scenic "payoff" is for driving this route. There is plenty of room to park a few vehicles here and turn around, so it would be a perfect endpoint for this route. However, if the Forest Service does not wish to do this, ending the route where it is currently signed on the ground next to the cabin in the saddle at the high point of the route would be acceptable to us as well.



2. *The Forest's refusal to correct the mapping error for NFSR 348 was arbitrary and capricious*

As described above, there is a significant discrepancy between the endpoint listed for NFSR 348 in the tabular data used in this travel management process (derived from INFRA) and how the route is depicted in both the action alternative maps and the current Salida Ranger District MVUM. Only the map for the No Action Alternative A appears to match the route length listed in the tabular data, which also corresponds to approximately where the endpoint of the route is signed on the ground.

Both Marcus Trusty and Patrick McKay commented about this mapping error in our DEIS comments, to which the Forest Service replied:

The no action alternative shows an additional 5 miles; **unclear if removal of this segment was correct/intentional**. The authorized routes are mapped correctly on the MVUM. Unauthorized routes are not mapped.

FEIS Appendix D at D-149 (emphasis added). Actually the No Action Alternative shows the route *ending* at ~5 miles rather than showing an additional 5 miles beyond the endpoint in the action alternative maps, but the point stands. Even though the Forest admitted in this comment response that it cannot explain the admitted discrepancy between the No Action Alternative map and the map for the adopted Alternative C, it bizarrely insisted the route shown on the MVUM (which matches the Alternative C map) is correct.

Even if the shorter endpoint was intentional (which there is no evidence it was), because the upper section of the road provides access to private property at the summit, it still should have been mapped in the GIS data for this travel management process as an existing admin or special use permit road. All other such roads in Pike San Isabel National Forest were included in that data even though they are not currently open to the public. But with NFSR 348, the only dataset that includes that section at all is the GIS data/maps for Alternative A, which show the full ~5 miles to the summit as a road open to all vehicles. There is no route segment at all for this upper section in the GIS data for Alternative C or any of the other action alternatives.

The only conceivable explanation for this omission is if the Forest determined in the process of evaluating the action alternatives that it does not have jurisdiction over the last ~2.5 miles of this road (i.e. a private road) and removed it from the route inventory, but that is not stated anywhere in the FEIS documents and does not explain why the tabular data in the FEIS and Draft ROD still list the endpoint as 5.1 miles rather than the MVUM endpoint of 2.65 miles. As discussed in Patrick McKay's DEIS comments, the full length of this road has been shown on USGS maps as a Forest Service road for decades, and any sections crossing parcels of private land are most likely covered by prescriptive easements, which the Forest Service travel planning manual lists as a valid basis for the Forest Service to assert jurisdiction. See FSM 7700, Ch. 7710, sections 7715.72(2) and 7715.72(3). The simplest explanation here is that the maps for the action alternatives and the current MVUM are simply wrong.

Rather than correcting this error, the Forest chose to ignore the issue entirely and do nothing to fix it. Given that mapping errors played a significant role in the litigation that spurred this travel management process in the first place, moving forward with a blatant mapping error such as this in the Final Decision

will only invite further litigation. The Forest's refusal to either explain or do anything to correct this mapping error was arbitrary and capricious.

As discussed in Objection #1, under APA section 706(2) agency decisions that are "unsupported by substantial evidence" must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision regarding the alternative adopted, but also to the decisions made regarding individual routes. In *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d at 1069, the court overturned a Forest Service travel plan because of the Forest's failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs. ("In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.")

When the Forest was made aware through public comments that the maps and route inventory data it relied upon to make decisions for this route was incorrect, it had a responsibility to reevaluate the route based on the new information it received, or at least respond to the specific evidence in our comments. The Forest failed to do this and therefore violated the Travel Management Rule.

In the *Idaho Conservation League* case, a travel management plan very similar to this one was overturned by the court because, "the Forest Service's failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA". *Id.* at 1074-1075. The court specifically found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs' comments were legally insufficient to meet the agency's burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.*

In the case of NFSR 348, the Forest failed to address any of the evidence in public comments about the mapping error regarding this route and the unsuitability of the arbitrary endpoint depicted in the action alternative maps, which is on a narrow shelf road where there is no room to turn around. Because the Forest has completely failed to provide *any* explanation of the discrepancy between the action alternative maps and the no action alternative map / tabular data (indeed the Forest admitted it **did not know** the reason for this discrepancy), the decision not to correct the maps and GIS data for the Draft ROD was arbitrary and capricious, counter to the evidence before the agency, and unsupported by substantial evidence.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, we request *at minimum*, that the Reviewing Officer remand the Draft ROD to the Deciding Official with instructions to correct the maps and GIS data included in the Final Record of Decision to properly depict NFSR 348 as ending at 5.1 miles as listed in the tabular data in the Draft ROD.

As an alternative resolution, we would prefer that both the maps and tabular data be modified to designate the endpoint of this route at the first switchback and scenic overlook on the south side of the

ridge, at 38.72858, -106.29792 (approximately 5.4 miles). We believe this would actually be a better endpoint than at the cabin at the summit of the pass, and would best match where most people who drive this route are currently turning around. This endpoint would be more sustainable than where the sign marking the current endpoint is, since the road obviously continues beyond that point and many users will be inclined to ignore the sign and continue on to the scenic overlook. The road past the switchback immediately turns into a narrow shelf road that could be easily barricaded, while the area near the cabin is in a wider flatter spot of open tundra that would be harder to effectively block. Therefore our preferred endpoint for this route is at the switchback at 38.72858, -106.29792.

At minimum though, the discrepancy between the decision maps and tabular data must be corrected so that the new MVUM published after the completion of this travel management process will properly depict the full length of this route. We request that the Draft ROD be remanded with instructions to correct this discrepancy in either way mentioned above.

One final note regarding this route. Portions of it appear to be inside the Kreutzer-Princeton Roadless Area with no cherry-stem. This is a clear error in the mapping of the roadless area boundaries because this road was on the ground long before the roadless area was designated, and it must remain open at least for purposes of private property access to the cabin at the high point of the road, which is surrounded by the roadless area. In order to designate the full length of this route in a manner consistent with the roadless area, either the roadless area boundaries need to be adjusted to show this route as cherry-stemmed, or else this road needs to be designated as a trail open to all vehicles.

Motorized trails are allowed inside roadless areas under the Colorado Roadless Rule (36 C.F.R. § 294.46(e) stating, "Nothing in this subpart shall affect the current or future management of motorized and non-motorized trails in Colorado Roadless Areas."), which does not contain any vehicle size limitations (36 C.F.R. § 294.41, defining a "road" under the Colorado Roadless Rule as "a motor vehicle route over 50 inches wide, *unless identified and managed as a trail.*"). Therefore changing the designation of this route to a full-size motorized trail would be the easiest way to resolve any potential conflict with the roadless area. Conversion to a motorized trail would also be appropriate given this route's TAP scores. Therefore along with correcting the mapping error identified above, we also request that this route be converted to a trail open to all vehicles to avoid any potential future litigation over roadless area incursions.

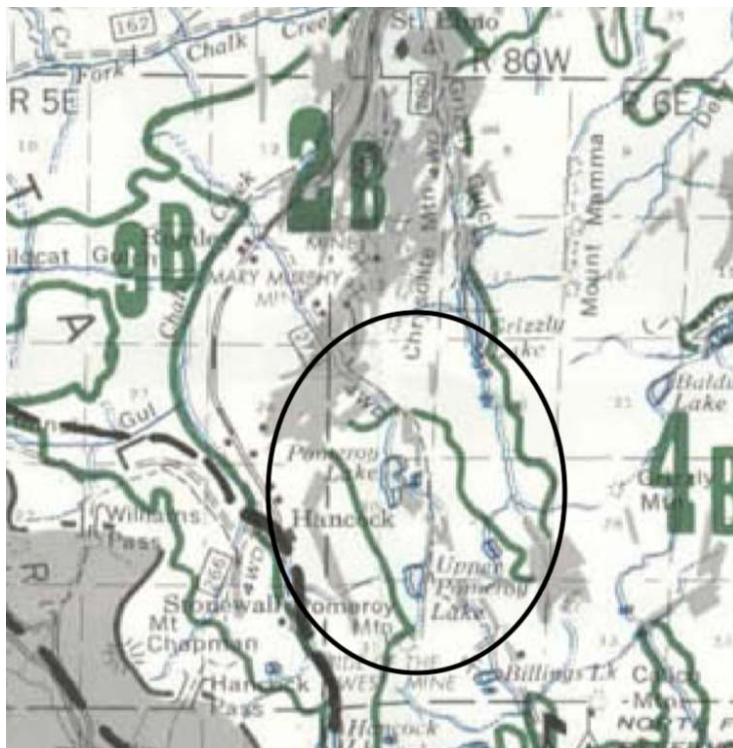
OBJECTION #32: IMPROPER DESIGNATION OF NSFT 1437 POMEROY LAKES AS A 50" TRAIL and NFSR 297 SEASONAL CLOSURE.

A. INTRODUCTION AND CONNECTION TO PREVIOUS COMMENTS

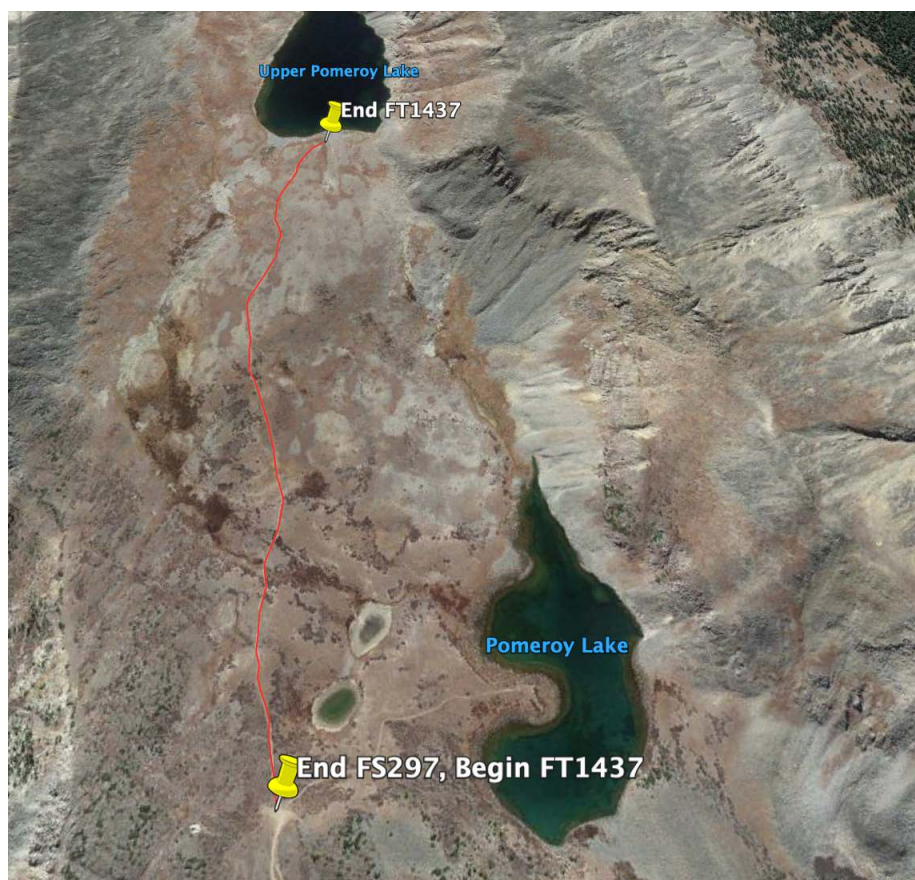
We object to the decision to keep NFST 1437 designated as a 50" motorized trail. NFST 1437 is the final 0.85 miles of the original road to upper Pomeroy Lake road. NFST 1437 begins at the current endpoint of NFSR 297. All alternatives in the DEIS recommended to keep this route 'as is'. Marcus Trusty submitted comments requesting the Forest review NFST 1437 for consideration as a full-size motorized trail. We also object to the seasonal closure (2/28 - 5/16) for NFSR 297.

B. ANALYSIS

NFST 1437 at some point became a stand alone motorized trail segment even though it was always part of NFSR 297. It's depicted on the 1984 Forest Plan map fully intact going to upper Pomeroy Lake and labeled as a '4WD' road, see black circle.



NFST 1437 was not created as a 50" motorized trail, nor was it built from OHV funding with the 50" user specifically in mind. NFST 1437 was a full-size motorized road and at some point a decision to segregate users was unfortunately made. However, whenever this decision happened, there was no need to do so. In 2020, users, recreation patterns, equipment and the track on the ground for NFST 1437 support the need for full-size motorized access. You can see the .85 mile NFST 1437 segment below in RED.



In some cases old roads are converted to motorcycle trails or 50" trails in instances when the road has deteriorated in width or when the environment dictates a road is no longer suitable for full-size vehicles. This is **NOT** the case with NFST 1437, the road does not ascend steep inclines nor does it traverse narrow sections of shelf road. NFST 1437 meanders up the basin on a relatively mild incline with a flat road surface and no width problems. The road is still fully intact on the ground and a full-size vehicle or UTV could drive the road today without issue.

Overall the 50" user group is deteriorating in numbers. UTVs are no longer 50" wide vehicles as all of them are becoming larger and larger with some as big as street legal 4x4s. Since 2006, there has been a 95.3% gain in UTVs sold to the public and the user group is growing faster than any other motorized user segment. Because of this and the size of UTVs, they are using full-size motorized trails and Forest Roads for their recreation.

This has also given rise to 'mixed' groups of motorized users. It's not uncommon to see a group of users, possibly even a family, with a motorcycle, an ATV and a UTV, sometimes all being driven at the same time in a group together. I have witnessed this exact scenario play out on NFST 1437. Many times motorcycles, ATVs and UTVs drive up NFSR 297 together. Then technically only the motos and the ATVs can continue on NFST 1437, but they all drive NFST 1437 together including the UTVs. This is a nearly impossible management solution as UTVs and full-size vehicles can drive NFST 1437 because it's still a road.

This is not an indictment on all 50" trails as many were purpose built to only allow 50" vehicles and many were converted, as previously stated, out of necessity. But again, NFST 1437 is not in that category, it was originally a road, still is a road, and should still be allowed to function for all off-road vehicles. This will improve management and will expand the same opportunity to all users.

NFSR 297 is a high alpine route that is not available to wheeled motorized use until June in the spring and is closed to wheeled motorized use by December each year. The access road, NFSR 295, is groomed each year for over the snow use during the proposed seasonal closure for NFSR 297. Because of this, there is no reasonable way to access NFSR 297 until the snow melts allowing wheeled motorized use, typically in June. This renders the proposed seasonal closure arbitrary and unnecessary.

C. CONCLUSION AND REQUESTED RESOLUTION

CORE requests NFST 1437 be converted from a 50" motorized trail to a full-size motorized trail. This will expand user opportunities and improve management of both NFSR 297 and NFST 1437.

CORE requests the NFSR 297 seasonal closure be removed because it is arbitrary and unnecessary.

We ask that the Reviewing Officer remand the Draft ROD to the Deciding Official with instructions to change the management of these routes in the final decision accordingly.

OBJECTION #33: IMPROPER DESIGNATION OF NSFTs 1423 & 1423.A CHINAMAN GULCH / CARNAGE CANYON AS MOTORCYCLE TRAILS

A. INTRODUCTION AND CONNECTION TO PREVIOUS COMMENTS

We object to the decision to keep NFST 1423.A and a short section of NFST 1423 a 50" motorized trail. Both Marcus Trusty and Patrick McKay commented on these routes requesting that 1423.A and a short section (0.9 miles) of NFST 1423 be converted to full-size motorized trails to allow for interconnectability within the Fourmile Travel Management area and to improve management and user experience. The Forest had a comment response referencing the Fourmile Travel Management Plan but did not address the specifics of our request.

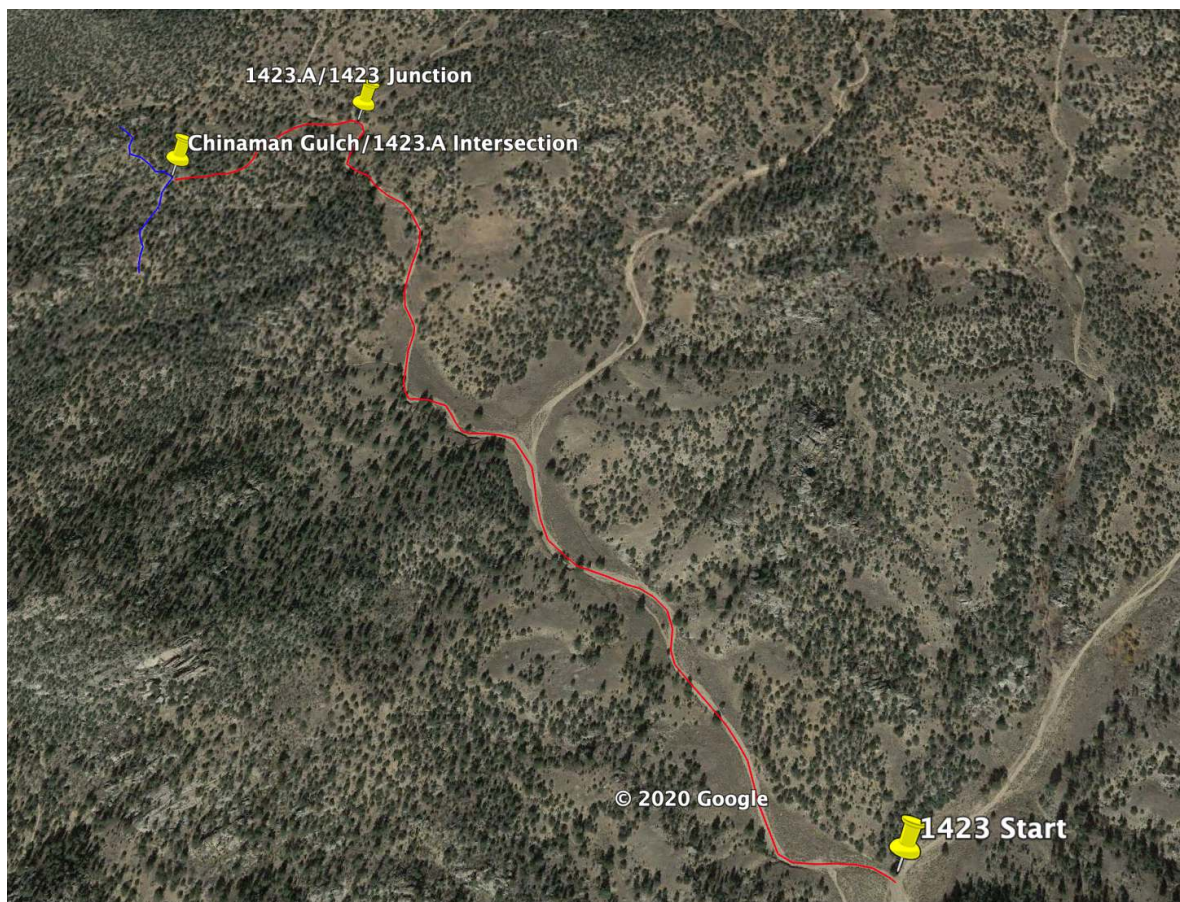
The Fourmile Travel Management EA designated these Forest Service trails for vehicles 50" or less to respond to the need to provide this kind of recreational experience.

Response to comment 298-1 by Patrick McKay, FEIS Appendix D at D-311. While this may have been true at the time, the Fourmile Travel Management Plan is over 20 years old. Users, equipment, habits and machines are vastly different today as compared to the late 1990s. It also appears the Forest did not fully investigate our comments. We did not ask for all of NFST 1423 or the entire 50" trail system of Triad Ridge to be converted to a full-size motorized trail. We asked the Forest to consider 0.9 miles of NFST 1423, and the 0.2 miles of NFST 1423.A to be converted to full-size motorized trails to improve management, allow connectivity and to provide looping trail opportunities.

B. ANALYSIS

Prior to the Fourmile Travel Management Plan, NFST 1423.A and NFST 1423 were part of Old Chinaman Gulch, which was a road and was open to all motorized vehicles. This was a standard through road that connected to NFSR 300.A. The Fourmile Travel Management Plan changed the recreation in this area to make Chinaman Gulch a looping trail and converted the end of the old road into a 50" trail (NFST 1423, NFST 1423.A) and made it part of the Triad Ridge 50" trail system. At that time there were only three motorized user groups, 4x4s, ATVs and Motorcycles. Motorized user groups have changed substantially in the last 20 years with the introduction and refinement of the Side-by-Side UTV. These UTVs are no longer 50" in width and with recent advancements, they are as large as a full-size 4x4. Because of this their available riding areas are Forest Roads and full-size motorized trails.

Since 2006, there has been a 95.3% gain in UTVs sold to the public and the user group is growing faster than any other motorized user segment. The popularity increase of the SxS has also diminished the 50" user group. While it still makes sense to have 50" trails and maintain that overall experience, in some cases, however, it is causing connectivity issues and users are ignoring the management prescription because they are looking for ways to access adjacent trail systems. NFST 1423.A and 0.9 miles of NFST 1423 fall into this situation.



UTV and 4x4 users are many times staging out of the Ruby Mountain Recreation Area to use the South Fourmile Travel Management Road System. They Travel NFSR 300 to NFSR 300.A in an effort to

access Chinaman Gulch. They complete Chinaman Gulch and then head back to NFSR 300.A and continue through the South Fourmile Travel Management Area roads before eventually heading back to the Ruby Mountain Staging Area. In other cases users are staging at the Chinaman Gulch Trailhead and accessing the South Fourmile Travel Management Area. You can see from the map above how close Chinaman Gulch (blue line) is to the end of NFSR - 300.A (pushpin designating 1423 start). The red line shows the short connector section (Old Chinaman Gulch Road) that is needed to allow for interconnectability and looping options.

This 1.2 mile section should be converted to full-size motorized use to allow all users and vehicles to transition between Chinaman Gulch and the South Fourmile Road System. This section also allows for an effective 'bail-out route' from the difficult Chinaman Gulch Trail. NFST 1423.A exits Chinaman Gulch as almost exactly the midway point of the loop, and if a vehicle were to have a mechanical failure, it could exit Chinaman Gulch via NFST 1423.A and use the much easier route of NFSR 300.A to NFSR 300 to get back to the trailhead.

Additionally, this request will not impact the Triad Ridge 50" trail system or the user experience there. The Triad Ridge trail system is not directly accessible from any of the Fourmile parking or staging areas, so 50" vehicles are required to drive NFSR 300, NFSR 300.A or Chinaman Gulch before getting to the 50" trail system. By doing so, they are already interacting with all user groups. Adding this connector route as an option will not negatively impact their experience or overall riding area.

C. CONCLUSION AND REQUESTED RESOLUTION

We request the Forest reconsider our request to convert a small section of NFST 1423 and NFST 1423.A to allow full-size motorized use. The PSI travel management process is directed to prioritize looping options and connectability. This is a specific situation where a change in designation makes practical sense. This will not take away the 50" trail system opportunity of Triad Ridge and will improve management and user experience for the South Fourmile Travel Management Area.

We ask that the Reviewing Officer remand the Draft ROD to the Deciding Official with instructions to change the management of these routes in the final decision accordingly.

OBJECTION #34: ERRONEOUSLY OMITTED SEGMENT OF NFSR 277 BALDWIN CREEK 4WD

A. INTRODUCTION AND CONNECTION TO PREVIOUS COMMENTS

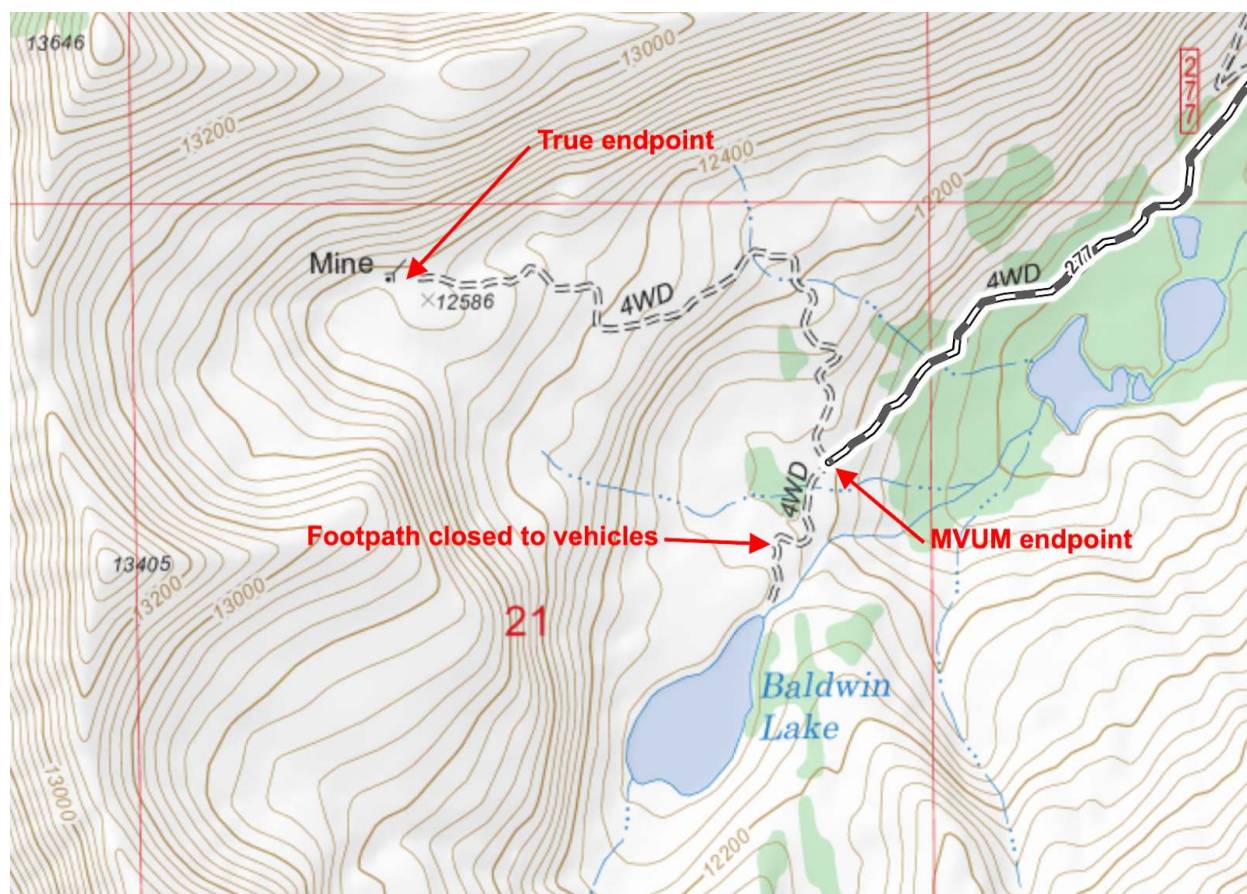
Both the current Salida Ranger District MVUM and the tabular data and maps used in this travel management process contain a mapping error with respect to NFSR 277 Baldwin Creek 4WD, mistakenly omitting the final 0.93 miles of the existing route. We object to Forest's failure to correct this mapping error in the FEIS and Draft Decision. Marcus Trusty commented on this route during the DEIS detailing the correction needed in comment 1987-2. Patrick McKay also commented on this mapping error in comment 191-1.

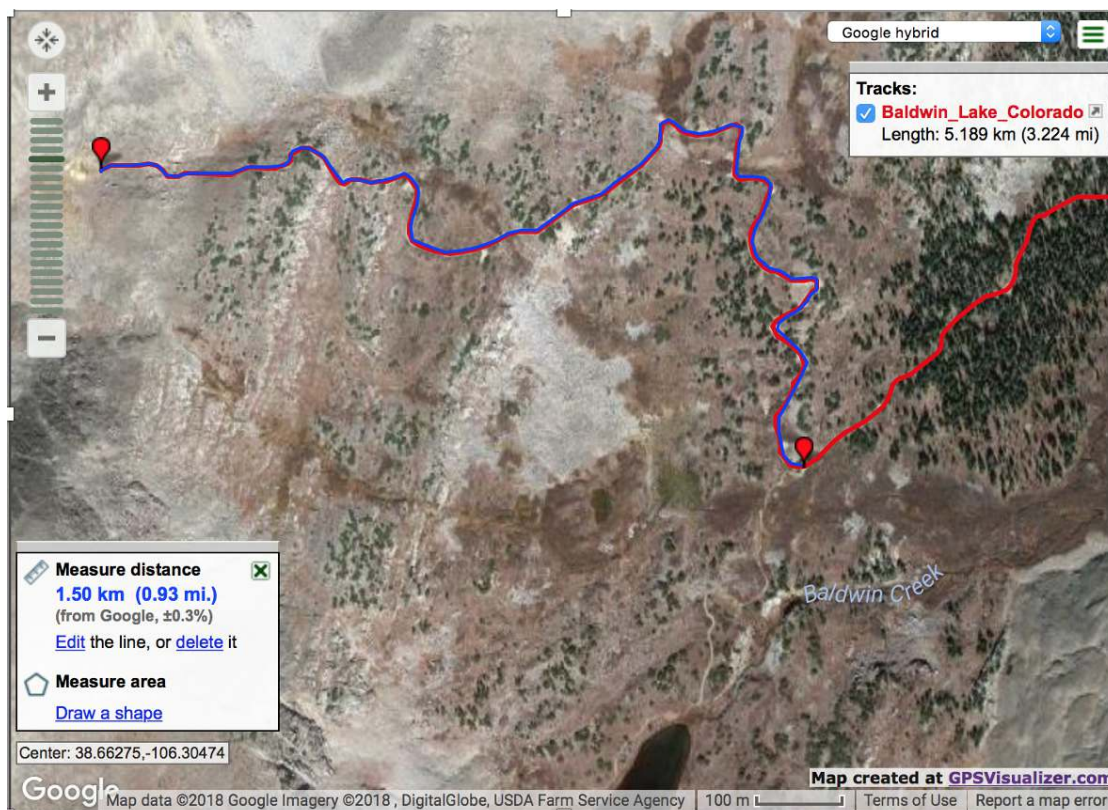
B. ANALYSIS

Under the Draft Decision, no changes are being made to the existing management of NFSR 277, which will continue to be open to public use as a road open to all vehicles from mileposts 0 - 5.2. However, the final 0.93 miles of the road has not been corrected in the Draft ROD as requested in our comments on the DEIS. This segment was erroneously left off the Salida District MVUM.

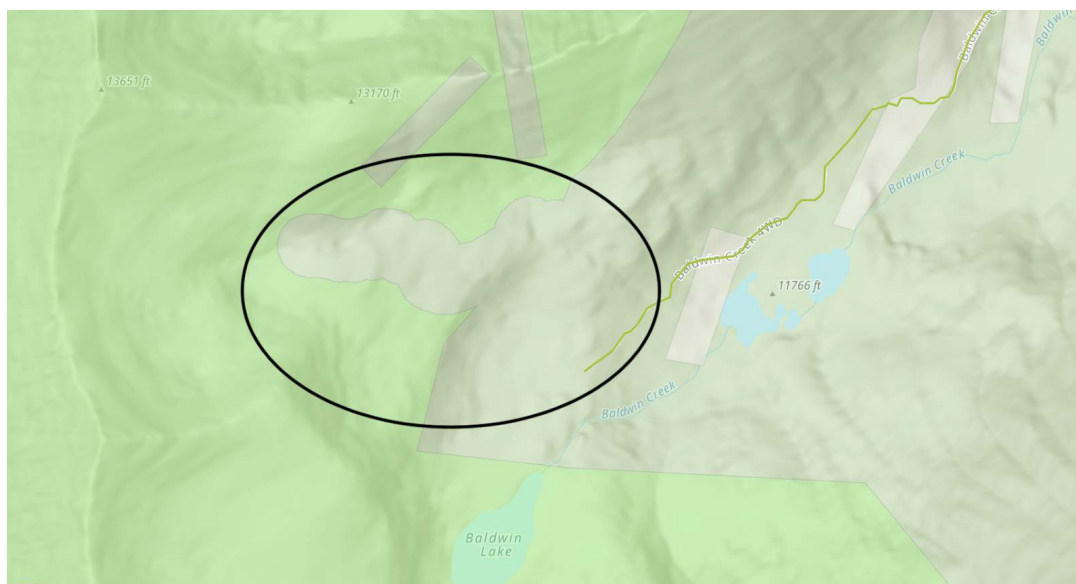
The current MVUM and alternative maps in the FEIS show this route ending at the Baldwin Lake hiking trailhead, approximately 0.9 miles short of its true endpoint at an old mine site above Baldwin Lake. In reality, the route continues up the northwest side of the valley for almost another mile beyond the officially marked endpoint. This segment of the route is shown both on the 1984 Forest Plan Map and on the 2016 Forest Service Raster Map, but was mistakenly left off the Motor Vehicle Use Map likely due to a drafting error.

The omitted segment of road may be seen in the following map and Google Maps imagery.

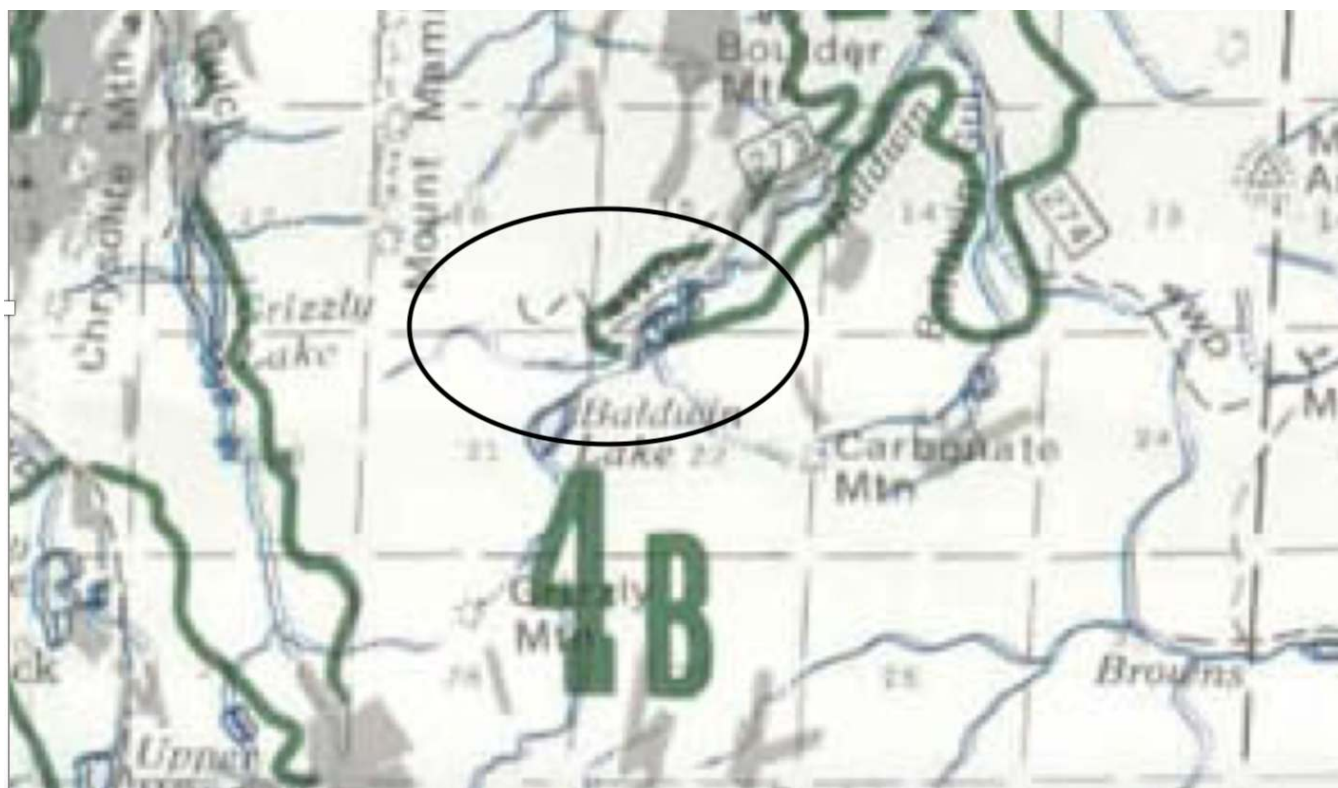




The MVUM section is shown above in RED and the additional 0.93 mile segment is shown in BLUE. This section of road is shown on the 1984 Forest Plan Map and is shown in official Forest Service GIS data as a cherry-stem into the Mount Antero Roadless Area (light green). You can see this section below outlined by the black oval. Notice this roaded section matches up perfectly with the above 0.93 mile blue line.

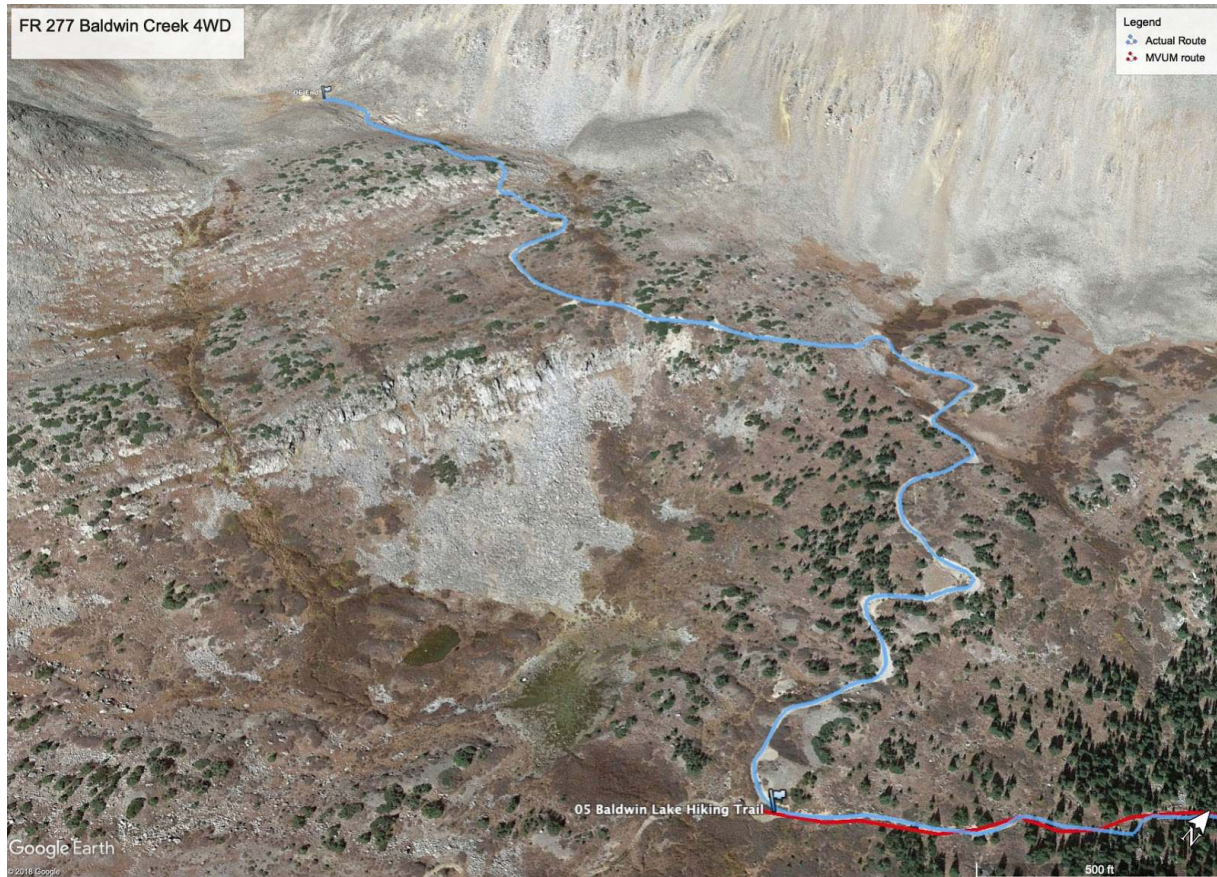


Additionally, this section of road shows up on the 1984 Forest Plan Map. At the Baldwin Lake hiking trailhead where the end of the route is marked on the current MVUM, the road makes a hard right hand turn uphill, and is partially obscured by the 4B management area boundary line. This may account for the mapping error, as the Forest Service staffer who originally created the Salida District MVUM may have easily not seen this segment on the Forest Plan map. Without a site specific analysis and a site visit, someone could interpret this 0.93 mile section as a topographical line, instead of a road. However in the 1984 Forest Plan map below, in the black circled section, the road is labeled '4WD' and matches up with the above photos of the road and area.



At some point, despite the above referenced info the MVUM did not accurately map NFSR 277. There was never any official decision to close this segment; it was simply mistakenly omitted.

Below is a Google Earth screenshot showing the mistakenly omitted portion of this route. The MVUM route is shown in red, while a GPS track marking the real route on the ground is shown in blue. The final segment has a well-defined roadbed clearly visible in satellite imagery. While there is a very small parking area at the marked endpoint, there is only enough space for a handful of vehicles to park in order to allow people to hike to Baldwin Lake, and there is not enough room for a large group of vehicles to turn around. The mine site at the true endpoint, however, has a large parking area that has plenty of room for vehicles to turn around.



Here are some pictures of the parking area at the mine:





And here is a photo of the road leading back down to the Baldwin Lake hiking trailhead:



As can be clearly seen in these photos, this is the proper route and the intended endpoint of the road. The road is well-defined and well-used, as most people who drive this trail continue to the true endpoint at the mine site. It is simply because of a mapping error that this segment is not shown on the MVUM.

There are no problems with the discussed 0.93 mile section, no off-trail issues, no water crossings, no wetlands, and the road is perfectly suitable for all motorized vehicles. It is currently routinely driven by vehicles driving this trail and this will continue to occur regardless of whether this segment is officially designated as part of this travel management process.

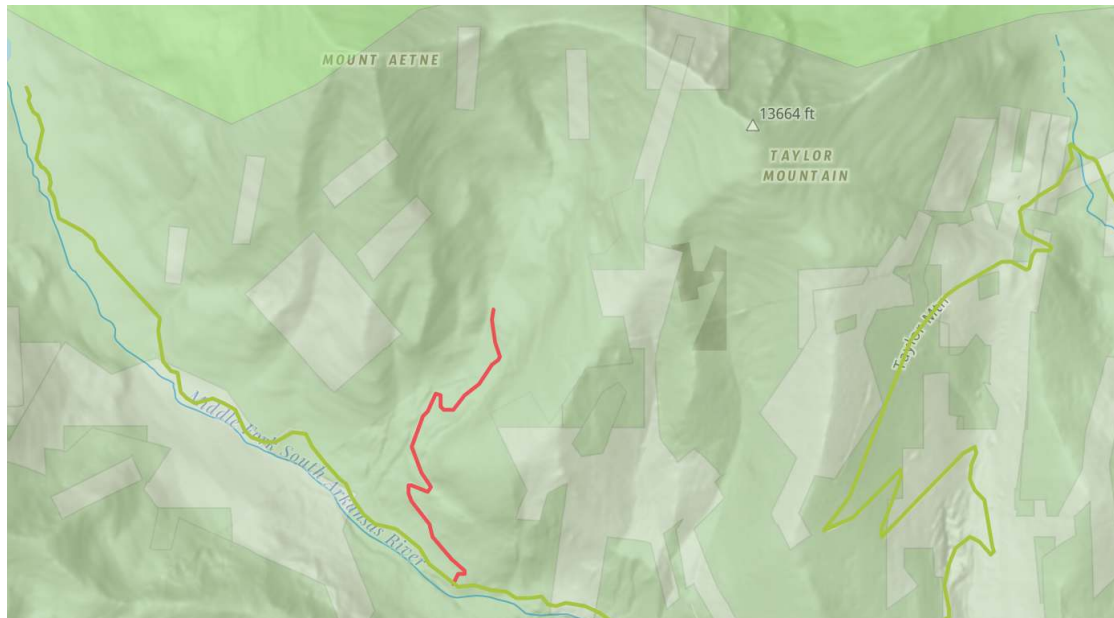
The Salida Ranger District regards this mistakenly omitted segment as part of the legal route and does not enforce the erroneous endpoint. The district ranger is fully in support of officially designating the missing segment as part of the legal trail, and has told CORE in the past that he would be willing to do so but could not make any additions to the MVUM until after this travel management process is complete. This indeed is the only acceptable management option for this segment, and this travel management process presents the best opportunity to correct this error rather than having to correct it in a separate NEPA process.

C. CONCLUSION AND REQUESTED RESOLUTION

We request that the maps and tabular data included in the Final Decision be corrected to include the mistakenly omitted 0.93 mile section of NFSR 277 and that it be designated as available for public use with the same management as the rest of this route. This error in the route inventory was pointed out to the Forest Service in our DEIS comments, yet the Forest failed to either sufficiently respond to those comments or correct the mapping error.

The Forest's failure to do so was arbitrary and capricious, and we ask that the Draft ROD be remanded to the Deciding Official with instructions to correct this mapping error in the Final Decision and designate the omitted segment of NFSR 277 as open to public motorized use under the same management as the remainder of the route.

OBJECTION #35: CONVERSION OF NFSR 230.C HOFFMAN PARK TO ADMIN USE



A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the decision to convert NFSR 230.C Hoffman Park (shown in red in the map above) to an administrative road in the Draft Decision, which was a change from the action proposed in the DEIS version of Alternative C. Marcus Trusty commented on this route in the DEIS comment period on 10/29/19, as listed in the table of our comments at the top of this document. The comment requested that the management option for NFSR 230.C be accepted as written in the Preferred Alternative C - convert to trail open to all vehicles. That recommendation would have also kept this route open to public use.

Because the management option for this route was changed in the Draft Decision and the FEIS version of Alternative C relative to the DEIS version of Alternative C, this is also a new issue arising after the last public comment period, and both objectors have standing to object to this closure.

B. ANALYSIS

NFSR 230.C is part of the Middle Fork Trail System, which also includes NFSR 230 and NFSR 230.B. Together these three roads make up 5.45 miles of available roads to motorized users. It accesses a scenic alpine basin near Monarch Ski Area. On the surface that may not seem like much; however, because all the roads are out-and-backs this mileage is effectively doubled due to the fact users must travel the roads in both directions. This effectively makes this trail system 10.90 miles for all motorized users. By converting NFSR 230.C to administrative use only, the Forest is subtracting 2.2 miles of motorized use from the Middle Fork Trail System. This also reduces the motorized option available here by 20%.

Middle Fork is used extensively by motorized recreators as a part of a full-day of exploration in the area. A full day simply means that when accounting for travel time to and from, lunch and stops, 10

miles of off-road driving options can easily fill up a full day. By subtracting 20% of the mileage from this trail system, the Forest has also removed a full day option for motorized users. This can result in less effective management due to users looking for more options to fill up their day. They can push past closures and create new routes causing issues.

Another area of recreation seldom accounted for during this process is hunter access. NFSR 230.C allows important access to big game management Unit 56 and is the only access to the southern drainages of Mount Aetna and Taylor Mountain. If NFSR 230.C were to be closed to public use, it would make harvesting animals and general hunter access in that region extremely difficult.

NFSR 230.C was given a 'moderate' (M) TAP score for recreational use benefit because it was not viewed in conjunction with the overall trail system. Its recreational use benefit score should properly have been 'high'. NFSR 230.C may not go to a hiking trailhead or to an alpine lake, but it does provide motorized recreators the opportunity to drive the 2.2 miles of trail (out-and-back) in conjunction with the surrounding roads. For this reason, the Preferred Alternative C recommendation, convert to a full-size motorized trail, should have been chosen as the final decision. NFSR 230.C may not be suitable for use as a *road* whose sole utility is to get from place to place, but it does hold value as a full-size *trail* for a high quality motorized recreational experience.

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/L

Benefits

Category	Score
Recreational Use Benefit	M
Fire/Fuels Access Benefit	M
Timber Access Benefit	L
Special Use Access Benefit	M
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	M
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	L

As discussed in Objection #6, as a L/L road with 'moderate' recreational use value, the first exception in the list for the L/L category in the Minimum Road System rubric would apply and should have produced a recommendation to convert this road to a trail open to all vehicles. The DEIS version of Alternative C properly adopted this action. There is no way to reach the action adopted in the Draft Decision of converting it to an admin road with the MRS rubric unless the recreational use benefit exception is ignored. This makes this decision contrary to the MRS rubric and unsupported by any evidence in the project record, and inherently arbitrary and capricious.

There is no information in the responses to comments as to why this route was changed to closed in the Draft Decision, but the Forest did receive several comments from anti-motorized groups claiming it conflicted with non-motorized recreation on the Continental Divide Trail. If this was the reason for closing it, that reason is not valid, as the CDT's authorizing legislation specifically allowed motorized use to continue on CDT segments where it was allowed prior to the designation of the CDT, and

forbade any kind of buffer zones around the CDT resulting in the closure of existing routes that are near to it. The CDT does not even coincide with this route, but rather coincides with the road it connects to, NFSR 230 Middle Fork, which remains open to motorized use under the Draft ROD. Several other anti-motorized group comments referenced risk to cutthroat trout, which the Forest Service responded to with a note that the USFWS has determined that the particular lineage of cutthroat trout in that area is no longer protected.

From this it appears that no reason whatsoever was given for the change in the Draft Decision to convert FNSR 230.C to an admin road instead of converting it to a trail open to all vehicles as specified by the MRS rubric and as was proposed in the DEIS version of Alternative C.

As discussed in Objection #1, under APA section 706(2) agency decisions that are “unsupported by substantial evidence” must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision adopted regarding the alternative chosen, but also to the decisions made regarding individual routes.

In *Idaho Conservation League*, 766 F. Supp. 2d at 1074-1075, a travel management plan very similar to this one was overturned by the courts because, “the Forest Service’s failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA”. The court found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs’ comments were legally insufficient to meet the agency’s burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.* The court concluded, “the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.” *Id.* at 1069.

In the case NFSR 230.C, the Forest failed to address any of the evidence regarding recreational use benefit as discussed in Marcus Trusty’s comment. Indeed, the Forest failed to provide any actual reasons why it decided to close this route to public use. Because the Forest completely failed to provide *any* specific explanation of the reasons for its decisions to close this route, and this decision is unjustified by the TAP scores which are the only evidence presented in the record, this decision is arbitrary and capricious and unsupported by substantial evidence in the project record, and must be reversed in the final decision.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, the decision to close NFSR 230.C Hoffman Park to public motorized use and convert it to an admin road was arbitrary and capricious, unsupported by substantial evidence in the record, and otherwise not in accordance with law. We therefore request that the Draft ROD be remanded to the Deciding Official with instructions to reverse this decision and change the management of this route back to “convert to trail open to all vehicles” as specified in the DEIS version of Alternative C.

OBJECTION #36: SEASONAL CLOSURE OF NFSR 267 TINCUP PASS**A. INTRODUCTION AND CONNECTION TO PREVIOUS COMMENTS**

We object to the decision to implement a seasonal closure (2/28 - 5/16) on NFSR 267 Tincup Pass. Marcus Trusty commented on this route in the DEIS, comment 2112-3.

B. ANALYSIS

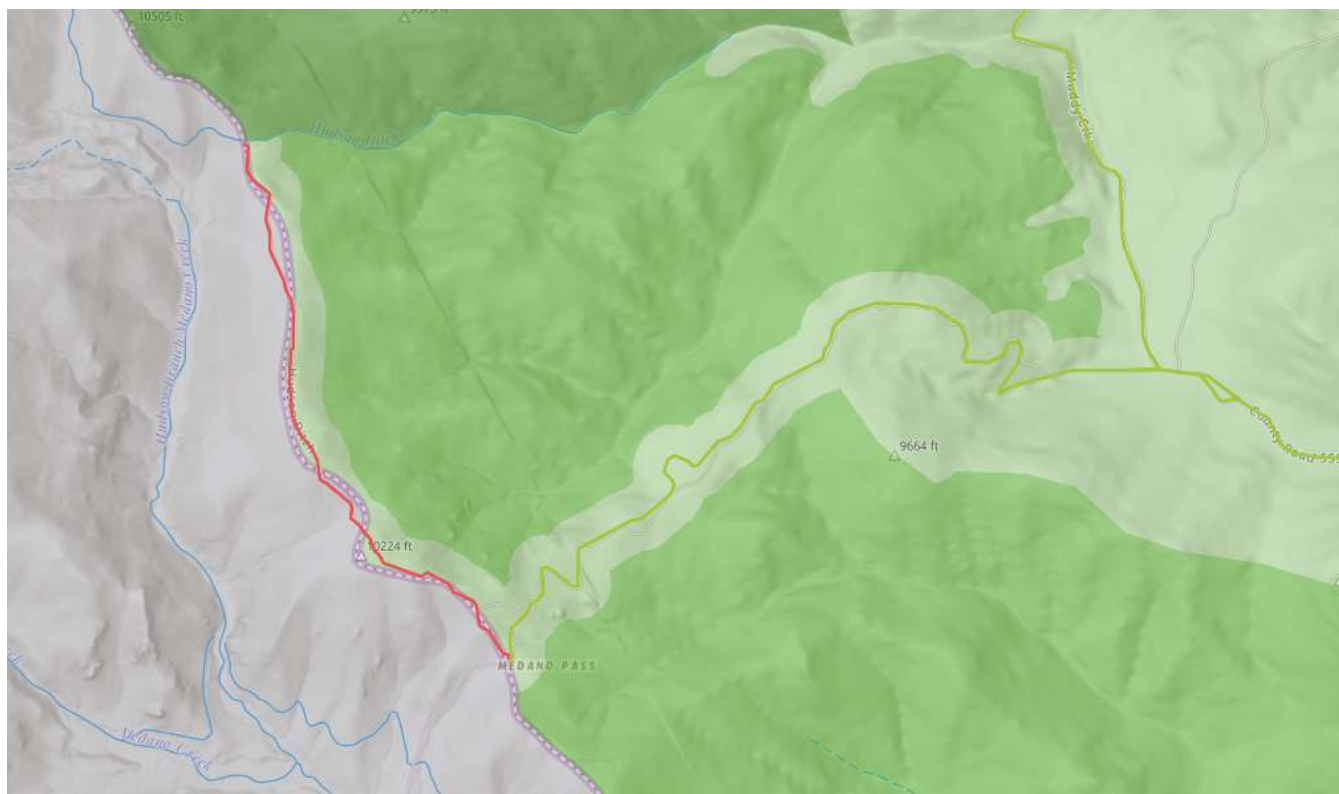
NFSR 267 is a popular high mountain pass in the Salida District, crosses the Continental Divide and is shared with the Gunnison National Forest. NFSR 267 is only available to wheeled motorized use from middle to late June once snow has melted in early summer and is usually closed by November due to winter snow. NFSR 267 is extensively used in winter by over the snow travel and is a groomed snowmobile trail over the pass. For this reason the seasonal closure is not needed and would be arbitrary given the short summer and fall season of available use to wheeled motorized vehicles.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, the decision to implement a seasonal closure (2/28 - 5/16) on NFSR 267 is not warranted, arbitrary, and capricious. We therefore request the Draft ROD be remanded to the Deciding Official with instructions to reverse the decision and change the route availability status to Yearlong.

XII. San Carlos District Objections

OBJECTION #37: CLOSURE OF NFSR 406 HUDSON DITCH



A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the action in the Draft ROD to close and convert to an admin road NFSR 406 Hudson Ditch (shown in red in the map above). This is a scenic spur route off of Medano Pass Road which connects the San Isabel National Forest to Great Sand Dunes National Park. Patrick McKay commented opposing the closure of this route in comment 328-21, to which the Forest replied with only a generic boilerplate response:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information.

FEIS Appendix D at D-377. This response is legally insufficient to justify this closure and is arbitrary and capricious.

B. ANALYSIS

NFSR 406 Hudson Ditch is an important 1.16 mile long side route off Medano Pass Road which provides access to multiple scenic overlooks along the top of a ridge as well as dispersed campsites. Medano Pass (NFSR 559) is an extremely popular backcountry 4WD route into Great Sand Dunes

National Park. It is especially popular with overlanders who enjoy point-to-point scenic routes with good camping. Because campsites are limited inside Great Sand Dunes National Park and Great Sand Dunes Preserve, many people who travel this route camp in the San Isabel National Forest adjacent to the park. The Hudson Ditch spur route is an excellent location for such camping, and offers multiple scenic dispersed campsites and scenic views looking into the Great Sand Dunes Preserve. Even anti-motorized groups calling for the closure of this route noted its popularity for dispersed camping (see comment 3158-124), though they claimed such camping is unauthorized. This is not true, as the sites on National Forest Land are authorized. The road can be seen in the Google Earth image below (in red) following a ridge above the Medano Creek valley, zig-zagging in and out of the Great Sand Dunes Preserve with multiple dispersed campsites (all in the National Forest) visible.



Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: H/L

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	H
Timber Access Benefit	L
Special Use Access Benefit	H
Resource Management/Range Access Benefit	M

Risks

Category	Score
Watershed Risk	L
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	L

Though this route received an H/L overall benefit/risk rating in the TAP report (which under the MRS rubric is an ideal route for the Minimum Road System and should never have been closed), it is nevertheless proposed for closure due to the TAP recommendation which stated, "Recommend eliminating public access and keeping as an admin road." We believe this recommendation was made in error and failed to recognize the significant recreational use benefit offered by this road. The recreational use benefit was improperly rated as 'low', which is factually incorrect given the high value this road has for dispersed camping while driving Medano Pass. This improper recreational use benefit rating and the disproportionately high administrative use benefit scores likely contributed to the erroneous TAP recommendation to convert it to an admin road.

Regardless of the specific risk and benefit scores, however, the Minimum Road System rubric described in the FEIS gives no basis for closing an H/L road to the public. These were considered ideal candidates for the MRS and were supposed to be left as-is. The only reason this road is proposed for closure must be because of the arbitrary and unsupported opinions of the ranger district staff that were the basis of the TAP recommendation. As discussed in Objection #2, the TAP recommendation alone is an improper basis for closing a route to the public, rendering such a decision arbitrary and capricious for multiple reasons.

First, the Forest unlawfully failed to respond to the specific evidence in our comments, and failed to provide any explanation for its decision to close NFSR 406. As discussed in Objection #1, under APA section 706(2) agency decisions that are "unsupported by substantial evidence" must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43. In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision adopted regarding the alternative chosen, but also to the decisions made regarding individual routes.

In *Idaho Conservation League*, 766 F. Supp. 2d at 1074-1075, a travel management plan very similar to this one was overturned by the courts because, "the Forest Service's failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA". The court found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs' comments were legally insufficient to meet the agency's burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.* The court concluded, "the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period." *Id.* at 1069.

The Forest did not provide any reason at all in the DROD or FEIS documents for closing this road, and only gave a generic boilerplate response to Patrick McKay's comment which utterly failed to respond to the specific evidence in his comment. This likewise failed to provide any specific reasons for the decision to close this specific route, and failed to meet the requirements of the APA and NEPA to articulate a "rational connection between the facts found and the decision made." It is therefore arbitrary and capricious.

Second, the Forest's treatment of the TAP reports as decisional documents not subject to challenge or further evaluation under NEPA violated the Travel Management Rule, multiple Forest Service policies, and NEPA and the APA.

From the little information we have on the reason for the decision to close this route, it appears it was the result of the recommendations in the San Carlos District TAP Addendum. As discussed in Objection #2, the FEIS states that all route-specific recommendations in the TAP reports were adopted in the Draft Decision, and routes that had such recommendations were not subject to any further screening under the MRS rubric. The agency also did not consider any public comments on these routes asking for a different management outcome, but simply replied that the TAP recommendation was dispositive.

As described in Forest Service regulations, the Travel Analysis Process is the first step in determining the Minimum Road System (MRS), conducting an initial analysis of roads that are likely needed or not needed for the MRS. The actual determination of the MRS occurs during a formal travel management process subject to NEPA, which is informed by the Travel Analysis Reports. This two step process has been affirmed by the courts as the proper method of determining the MRS. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (D. Mont. 2020):

Identification and implementation of a minimum road system is a two-step process. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117 (9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

As discussed in Objection #2, the TAP reports were only the first step of this two-step process, and did not produce a final agency decision regarding the MRS. This travel management process was supposed to be the second step in designating the Minimum Road System for the PSI NF, subjecting the initial findings in the TAP reports to full NEPA review. From its comment responses, it is clear however that the Forest has decided to treat the TAP report recommendations as a final decision not subject to further challenge or review. These responses demonstrate that the Forest had already made the decision to close this route to the public in the supposedly non-decisional TAP process.

The inadequate public involvement in the creation of the San Carlos District TAP Addendum (which received only three public comments), and the fact that the Forest automatically adopted the recommendations in that addendum and carried over the TAP scores into the MRS Screening Process in this travel management decision without accepting any input that challenged them; precluded any effective opportunity for public comment on the actual decision to *designate* NFSR 406 as an admin road, as required by the Travel Management Rule as codified in 36 C.F.R. § 212.52(a):

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

By effectively making the designation decision for this route in the predecisional travel analysis process and refusing to consider any comments which challenged the TAP recommendations or the management outcomes derived from them, the Forest violated both the Travel Management Rule and 40 C.F.R. § 1502.5 on the timing of NEPA actions involving Environmental Impact Statements, which states:

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can **serve as an important practical contribution to the decision-making process** and will **not be used to rationalize or justify decisions already made.....**

By the time the alternatives for this travel management process were formulated, every one of the action alternatives proposed closing it to the public. Only the No Action Alternative would have left it open, and the Forest did not seriously consider it or incorporate any of its actions into the Draft Decision with respect to this route, even though that was requested in public comments. Therefore public input was not allowed to serve as an important practical contribution to the decision making process.

If, contrary to Forest Service policy, the Forest wished to make final route designation decisions during the TAP process, then it should have prepared an Environmental Impact Statement at that stage of the process, which it did not. Instead, it simply made those decisions in the TARs -- either directly through the express recommendations in the TAP reports, or indirectly through the use of the TAP scores in the MRS rubric. The entire travel management process that followed has been a *post hoc* rationalization of decisions already made in the supposedly non-decisional TAP process.

The Travel Analysis Reports were not decisional documents and the agency improperly treated them as final decisions which could not be challenged. In order to create a Minimum Road System as prescribed by the Travel Management Rule, the Forest must both conduct a predecisional Travel Analysis Process *and* subject the findings of that process to NEPA review. This travel management plan *is* that NEPA review and the Forest was obligated to consider evidence which contradicts the findings in the TAP reports. See Objection #2 for further discussion of this point. The automatic adoption of the TAP recommendations with respect to this route violated the Travel Management Rule and was therefore arbitrary and capricious.

Third, in making the decision to close NFSR 406 contrary to the recommendation produced by the TAP data and the MRS screening criteria, the Forest has also “offered an explanation for its decision that runs counter to the evidence before the agency.” *Motor Vehicle Mfrs. Ass’n.*, 463 U.S. at 43. The only actual evidence in the project record regarding this route is the TAP data and MRS Screening Criteria. The TAP recommendation is not evidence because it is simply an unsupported conclusory statement giving the opinion of the ranger district. A decision contrary to what that evidence supports without any explanation or further evidentiary support for the deviation inherently “runs counter to the evidence before the agency” and is both arbitrary and capricious and unsupported by substantial evidence.

NFSR 406 was given an overall High Benefit / Low Risk TAP rating, which under the MRS rubric should have resulted in its automatic inclusion in the Minimum Road System with a designation that would have made it open to public motorized use. The FEIS states that High Benefit / Low Risk roads were ideal candidates for the MRS and were supposed to remain as-is with no change in status. FEIS at 2-6. Nowhere in the MRS screening section does the FEIS give any reason why a H/L road should be closed to public use. Therefore the decision to convert it to an admin road could not have been produced by the MRS rubric, and could only have come from the arbitrary recommendation of the

ranger district in the TAP Report. Had the MRS rubric actually been applied to this route, it would have produced a management recommendation that kept it open to public motorized use.

While the TAP scores were not the only proper basis for final route designation decisions, they were supposed to be used to inform such decisions. The Forest's failure to consider the TAP scores for this route at all and instead base the decision to close it to the public solely on the arbitrary, one sentence recommendation in the TAP report, contrary to the MRS rubric's recommended management for H/L roads, was arbitrary and capricious and contrary to the evidence before the agency.

Fourth, as discussed in both Objections #1 and 3, basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the APA. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n.*, 463 U.S. at 43.

Critically, "NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data". *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458 at *29. Basing the decisions to close NFSR 406 on the conclusory and unsupported recommendations in the TAP report caused that decision to be based solely on the "bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS." *Great Basin Resource Watch*, 844 F.3d at 1103. This makes the decision inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

Fifth, basing travel management decisions solely on ranger district staff opinions also violates the Travel Management Rule (TMR) as codified in 36 C.F.R. § 212.5(b)(1), which states:

In determining the minimum road system, the responsible official must incorporate a **science-based roads analysis** at the appropriate scale and, to the degree practicable, **involve a broad spectrum of interested and affected citizens**, other state and federal agencies, and tribal governments.

The science-based analysis referenced in this CFR is the Travel Analysis Process and Minimum Road System screening criteria. While those are not the only allowable basis for deciding whether routes should be included in the Minimum Road System, deviations from that scientific process must be adequately justified by clearly articulated facts and reasoning. If Forest Service staff are allowed to arbitrarily deviate from the recommendations of the MRS rubric at whim without justifying those decisions at all, the minimum road system could no longer be said to be science-based in any meaningful way.

Because compliance with section 212.5(b)(1) of the TMR was part of the main stated Purpose and Need for this project, failing to comply with the TMR also fails to meet the purpose and need of the project, which is an independent reversible error.

C. CONCLUSION AND REQUESTED RESOLUTION

For the reasons stated above, the decision to close NFSR 406 Hudson Ditch to public motorized use and convert it to an admin road was arbitrary and capricious, unsupported by substantial evidence in the record and contrary to the evidence before the agency, and was otherwise contrary to law. We therefore request that the Reviewing Officer remand the Draft ROD to the Deciding Official with instructions to reverse this decision and leave NFSR 406 open to public motorized use as either a road or trail open to all vehicles.

XIII. Wildcat Canyon Objections

OBJECTION #38: CLOSURE OF WILDCAT CANYON ROADS (THE GULCHES)

A. INTRODUCTION AND CONNECTION TO PRIOR COMMENTS

We object to the proposed decommissioning in the Draft ROD of the Park County half of the nationally famous Wildcat Canyon offroad trail system, also known by local offroaders as “The Gulches” -- named for Hackett, Longwater, and Metberry Gulches. Both Patrick McKay and Marcus Trusty submitted extensive comments on these trails, listed in the table of our comments at the top of this document. CORE will be submitting a separate set of objections on these routes through its attorney Kevin Garden. This objection regarding these routes is intended to be complementary to those objections. We write separately here to emphasize certain points and to provide an additional objection on this issue on behalf of both CORE and Patrick McKay.

The five specific roads at issue in this objection are the Park County segments of **NFSR 220 Hackett, NFSR 220.A Crossover, NFSR 220.B Widow Maker, NFSR 540 Corral Creek, and NFSR 221 Longwater**. Former NFSR 205 Metberry has been acknowledged in the FEIS as being entirely under the jurisdiction of Teller County and is not covered by this travel plan. The same is true of former NFSR 202 Old Stage. NFSR 895 Predator and NFSR 897 Sportsman are two important connecting routes in this trail system that are still under Forest Service jurisdiction and are included in this travel plan, but those routes are currently open to the public and are proposed to remain open under the Draft ROD.

The five FSRs at issue in this objection form the core of what has long been the most popular offroad trail system near the Front Range of Colorado, and have been repeatedly acknowledged by the Forest Service as offering a unique and irreplaceable offroad driving experience. This includes multiple long loop opportunities in a spectacular rocky canyon along the South Platte River, and a crucial connection across the canyon between two major road networks in the area west of Woodland Park and north of Lake George.

Unfortunately, the western half of this trail system in Park County has been closed to the public in ML 1 status since the 2002 Hayman Fire, despite the Forest Service’s conclusion in the 2004 Hayman Fire Roads Management Project EA that the best management option for these roads was to reopen them to public use under county jurisdiction, through easements granted to the relevant counties by the Forest Service. This plan unfortunately failed because only Teller County was ultimately able to obtain

easements and reopen the half of the trail system in that county. Despite multiple attempts to apply for easements between 2009 and 2014, Park County was ultimately dissuaded from following through on this plan by the efforts of South Park District Ranger Josh Voorhis, who was personally opposed to this plan and persuaded the Park County Commission to abandon it.

As a result of Mr. Voorhis' intervention to thwart the plan approved by the Forest Service in the 2004 EA, the trails in Park County have remained closed with their ultimate fate in limbo for the last 18 years, preventing both of the primary loop opportunities offered by these trails from being legally driven. Because of the extreme popularity of these trails for motorized recreation, the Forest has never been able to effectively enforce this closure, and the technically "closed" trails in Park County have continued to be driven on an almost daily basis since the Teller County portions were first reopened around 2009.

The Wildcat Canyon roads have featured prominently in every four-wheel-drive trail guidebook published for Colorado and have been regarded for decades as being among the best offroad trails in the state. It is no exaggeration to say these are some of the most popular and highly valued motorized trails in Colorado. Yet despite this incontrovertible fact, the TAP reports used as the sole basis for the decisions on these trails in this travel management process falsely declared them to be of low recreational value and recommended them for permanent closure.

The permanent decommissioning of these incomparably valuable motorized trails is utterly unacceptable to the offroad community, and is wholly unsupported by any evidence or scientific analysis in the project record, rendering this decision arbitrary and capricious in the extreme.

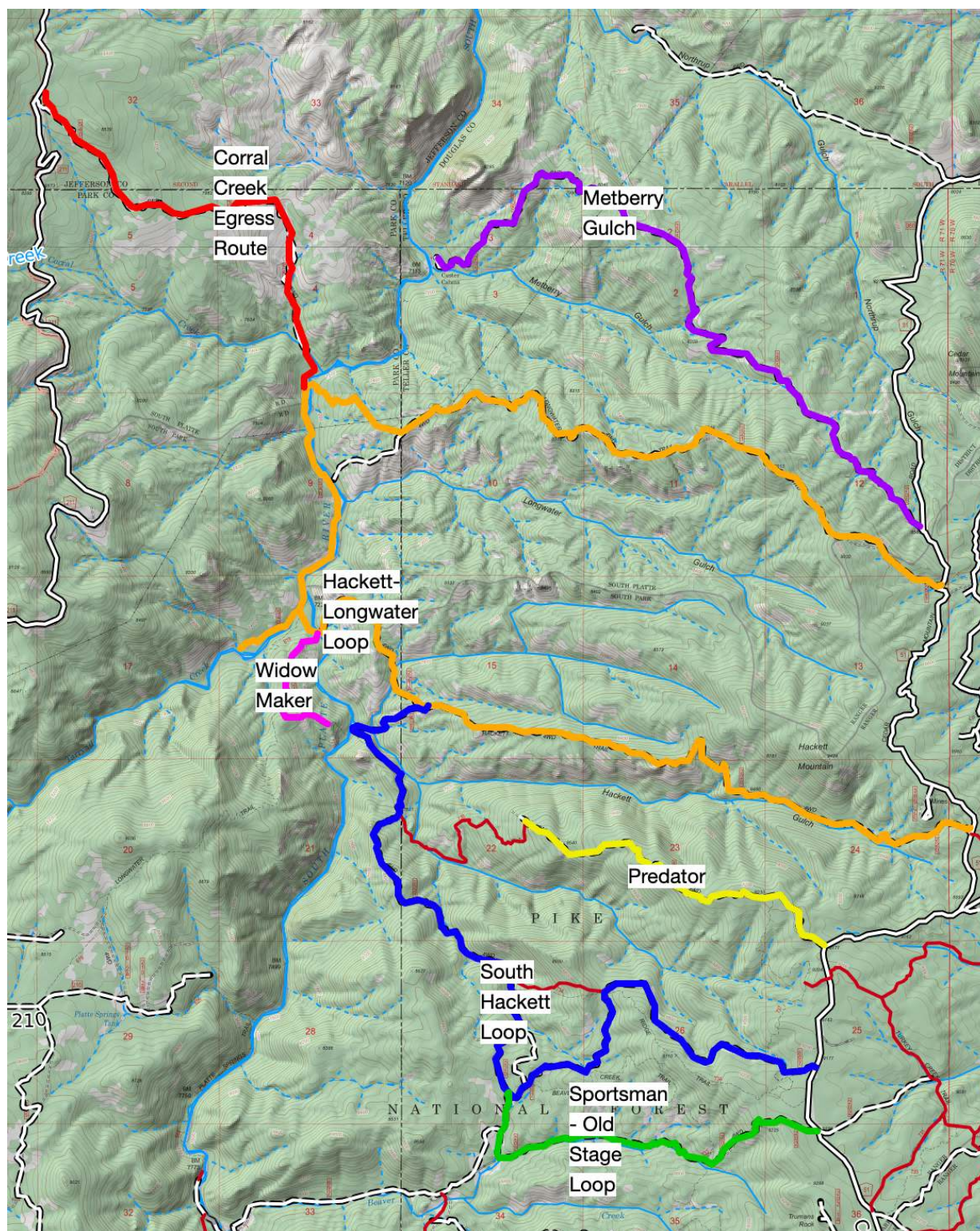
B. ANALYSIS

1. *Trail system description and current status*

Located in a remote area of the Pike National Forest north of Lake George which spans the South Park and South Platte Ranger District and four separate counties (Teller, Park, Jefferson, and Douglas), the Gulches have long been enjoyed by off-road vehicle enthusiasts as one of Colorado's premier low elevation four-wheel-drive trail systems, with the roads in the area dating back at least to the mid-20th century and predating the 1984 Forest Plan. This area has been highly prized by motorized users for many decades due to its spectacular scenery dominated by deep canyons, sweeping views of the Tarryall Mountains and Lost Creek Wilderness to the west, towering rock formations, and easy access to a remote portion of the South Platte River.

Located between 8000 and 9000 feet elevation, these trails are accessible year-round and are snow-free for most of the year. The Gulches are some of the first 4WD trails in the mountains to melt out in the spring, and they receive heavy traffic in the spring and fall when most other trails in Colorado are covered with snow. Because of their close proximity to Denver and Colorado Springs, they are a frequent destination for trail runs by Front Range four-wheel-drive clubs.

The 1984 Forest Plan designated the entire Wildcat Canyon area as a 2A management area emphasizing semi-primitive motorized recreation opportunities including four-wheel driving, motorcycling, and ATVs. It is also entirely inside a 'semi-primitive motorized' ROS zone. Motorized recreation has always been the dominant use in the area. There are no significant hiking trails in Wildcat Canyon, with most hikers choosing to go to the nearby Lost Creek Wilderness Area instead.



Map of the Gulches showing the three classic loop routes: (1) Hackett to Longwater (orange), (2) South Hackett to Sportsman (blue), and (3) Sportsman to Old Stage (green). The egress route along Upper Corral Creek to Matukat Road is shown in red, which when run in conjunction with Longwater or Hackett can provide a straight through route from Cedar Mountain Road to Matukat Road.

Metberry Gulch and Predator have always been strictly out-and-back trails for full-size vehicles (Predator connects to a motorcycle trail that loops with NFSR 220). The rest of the roads in Wildcat Canyon have historically connected to form a series of loops, shown on the map on the previous page.

The northern loop consisting of NFSR 220 Hackett Gulch, NFSR 220.A Crossover, NFSR 540 Corral Creek, and NFSR 221 Longwater Gulch was the most popular. The Hackett-to-Longwater loop was renowned for challenging rock obstacles and its three deep river crossings (two on the South Platte and one on Tarryall Creek), with the deepest crossing at the bottom of Longwater Gulch earning the nickname, “Teller County Car Wash” despite actually being in Park County. The upper section of NFSR 540 Corral Creek historically connected the Gulches trail system to NFSR 211 Matukat Road to the west and provided an important ingress and egress route to the area. When combined with either Hackett or Longwater, it created a straight-through connector route between Cedar Mountain Road to the east and Matukat Road to the west.

A second more difficult loop was formed by continuing southwest on NFSR 220 Hackett Gulch past the junction with NFSR 220.A, proceeding down to the river, then continuing back up the steep hill to the southeast over several challenging rock obstacles, until NFSR 220 intersects with NFSR 897 Sportsman. NFSR 897 Sportsman and former NFSR 202 Old Stage can also be run as a loop, which is the only full-size loop opportunity currently legally available in the area. The Hackett-to-Longwater and South Hackett loops are currently closed in Park County, forcing them to be run as out-and-back trails.

NFSR 220.B Widow Maker is a short spur at the southern end of NFSR 540. It historically was known for a steep hill climb up to a high point overlooking the Platte River, dubbed “Widow Maker Hill” because of its difficulty. The original Widow Maker Hill connected to the bottom of the Hackett Gulch trail at the South Platte River, but was closed by the Forest Service a decade or so before the Hayman Fire and is not included in the route inventory for this travel plan. We are not asking to have that section reopened, only the significantly less steep portion between NFSR 540 and the overlook at the top of the hill.

Prior to 2002, the four-wheel-drive trail system in Wildcat Canyon was one of the most popular areas in the Pike National Forest for motorized recreation, with visitors enjoying a wide variety of additional activities including camping, fishing, hunting, and rock climbing. The multiple interconnecting loops, river access, and straight-through connection these roads created between Cedar Mountain Road and Matukat Road provided critical connectivity and access for multiple recreational user groups. The Forest Service described the pre-Hayman Fire conditions in its 2004 Environmental Assessment:

The Wildcat Canyon area was **extremely popular because of the 4x4 challenge of the roads**, the South Platte River destination point, the **opportunity for long and scenic loop rides**, the close proximity to the Colorado Front Range and the **many other dispersed recreational opportunities available** in the area like fishing, hunting, camping, picnicking, and rock-climbing.

Environmental Assessment for Hayman Fire Roads Management Project (July 2004), at 3-17 (“Hayman Roads EA”).

In 2002, much of Wildcat Canyon was devastated by the Hayman Fire, which was caused by a Forest Service employee. All of the roads and trails in the area were closed for years after the fire, to the

significant detriment of motorized recreationists. As discussed below, only half of the pre-fire route network has since been reopened in Teller County (plus a short segment of Metberry Gulch Road in Douglas County). The half in Park County (plus a short segment of Corral Creek Road in Jefferson County) remain closed to the public 18 years later, cutting off both of the main loop routes described above which cross back and forth between Teller and Park Counties. As a result, the Hackett Gulch trail is cut into two disconnected out-and-back segments, while Longwater Gulch is also an out-and-back route.

2. Legal history

The roads in Wildcat Canyon long predate the 1984 Forest Plan and at least some were originally built as stagecoach roads. A 2004 resolution by the Teller County Commission (attached) following a study of the issue concluded that they all likely qualify as county roads subject to existing rights under RS-2477.⁸ By the early 1980s they were already popular routes for offroad motorized recreation, which was acknowledged in the 1984 Forest Plan by designating the entire area a 2A management zone dedicated to semi-primitive motorized recreation opportunities.

Between 1997 and 2004, the Wildcat Canyon area was extensively analyzed by the Forest Service in the South Platte Wild and Scenic River Study. Wild and Scenic *eligibility* was considered as a separate issue from *suitability* for each segment of the river that was analyzed. Had the Forest Service made a final suitability recommendation to Congress, it could have recommended that specific segments of the river be suitable for designation at a lower level of classification (but not higher) than they were found to be eligible for.

The original end-goal of the process was a suitability recommendation to Congress, as only Congress can designate a Wild and Scenic River corridor. In the end, the Forest decided to only make formal findings on eligibility. No suitability recommendation was made, with the Forest Service preferring to pursue protection of the river through the community-led South Platte Protection Plan (SPPP) instead of pursuing formal designation by Congress as a Wild and Scenic River.

Throughout this study, continued motorized recreation on the 4WD roads adjacent to the river was viewed as fully compatible with wild and scenic river eligibility, and Segment C of the river which included the Wildcat Canyon roads was specifically designated as eligible for a maximum status of 'scenic' rather than 'wild' in order to allow motorized use of these roads to continue.

The Final EIS and the Record of Decision for the Wild and Scenic Study approving the South Platte Protection Plan were both published in early 2004, by which time the roads were temporarily closed after the Hayman Fire. While this decision deferred to the travel management plan being created for the area on the ultimate status of these roads, both the EIS and ROD emphasized that all of the alternatives being considered in the Hayman Roads Management Project, ranging from full reopening to full closure of the Wildcat Canyon roads, would be fully consistent with the Wild and Scenic study and the SPPP. It also maintained the semi-primitive motorized ROS for Segment C of the river.

Following the Hayman Fire, the Forest Service conducted a travel management process for the burn area which was completed in 2004. This travel planning process was extremely controversial, with

⁸ <https://www.co.teller.co.us/publicworks/transportation/AdoptedFINALresolutionRS4277.pdf>.

motorized groups asking for the trails in Wildcat Canyon to all be reopened and environmental groups demanding they be closed (primarily based on claims of impacts to the South Platte River). According to the final decision document:

A majority of the comments received focused on roads in the Wildcat Canyon area such as Metberry, Longwater, Hackett and Corral Creek roads. The comments regarding water quality and motorized recreation access in Wildcat Canyon were divisive and polarized enough that the Forest Service sent a letter to 42 Off-Highway Vehicle (OHV) and environmental groups on March 11, 2004 requesting that they work together to develop a compromise alternative sufficient to both groups. However, for various reasons, not all groups were in agreement to seek a compromise alternative. Subsequently, the four project alternatives presented in the EA were developed by the Forest Service to cover the broad range of issues raised by the public during scoping and to present a broad range of alternatives to the Proposed Action.

Decision Notice and Finding of No Significant Impact for Hayman Fire Roads Management Project (Wildcat Canyon) - South Park District (Sept. 9 2004), at 4 (“Hayman Roads Decision Notice”).

The action the Forest Service finally settled on was basically to pass the buck. The Forest Service decided that Hackett, Crossover, Longwater, Metberry, and Corral Creek could be reopened to the public, “if and only if a written easement, agreement or special use permit is entered into with a public road management agency with respect to each road, and such easement, agreement or permit contains an agreed maintenance standard for each road.” *Id.* at 2. While the Forest Service accepted reopening the roads in principle and concluded that the benefits of such reopening outweigh the risks, it wanted the counties to bear the burden of restoration, maintenance, and enforcement rather than take responsibility for them itself.

Thanks to years of negotiations led by Predator 4 Wheel Drive (which had long been the primary caretaker of these trails), in 2005 Teller County was granted an easement and officially assumed jurisdiction over the portions of Hackett, Longwater, Metberry, and Old Stage Roads inside its boundaries. Douglas County was given an easement over a portion of Metberry Gulch Road which it then signed over to Teller County to manage. Metberry Gulch opened first, all the way to the Platte River. By 2009, the rest of the trails with easements were reopened to the public and are shown as county roads on the current MVUMs. Hackett, Longwater, and Old Stage were opened only to the Park County line, with a crucial portion in the middle of the southern Hackett loop being closed in Park County. Predator and Sportsman were reopened by the Forest Service. Crossover, Corral Creek, Window Maker, and the bottom of Longwater Gulch Road in Park County remained closed.

Park County, which contains the western half of the Gulches trail system, first applied for an easement in 2008. In contrast to Teller County, Park County’s attempts to obtain easements were repeatedly stonewalled by the Forest Service. Ultimately, Park County submitted no less than four easement applications between 2008 and 2014, with each being met with either silence or excuses from the Forest Service such as claims to have lost the paperwork or not having the budget to process it. Internal Forest Service emails (attached in the file “FS Easement Emails.pdf”) obtained by CORE show agency employees, including two different South Park District rangers, repeatedly searching for reasons not to grant the easements and attempting to discourage Park County officials from moving forward with their request.

Finally in 2015, Park County Manager Tom Eisenman retracted the county's easement application, leaving the Park County roads in limbo. As revealed by emails CORE received in response to our FOIA request (attached in the file "FS Easement Emails.pdf"), this action came shortly after a phone conversation with South Park District Ranger Josh Voorhis. In a discussion about this decision during the Park County Commission meeting held on October 8, 2020, Park County Commissioner Mike Brazell (who was on the Commission in 2015) told Patrick McKay that this decision was made "largely on the advice of the Forest Service." Park County's decision to rescind its easement application therefore was the direct result of Mr. Voorhis' intervention to thwart the plan approved by the Forest Service (including his predecessor at the South Park Ranger District) in its 2004 EA from being fully carried out.

In spring 2019, CORE and a number of other motorized advocacy groups petitioned the Park County Commission to try again to assume jurisdiction over the Park County portions of the Wildcat Canyon trails. Having learned of this, South Park District Ranger Josh Voorhis intervened again, having his staff write up a Supplemental Information Report (attached separately) which claimed changed circumstances prevented further implementation of the 2004 EA, which he then forwarded to Park County officials to dissuade them from even considering CORE's request. A short time afterward, the Park County Commission announced in a press release on April 16, 2019 that they were not interested in taking responsibility for these roads, and that they would defer to the Forest Service:

Park County Commissioners have had many requests from various 4-Wheel Clubs and off-road enthusiasts to reconsider our position as related to the re-opening of Wildcat Canyon, Hackett Gulch, Longwater Gulch, and Corral Creek to motorized vehicles.

Even though the commissioners are strong supporters of all recreation within Park County's boundaries, "We are not the experts in this type of recreation or establishing the needs for this type of recreation. We have left that up to the experts that we recognize as those individuals who manage public lands within the Forest Service."

In or around 2015, the County informed the South Park Ranger District that we have no interest in obtaining any easements related to the above mentioned areas. We are inclined to support any management plan the Forest Service will put forward in those areas.

Park County Commission, "Press Release - Park County Wildcat Canyon Area", April 16, 2019 (attached separately). CORE engaged in multiple discussions with the Park County Commission in the fall 2020, with the commissioners firmly reiterating their stance that they have no interest in taking jurisdiction over these roads.

Now, going on 20 years since the roads in Wildcat Canyon were first closed by the Hayman Fire, the roads in Park County remain in limbo, closed to the public in ML1 status. The Forest Service's attempt in 2004 to evade responsibility for these roads and turn over jurisdiction to the counties failed to achieve a definitive result, and the 2004 EA never contemplated or planned for a situation where only half of this highly interconnected trail system was reopened under the original plan to give easements to the counties.

Park County has made it clear that it will not take responsibility for these roads. It is up to the Forest Service to finally make a decision in this travel plan what their ultimate status will be. Given that the stated goal of the 2004 decision was to enable these roads to be reopened to the public, that intent

should be followed now by reopening the closed roads as trails open to all vehicles under Forest Service jurisdiction.

3. The situation on the ground is untenable and unsustainable

As a result of only one of the two counties assuming jurisdiction over the Wildcat Canyon roads, Hackett and Longwater remain closed at an arbitrary political boundary, with Hackett (NFSR 220) split into separate northern and southern segments that cannot be legally connected. This boundary forms an inconvenient, unnatural end to these trails, causing them to both end on barren hillsides in the middle of the Hayman burn area, well above their natural terminus at the Platte River. This makes for a fundamentally unsatisfactory experience and it is extremely tempting for riders to continue past the closure points down to the river.

In the past, either the Forest Service or Teller County has attempted to set up gates blocking the ends of these trails. In every case, the gates were quickly torn down and stolen or else people simply drove around them. As a result, there has been no sign on the ground for many years that the roads in Park County are technically closed, and numerous motorized users drive the closed roads every week either out of ignorance of their status or simply not caring. Occasionally rumors have spread online that the full Hackett to Longwater loop is open, spurring a rush of people to drive that loop before they learned that was not the case.

The Forest Service compounded matters in 2014, when it listed all of NFSR 220 as open in the Federal Registry, mistakenly opening the portion of the southern Hackett loop in Park County between the junction with NFSR 220.A and the southern portion of NFSR 220 in Teller County. Between 2014 and 2017, most online trail guides listed that section as open, and it became common for most users running Hackett to drive all the way to the point where the trail meets the river, with many proceeding up the hill to the southeast and running the full South Hackett loop. One of the patrols of the Mile High Jeep Club did an official trail run on the South Hackett Loop in fall 2017. Sometime in late 2017 the Forest Service again marked the trail as closed at the Park County line in online maps and databases, but it wasn't until a full year later in December 2018 the word got out in the offroading community that it was again closed and online trail guides were updated to indicate this.

The net result of this confusion has been that for the last 10 years, illegal motorized activity on the closed roads has been rampant, with little to no enforcement. While we do not condone illegal riding on closed trails, in this case illegal use should be considered indicative of the high public demand for these roads. Those running the trails illegally are in most cases well-meaning, responsible riders who wish to follow the law and "stay the trail," but are unable to do so because of the lack of good information about the status of roads in the area and the complete absence of signage on the ground. While these roads may be technically closed, as a practical matter on the ground, they are not.

Because the roads in Park County have not been maintained for the last 10 years despite people continuing to drive them regularly, the conditions of the roads have deteriorated in some places. Overall they are in surprisingly good condition and are still very much present on the ground and easily drivable by appropriately equipped vehicles.

However the steep hill on NFSR 220 ascending to the southeast from the Platte River (pictured right) has become extremely rutted and eroded. As a result, a bypass has formed adjacent to the main route, and most riders now take this route. While this section of hillside could be stabilized and reopened with some volunteer maintenance work that CORE and Predator 4WD would gladly undertake, or possibly rerouted, that has not happened due to that section's status as technically closed.

It is important to note that NFSR 220 never crosses the South Platte River but is entirely on the eastern side of it. The Draft ROD already proposes to open half of this currently closed segment, just leaving one short 0.84 mile segment closed which breaks the entire South Hackett loop. Aside from some stabilization and erosion mitigation work that needs to be done on the hill climb, and fencing off an unnecessary entrance to the river, this entire loop could be reopened without any impacts to the South Platte River.

While the impacts of vehicles crossing the Platte River have been extremely exaggerated, those impacts are not lessened by the roads' status as technically closed. People continue to drive across the river on a regular basis, and multiple times every year recovery groups have to be called out to recover stalled vehicles that hydrolocked in the unregulated river crossings. This could be prevented if the trails were actively managed and the Forest Service hardened river crossings and implemented seasonal closures of the crossings during spring runoff and high water conditions.⁹

The Forest Service's current approach to the Park County portion of the Gulches of nominal closure, neglect, and non-enforcement have failed. Closure isn't management. If these trails were legally opened and properly managed, almost all negative impacts could be mitigated. As it is, negative impacts continue to accumulate, compounded by the Forest Service's negligent refusal to properly manage the area. The Forest's failure to enforce the current closure also shows that the permanent closure proposed in the Draft ROD is likewise doomed to failure. Whatever gates or barricades the Forest installs in order to block the entrances to the closed roads would likely be driven around or destroyed. It is time for the Forest Service to do its job, take responsibility for the area, and meet the strong public demand for these trails by reopening them and managing them as the valuable recreational assets they are.



⁹ See Coalition for the Upper South Platte, *South Platte Baseline Study*, 27 (October 2018), (attached separately), noting erosion damage from unmanaged OHV use along Corral Creek Road, and recommending either "Enforce and harden closure, or **develop a plan to manage recreation.**" (Emphasis added.)

4. All prior analysis by the Forest Service supports both the extremely high value of these roads for motorized recreation and reopening them to the public

Because of its location along the South Platte River in the Hayman burn zone, the Wildcat Canyon trail system has been subject to two different environmental analysis processes under NEPA by the Forest Service in the last 20 years.

Despite the decades-long effort by anti-motorized environmental groups to get the motorized routes in the area closed, every scientific analysis that has been conducted regarding this area has concluded that, when managed properly, these routes cause minimal impacts to the river or the wildlife in the area, and that their extremely high recreational benefit outweighs any negative impacts. Indeed, the Forest has found that, as long as the roads are properly maintained, they are actually *net beneficial* to the environment. Yet as discussed below, the flawed and non science-based Travel Analysis Reports which form the sole basis for the decision to close these routes in the DROD rated them all as low benefit / high risk roads with low recreational use benefits, contrary to all prior science-based analysis.

a) Wild and Scenic River Study

The first of the two NEPA processes which analyzed these roads was the South Platte Wild and Scenic River Study. The documents from this process are especially insightful as they include analysis from both before and after the Hayman Fire. Segment C2 was the analyzed segment of the South Platte River that included the four-wheel-drive roads in Wildcat Canyon.

The Draft Legislative EIS published in 1997 (when the Forest was still considering both eligibility and suitability for Wild and Scenic designation), included as a key assumption for its Preferred Alternative J, “The chief assumptions of this alternative are that: ... 6) there are important motorized recreation opportunities in portions of Wildcat Canyon that can be maintained without impacts to the area's OR [Outstanding Remarkable] values.” Wild and Scenic DLEIS at IV-11. In the transportation analysis section for the No Action Alternative A, it described the extreme importance of these roads to the offroad community:

Existing roads in Segment C in Wildcat Canyon, such as the off-highway vehicle road that crosses the South Platte from Corral Creek (FDR 540), turns south and parallels the west bank for a mile, then fords the South Platte and climbs out of the canyon to the east near Longwater Gulch (FDR 221) would remain open. The Hackett Gulch Road (FDR 220) which goes down to the river would remain open but the ford has been closed. The four-wheel drive Northrup Gulch Road (FDR 206) was closed several years ago about ¼ mile from the river to mitigate erosion and protect resource values would remain closed in all alternatives. The Metberry Creek Road (FDR 205) which currently goes to the river, is planned to be closed below Custer Cabins to reduce erosion on a 1/4-mile steep section in all alternatives. **These open roads are very valuable to the motorized community as they represent a level of challenge in four-wheeling that is not abundant near the Front Range.** Four-wheel drive and off-highway vehicle clubs would continue to work with the Forest Service to ensure the protection of resource values in this area. Additional routes in the area might be opened as long as resource values could be protected under the Forest Plan.

Wild and Scenic DLEIS at V-27 – V-28.

The 1997 DLEIS originally contained an alternative that designated Segment C2 as both eligible and suitable for 'wild' status, which would have forced the closure of the motorized routes inside of it. By the time the FEIS was published in January 2004 all alternatives only considered it eligible for a maximum protection level of 'scenic.' The FEIS explains this change was because of the presence of motorized routes in this segment of the river:

Because motorized access is allowed with crossings in the section from Hackett Gulch to the Corral Creek-Longwater Gulch crossing, this section of the segment is classified scenic - (3.0 miles). This is a correction from the original eligibility determination conducted in 1984 in Segment C2. Classifications are intended to reflect current conditions and not anticipated conditions. If conditions change, for instance motorized travel in the canyon is prohibited, then the classification for this segment would be re-evaluated for a possible change to wild status.

Wild and Scenic FEIS at 3-17. In the response to Comment #31 in the Wild and Scenic River FEIS, the Forest stated, "*None of the alternatives show all of Segment C as "wild" because of the traditional motorized use that has occurred in that area and the belief during this study that **some manner of motorized access in the area was appropriate.***" Wild and Scenic FEIS, Appendix J at J-6 (emphasis added). In response to comment #51, the Forest Service specifically recognized the work motorized groups had done regarding resource protection in the area:

Comment #51 — Offroad vehicle user groups have cooperated to protect habitat in Wildcat Canyon.

The Forest Service recognizes and applauds the efforts put forth by many of the user groups to protect habitat in Wildcat Canyon. The reclassification of Segment C2 as "scenic" further recognizes traditional motorized uses as addressed in the response to comment #48.

Wild and Scenic FEIS, Appendix J at J-7. Finally in response to comment #40 calling to keep Wildcat Canyon classified as eligible for 'wild' status, the Forest Service replied:

The classification for Wildcat Canyon has been revised so that the section 1/4 [mile] upstream from Hackett Gulch to 1/4 mile downstream of Corral Creek is now *scenic* rather than *wild*. This error from the original eligibility and classification study recognizes traditional recreational motorized activities in that area of the river corridor. This classification does not have an affect [sic] on or is affected [sic] by the Hayman closure of roads into this area. That closure is in affect [sic] to protect the safety of the public and to conduct a roads analysis to determine the effects of the fire on the resource as well as road safety and stability.

The designation alternatives do include the OHV crossings. However, these segments have been reclassified as *scenic*, in recognition of traditional motorized recreational uses. As a result, none of the designation alternatives restrict OHV use on existing legal trails. A scenario involving such restrictions is essentially an alternative considered but not analyzed in detail.

Wild and Scenic FEIS, Appendix J at J-33.

From the quotes above, three things are clear: (1) the Forest Service recognized the uniquely high value of the roads in Wildcat Canyon for motorized recreation and recognized the work of motorized user groups to protect the habitat there, (2) Segment C of the river was specifically designated as eligible for 'scenic' status rather than 'wild' in order to allow motorized use on the roads to continue, and (3) the Forest Service believed that "some manner of motorized access in the area was appropriate"

and was fully consistent with protecting the Outstanding Remarkable Values (ORVs) identified for that segment in the Wild and Scenic River study. The ORVs for Segment C were Scenery, Geology, Fisheries, and Wildlife. While there was no ORV listed for recreation, that does not mean recreation (including motorized recreation) was incompatible with the area, as the Forest made clear in the quotes above.

By the time Wild and Scenic River Report and FEIS was published, the Wildcat Canyon roads were temporarily closed because of the Hayman Fire, and the Wild and Scenic FEIS deferred to the decision in the Hayman Roads Management Project for the final travel management decision on the status of these roads. But it made it abundantly clear that the roads were not causing any impacts on the river that threatened the ORVs for Segment C or its 'scenic' eligibility status. When the Final Record of Decision was published for the Wild and Scenic River study later in 2004, it included the following section describing the relationship between that decision and the pending decision in the Hayman Fire Roads Management Project.

Relationship of this Decision to the Hayman Travel Management Project - This is a separate project with its decision being scheduled for issuance later this year. It deals with travel management within the area burned by the Hayman fire and overlaps with this Decision regarding the Scenic portion of Segment C above Chessman Reservoir (aka Wildcat Canyon). Comments on the Final EIS expressed concern over the potential for inconsistency between the two decisions.

Before the Draft EIS was issued, one early focus of public involvement was on motorized use in the Wildcat Canyon area. Multiple interests were involved in the dialog. **The outcome was a conclusion that it was appropriate to have some amount of motorized travel in that area.** This outcome is reflected in Alternative J, which was one of the Draft EIS's preferred alternatives and shows the Wildcat Canyon area as Scenic, which allows for motorized travel. The Hayman Project is now analyzing the overall burned area in light of damages caused by the Hayman fire, and will make a decision on the area's future travel management in light of resource protection. In the event of conflicting elements between the two decisions, the decision elements that are most protective of river values will prevail.

However, at this time I do not expect a consistency problem to emerge. This is because the Hayman decision is likely to fall between two extremes, both of which are consistent with the wild and scenic decision. At one extreme the Hayman decision might close all motorized routes passing through the Scenic portion; this would amount to a high degree of protection for river values, but not an inconsistency with this wild and scenic Decision. At the other extreme the Hayman decision might call for returning travel management to pre-Hayman conditions, which also is not an inconsistency because those conditions represent the situation extant at the time the pre-Draft EIS dialog took place. Even so, should there be an unexpected inconsistency between the two decisions that compels the wild and scenic decision to be modified, the necessary modifications will be made at that time.

Wild and Scenic ROD at 5-6 (emphasis added).

From the perspective of the Wild and Scenic River Study, any outcome in the Hayman Fire travel management project, ranging from full closure to full reopening of all the roads in Wildcat Canyon, was fully compatible with protecting the values identified for Segment C in the Wild and Scenic Study. The Forest Plan amendment which was adopted as part of the Wild and Scenic ROD also specifically maintained the "semi-primitive motorized" ROS for Segment C. Prior drafts of the Forest Plan amendment specifically included direction to maintain current motorized access to the Wildcat Canyon

roads, but this item was removed in light of the Forest's decision to defer to the outcome of the Hayman Roads Management Plan. Wild and Scenic ROD at 11.

b) South Platte Protection Plan

The South Platte Protection Plan, which was adopted alongside the decision in the Forest's Service Wild and Scenic River Study, also recognized the high quality motorized recreation opportunities offered by the Wildcat Canyon roads and allowed for that use to continue, should the Forest Service choose to reopen the roads in the Hayman Fire Roads Management Project decision. It mentioned that the ORVs identified for a given segment did not preclude other existing values, and identified **"Challenging 4WD roads not represented within a one-hour drive of this area"** as one of the current uses/values of Segment C. South Platte Protection Plan, Wild and Scenic FEIS Appendix A, Attachment C, at Att C-9. It listed among the 'opportunities' for this segment:

Maintain wild character for undisturbed wildlife habitat, high water quality, wild trout fisheries and semi-primitive motorized recreation on Longwater Gulch, Hackett Gulch and Corral Creek connection between them, and non-motorized back country recreation in the rest of this segment.

Id. Under 'challenges' it listed:

- Maintaining the present Forest Service designated 4WD roads and motorized trails while protecting the environment and the wild, challenge character of the area is a high priority. It calls for maintaining the Longwater Gulch 4WD road (FDR#221), including the South Platte River ford allowing connection to the Corral Creek road. Maintaining the Corral Creek 4WD road (FDR#540) including the Tarryall Creek ford allowing connection to the Hackett Gulch road. Maintaining the Hackett Creek 4WD road (FDR#220, 220.A, 220.B), including the South Platte River ford allowing connection to the Corral Creek road. This will protect the present investment of volunteer work by 4WD clubs of the Colorado Association of 4WD Clubs to maintain access on these roads.
- Establish volunteer agreements between the Forest Service and 4WD clubs, motorcycle and ATV clubs. Define the maintenance level on each 4WD road and motorized trail to protect the motorized challenge and to perpetuate the present low use of this section.
- Develop strategies to address motorized recreation off designated 4WD roads and motorized trails. Include such educational actions as informational maps and signage, travel management posters describing allowed uses on all 4WD roads, motorized trails and foot trails, immediate non designated route rehabilitation, and law enforcement presence.

Id. at Att C-9 - Att C-10. Finally, the section on travel management in the SPPP noted:

Through previous discussions on travel management issues, participants in developing the SPPP reached general agreement that continued use of designated off-highway vehicle trails in Wildcat Canyon and the Corral Creek crossing would be allowed in the future, but that illegal routes should be closed and motorized use along the river corridor not expanded.

South Platte Protection Plan, Wild and Scenic FEIS Appendix A, Attachment G, at Att G-16. Thus the South Platte Protection Plan was also fully compatible with, and approved of, continued motorized use of the existing 4WD roads in Wildcat Canyon.

c) Hayman Fire Roads Management Project

The Environmental Assessment for the Hayman Fire Roads Management Project was published in July 2004. While this EA considered the travel management status for all of the roads in the Hayman Fire burn area, the roads in Wildcat Canyon were a major focus of its analysis and a noted area of controversy. It included the following description of the Wildcat Canyon motorized trail system, which acknowledged its extremely high value for motorized recreation:

One Hayman area of the South Platte District that is **especially popular with four-wheel drive motorized users** is the northern section of Wildcat Canyon which includes nationally-known four-wheel drive roads such as Metberry, Northrup, Longwater, and Corral Creek. Due to the Hayman fire and subsequent resource and safety concerns, these roads have been closed to public motorized access since June 2002. Nonmotorized access to this area was allowed in April 2003. **The Wildcat Canyon area was extremely popular because of the 4x4 challenge of the roads, the South Platte River destination point, the opportunity for long and scenic loop rides, the close proximity to the Colorado Front Range and the many other dispersed recreational opportunities available in the area like fishing, hunting, camping, picnicking, and rock-climbing.** Furthermore, many local OHV clubs were involved in the maintenance and upkeep of these roads through grant agreements with the Colorado State Parks OHV Fund and partnerships with the US Forest Service. Over the past 8-10 years, a considerable amount of volunteer hours and over \$100,000 in grant monies has been dedicated to hardening and rehabilitating four-wheel drive roads in the area, especially Longwater, Corral Creek and Hackett.

The Wildcat Canyon area is chiefly located in the **2A Management Area where the primary management direction is for semi-primitive motorized recreation opportunities** such as snowmobiling, four-wheel driving, and motorcycling. The ROS setting for the portion of this MA is Semi-Primitive Motorized (SPM) which is mostly appropriate since the area appears natural and the presence of other users is limited since only four-wheel drive vehicles can handle the roads. However **the tremendous popularity of this area and prevalent management presence especially on weekends and holidays** makes this area appear at times to be more in the ROS setting for Roaded-Natural (RN).

Hayman Roads EA at 3-17 - 3-18 (emphasis added).

The Wildcat Canyon roads ended up being the most controversial part of the Hayman Roads Management Project, with motorized groups asking for the trails in Wildcat Canyon to all be reopened and environmental groups demanding they be closed (primarily based on claims of damaging impacts to the South Platte River). Over 1500 comments were received during the comment period. According to the final decision document:

A majority of the comments received focused on roads in the Wildcat Canyon area such as Metberry, Longwater, Hackett and Corral Creek roads. The comments regarding water quality and motorized recreation access in Wildcat Canyon were divisive and polarized enough that the Forest Service sent a letter to 42 Off-Highway Vehicle (OHV) and environmental groups on March 11, 2004 requesting that they work together to develop a compromise alternative sufficient to both groups. However, for various reasons, not all groups were in agreement to seek a compromise alternative. Subsequently, the four project alternatives presented in the EA were developed by the Forest Service to cover the broad range of issues raised by the public during scoping and to present a broad range of alternatives to the Proposed Action.

Hayman Roads Decision Notice - South Park District at 4.

In the Hayman Roads EA, Alternative A (No Action) would have left all closed roads in ML1 status. Alternative B would have reopened all roads in Wildcat Canyon and restored them to their pre-fire condition. Alternative C (the Preferred Action) would have reopened all of the Wildcat Canyon roads except Metberry Gulch and the last two miles of NFSR 540 (the lower portion along the river), which would be converted to a non-motorized trail. Alternative D would have decommissioned the entire Wildcat Canyon trail system and converted NFSR 540 to a non-motorized trail. Alternative C was considered the Preferred Alternative because the Forest thought it offered the best balance between resource protection and providing adequate opportunities for motorized recreation in the Wildcat Canyon area.

When analyzing the effects of Alternative D, the Forest notably concluded the closure of the popular 4x4 roads in Wildcat Canyon would result in unacceptable user displacement and increased impacts in other nearby motorized recreation areas which would serve as substitutes:

Crowding and Density – Since 79 miles of classified roads would not be available to motorized vehicles under this alternative, visitors who have historically frequented the area for driving for pleasure, sightseeing, or OHV riding would be displaced, or forced to find other areas to carry out their recreation activity. This is already occurring since the roads in Wildcat Canyon (e.g., Hackett, Metberry, Longwater, etc.) have been closed to motorized vehicles because of safety and resource concerns resulting from the Hayman Fire.

Many motorized recreationists are now carrying out their activities at other locations on the Pike National Forest such as Rainbow Falls, Rampart Range, Badger Flats – China Wall, and Breakneck Pass. In these alternate or substitute locations, visitor density has most likely increased which could lead to management issues such as visitor conflicts, public safety issues, perceived crowding – or the feeling of too many people in one place, resource damage, creation of unclassified roads, and a reduction in quality of the visitor experience. For example, since the Hayman Fire, the Badger Flats – China Wall area west of the Tarryall Road (Park Co. Road 77) has become very popular with motorized recreationists and there has been a reported six new motorized hill climbs in the area, vehicles going around road barriers onto closed roads, and vehicles crossing riparian areas including the Tarryall River (Thibodeaux, pers. comm., 2004). Similar motorized issues are also reported to be occurring on those roads in Hayman that are currently open and at Breakneck Pass in the alpine tundra environment of the Mosquito Range (Thibodeaux, pers. comm., 2004).

Under Alternative D, there would be more displacement of visitors to motorized areas outside of the Hayman area since many popular Forest roads would be closed and there are few comparable substitute motorized recreation sites within the Hayman area. By keeping more classified Forest roads open to motorized use in the Hayman area, this could help reduce the visitor pressure and impacts being felt at other areas on the Pike National Forest such as Badger Flats, China Wall, Rainbow Falls, and Breakneck Pass.

Hayman Roads EA at 4-55. This is particularly noteworthy because (a) the FEIS and Draft ROD in the instant travel management process, which likewise to propose to close all of the roads in Wildcat Canyon that remain under Forest Service jurisdiction, contains no such analysis of user displacement resulting from the closure of these trails; and (b) the impacts predicted here are precisely what has occurred as the result of the Wildcat Canyon roads being closed for the last 18 years.

Two areas mentioned in the above analysis, Badger Flats/China Wall, and Browns/Breakneck Pass (aka Sheep Mountain), have recently undergone their own area-specific travel management processes because of significant issues with overuse and resource damage that were occurring there. Those separate travel planning projects were likely necessitated in large part due to the continued closure of the Wildcat Canyon roads displacing users there.

Of additional note, the EA concluded that Alternative D's proposal to close all of the roads in Wildcat Canyon was **not consistent with the Forest Plan**, and that a Forest Plan amendment would be needed in order to close all motorized routes in 2A and 2B management areas:

The majority of classified Forest roads recommended for closure or decommission are in the 2A and 2B Management Area (MA) category which emphasizes semiprimitive motorized, roaded, and roaded natural recreation opportunities respectively. Furthermore, the Recreational Opportunity Spectrum (ROS) category for these MA's is either Semi-Primitive Motorized (SPM) or Roaded-Natural (RN), which again emphasizes access by motorized vehicles

Similar to Alternative A, Alternative D would not meet the requirements of the PSICC Forest Plan MA direction for MA 2A and 2B if motorized travel is prohibited in large, traditional motorized recreation areas like Wildcat Canyon. If Alternative D was selected, a Forest Plan amendment would probably be necessary to emphasize the new nonmotorized recreation use in these areas. To address resource concerns, existing management tools, such as seasonal road closures or other timing restrictions, should be considered.

Hayman Roads EA at 4-56. As discussed below, the proposed actions with respect to the Wildcat Canyon roads in Draft ROD of the instant travel plan are nearly identical to the proposal considered and rejected in Alternative D in the Hayman Roads EA, yet no Forest Plan amendment has even been considered regarding this area in this entire process. Thus the same inconsistency with the Forest Plan applies here.

At the time the Hayman Roads EA was published in July 2004, the Forest thought that Alternative C, which would have reopened all of the Wildcat Canyon roads besides Metberry Gulch and the lower portion of Corral Creek, represented the best combination of resource protection, restoration, and continued motorized access. However when the Decision Notice and Finding of No Significant Impact (FONSI) was published in September 2004, the final decision adopted for the Wildcat Canyon roads was somewhat different.

The Forest prepared two separate Decision Notices specifically for the Wildcat Canyon area - one for the South Park Ranger District and one for the South Platte Ranger District. These two Decision Notices adopted a modified version of Alternative C from the Hayman Roads EA, in which instead of the Forest Service reopening the Wildcat Canyon roads itself, it would transfer jurisdiction over those roads to the underlying counties, which would then be responsible for rehabilitating them from the fire damage and reopening them to public motorized use.

The South Park Decision Notice stated:

The decision will allow for the opening of the following roads, if and only if a written easement, agreement or special use permit is entered into with a public road management agency with respect to each road, and such easement, agreement or permit contains an agreed maintenance standard for each road:

- Forest Service Road 220, also known as Hackett Road (7.16 miles);
- Forest Service Road 220.A, also known as Crossover (1.35 miles);
- Forest Service Road 220.B, also known as Widow Maker (0.53 miles);
- Lower (southern) section of FSR 540, also known as Corral Creek Road (2 miles).

Hayman Roads Decision Notice - South Park District at 2.

And the South Platte Decision Notice stated:

The decision will allow for the opening of the following roads, if and only if a written easement, agreement or special use permit is entered into with a public road management agency with respect to each road, and such easement, agreement or permit contains an agreed maintenance standard for each road:

- Forest Service Road 205, also known as Metberry Road (4.63 miles);
- Forest Service Road 221, also known as Longwater Road (4.63 miles);
- Upper (northern) section of FSR 540, also known as Corral Creek Road (2.9 miles)

Hayman Roads Decision Notice - South Platte District at 2.

These decision documents adopted a plan which had been worked out during the intervening months between the publication of the EA and Decision Notices, in which the Forest Service (apparently concerned about taking on the maintenance costs for these roads) would turn over jurisdiction of the Wildcat Canyon roads to their respective counties, with the counties agreeing to take responsibility for maintaining them and reopening them to public use. The counties in turn, would allow motorized groups such as Predator 4WD (which had historically adopted these trails and been responsible for their maintenance) to maintain the roads, at little to no cost to either the counties or the Forest Service.

This plan was fully carried out with respect to the roads in Teller County and Douglas County (the latter of which' easement was then transferred to Teller County) and has been a resounding success. As discussed above, this plan was never allowed to be carried out regarding the roads in the lower parts of the canyon in Park County because of the personal opposition of South Park Ranger District staff to reopening those roads. The South Park District first delayed processing Park County's easement applications and claimed to have lost them, then later South Park District Ranger Josh Voorhis persuaded the Park County Commissioners and Park County Management Tom Eisenman to abandon the plan and withdraw their easement application.

The only reason this issue is back before the Forest Service today instead of having been definitively resolved in 2004 is because of the intervention by later South Park District staff to thwart the plan agreed to and adopted by then South Park District Ranger Sara Mayben in 2004. This left the Wildcat Canyon roads stuck in limbo half opened and half closed, which was a situation the 2004 decision never contemplated.

While the Decision Notices did say the roads would be opened "if and only if" the counties agreed to manage them, they did not say what should be done if the counties refused to agree to an easement. Nor did they ever contemplate the situation today where half of the roads were turned over to county jurisdiction while the other half were not, leaving the Wildcat Canyon trail system awkwardly divided into closed and open areas based on an arbitrary political boundary. At the time, all counties involved agreed to the deal, and no one contemplated what would happen if one county backed out.

Nevertheless, the Decision Notices in the 2004 Hayman Roads Management Project found that reopening all of the Wildcat Canyon roads to public motorized use under county jurisdiction was the best way to manage the area going forward. The South Park DN stated:

Alternative C as modified does the best job of balancing concerns for recreation access and for watershed and soil health while meeting the purpose and need of this project. The modified alternative will help achieve Forest Plan goals to provide a broad spectrum of developed and dispersed recreation opportunities; increase diversity for wildlife and habitat improvement; maintain or improve water quality to meet Federal and State standards; protect riparian areas and wetlands from degradation; and manage the transportation system for increased cost effectiveness, efficiency and utility (EA, Chapter 1, page 1-3).

Hayman Roads Decision Notice - South Park District at 2. Alternative D, which decommissioned all of the roads in Wildcat Canyon, was rejected because, "Water quality and soil erosion concerns would be addressed but many of the recreation access needs would not be sufficiently addressed." *Id.* at 3.

The Decision stated that the modified version of Alternative C was chosen in order to address the concerns of motorized users and avoid impacts to other recreation areas from user displacement and concentration:

Alternative C as modified addresses many of the public access concerns from motorized recreation users. Many of the recreation opportunities available in the Hayman area before the fire would be made available following the required road rehabilitation work (EA, pg. 4-52). As a result, there would be less displacement of visitors to motorized areas outside of the Hayman area since many popular Forest roads would be reopened (EA, pg. 4-53). Keeping more classified Forest roads open to motorized use in the Hayman area will help reduce the potential for crowding, low visitor satisfaction, and resource impacts being felt at other parts of the South Park Ranger District, such as China Wall and Breakneck Pass (EA, pg. 4-53).

Hayman Roads Decision Notice - South Park District at 5-6.

Regarding impacts to the South Platte River, the Decision found that this plan would produce a net long-term benefit to the river:

The rehabilitation and/or decommission of roads, especially those with a moderate or high risk rating for aquatics (EA, pgs. 4-1, 4-9, 4-10), will help reduce erosion and stream sediment loading and will result in a long-term beneficial impact to water quality (EA, pgs. 4-3, 4-6), riparian areas (EA, pgs. 4-9, 4-10), downstream fisheries (EA, pgs. 4-9, 4-10) and aquatic habitat (EA, pgs. 4-9, 4-10).

Id. at 5. It would not adversely affect the Wild and Scenic eligibility of the South Platte River:

As noted in the EA (pg. 4-58), the selected alternative will protect the fisheries value by the long-term reduction of sediment delivery to the river. The selected alternative will not adversely affect the finding of eligibility and will maintain the classifications identified in the South Platte Wild and Scenic River Study (EA, pg. 4-59).

Id. at 6. The Forest also found that reopening the roads would not significantly affect wildlife such as the pawnee montane skipper or Preble's jumping mouse. *Id.* at 5.

To conclude, the Forest found in a decision under NEPA that reopening the Wildcat Canyon roads, albeit under county jurisdiction and maintenance, was the best way to manage this area and was the

best balance between environmental protection and providing high quality opportunities for motorized recreation in an extremely valuable motorized trail system. The closure of that trail system would have caused unacceptable impacts in the form of user displacement and concentrated impacts in other areas, and the Forest specifically chose an alternative that would avoid those negative cumulative impacts.

The Decision in the Hayman Fire Roads Management Project still stands today and has never been vacated or invalidated.¹⁰ Yet it is not mentioned even once in the record for this project, nor has the Forest made any effort to explain the stark discrepancy between its findings in that process and the decisions being adopted regarding these roads in this process. As discussed below, this renders the decisions with respect to these roads inherently arbitrary and capricious.

5. The TAP reports which formed the basis of the DROD decision improperly evaluated the Wildcat Canyon roads and contradicted the findings of the prior NEPA proceedings

While neither the FEIS nor the Draft ROD give *any* specific reasons for the decision to decommission all of the 4WD roads in Wildcat Canyon except for the southern segment of the currently closed portion of NFSR 220 in Park County, it is clear from the Forest's responses to public comments and its overall approach to this travel management process that these decisions were based largely if not entirely on the ratings and recommendations in the TAP reports.

Our comments regarding these roads focused heavily on the erroneous TAP scores given to these roads, which were falsely given low recreational benefit scores solely because they were temporarily closed after the Hayman Fire, despite having been acknowledged by the Forest Service in two prior NEPA proceedings as having extremely high value for off-highway recreation when they were open. In response to these comments, the Forest merely said:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. Revision of the TAP/TAR reports is beyond the scope of this undertaking. Motorized access to the South Platte River via NFSR 220, 220.A, 220.B, and 540 is analyzed in Alternative D.

Response to comment 21-13 by Patrick McKay, FEIS Appendix D at D-103.

While Alternative D considered opening *some* of the Wildcat Canyon roads, it notably did *not* open either the currently closed section of NFSR 220 Hackett in Park County or the currently closed section

¹⁰ While the South Park and South Platte Districts did publish a Supplemental Information Report (SIR) (attached separately) in 2019 claiming that "changed conditions or new information" made the 2004 Hayman Roads decision no longer "fully current and sufficient", and required further supplemental analysis before additional implementation actions could be taken (see Supplemental Information Report for the Hayman Fire Roads Management Project (April 24, 2019) at 4, that document contained no actual scientific analysis and did not invalidate or vacate the Hayman Roads decision. Instead, this document was hastily drawn up by the South Park District biologist in an effort to thwart CORE's petition for the Park County Commission to renew its easement application for the Wildcat Canyon roads, and was based solely on undocumented anecdotal evidence. Moreover, all of the issues that the document claimed were "changed circumstances" (except the release of bighorn sheep by Colorado Parks and Wildlife in the area north of Wildcat Canyon) were fully analyzed in the 2004 EA. Almost all of the sources cited in this document predated the 2004 decision, and one of the supposed "changed circumstances" (the confirmed presence of the pawnee montane skipper in Wildcat Canyon) was known and analyzed in the DLEIS of the South Platte Wild and Scenic River Study in 1997.

of NFSR 221 Longwater between the Park County line and the crossing of the South Platte River at the junction with NFSR 540 Corral Creek. It therefore failed to fully open either of the two primary loop opportunities in the historical Wildcat Canyon/Gulches trail system. As pointed out in our comments, this made Alternative D utterly insufficient and non-responsive to the numerous requests the Forest received in the scoping comments asking for the entire Gulches trail system to be reopened.

In the end, the Deciding Official did not choose to incorporate any of the Alternative D actions with respect to these roads into the Draft ROD, with no explanation for this decision other than a generalized statement of the sources of information relied on. Notably absent from that list was any consideration of the 2004 Hayman Roads Management Project EA or the Wild and Scenic River Study report. The sole basis for the decisions regarding these roads appears to be the TAP scores and recommendations.

While revisions to the TAP reports themselves may have been beyond the scope of this proceeding, the *route designation decisions* made based on those TAP reports are very much in scope and are required by NEPA and the APA to be justified by substantial evidence offering a rational explanation of the connection between the facts found and the decision made. The Forest failed to satisfy that requirement here, and indeed offered an explanation for these decisions which was directly contrary to both the prior findings of the agency in previous NEPA decisions and the evidence in the project record. As the courts have held, “Unexplained inconsistency between agency actions is a reason for holding an interpretation to be an arbitrary and capricious change.” *Organized Village of Kake v. United States Department of Agriculture*, 795 F.3d 956, 966 (9th Cir. 2015) (internal quotations omitted).

The TAP ratings and recommendations regarding the Wildcat Canyon roads were uniquely flawed in a manner that rendered them a wholly improper basis for management decisions regarding these five routes. The TAP scores (sourced from the tabular data in the FEIS) for each of the five FSRs at issue in this objection are shown below.

NFSR 220 Hackett TAP Scores:

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	H
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	H

NFSR 221 Longwater TAP Scores:**Travel Analysis Process (TAP) Scores**

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	M
Fire/Fuels Access Benefit	L
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	HH
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	L

NFSR 220.A Crossover TAP Scores:**Travel Analysis Process (TAP) Scores**

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	H
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	HH
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	H

NFSR 220.B Widow Maker TAP Scores:**Travel Analysis Process (TAP) Scores**

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	H
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	L
Public Health and Safety/Financial Burden Risk	H

NFSR 540 Corral Creek (lower segment) TAP Scores:

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	H
Fire/Fuels Access Benefit	L
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	M
Archaeology Risk	M
Public Health and Safety/Financial Burden Risk	H

NFSR 540 Corral Creek (upper segment) TAP Scores:

Travel Analysis Process (TAP) Scores

Combined Benefit/Risk Rating: L/H

Benefits

Category	Score
Recreational Use Benefit	L
Fire/Fuels Access Benefit	M
Timber Access Benefit	L
Special Use Access Benefit	L
Resource Management/Range Access Benefit	L

Risks

Category	Score
Watershed Risk	H
Wildlife Risk	H
Botany Risk	L
Archaeology Risk	H
Public Health and Safety/Financial Burden Risk	L

As seen in these tables, each of the five NFSRs in Wildcat Canyon were given Low Benefit / High Risk overall TAP scores. Almost all of them were given 'low' recreational use benefit scores.

It is a simple matter of common sense that the recreational use benefit a given route has for motorized recreation should be evaluated based on the benefit that road would have if it were managed as open to public motorized use. Yet as alluded to in the TAP Addendum reports and confirmed by informal conversations we have had with the PSI NF's former Transportation Planner / Roads Engineer (who was a member of the teams that drafted the South Park and South Platte Ranger District TAP Addendums), NFSRs 220 Hackett, 220.A Crossover, 220.B Widow Maker, and the upper segment of NFSR 540 Corral Creek were all given 'low' recreational use benefit ratings solely because of their temporary ML1 closed status.

Only the lower portion of NFSR 540 Corral Creek along the South Platte River was given a 'high' recreational use benefit rating. The ML1 portion of NFSR 221 Longwater was specifically stated in the TAP report to have been downgraded from 'high' to 'moderate' recreational use benefit solely because of its ML1 status in response to the *single* comment the South Platte District received on its TAP Addendum:

Comment #1: Closed ML1 roads should not have any recreational motorized benefit, but the draft TAP shows a High recreational use benefit rating for the 221 road. This rating should be lowered to a Low rating on the TAP.

Response #1: Recreational use ratings for the specific road listed above was re-evaluated, and the result of that re-evaluation is as follows:

- Change the Recreational Use Benefit rating for NFSR 221 from High to Moderate, as non-motorized recreation is still available to access the river.

South Platte District TAP Addendum at A2. Note that the only reason NFSR 221 received even a moderate rating was because of non-motorized recreational benefit, even though the TAP was supposed to be evaluating *motorized* recreational use benefit. It is utterly nonsensical for a *motorized* Travel Analysis Report to rate the motorized recreational use benefit of a road based on non-motorized use.

The idea that “closed ML1 roads should not have any recreational motorized benefit” was likewise absurd and was baselessly accepted by the Forest Service, rendering the recreational use benefit ratings for these roads completely invalid. The benefit ratings in the TAP reports were supposed to be used to determine if a road should be open to public motorized use or not. Therefore the recreational use benefit should have been evaluated based on the benefit the road would have if it were open to public motorized use. In the case of the Wildcat Canyon roads which were still temporarily closed after the Hayman Fire, the only rational way to evaluate their recreational use benefit was by the benefit they had when they were open *prior to* the Hayman Fire.

As discussed above, the Wildcat Canyon roads have been featured in four-wheel-drive guidebooks for decades, and are among the most widely recognized offroad trails in Colorado. All of the roads in Wildcat Canyon were repeatedly acknowledged by the Forest Service itself as having extremely high value for motorized recreation in both the Hayman Fire Roads Management Project EA & ROD and the South Platte River Wild and Scenic Study EIS & ROD, all published in 2004. The Hayman Fire Roads Management Project EA explicitly noted that these roads were “*especially popular with four-wheel drive motorized users,*” and referred to them as “*nationally-known four-wheel drive roads.*” Hayman Roads EA at 3-17 (emphasis added). It also noted that “*The Wildcat Canyon area was extremely popular because of the 4x4 challenge of the roads.*” *Id.* (emphasis added). The low recreational use benefit ratings for these roads in the TAP reports were categorically and incontrovertibly false, as proven by the PSI NF’s own statements in its prior NEPA analyses.

Under any objective evaluation of the recreational use benefit of the roads in Wildcat Canyon, all of them would have received at least a ‘high’ (H) or likely even a ‘very high’ (HH) recreational use benefit rating based on their value to the motorized community when they were last open to public use prior to the 2002 Hayman Fire. Yet most of them were rated ‘low’ solely because of their temporary ML1 status. As discussed above, that status was only still in place at the time the TAP addendums were written because of the intervention of two South Park District rangers who first delayed and then dissuaded the Park County Commission from applying for easements to take over jurisdiction of these roads as contemplated by the decision in the Hayman Fire Roads Management Project.

The failure to properly evaluate the recreational use benefit of these roads unquestionably influenced the ultimate decision made regarding these roads in the Draft ROD. As best we can tell from the FEIS and DROD, the decision to close these roads was based on a combination of the TAP recommendations and the TAP scores.

As stated in the FEIS description of how the Preferred Alternative C was formulated, “Of the roads subject to the MRS screening process, any specific road recommendation in the TARs was adopted, regardless of the screening process and criteria described below.” FEIS at 2-6. For roads that did not have specific TAP recommendations, the TAP scores were run through the formulaic Minimum Road System Screening Criteria rubric to produce a recommended management result.

Some of the Wildcat Canyon roads had express TAP recommendations which recommended their closure, while others did not. In either case, the outcomes produced by the TAP recommendations and the TAP scores/MRS rubric were the same. And since the TAP recommendations and scores were written by the same people at the same time, it is likely the TAP recommendations were influenced by the same erroneous perception of these roads’ recreational benefits that caused the improper recreational use benefit scores.

The roads that did have express TAP recommendations were the following:

- NFSR 540 Corral Creek: “Admin Rd, Recommend granting esmts to Park and Jefferson Counties for their management; decommission it if Counties won't take it.”
- NFSR 221 Longwater: “OP ML1, Recommend granting esmt to Park County for their management; decommission it if County won't take it.”

All of the TAP comments for the other NFSRs merely noted “OP ML1” and did not have an express recommendation.

For roads in the Low Benefit / High Risk category, there were two separate exceptions in the MRS rubric depending on whether the recreational benefit rating was high or moderate:

- Recreational use (high benefit TAP rating) – Management recommendation is Convert to trail open to all vehicles.
- ...
- Recreational use (moderate benefit TAP rating) – If the road has potential to provide a loop or connection to other trails open to public motor vehicle use, then the management recommendation is Convert to trail open to all vehicles.

FEIS at 2-8, 2-9. By coincidence or design, NFSR 540 (lower segment) and NFSR 221 were the only roads in this trail system with moderate or high recreational use benefit ratings which could have caused the recreational use benefit exceptions in the MRS rubric for L/H roads to apply, resulting in reopening them to public use as a trail open to all vehicles.

Because these roads had express TAP recommendations to decommission them if Park County would not take over jurisdiction of them, that recommendation was automatically adopted and the MRS rubric was never applied to them, precluding those exceptions from applying. (Given both the South Park and

South Platte addendums were written in 2015, it was likely the rangers already knew that Park County would not take jurisdiction, as Ranger Voorhis had already persuaded them not to.) For the rest of the Wildcat Canyon roads, as L/H roads with low recreational use benefit, no exceptions in the MRS rubric would have applied; so they would have been given the default recommendation for L/H roads of decommissioning.

Conversely, if the TAP recommendations had not recommended closure or had not been automatically adopted in Alternative C and the Draft ROD; and if the recreational use benefit scores had been 'moderate' or higher; the MRS rubric would have produced a management recommendation for all of these roads to be converted to trails open to all vehicles. This would especially have been true if they had been given HH (very high) recreational use benefit ratings (and it is hard to think of any roads in the PSI more deserving of that rating than these). An HH rating would have been enough to guarantee a 'high' overall benefit score even if the rest of the benefit scores were low, giving each of these roads an H/H overall rating. As H/H category roads, they would have been considered good candidates for the Minimum Road System with some mitigation measures applied, and would have been recommended by default to be open to public motorized use (likely as trails open to all vehicles).

Even with merely a 'high' or 'moderate' recreational use benefit score that may not have been enough by itself to raise the overall rating to H/H, keeping them in the L/H category, an exception in the MRS rubric would have applied. Because every one of the five NFSRs except Widow Maker facilitates loop opportunities or connections to other motorized routes, either of the two recreational use benefit exceptions for the L/H category in the MRS rubric would have applied, producing a recommendation to convert them to trails open to all vehicles.

It is therefore clear that the Forest's failure to correctly evaluate the recreational use benefit of the Wildcat Canyon roads in the TAP reports, combined with the automatic adoption of the TAP report recommendations, directly contributed to the final management decision in the Draft ROD to decommission them. While Alternative D did consider reopening some (but not all) of these roads, at no point did the Forest evaluate an alternative which reopened all of them or even the full Hackett-to-Longwater or South Hackett loops. None of the actions from Alternative D were ever incorporated into the Preferred Alternative C, which was mostly adopted unchanged from the DEIS.

Finally, the 'high' or 'very high' watershed and wildlife risk ratings in the TAP reports were likewise erroneous, and were improperly influenced by the non-scientific perceptions of the ranger district staff. Every prior science-based environmental analysis conducted by the Forest and cooperating land managers had concluded that, as long as they were properly maintained, the roads in Wildcat Canyon did NOT pose a significant risk to either the water quality in the South Platte River, the trout fisheries, or to wildlife such as the pawnee montane skipper. The Forest has also previously concluded that the substantial benefits of keeping these roads open to motorized recreation outweighed any environmental risk, and that having them open and properly maintained would be net beneficial to the environment. These risk scores were therefore also erroneous and contrary to prior NEPA findings.

To the extent that these high risk ratings influenced the final decision (which they would have at the very least by producing the overall high risk score), they also were an improper basis for decisions on these routes that were contrary to both the evidence before the agency and prior agency decisions.

6. *The decision to decommission the Wildcat Canyon roads was arbitrary and capricious, unsupported by substantial evidence, and contrary to the evidence before the agency*

Returning to the standard of review in a challenge to an agency decision such as this one, APA section 706(2) provides that a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) unsupported by substantial evidence....”

This standard of review is “narrow” but the agency:

must examine the relevant data and articulate a satisfactory explanation for its action including a **rational connection between the facts found and the choice made**....Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, **entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view** or the product of agency expertise.

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

As set forth below, the PSI NF’s decision to decommission the five NFSRs in Wildcat Canyon fails this test in multiple ways and is therefore arbitrary and capricious and unsupported by substantial evidence.

a) **Failure to provide a rational connection between the facts found and choice made**

As stated above, the most basic requirement of the APA is that an agency must articulate “a rational connection between the facts found and the choice made.” The applicable “arbitrary and capricious” standard is narrow and the 10th Circuit advises, “[w]e confine our review to ascertaining whether the agency examined the relevant data and articulated a satisfactory explanation for its decision.” *Colorado Wild v. U.S. Forest Service*, 435 F.3d 1204, 1213 (10th Cir. 2006). The focus is “on the rationality of an agency’s decision making process rather than on the rationality of the actual decision” and the “agency’s action must be upheld, if at all, on the basis articulated by the agency itself.” *Id.* “Thus, the grounds upon which the agency acted must be clearly disclosed in, and sustained by, the record.” *Id.* (emphasis added).

Even this deferential review “requires an agency’s action to be supported by facts in the record.” *Id.* Such facts must rise to at least the level of “substantial evidence” which is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” (quoting *Pennaco Energy v. U.S. Dep’t of Interior*, 377 F.3d 1147, 1156 (10th Cir. 2004)) and is “something more than a mere scintilla but something less than the weight of the evidence.” *Id.* (quoting *Foust v. Lujan*, 942 F.2d 712, 714 (10th Cir. 1991)).

In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision regarding the alternative adopted, but also to the decisions made regarding individual routes. In *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1077 (D. Idaho 2011), the court overturned a Forest Service travel plan because of the Forest’s failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs. The Forest Service’s Decision

here is likewise adrift from this critical connection between evidence presented in the record and identified as a rational basis for the chosen route-specific conclusions regarding the five NFSRs in Wildcat Canyon.

As discussed above regarding the history of these routes, the controversy surrounding the motorized roads and trails in Wildcat Canyon has been going on for over 20 years. These routes have been the target of a sustained campaign by anti-motorized environmental groups to secure their permanent closure since at least the late 1990s. First these groups hoped to get these routes closed by Wild and Scenic River designation in the South Platte Wild and Scenic River Study. When they failed there they tried to get them closed through the Hayman Fire Roads Management Project. When the Forest decided in that project to reopen the roads by granting easements to transfer jurisdiction to the underlying counties, these groups worked with sympathetic personnel in the South Park and South Platte Ranger Districts to thwart the Hayman Roads decision from being fully implemented.

Throughout each of these efforts, motorized advocacy groups have continued to fight against the closure of these roads and to advocate for reopening them to public use. The strong demand in the motorized community to see these roads reopened has never changed and remains the same as it was 16 years ago during the Hayman Roads Management Project.

The 20+ years of controversy over these particular routes should have been more than enough to give the Forest Service notice that these routes would be a hotspot of controversy in this travel management process as well. A large percentage of public comments received during the scoping period concerned these routes. In response to the large number of scoping comments calling for the Wildcat Canyon roads to be reopened, the Forest modified Alternative D to consider reopening some (but not all) of these routes. This again should have given the Forest notice that these five routes were of immense interest to members of the public on both sides of the controversy, and that these routes required special attention and analysis. At the very least, it should have caused the Forest to at least set forth clear reasons in the EIS and ROD explaining its decisions regarding these routes, in order to put a definitive end to the 20+ years of fighting over these trails.

Unfortunately, the Forest did none of that. In the end, these routes were treated no differently in the FEIS or Draft ROD than the hundreds of other routes discussed throughout our objections (see Objection #1) that are proposed for permanent closure with no clear explanation of the reasons for that decision or the connection between the facts found and the decision made. There is only one express mention of these routes in the Draft ROD, which occurs in the discussion of the relationship between this decision and the decision of the Badger Flats Travel Management Project. The Supervisor stated:

A few routes that fall within that project area were not included in the Badger Flats Decision Notice, and I have decided to manage them as described in Alternative C. Those routes are NFSR 220.A, NFSR 220.B, and NFSR 540.

Draft ROD at 14 - 15. This brief mention only stated that the Supervisor had decided to adopt the Alternative C actions for four of the five NFSRs in Wildcat Canyon, and did not state any reasons for this decision or give any explanation for why the Alternative C actions were chosen instead of Alternative D. There is no analysis whatsoever of the impacts of this decision or why it is the best way to manage the area.

The FEIS also contained one brief mention of these routes, which also happens to be completely factually incorrect.

Additionally, several commenters suggested that an alternative include reopening the closed routes accessing the South Platte River in Wildcat Canyon. They indicated that if the PSI did not consider this option there would not be sufficient diversity in the alternatives considered for detailed analysis. These routes, however, are under the jurisdiction of Park County and are not part of the NFS route system; therefore, including these routes is beyond the scope of this undertaking.

FEIS at 2-31. While the Forest at least acknowledged the comments calling to reopen the Wildcat Canyon roads, the reason given for the Forest's failure to consider this is objectively false and absurd. The Forest stated that, "These routes, however, are under the jurisdiction of Park County and are not part of the NFS route system; therefore, including these routes is beyond the scope of this undertaking." Id. If that were true, these roads would be open to the public right now under the jurisdiction of Park County, and we would have no need to ask the Forest Service to reopen them.

In fact these roads were *offered* to Park County under the 2004 decision in the Hayman Fire Roads Management Project, but after years of the Forest Service delaying processing Park County's easement applications, South Park District Ranger Josh Voorhis persuaded the Park County Commissioners and County Manager to withdraw their easement application in 2015. Below is the email from Park County Manager Tom Eisenman rescinding Park County's easement request, as well as a scanned image provided to us by the Forest Service in response to our FOIA request, showing the handwritten words at the top (by an unknown Forest Service employee), "rescinded 9/22/2015." A full copy of this document is attached to these objections.

From: Tom Eisenman
Sent: 21 Sep 2015 16:51:18 +0000
To: Voorhis, Josh -FS
Subject: Forest Service Road(s) easements

Mr. Voorhis,

This email is to rescind Park County's application for easements for;
 F.S. road 220 (Hackett Gulch)
 F.S. road 220A (Hackett Gulch Crossover)
 Junction F.S. road540 (Corral Creek)
 F.S. road 221 (Longwater Gulch)
 F.S. road 540 (Corral Creek)

Thank you for your time and efforts on this initial request.

Thomas Eisenman
 Park County Administration Officer
 teisenman@parkco.us
 719-836-4203 (o)
 719-839-1149(c)

revised 9/22/2015

APPLICATION FOR TRANSPORTATION AND UTILITY SYSTEMS AND FACILITIES ON FEDERAL LANDS

Beyond the incontrovertible fact that Park County's easement application was withdrawn, the Forest's assertion that it has no jurisdiction over these roads is contradicted by the fact that, as just mentioned, the Supervisor explicitly adopted the Alternate C management options with respect to these roads, and they are listed in Appendix A, Table A-3 of the Draft ROD as being decommissioned (screenshots below). The same is true of the GIS data, tabular data, and decision maps.

SOUTH PARK	SOUTH PARK	203	BLADDER BAG	0.00	1.17	1.17	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	220.A	CROSSOVER	0.20	1.33	1.13	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	220.A	CROSSOVER	1.33	1.40	0.07	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	220.B	WIDOWY MAKER	0.00	0.80	0.80	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	220	HACKETT	3.90	4.74	0.84	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	228	LOOKOUT	0.00	1.25	1.25	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	229	FOURSTONE	0.00	0.75	0.75	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	540	CORRAL CREEK	3.05	4.89	1.84	Decommissioned	Not applicable
SOUTH PARK	SOUTH PARK	220	LOUISIANA	3.21	3.00	3.00	Decommissioned	Not applicable
SOUTH PLATTE	SOUTH PLATTE	157	SUGAR CREEK T.S.	0.00	3.56	3.56	Decommissioned	Not applicable
SOUTH PLATTE	SOUTH PLATTE	221	LONGWATER	3.93	4.63	0.70	Decommissioned	Not applicable
SOUTH PLATTE	SOUTH PLATTE	509	SHELIN	0.00	0.78	0.78	Decommissioned	Not applicable
SOUTH PLATTE	SOUTH PLATTE	510	ELEPHANT ROCK	0.00	1.20	1.20	Decommissioned	Not applicable
SOUTH PLATTE	SOUTH PLATTE	528.B	CHEESMAN TH	0.00	0.10	0.10	Decommissioned	Not applicable
SOUTH PLATTE	SOUTH PLATTE	540	CORRAL CREEK	0.00	3.05	3.05	Decommissioned	Not applicable
SOUTH PLATTE	SOUTH PLATTE	542.B	BOLING CREEK TRAIL	0.00	0.30	0.30	Decommissioned	Not applicable

If the Forest Service does not have jurisdiction over these roads, why are they being decommissioned under this very travel management plan? Why did it in fact consider reopening some of them in Alternative D? Why is it making any decision with respect to these routes in this process at all?

The Forest did actually acknowledge in response to our comments (see response to comment 2231-3 by Marcus Trusty, FEIS Appendix D at D-126) that the short segment of former NFSR 205 Metberry in Douglas County was no longer under NFS jurisdiction (an easement was granted to Douglas County which was then signed over to Teller County), and removed it from the alternative maps, GIS data, and tabular data. It is not listed in the tables in Appendix A of the Draft ROD. If the Forest truly wished to disclaim jurisdiction over these roads, they should have been removed from this process completely the way Metberry Gulch Road was, and there should be no decision actions listed regarding them.

The Forest's sole justification for refusing to consider an alternative that opened all of the Wildcat Canyon roads and restored both historical loop opportunities is facially absurd, contrary to well-established fact, and is contradicted by its own decisions regarding these routes. This brief statement in the FEIS is simply false, and neither justifies the Forest's failure to consider an alternative that reopened all of the Wildcat Canyon roads as we had asked in our comments, nor does it provide any rational explanation for the Forest's decision to decommission all of those routes in Alternative C as adopted in the Draft ROD.

Finally, the Forest's responses to public comments likewise failed to articulate any actual connection between the facts found and the choice made with respect to these routes. In response to these comments, the Forest merely said:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. Revision of the TAP/TAR reports is beyond the scope of this undertaking. Motorized access to the South Platte River via NFSR 220, 220.A, 220.B, and 540 is analyzed in Alternative D.

Response to comment 21-13 by Patrick McKay, FEIS Appendix D at D-103. All other responses to comments on the Wildcat Canyon roads in Appendix D of the FEIS are similarly lacking in actual content or explanation.

As discussed in the previous section of this objection, we can *infer* that the Forest's decisions with respect to these routes, at least for the actions included in Alternative C, ultimately were based on the TAP scores and recommendations and the Minimum Road System rubric. But nowhere in any of the documents does the Forest actually say that directly. Nor does it give any reason anywhere in the record for the Supervisor's ultimate decision to choose the management actions in Alternative C over the actions in Alternative D with respect to these routes. The Supervisor was free to choose actions from any of the alternatives in her final decision with respect to individual routes. Her decision to adopt the actions in Alternative C straight up with no modification is never explained or justified.

When contrasted with the detailed analysis and explanations given in the decision documents for the Hayman Fire Roads Management Project with respect to these routes, it is clear that the Forest has utterly failed to articulate a rational connection between the facts found and the decisions made with respect to these five NFSRs of undeniably high interest to the public.

As the courts have stated, "Under [NEPA], an injury results not from the action authorized by the agency's decision, but from the agency's uninformed decision-making." *Comm. to Save Rio Hondo v. Lucero*, 102 F.3d 445, 452 (10th Cir. 1996). In failing to provide any explanation at all in the project record for these route-specific decisions, the Forest has shown that its decision with respect to the five NFSRs in Wildcat Canyon was uninformed and not based on any facts articulated in the record. Therefore the decision to decommission these five routes was arbitrary and capricious and unsupported by substantial evidence.

b) Unexplained inconsistency with the Hayman Fire Roads Management Project decision

It has long been held by the courts that unexplained inconsistency between two agency decisions on the same subject constitutes *prima facie* evidence that the latter decision is arbitrary and capricious. As held in *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956 (9th Cir. 2015):

The APA requires a court to "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Agency action is "arbitrary and capricious if the agency has ... 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." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983).

“Unexplained inconsistency” between agency actions is “a reason for holding an interpretation to be an arbitrary and capricious change.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981, 125 S.Ct. 2688, 162 L.Ed.2d 820 (2005).

In order to comply with the APA, when an agency makes a decision that contradicts a past decision, it must display an “awareness that it is changing position,” and articulate “good reasons for the new policy, which, if the new policy rests upon factual findings that contradict those which underlay its prior policy, must include a reasoned explanation for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Id.* (internal quotations omitted).

As described above, the Pike San Isabel National Forest conducted a detailed travel management analysis of the five NFSRs in Wildcat Canyon in the 2004 Hayman Fire Roads Management Project, and concluded that the best management approach would be to reopen these roads to the public. The agency specifically found that this action was necessary in order to provide a satisfactory motorized recreation experience in the region around Lake George and Woodland Park, and that failing to reopen these roads would cause unacceptable negative impacts to the human environment--specifically in the form of user displacement and overcrowding in other popular motorized trail systems in the South Platte and South Park Ranger Districts. The exact method the Forest chose to accomplish reopening these routes was turn over jurisdiction of the roads to the underlying counties.

This plan failed to be fully implemented due to the intervention of the South Park Ranger District to thwart the plan it had approved only a few years earlier from being carried out. But the fact stands that the Forest decided in a prior NEPA proceeding only 16 years ago that the best way to manage these roads is to reopen them to public motorized use.

In the instant travel management process, the Forest was free to make a different decision regarding these routes than was made in the Hayman Roads Project. But the complete reversal of that decision and the choice to adopt a decision almost identical to the management options previously considered and rejected in Alternative D of the Hayman Roads Project requires at least some explanation of the stark difference between the two decisions. It may be that changed circumstances in the intervening years require a different decision than in 2004. But if that is true, the Forest made no attempt to explain why.

Likewise the Forest was required to provide at least some explanation for why the Hayman Roads Project considered each of the Wildcat Mountain Roads as extremely valuable for motorized recreation, yet the TAP data used as the basis for Alternative C rated almost all of them as having low recreational use benefit. The Forest also failed to do this.

In all of the documents associated with the Draft ROD and FEIS, the Forest never acknowledged that a discrepancy exists between the decision it makes now regarding those roads and the decision it made in the 2004 Hayman Roads Project, or made any attempt to explain the reasons for this discrepancy. Indeed, never once in all these documents does the Forest even acknowledge the *existence* of the Hayman Roads decision. In Table 3-1 in Section 3.2 of the FEIS, entitled “Past, Present, and Reasonably Foreseeable Future Actions on the PSI”, the Forest listed all related management projects included in its cumulative impacts analysis. This table listed the recent Badger Flats and Sheep

Mountain Management Projects as recent travel management decisions the Forest considered, but there is no mention at all of the Hayman Fire Roads Management Project. See FEIS at 3-6.

Even though the Hayman Roads Project was discussed extensively in comments submitted by Marcus Trusty, Patrick McKay, and other motorized groups such as COHVCO and TPA, the Forest also failed to include any discussion of the Hayman Roads Project decision in the responses to public comments in Appendix D of the FEIS. The only acknowledgement the Forest made of *any* prior NEPA process regarding this area was in this general concern statement on page D-2 of Appendix D of the FEIS:

Concern ID	Concern Statement	Response	Draft Remarks to Concern Statement
C11	Commenters stated that the EIS does not provide adequate protections for wild and scenic rivers, such as the Wild Cat Canyon area and the South Platte River segment, identified as eligible under the National System of Wild and Scenic Rivers.	Comment considered but no changes needed	Previously, the PSI evaluated the South Platte River for Wild and Scenic River suitability; however, before recommending their suitability, the PSI entered into an agreement with interested constituents, led by Denver Water. Following extensive collaboration with user groups and Denver Water, the PSI agreed to the South Platte Protection Plan instead of invoking the Wild and Scenic River Act protections. The South Platte Protection Plan preserves the free flow and outstandingly remarkable values, as required by the Forest Plan.

Our comments addressing the Hayman Fire Roads Management Project were referred to this concern statement response, which discusses the Wild and Scenic River Study and the South Platte Protection Plan but fails to mention the Hayman Fire Roads Management Project at all or give an explanation of the discrepancy between the proposed management actions in Alternative C and the decision in that travel management plan.

We have therefore been unable to find a single sentence in any of the documents in the project record where the Forest Service so much as acknowledges the *existence* of the 2004 Hayman Fire Roads Management Project decision or EA, let alone acknowledges and explains the clear discrepancies in the analysis and decisions regarding these roads between this travel plan and that one.

As described in *Organized Vill. of Kake*, 795 F.3d at 966:

The Supreme Court addressed the application of the APA to agency policy changes in *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 129 S.Ct. 1800, 173 L.Ed.2d 738 (2009). In *Fox*, the Court held that a policy change complies with the APA if the agency (1) displays “awareness that it is changing position,” (2) shows that “the new policy is permissible under the statute,” (3) “believes” the new policy is better, and (4) provides “good reasons” for the new policy, which, if the “new policy rests upon factual findings that contradict those which underlay its prior policy,” must include “a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Id.* at 515–16, 129 S.Ct. 1800 (emphasis omitted).

The decision by the PSI NF to decommission the five NFSRs in Wildcat Canyon clearly fails every prong of this test. The agency failed to display any awareness that is changing its position with respect to these roads, or even that a prior decision regarding them exists at all. The agency also does not provide any explanation in the record showing that the new policy is permissible under statute, that it

believes the new policy is better, or that it has good reasons for the new policy. Neither does it include “a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy” as required by the APA.

The Forest’s failure to acknowledge or explain the discrepancy between the current decisions regarding the Wildcat Canyon roads and the decision in the Hayman Fire Roads Management Project was therefore arbitrary and capricious and violates the APA.

c) Failure to adequately respond to public comments

As discussed in Objection #1, under APA section 706(2) agency decisions that are “unsupported by substantial evidence” must be set aside as unlawful. Both NEPA and the APA require the Forest Service to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983).

In the case of a Forest Service travel management plan, this requirement not only applies to the overall decision regarding the alternative adopted, but also to the decisions made regarding individual routes. In *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d at 1069, the court overturned a Forest Service travel plan because of the Forest’s failure to adequately explain its decisions with regards to the individual routes of concern to the Plaintiffs. (“In addition, the decision adopting the Travel Plan violates the 2005 Travel Management Rule and NEPA, because the Forest Service did not address directly the site-specific evidence submitted by Plaintiffs during the comment period.”)

Both Patrick McKay and CORE submitted extensive comments on the Wildcat Canyon roads, explaining why they had been improperly evaluated in the TAP reports, describing their extremely high value for motorized recreation, and providing specific evidence as to why their proposed closure under Alternative C was unjustified. When the Forest was made aware through public comments that the data it relied upon to make decisions for these routes was incorrect, it had a responsibility to reevaluate the route based on the new information it received, or at least respond to the specific evidence in our comments.

The Forest failed to do this and therefore violated the Travel Management Rule. In the *Idaho Conservation League* case, a travel management plan very similar to this one was overturned by the court because, “the Forest Service’s failure to demonstrate how it considered this evidence that it requested [in public comments] renders the decision arbitrary and capricious and a violation of NEPA”. *Id.* at 1074-1075. The court specifically found that generalized responses to comments that did not specifically address the site-specific evidence in the Plaintiffs’ comments were legally insufficient to meet the agency’s burden of proof to show a rational basis for decisions on individual routes in the travel plan. *Id.*

In response to our comments, the Forest merely provided vague and generalized responses such as this:

Route management and recreation are respectively analyzed in Chapter 3 of the EIS, Transportation and Recreation. Recommendations for route management are based on a combination of TAP/TAR reports and rating, data from scoping, MRS screening criteria, and site-specific information. Revision of the

TAP/TAR reports is beyond the scope of this undertaking. Motorized access to the South Platte River via NFSR 220, 220.A, 220.B, and 540 is analyzed in Alternative D.

Response to comment 21-13 by Patrick McKay, FEIS Appendix D at D-103. All other responses to comments on the Wildcat Canyon roads in Appendix D of the FEIS are similarly lacking in actual content or explanation. Such generalized and vague responses were utterly insufficient to respond to the detailed evidence in our comments. Patrick McKay's comments on Wildcat Canyon alone included over 40 pages of detailed descriptions and analysis, photographic evidence, and scans from four-wheel-drive guidebooks describing the historical importance of these routes. The Forest did not specifically address any of this evidence in the comment responses in Appendix D of the FEIS.

The Forest's responses to comments on the Wildcat Canon roads were therefore legally insufficient "to demonstrate how it considered this evidence that it requested [in public comments]", which "renders the decision arbitrary and capricious and a violation of NEPA" *Idaho Conservation League*, 766 F. Supp. 2d at 1074-1075.

d) Improper reliance on TAP scores and recommendations

As discussed above, the closest the Forest came to providing any facts or reasons upon which its decision to decommission the five NFSRs in Wildcat Canyon was made was the TAP recommendations and TAP scores combined with the Minimum Road System Screening Criteria. As discussed above, the TAP scores and recommendations were blatantly false and were therefore an improper basis for this decision. Moreover, the Forest's treatment of the TAP reports as decisional documents not subject to challenge or further evaluation under NEPA violated the Travel Management Rule, multiple Forest Service policies, and NEPA and the APA.

As described in Forest Service regulations, the Travel Analysis Process is the first step in determining the Minimum Road System (MRS), conducting an initial analysis of roads that are likely needed or not needed for the MRS. The actual determination of the MRS occurs during a formal travel management process subject to NEPA, which is informed by the Travel Analysis Reports. This two step process has been affirmed by the courts as the proper method of determining the MRS. As stated in *Friends of the Bitterroot v. Marten*, 2020 WL 5804251 at *2 (D. Mont. 2020):

Identification and implementation of a minimum road system is a two-step process. In the first step, the Forest Service conducts a science-based roads analysis and develops a recommended road system for a given area. *All for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1117 (9th Cir. 2018). This recommendation is not a final agency decision until it is adopted in step two through the NEPA process. *Id.*

As discussed in Objection #2, the TAP reports were only the first step of this two-step process, and did not produce a final agency decision regarding the MRS. This travel management process was supposed to be the second step in designating the Minimum Road System for the PSI, subjecting the initial findings in the TAP reports to full NEPA review. From its comment responses, it is clear however that the Forest has decided to treat the TAP reports as a final decision not subject to further challenge or review. These responses demonstrate that the Forest had already made the decision to close these routes to the public in the supposedly non-decisional TAP process.

The inadequate public involvement in the creation of the TAP Addendums (see Objection #2), and the fact that the Forest automatically adopted the recommendations in that addendum and carried over the TAP scores into the MRS Screening Process in this travel management decision without accepting any input that challenged them; precluded any effective opportunity for public comment on the actual decision to *designate* these routes as closed to public use, as required by the Travel Management Rule as codified in 36 C.F.R. § 212.52(a):

The public shall be allowed to participate in the **designation** of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions.

By effectively making the designation decisions for these routes in the predecisional travel analysis process and refusing to consider any comments which challenged the TAP scores or the management outcomes derived from them, the Forest violated both the Travel Management Rule and 40 C.F.R. § 1502.5 on the timing of NEPA actions involving Environmental Impact Statements, which states:

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can **serve as an important practical contribution to the decision-making process** and will **not be used to rationalize or justify decisions already made.....**

If, contrary to Forest Service policy, the Forest wished to make final route designation decisions during the TAP process, then it should have prepared an Environmental Impact Statement at that stage of the process, which it did not. Instead, it simply made those decisions in the TARs -- either directly through the express recommendations in the TAP reports, or indirectly through the use of the TAP scores in the MRS rubric. The entire travel management process that followed has been a *post hoc* rationalization of decisions already made in the supposedly non-decisional TAP process.

The Travel Analysis Reports were not decisional documents and the agency improperly treated them as final decisions which could not be challenged. In order to create a Minimum Road System as prescribed by the Travel Management Rule, the Forest must both conduct a predecisional Travel Analysis Process *and* subject the findings of that process to NEPA review. This travel management plan *is* that NEPA review and the Forest was obligated to consider evidence which contradicts the findings in the TAP reports, which it did not. The automatic adoption of the TAP recommendations with respect to these routes violated the Travel Management Rule and was therefore arbitrary and capricious.

Additionally, the improper use of the flawed TAP scores and recommendation to dictate the range of alternatives considered with regard to these routes caused the Forest to consider an insufficient range of alternatives contrary to NEPA.

By predetermining the designations for numerous routes based on the TAP recommendations, the Forest violated one of the basic requirements of NEPA processes as specified in 40 C.F.R. § 1502.14(a), to "Evaluate **reasonable alternatives** to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination." Under 40

C.F.R. § 1508.1, “Reasonable alternatives means a reasonable range of alternatives that are **technically and economically feasible, [and] meet the purpose and need for the proposed action....**”

Despite numerous comments requesting this during the scoping period, no alternatives considered in this process would have reopened all of the Wildcat Canyon roads, including the two main loop opportunities, to public motorized use. There is no analysis in any of the documents associated with the FEIS and Draft ROD that explains why no other alternatives were considered or why considering at least one action alternative that opened them to the public was not technically or economically feasible or failed to meet the purpose and need of the proposed action (aside from the patently false assertion discussed above that such an alternative was not considered because the Forest Service does not have jurisdiction over these roads).

The only explanation ever given for failing to consider other management options for these routes was that the chosen option was the result of the TAP recommendations and TAP scores. The forest therefore failed to consider a sufficient range of alternatives regarding these routes, rendering the decision to close them arbitrary and capricious.

Finally, as discussed in Objection #2, the TAP scores and recommendations were created through an inherently subjective and non science-based process that was unduly influenced by the subjective preferences, opinions, and impressions of ranger district staff. Basing route-specific management decisions on the mere opinions of ranger district staff with no supporting evidence or reasoning violates the APA. The APA requires that agency decisions must be based on factual evidence which is disclosed as part of the project record, not the mere opinions of agency staff, and requires the agency to articulate a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983).

Critically, “NEPA does not permit an agency to rely on the conclusions [of agency experts] without providing both supporting analysis and data”. *Sierra Nevada Forest Protection Campaign v. Tippin*, 2006 U.S. Dist. LEXIS 99458, *29 (E.D. Cal. 2006). Basing the decisions to close these routes on the conclusory and unsupported recommendations in the TAP reports and/or the expression of subjective ranger opinions in the TAP scores, caused that decision to be based solely on the “bare assertion of opinion from an [agency] expert, without any supporting reasoning, [which] would not pass muster in an EIS.” *Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1103 (9th Cir. 2016). This makes the decision inherently arbitrary and capricious. If this decision were challenged in court, it would almost certainly be overturned on that basis.

e) Failure to analyze cumulative impacts

The PSI NF failed to provide analysis regarding impacts caused by user displacement and concentration of motorized recreation in other areas of the Forest caused by permanently closing the extremely popular roads in Wildcat Canyon to motorized use. NEPA requires that the environmental impacts of a proposed action be considered in context with other past, ongoing, and reasonably foreseeable future actions, even if those actions are those of forest users. 40 C.F.R. § 1508.25(c)(3). The regulations define a “cumulative impact” as:

[T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. The duty to discuss cumulative impacts in an EIS is mandatory. *City of Carmel v. Dep't of Transp.*, 123 F.3d 1142, 1160 (9th Cir.1997). Therefore, the agency was required to assess the impacts of motorized recreation being prohibited on these very popular roads and thus concentrated on the remaining roads in order to make a knowledgeable decision as to where to permit or prohibit motorized recreation.

As discussed above, the 2004 Hayman Fire Roads Management Project EA contained an extensive analysis of user displacement and concentration, identifying that as a major negative impact that would occur as a result of the total closure of the Wildcat Canyon trail system as contemplated in Alternative D of that project. The Forest stated:

Crowding and Density – Since 79 miles of classified roads would not be available to motorized vehicles under this alternative, visitors who have historically frequented the area for driving for pleasure, sightseeing, or OHV riding would be displaced, or forced to find other areas to carry out their recreation activity. This is already occurring since the roads in Wildcat Canyon (e.g., Hackett, Metberry, Longwater, etc.) have been closed to motorized vehicles because of safety and resource concerns resulting from the Hayman Fire.

Many motorized recreationists are now carrying out their activities at other locations on the Pike National Forest such as Rainbow Falls, Rampart Range, Badger Flats – China Wall, and Breakneck Pass. In these alternate or substitute locations, visitor density has most likely increased which could lead to management issues such as visitor conflicts, public safety issues, perceived crowding – or the feeling of too many people in one place, resource damage, creation of unclassified roads, and a reduction in quality of the visitor experience. For example, since the Hayman Fire, the Badger Flats – China Wall area west of the Tarryall Road (Park Co. Road 77) has become very popular with motorized recreationists and there has been a reported six new motorized hill climbs in the area, vehicles going around road barriers onto closed roads, and vehicles crossing riparian areas including the Tarryall River (Thibodeaux, pers. comm., 2004). Similar motorized issues are also reported to be occurring on those roads in Hayman that are currently open and at Breakneck Pass in the alpine tundra environment of the Mosquito Range (Thibodeaux, pers. comm., 2004).

Under Alternative D, there would be more displacement of visitors to motorized areas outside of the Hayman area since many popular Forest roads would be closed and there are few comparable substitute motorized recreation sites within the Hayman area. By keeping more classified Forest roads open to motorized use in the Hayman area, this could help reduce the visitor pressure and impacts being felt at other areas on the Pike National Forest such as Badger Flats, China Wall, Rainbow Falls, and Breakneck Pass.

Hayman Roads EA at 4-55.

Not only did the Forest fail to provide any acknowledgement or explanation of the clear discrepancy between this decision and the decision ultimately adopted in the Hayman Roads Project, but it also failed to provide any analysis in the FEIS regarding the cumulative impacts of the closure of the Wildcat Canyon roads on other motorized recreation sites. Some of the same areas identified as locations

where the Forest was previously concerned about overcrowding due to user displacement from the closed Wildcat Canyon roads were recently subject to their own area-specific travel management projects precisely because of impacts from overuse and overcrowding. Therefore the Forest's prediction of negative impacts to these areas from the continued closure of the Wildcat Canyon roads appears to have been correct.

These negative impacts will only continue to compound if the Wildcat Canyon trail network is permanently closed as proposed in the Draft ROD. Therefore the Forest was obligated under NEPA to analyze the cumulative impacts of this closure on these other areas. Its failure to do so violated NEPA and was therefore arbitrary and capricious.

f) Outcome predetermined by the actions of South Park Ranger Josh Voorhis

As discussed above, the actions by South Park District Ranger Josh Voorhis in persuading Park County officials to withdraw their easement application for the roads in their half of the Wildcat Canyon trail system are the entire reason the management of these roads has not been resolved and is still an issue in the instant proceeding. Mr. Voorhis's actions over the last five years amount to nothing less than a sustained campaign to prevent any decision to reopen the Wildcat Canyon roads to public motorized use, which effectively predetermined the final decision regarding these roads in this process.

CORE's separate objections submitted through its attorney Kevin Garden address in detail Mr. Voorhis' actions to specifically prevent any actual NEPA analysis from being included in this travel management process regarding reopening these roads. He strongly opposed any consideration of reopening these roads in Alternative D, and when he was overridden on that front, he ensured that the Alternative D actions for these roads would never be incorporated into the Preferred Alternative. There is no need to duplicate Mr. Garden's detailed description of these actions here, and we refer the Reviewing Officer to those objections on that issue.

However we would like to note that CORE has discovered additional actions by Mr. Voorhis, which began in 2018, to illegally decommission these roads prior to any final decision in this travel management process being adopted. Mr. Voorhis' actions constituted an "irreversible and irretrievable commitment of resources" prior to completing the environmental review which likely predetermined the decision made in this travel plan. The following description of events is based on internal Forest Service emails obtained in response to a FOIA request submitted by CORE. The relevant emails, memos, and other documents are attached to these objections in a separate file entitled, "FS_Decommissioning_Emails.pdf."

In May of 2018, Ranger Voorhis wrote an internal memo kicking off a decommissioning project regarding the Wildcat Canyon roads in Park County with three elements: (1) Removing all existing metal signs and fencing from the Park County roads, (2) installing heavy metal barriers blocking access to the closed Park County roads from the open roads in Teller County, and (3) re-contouring the roads on the west side of the river to physically remove them from the ground. Another Forest Service employee, Transportation Planner Gary Morrison, strongly objected to Voorhis' plan, saying in an email that decommissioning these highly desirable roads in a controversial area with no supporting environmental analysis or public input was illegal and invited distrust and justified outrage from the motorized community (see attached file "Morrison_Emails.pdf").

Nevertheless, Voorhis moved forward with his project, purchasing the metal barriers in the summer of 2019 (funded through a \$20,000 grant from the South Platte Enhancement Board plus \$12,000 in matching Forest Service funds - see attached file "SPEB_Decommissioning_Grant.pdf"), and he began searching for contractors to install them that fall. Around the same time, he and a Forest Service biologist with a strong bias against motorized recreation wrote up a document claiming "changed circumstances" which would prevent Park County from being granted an easement under the 2004 EA, thereby thwarting a renewed push by CORE and other motorized groups to get Park County to re-apply for an easement in spring 2019.

It was during the public comment period for the draft EIS in fall 2019 that CORE first became aware of Voorhis' plans to decommission these roads, when he unsuccessfully sought permission from Teller County to barricade the roads on the east side of the canyon further up in Teller County (see Decommissioning Emails). Patrick McKay commented on this issue during the DEIS comment period. CORE subsequently hired an attorney to file a FOIA request for all Forest Service documents pertaining to Wildcat Canyon, which we obtained in early 2020.

Having learned through the documents provided in response to our FOIA request of Voorhis' plans to install permanent barriers blocking access to the Park County roads sometime in 2020, CORE wrote to Forest Supervisor Diana Trujillo this past spring asking for her assurance that no actions would be taken to decommission any roads in Wildcat Canyon until after a final decision was made in the travel management EIS. After a phone conversation with the Supervisor in May, Deputy Forest Supervisor Dave Condit wrote to us on her behalf on July 1, 2020 stating that, "The Forest does not plan to do any work on the roads in Wildcat Canyon this year. There will be no changes until we complete our Travel Management Final Environmental Impact Statement (FEIS) and sign the subsequent project Record of Decision (ROD)." (Decommissioning Emails, page 30).

Unfortunately, this assurance turned out to be false. On the same day Mr. Condit sent his email, Wild Connections (the lead environmental group pushing for closure of Wildcat Canyon) published their July monthly newsletter (see attached file "Wild_Connections_Wild_News_7-2020.pdf") in which they announced they had received grant from the Park County Land and Water Trust Fund and permission from the South Park Ranger District to move forward with a "metal removal project" in Wildcat Canyon later this summer.

This project was the same as the first element of Mr. Voorhis' decommissioning plan from May 2018, removing all the old signs and fencing from the Park County roads in preparation for obliterating the routes from the ground. Those signs and fences were originally placed decades ago by Predator 4WD in partnership with the Forest, and continue to be helpful today in preventing drivers who inadvertently drive the closed roads without knowing of the closure from going off trail. They would also be critical for this purpose if the roads were ever legally reopened.

When CORE contacted Ms. Trujillo again in August with these concerns and asked her to prevent Wild Connections from completing this project until a final travel management decision has been made, she dismissed our concerns, falsely claiming that the metal removal work was not decommissioning and it would not affect the outcome of the travel management process.

We subsequently learned from documents obtained in response to another FOIA request that the contractor who would be performing this work was scheduled to complete the metal removal work in October 2020. This work was funded by a \$35,000 grant from the Park County Land and Water Trust Fund plus \$8000 in matching funds and in-kind services from Wild Connections (see attached file "Park_County_Grant_Application.pdf"). The contractor was instructed to leave all the signs and fencing in a pile for either removal or future use if the roads were reopened. Based on accounts by motorized users who visited the area in October, at least some of this work was in fact carried out and all the signs and fencing were observed piled at the bottom of NFSR 540 Corral Creek.

Despite the claims of the Supervisor that Voorhis' decommissioning work did not predetermine the outcome of this travel plan, it is clear from the fact that he was allowed to expend significant Forest Service finances and employee time on this project that the decision had in fact been made to close these roads long before the Draft ROD was published. Between Voorhis purchasing of the metal barricades in 2019 and hiring a contractor to conduct the metal removal work in 2020, over \$75,000 in mixed Forest Service funds and grant money, and matching funds from Wild Connections had already been spent on decommissioning these roads (\$43k for the barriers and \$32k for the metal removal work), and it is clear that reopening them was never a possibility the Forest seriously entertained.

The courts have held that illegal predetermination of a NEPA process "has occurred only when an agency has made 'an irreversible and irretrievable commitment of resources' based upon a particular environmental outcome, prior to completing its requisite environmental analysis." *Forest Guardians v. U.S. Fish and Wildlife*, 611 F.3d 692, 715 (10th Cir. 2010). While we cannot prove definitively that Voorhis' decommissioning plan directly influenced the Supervisor's decision regarding these roads (indeed she denied that), the Forest's significant expenditure of agency and third party funds and employee time to decommission these roads likely constitutes "an irreversible and irretrievable commitment of resources" per the holding in *Forest Guardians*, causing this decision to be illegally predetermined by Ranger Voorhis' actions prior to the completion of this NEPA process. This predetermination also makes the decision to close these roads arbitrary and capricious.

7. The decision to decommission all of the roads in Wildcat Canyon is inconsistent with the Forest Plan and requires a Forest Plan amendment

As described above, all of the roads in the Wildcat Canyon area are inside a 2A management area under the 1984 Forest Plan, which directs that this area be managed to provide opportunities for semi-primitive motorized recreation. As stated in the Forest Plan Compliance Report for the DEIS, the Forest Plan direction for MA 2A areas is:

Emphasize semi-primitive motorized recreation opportunities. Increase opportunities for primitive road motorized trail use. Specific land areas or travel routes 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.

Forest Plan Compliance Report at 23. Further guidance for MA 2A areas states:

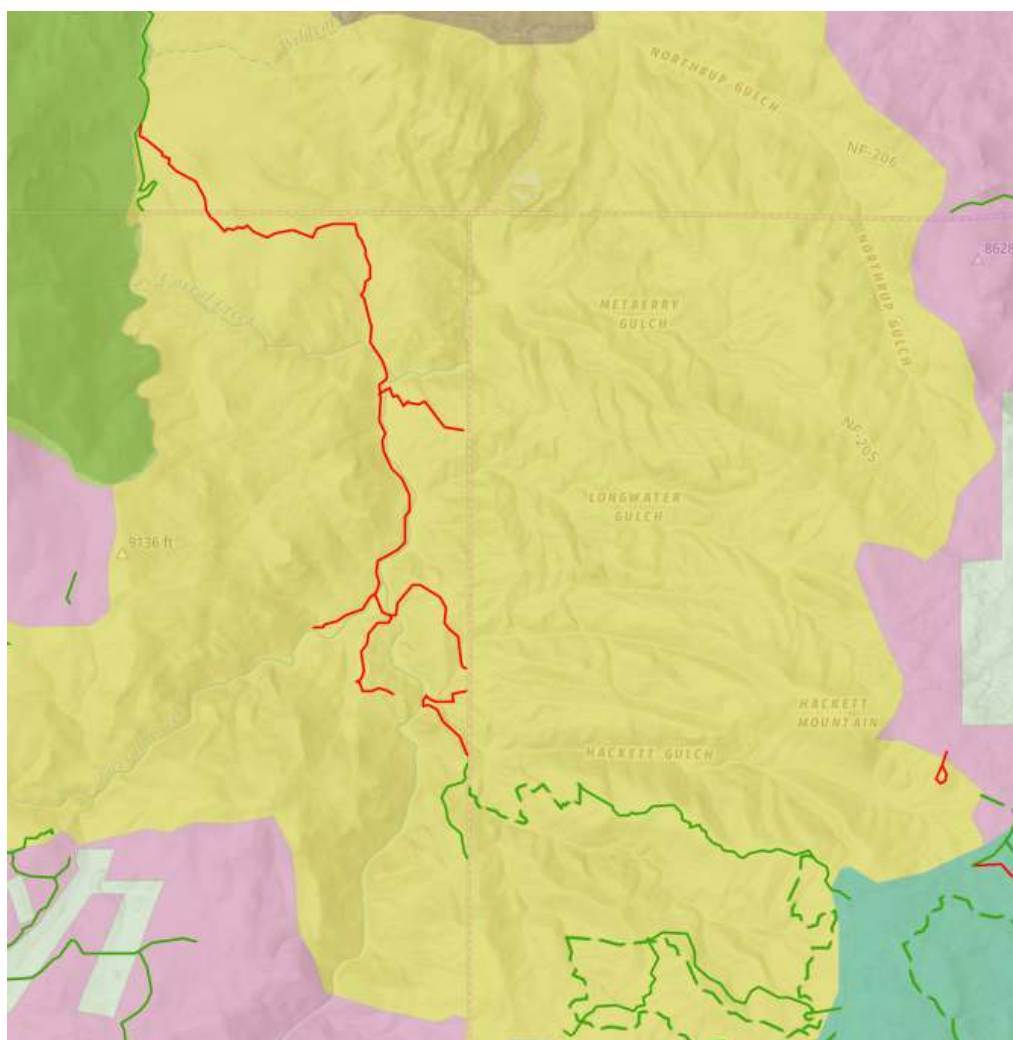
Maintain existing motorized routes or construct new routes needed as part of the transportation system. Provide loop routes of one-half to one day's travel time with at least one-half the total route located within

the semi-primitive motorized ROS class and utilizing primitive local roads and/or trails suitable for motorized trail bike travel.

Forest Plan Compliance Report at 44.

While the Forest Plan direction admittedly allows for specific routes to be closed within 2A management areas to prevent resource damage, etc., Alternative C as adopted in the Draft ROD would close almost all of the roads which remain under Forest Service jurisdiction in a large portion of the 2A area, except for a 0.75 mile segment of NFSR 220 Hackett, as well as NFSRs 895 and 897 in the far southern part of the Wildcat Canyon trail system. Under the Draft ROD, there would be no open motorized routes under Forest Service jurisdiction in Wildcat Canyon north of NFSR 895, which is essentially the same result as considered in Alternative D of the Hayman Fire Roads Management Project.

The following map shows the large portion of the MA 2A area around Wildcat Canyon that would no longer have any open NFS motorized routes under the Draft ROD. The 2A management area is shown in yellow. Open roads are shown in green, open motorcycle/ATV trails are shown in green dashed lines, and roads proposed to be decommissioned are shown in red. Roads under Teller County jurisdiction are not shown.



The closure of every motorized route in a large portion of a management area dedicated to motorized recreation under the Forest Plan constitutes a *de facto* change in the management direction for this area. The Forest has in effect decided that an area that was formerly considered *ideal* for motorized recreation, and that was directed to be managed *specifically* to provide motorized recreation opportunities, is now *no longer suitable* for motorized recreation *at all*.

This abrupt and total reversal of how this area is to be managed henceforth absolutely requires a Forest Plan amendment to harmonize the Forest's chosen decision with the Forest Plan direction, yet no Forest Plan amendment for this area is included in the Draft ROD, nor was one ever considered at any point in this process.

The PSI NF itself concluded in the 2004 Hayman Roads Management Project EA that the complete closure of the Wildcat Canyon trail system as contemplated in Alternatives A and D was inconsistent with the Forest Plan direction for MA 2A and 2B areas, and that a Forest Plan amendment would be required if either of those alternatives were adopted. As the Forest stated in the section discussing the impacts of Alternative D on motorized recreation:

The majority of classified Forest roads recommended for closure or decommission are in the 2A and 2B Management Area (MA) category which emphasizes semiprimitive motorized, roaded, and roaded natural recreation opportunities respectively. Furthermore, the Recreational Opportunity Spectrum (ROS) category for these MA's is either Semi-Primitive Motorized (SPM) or Roaded-Natural (RN), which again emphasizes access by motorized vehicles.

Similar to Alternative A, Alternative D would not meet the requirements of the PSICC Forest Plan MA direction for MA 2A and 2B if motorized travel is prohibited in large, traditional motorized recreation areas like Wildcat Canyon. If Alternative D was selected, a Forest Plan amendment would probably be necessary to emphasize the new nonmotorized recreation use in these areas. To address resource concerns, existing management tools, such as seasonal road closures or other timing restrictions, should be considered.

Hayman Roads EA at 4-56 (emphasis added). The Forest itself therefore recognized in the 2004 EA that the proposed decommissioning of the entire Wildcat Canyon motorized trail network, contemplated in Alternative D of that travel plan just as it is in Alternative C of this one, required a Forest Plan amendment to accomplish.

In the instant travel management process, the Forest is essentially adopting the same plan it considered and rejected in Alternative D of the Hayman Fire Roads Management Project, which likewise proposed to decommission every road in Wildcat Canyon north of NFSR 895 (it also would have left NFSRs 895 and 897 open), minus the portions of the roads that are no longer under Forest Service jurisdiction because of the easements granted to Teller County. Yet there has been no acknowledgment anywhere in any document associated with this project that the proposed closure of this entire trail network in a 2A management area is inconsistent with the Forest Plan and requires a Forest Plan amendment.

Travel management decisions are specifically required to be consistent with the Forest Plan under 36 C.F.R. § 219.15(e), which mandates, "Any resource plans (for example, travel management plans) developed by the Forest Service that apply to the resources or land areas within the planning area must

be consistent with the plan components.” See also *Center for Sierra Nevada Conservation v. U.S. Forest Service*, 832 F. Supp. 2d 1138, 1164 (E.D. Cal. 2011) (“Individual projects within the ENF, including the Travel Management Decision, must be consistent with the ENF Forest Plan and the Sierra Nevada Forest Plan.”). A travel management plan that is inconsistent with the Forest Plan violates the National Forest Management Act. *Id.* at 1165, holding that “the Travel Management Decision conflicts with the governing Forest Plans, and thereby violates NFMA.”

In the *Center for Sierra Nevada Conservation* case, the Forest Plan prohibited motorized routes that crossed meadows. The Forest Service proposed in its travel plan to designate 42 routes through meadows but only prepared a Forest Plan amendment which exempted 20 of them from this prohibition. The project record contained no explanation for why the additional 22 route segments which crossed meadows did not violate this prohibition in the Forest Plan. Accordingly, the court held that the designation of these routes was likely prohibited by the Forest Plan, and “the record fails to provide a rational connection between the fact that the decision designates 42 routes through meadows and the conclusion that those routes do not violate the ENF Forest Plan.” *Id.* at 1166. The court concluded, “The Forest Service has failed to reconcile its own conclusion with the fact that [Alternative] Modified B designates 42 routes through meadows. Accordingly, the Forest Service’s conclusion that the Travel Management Decision complied with the Sierra Nevada Forest Plan was arbitrary and capricious.” *Id.*

In the instant travel management process, the FEIS and DROD contain no discussion whatsoever of the clear discrepancy between the decommissioning of almost the entire Wildcat Canyon motorized trail system and the Forest Plan’s direction that this area is to be managed to provide opportunities for semi-primitive motorized recreation. The Forest also makes no attempt to explain why it believes that no Forest Plan amendment is necessary to accomplish the same thing it stated in 2004 *would* require a Forest Plan amendment. As the courts have held, “Unexplained inconsistency between agency actions is a reason for holding an interpretation to be an arbitrary and capricious change.” *Organized Village of Kake*, 795 F.3d at 966 (internal quotations omitted).

Despite this clear discrepancy, the FEIS section on Forest Plan Compliance concludes without rational basis that:

Other than the direction described above [regarding the proposed Forest Plan amendments needed for MA 3A compliance], all of the action alternatives were determined to be consistent with the components of the PSI’s current Forest Plan. Implementation of any of the action alternatives would not exceed thresholds identified in the Forest Plan standards and would contribute to the achievement of the Forest Plan’s goals and objectives.

FEIS at 3-231.

The only discussion of compliance with 2A management areas is in the Forest Plan Compliance Report, which states:

Most alternatives maintain miles of mixed-use roads and motorized trails in the semiprimitive motorized ROS class. No alternatives remove miles in this ROS class completely, although Alternative E would decrease mileage for the ROS class by 68 percent.

Forest Plan Compliance Report at 23.

From this statement, it appears the Forest concluded that because none of the alternatives completely closed *all motorized routes* in MA 2A areas and the corresponding ROS class across the entire Forest, all proposed alternatives were consistent with the Forest Plan direction to “emphasize semi-primitive motorized recreation opportunities” in MA 2A zones. Not even closing 68 percent of routes in MA 2A areas across the entire Forest was considered inconsistent with the Forest Plan. Apparently, as long as a single motorized route was left open in a MA 2A area anywhere in the Forest, the Forest Service thought that would be sufficient to comply with the Forest Plan direction for MA 2A / semi-primitive motorized ROS areas.

This conclusion defies common sense and utterly fails to square with the Forest’s previous statement in the Hayman Roads EA that the Forest Plan direction for MA 2A and 2B zones would not be met, “if motorized travel is prohibited in large, traditional motorized recreation areas like Wildcat Canyon.” Hayman Roads EA at 4-56. The Forest cannot merely consider compliance with all MA 2A areas across the entire Forest in aggregate. It must consider compliance with *individual* MA 2A areas as well.

The MA 2A area around Wildcat Canyon is a discrete area, and closing almost every motorized route under Forest Service jurisdiction in that area is plainly contrary to the Forest Plan’s direction to “emphasize semi-primitive motorized recreation opportunities,” as well as to:

Maintain existing motorized routes or construct new routes needed as part of the transportation system. **Provide loop routes of one-half to one day’s travel time with at least one-half the total route located within the semi-primitive motorized ROS class** and utilizing primitive local roads and/or trails suitable for motorized trail bike travel.

Forest Plan Compliance Report at 44 (emphasis added). If the Wildcat Canyon trail system were fully open, it would offer at least two such half-day to one-day loop routes in the semi-primitive motorized ROS class. With the proposed total closure of this trail system under the Draft ROD, there will be zero such loop routes in the entire MA 2A area. The Forest’s only analysis of compliance with this specific guidance was the generalized statement that:

Motorized roads are analyzed in the transportation report; routes for recreation are analyzed in the recreation specialist report. Minimization and mitigation techniques for all action alternatives are described in the applicable regulations and forest service guidance for screening criteria appendix found in each specialist report.

Forest Plan Compliance Report at 44. This statement entirely fails to analyze compliance with the specific MA 3A area around Wildcat Canyon, or to explain why the decision to decommission both of the highly desirable loop routes in this trail system is consistent with this direction.

The Forest’s failure to either adopt a Forest Plan amendment changing the management direction for the Wildcat Canyon area to be consistent with its decision to close nearly all motorized routes in the area, or else to provide a rational explanation for its apparent conclusion that this action is consistent with the Forest Plan and no amendment is required, is therefore arbitrary and capricious.

Absent a rational explanation to the contrary, a court would most likely conclude this decision is contrary to the Forest Plan, and therefore violates the NFMA as well as 36 C.F.R. § 219.15(e). Therefore the closure of these five NFSRs is both arbitrary and capricious and unlawful and must be reversed.

C. CONCLUSION

As demonstrated above, the decision in the Draft ROD to decommission all but one short segment of the five NFSRs in Wildcat Canyon is contrary to the Forest Plan and contradicts the decision in a prior travel management plan adopted through a NEPA process. The Forest has provided no explanation in the record for these inconsistencies, and indeed has failed to provide any explanation in the record at all of the connection between the facts found and the choices made with respect to these routes. The Forest has also utterly failed to provide any response to the specific evidence provided in public comments regarding these routes.

From what we can infer was the likely basis for this decision, the management decisions analyzed in the alternatives were unlawfully predetermined and constrained by basing these decisions on the erroneous risk/benefit scores and recommendations in the TAP reports, which were improperly treated as a final agency action that was insulated from further evaluation under NEPA. The final decision with respect to these routes was also likely illegally predetermined by the prejudicial actions of South Park District Ranger Josh Voorhis, both in blocking a proper NEPA analysis from being done in this travel management process of all viable alternatives, and in irretrievably and irreversibly committing Forest Service resources to unlawfully decommission these roads prior to the completion of the required NEPA process.

For these reasons the decision to decommission the five NFSRs in Wildcat Canyon was unlawful, arbitrary and capricious, unsupported by substantial evidence in the record, and contrary to the evidence before the agency. It was made in violation of NEPA, the APA, the National Forest Management Act, and multiple CFRs, and must therefore be reversed.

In resolution of this objection, we request that the Reviewing Officer remand the Draft ROD to the Deciding Official with instructions to modify the final decision to reopen all segments of NFSRs 220, 220.A, 220.B, 221, and 540 to public motorized use as either roads or trails open to all vehicles. No other management option is acceptable to the motorized community for this trail network.

The Forest Service had its chance in 2004 to wash its hands of these roads forever and transfer responsibility for them to Teller and Park Counties. While that plan has worked excellently in Teller County, the transfer of jurisdiction to Park County never took place because of the actions of South Park District Ranger Josh Voorhis to unilaterally undermine that NEPA decision and thwart Park County's easements from being granted. As a result, the Forest Service has lost its chance to avoid responsibility for managing these roads, as the current park County leadership wants nothing to do with them.

The way in which the Pike San Isabel National Forest has handled the situation with the roads in Wildcat Canyon has been nothing short of disgraceful. As former PSI Roads Engineer/Transportation Planner Gary Morrison stated in an email supplied in response to our FOIA request, *"If our leadership wants to know why the motorized community does not want to cooperate with the forest service, this is a great example of why they don't trust us. I don't blame them for their outrage."* (Email from Gary Morrison to James Statezny dated July 11, 2019, attached separately on page 4 of the file "Morrison Emails.pdf".) The Forest's decision to decommission these roads without any justification or analysis in

the instant travel management plan merely continues the disgraceful handling of this situation, and if that decision is not corrected, litigation is highly likely.

The objection process necessarily anticipates the possibility of, and likelihood of success in, subsequent litigation brought by an objector. We ask the Reviewing Officer to take the last chance the Forest Service has to resolve this situation without litigation, and to grant our objections regarding these roads and direct that the final Record of Decision be modified accordingly.

XIV. Objections to Preserve the Ability to Participate in Other Objection Resolutions

The following is a list of routes where we approve of and support the chosen management action in the Draft ROD, but we anticipate that there may be objections filed by anti-motorized groups requesting to have those management actions changed and these routes closed to public use. We strongly oppose any changes in the Final ROD in resolution of other objections that result in any additional routes being closed to public motorized use, and wish to reserve our right to participate in the resolution of any such objections with respect to the following routes.

- **NFSR 298.A Williams Pass 4WD** - This extremely important high alpine pass route which crosses into the Gunnison National Forest was originally proposed for closure in the DEIS version of Alternative C. It is one of the trails adopted by CORE. Both Marcus Trusty and Patrick McKay commented extensively on this route in the DEIS comment period. In response to CORE's comments and work with the Salida Ranger District during the summer of 2020, the FEIS version of Alternative C (as adopted in the Draft ROD) was modified to keep it open to public use and convert it to a trail open to all vehicles.

We anticipate that anti-motorized groups will object to keeping this route open to motorized use, using the same arguments about mud bogs, watershed risk, and vegetation resource damage they made during the DEIS comment period. We wish to note that CORE, in cooperation with the Salida Ranger District, performed extensive mitigation work on this trail during the summer of 2020, installing water bars, creating drainage ditches, and lining parts of the route with boulders to prevent vehicles from driving off trail. Mud bogs and off-trail resource damage are no longer significant concerns with this route, and any claims to the contrary by anti-motorized groups will be based on outdated information.

As a result of CORE's resource mitigation work and the mild winter and dry summer, Williams Pass was able to be opened to the public during the month of August 2020 for the first time in several years, with no management problems or resource damage occurring. We object in advance to any objections calling for closure of this route, and request that we be included in any resolution meetings held regarding it.

- **NFSR 110 Halfmoon and NFSR 110.J South Halfmoon 4WD** - These are two extremely important 4WD routes in the Leadville District that have been subject to partial temporary

closures under the terms of the lawsuit settlement agreement, and are proposed to be fully reopened as trails open to all vehicles under the Draft ROD, after the administrative Forest Plan correction resolved the mapping error which showed them intruding into a 3A management zone. Both Patrick McKay and Marcus Trusty commented on these routes during the DEIS comment period. We strongly support these routes being reopened to public motorized use, and object in advance to any objections calling for closure of these routes. We request that we be included in any resolution meetings held regarding them.

- **NFSR 381 Cloyses Lake 4WD** - This is an important wilderness cherry-stem route in the Leadville District that is one of CORE's adopted trails, all of which other than the final segment is being kept open to motorized use under the Draft Decision. Both Marcus Trusty and Patrick McKay submitted comments on it during the DEIS comment period. We have written a separate objection to the decision with respect to the final segment of this route, which we are requesting to be made open to public motorized use instead of being designated as an admin road. However we anticipate anti-motorized groups will file objections calling for the entire length of this route to be closed, as they did in the DEIS comment period. We object in advance to any objections calling for this route to be closed to public use, and request that we be included in any resolutions meetings regarding them.
- **NFSRs 277 Baldwin Creek, 279 Boulder Mountain, 278 Upper Browns Creek, and 278.A Antero, 278.B Mount White** - These routes comprise the Mount Antero trail system near Saint Elmo in the Salida District. Both Marcus Trusty and Patrick McKay commented regarding these routes during the DEIS comment period, and we have written a separate objection regarding a mapping error on the end segment of NFSR 277. They are all extremely valuable 4WD trails and several are adopted by CORE. We object in advance to any objections calling for closure of these routes and request to participate in any resolution meetings held regarding them.
- **NFSRs 344 South Cottonwood, 344.G Atlantic Mound, and 349 Grassy Gulch** - These are all extremely valuable motorized routes comprising the South Cottonwood trail system west of Buena Vista. Both Patrick McKay and Marcus Trusty commented on these routes during the DEIS comment period, and we have written a separate objection regarding the closure of the end segment of NFSR 349. We anticipate that anti-motorized groups will file objections requesting the closure of all of these roads, and object in advance to any such objections. We request that we be included in any resolution meetings held regarding these roads.
- **NFSR 408 Wheeler Lake, NFSR 437 Mount Lincoln, and NFSRs 285, 288, & 857 (Mount Bross trails)** - These are all extremely valuable routes north of Alma in the South Park District, and are the only remaining routes in this area left open by the Draft Decision. Wheeler Lake is an especially valuable motorized route being converted to a trail open to all vehicles. Patrick McKay and Marcus Trusty both commented regarding these routes. We object in advance to any objections calling for the closure of these roads and request to participate in any resolution meetings held regarding them.
- **NFSR 119 Upper Geneva** - This is an important high alpine mining road in the South Platte District that was previously subject to a mapping error which left off the final 1.1 miles from the MVUM route. That mapping error is being corrected in the Draft ROD, with an additional 1.1

miles proposed to be added to the legal motorized route. Both Patrick McKay and Marcus Trusty commented on this route in the DEIS comment period, and we strongly support this action. We object in advance to any objections calling for the closure of any section of this road, and request to participate in any resolution meetings held regarding it.

- **NFSR 565 Red Cone, NFSR 121 Handcart Gulch (aka Webster Pass), NFSR 120.C Upper Hall Valley** - These are all extremely popular 4WD routes in the South Platte District which would be kept open under the Draft ROD. Red Cone is proposed for conversion to a trail open to all vehicles, which we support. Both Patrick McKay and Marcus Trusty commented on these routes during the DEIS comment period. We object in advance to any objections calling for the closure of these routes and request to participate in any resolution meetings held regarding them.
- **NFSR 346 Hotel Gulch** - This extremely important connector route in the Pikes Peak Ranger District provides critical access to Rampart Range Road from Highway 67 north of Woodland Park. It was proposed for closure in an early draft of Alternative C released prior to the publication of the DEIS, but was changed to stay open in the DEIS and subsequent versions of Alternative C. Both Patrick McKay and Marcus Trusty commented on this route in the DEIS comment period asking for it to stay open. We object in advance to any objections calling for it to be closed, and request to participate in any resolution meetings held regarding it.
- **NFSR 381 Mount Rosa and NFSR 376.A Bull Park** - These are both highly-prized moderate difficulty 4WD trails that provide valuable access to some scenic and remote areas south of Pikes Peak. Patrick McKay commented on both of these routes in the DEIS comment period. We anticipate that there will be objections calling for closure of these routes as there were several comments from anti-motorized groups during the DEIS comment period asking for them to be converted to non-motorized trails. We strongly oppose any motorized route closures to favor non-motorized users as such discriminatory treatment violates the Travel Management Rule (see Objection #4). We object in advance to any objections calling for closure of these routes and request to participate in any resolution meetings regarding them.

XV. Conclusion

In the Purpose and Need statement in the Final EIS for the Pike San Isabel National Forest MVUM Analysis, the Forest stated that the purpose of this project is “to comply with the [Travel Management Rule] as well as all applicable laws by providing a system of roads, trails, and areas designated for motor vehicle use by class of vehicle and time of year on the PSI.” FEIS at 1-9. The Forest further stated, “More specifically, this action is needed to develop a **sustainable system** of roads, trails, and areas where motor vehicle use is appropriate.” *Id.* It identified two specific needs: (1) the designation of a sustainable motorized route network under 36 C.F.R. § 212.55, and (2) the identification of the Minimum Road System (MRS) under 36 C.F.R. § 212.5(b).

As thoroughly demonstrated in the preceding 300+ pages of objections, the Pike San Isabel National Forest utterly failed to create a travel management plan which meets this stated purpose or fulfills these

stated needs. The Forest failed to properly comply with either section of the Travel Management Rule, as it based its entire analysis in this process on a rushed and non-scientific Travel Analysis Process.

Rather than treating the TAP and TARs as merely the non-decisional first step in the two-step process of determining the Minimum Road System under TMR § 212.5(b), the Forest treated it as if it were a decisional document producing a conclusive final agency action upon which the Forest then based most individual route designations, either by directly adopting the conclusory recommendations in the TAP reports or by running the TAP scores through a formulaic Minimum Road System rubric to produce a given result. The remainder of the routes were designated based on the arbitrary and undocumented opinions of ranger district staff in a “site-specific review” process which was used to override the results of the MRS rubric at whim.

The result of this process was a Preferred Alternative entirely composed of subjective and non science-based route decisions, which the public was allowed no meaningful role in developing. All public comments challenging the factual basis of the TAP scores and recommendations or the site-specific review recommendations were disregarded. In 99% of cases, the Forest failed to provide any explanations of the reasons for route-specific decisions at all. This Preferred Alternative was then adopted as a *fait accompli*, and all analysis included in the Final EIS is nothing but a *post hoc* rationalization of decisions that were effectively made before the instant travel management process even began.

As a result of the Forest’s complete failure to effectively involve the public in route-specific decision making, the motorized route system designated in the Draft ROD is a confused mess of routes rife with mapping errors that does not meet the public demand for motorized access and recreation in the Pike San Isabel National Forest either now or in the future. Despite the skyrocketing popularity of side-by-sides and UTVs and the dramatic increases in both Colorado’s population and the popularity of off-highway motorized recreation over the last 20 years, the Forest has designated a total motorized route network that contains 4% fewer routes than are open today.

Many of the routes that are slated for closure are among the most popular motorized trails in Colorado, including nationally-famous trail systems like Wildcat Canyon (the Gulches). Many other routes like Twin Cones, the many trails around Alma and Fairplay, or Winding Stairs Road in Rampart Range are local favorites that have been highly prized by area residents for decades for their scenic campsites and overlooks, high alpine scenery, technical four-wheel-driving, or access to mountain lakes, hunting grounds, hiking trails, and historic mining ruins. Many of these routes were erroneously proposed for closure because the ranger district staff making route-specific decisions neither understood the benefits of these routes themselves nor made any effort to consult the actual users of these routes before recommending them for closure.

Because the Forest Service staff had no understanding of the importance of the routes they were closing, the statements in the FEIS describing the proposed travel plan’s impacts on motorized recreation are almost universally false, including statements such as:

- Alternative C would slightly reduce the overall motorized recreation route network that is not likely to reduce access to favorite destinations or result in overcrowded or congested motorized routes.

FEIS at 3-138. As demonstrated by the detailed analysis above of numerous highly valued routes proposed for closure, the statement that Alternative C “is not likely to reduce access to favorite destinations” is demonstrably and categorically untrue. The statement that it would not “result in overcrowded or congested motorized routes” is likewise false. In the 2004 Hayman Roads EA, the Forest Service correctly predicted that closing the nationally-famous four-wheel-drive roads in Wildcat Canyon (particularly Hackett, Longwater, and Corral Creek) would result in overcrowding and congestion in the Badger Flats and Sheep Mountain (Browns and Breakneck Pass) trail systems in the South Park District, as users were displaced and concentrated there. After 10+ years of the Wildcat Canyon trails continuing to be closed, that is exactly what happened, with both of those areas requiring their own area-specific travel management plans to be developed in the last five years due to impacts from overuse.

With the mass route closures proposed around Fairplay, Alma, and south Rampart Range especially, some of the most popular offroading areas close to the Front Range will have significantly decreased opportunities for motorized recreation, which in turn will displace users to the remaining open areas in neighboring districts or other National Forests. Congestion, user concentration, and ever increasing environmental impacts are the inevitable result.

The year 2020 has been a perfect case study of why “management by closure” does not work, but merely displaces users and concentrates impacts in other areas. With the closures of recreation areas in response to the COVID-19 virus, we have seen events play out in a matter of weeks which normally take years. As more and more recreation sites were closed this past spring due to concerns of spreading the virus, those areas that remained open rapidly became overcrowded, forcing their closure as well. One well-known example occurred in California when Los Angeles closed its beaches, which then drove throngs of people to San Diego’s beaches, after which all the beaches in California were closed.

The Pike San Isabel National Forest’s proposed travel plan will produce a similar effect regarding motorized recreation in south-central Colorado. As more and more areas are closed at the same time participation in motorized recreation is dramatically increasing, more and more areas will become overcrowded with ever increasing impacts driving still more closures. The Forest’s failure to consider such impacts, and indeed its complete denial that this would even be an issue, demonstrates that it failed to take the requisite “hard look” at the cumulative impacts of the proposed travel plan as required by NEPA, and failed to consider a key aspect of the problem, rendering the overall decision arbitrary and capricious.

Ultimately, the Pike San Isabel National Forest utterly failed to designate a “sustainable system of roads, trails, and areas where motor vehicle use is appropriate” as required by the Travel Management Rule. The proposed route network will not meet the needs of motorized recreationists and will not be sustainable in any fashion, but will only cause increasing impacts on both the human and natural environments as a consequence of its irrational decisions to close many favorite routes, sever existing loop opportunities, and end numerous routes at arbitrary and unsatisfying endpoints causing new resource damage as parking areas and turnarounds are formed in unsuitable locations.

The unjustified closure of many popular trails and the nonsensical choice of endpoints on many others will also likely cause an increased number of motorists illegally driving closed trails, and the Forest

cannot possibly hope to enforce all of these route closures. Many of the endpoints chosen are physically indefensible, ending in open areas with no way to effectively install gates or fences. Others are in random locations on narrow shelf-roads that will create safety hazards for motorists who are forced to turn around in unsafe locations. Arbitrarily closing popular routes at indefensible locations does nothing but invite illegal use of the closed routes. In the case of the numerous roads being converted to special use permit roads, enforcement will effectively be up to the nearby landowners, causing needless conflicts where none exist now.

Finally, the Forest has chosen to impose a variety of arbitrary and unsupported seasonal closures on numerous routes that are inconsistent both with how those routes have been managed in the past and with the management of other nearby routes in the same area that have no seasonal closures. This creates nonsensical outcomes such as the main arterial road of the Rainbow Falls trail system being seasonally closed for four months out of the year while none of the roads connecting to it have seasonal closures. As a result, users will have to detour for miles to reach certain trails and will still be able to drive 99% of a major loop route, but will be barred from driving the last few hundred yards back to the highway.

Such is the result of uninformed decision-making based solely on maps and the biased personal knowledge, impressions, and opinions of ranger district staff without any input from the actual users of the motorized routes being analyzed. The Pike San Isabel National Forest could do much better.

CORE and Patrick McKay appeal to the Reviewing Officer at the Rocky Mountain Regional Office of the Forest Service to affirm our objections and reverse the uniquely flawed travel management plan adopted in the Draft Record of Decision. We ask for that decision to be remanded to the Supervisor of the Pike San Isabel National Forest with instructions to correct the errors identified herein by making the changes to the Final Record of Decision requested in our objections. To do otherwise would be inconsistent with the Purpose and Need of this project, the agency's statutory authority, NEPA, the APA, and the public interest. We would welcome a discussion of these objections at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, reading "Patrick McKay". The signature is fluid and cursive, with the first name "Patrick" and last name "McKay" clearly legible.

Patrick McKay, Esq., Lead Objector / Advisory Board Member, Colorado Offroad Enterprise

cc: Marcus Trusty, President, Colorado Offroad Enterprise
Kevin Garden, Esq., The Garden Law Firm, P.C.

Appendix A: List of Supporting Documents

Below is a list of supporting documents attached to these objections as separate files, with the filename and a brief description of the contents. The following files are cited in the objections above or support arguments made in them. Note that because of file size limitations in the Forest Service's website for submitting objections, these files are spread across multiple separate submissions.

Filename	Description
FS_Decommissioning_Emails.pdf	Forest Service emails regarding Ranger Voorhis' plan to decommission the Wildcat Canyon roads. Cited in Objection #38.
FS_Easement_Emails.pdf	Forest Service emails regarding the South Park District's attempts to persuade Park County to withdraw its easement application for the Wildcat Canyon roads and thwart further easement applications. Cited in Objection #38.
Hayman_Roads_EA.pdf	The 2004 Hayman Roads Management Project EA. Cited in Objection #38.
Hayman_Roads_DN and_FONSI.pdf	The Decision Notice and FONSI for the 2004 Hayman Roads Management Project. Cited in Objection #38.
Hayman_Roads_SIR.pdf	The 2019 Supplemental Information Report for the 2004 Hayman Roads Management Project. Cited in Objection #38.
Metal_Removal_Contractor_Instructions.pdf	Email describing instructions to the contractor hired to carry out the metal removal project on Corral Creek Road. Cited in Objection #38.
Morrison_Emails.pdf	Gary Morrison's emails regarding Wildcat Canyon, obtained by FOIA request. Cited in Objection #38.
Park_County_Grant_Application-Metal_Removal.pdf	Wild Connections' grant application to the Park County Land and Water Trust Fund for the Wildcat Canyon metal removal project. Cited in Objection #38.
Rescinded_Easement_Request_9-22-15.pdf	Copy of the rescinded easement application from Park County for the Wildcat Canyon roads. Cited in Objection #38.
South_Platte_Baseline_Study_2018.pdf	Study of current conditions in Wildcat Canyon by the Coalition for the Upper South Platte. Cited in Objection #38.
South_Platte_Protection_Plan.pdf	The South Platte Protection Plan as approved in the South Platte Wild and Scenic River Study. Cited in Objection #38.
South_Rampart_EA.pdf	The South Rampart Travel Management Plan EA published in 2011. Cited in multiple objections.

SPEB_Decommissioning_Grant.pdf	The Forest Service's grant application to the South Platte Enhancement Board for funding to decommission the Wildcat Canyon roads. Cited in Objection #38.
Teller_County_RS2477_Resolution.pdf	Teller County's resolution claiming the Wildcat Canyon roads as RS-2477 roads. Cited in Objection #38.
Upward_Trend_in_Powersports_(SEMA).pdf	Article from SEMA news giving statistics on side-by-side sales. Cited in Objection #2.
Voorhis_Memo.pdf	South Park Ranger Josh Voorhis' 2018 memo of expectations laying out his plans to decommission the Wildcat Canyon roads. Supports Objection #38.
Park_County_Wildcat_Canyon_Press_Release_4-16-2019.pdf	Park County's press release from April 2019 announcing they have no interest in taking jurisdiction of the Wildcat Canyon Roads. Cited in Objection #38.
Wild_Connections_Wild_News_7-2020.pdf	Wild Connections' July 2020 newsletter announcing the Wildcat Canyon metal removal project. Cited in Objection #38.
Wildcat_Canyon_Timeline.pdf	Timeline of events regarding Wildcat Canyon. Supports Objection #38.
Wild_and_Scenic_DLEIS.pdf	South Platte River Wild and Scenic River Study DLEIS. Cited in Objection #38.
Wild_and_Scenic_FEIS_Volume_1.pdf	South Platte River Wild and Scenic River Study FEIS. Cited in Objection #38.
Wild_and_Scenic_FEIS_Volume_2_Appendices.pdf	South Platte River Wild and Scenic River Study FEIS appendixes. Cited in Objection #38.
Wild_and_Scenic_Record_of_Decision.pdf	South Platte River Wild and Scenic River Study ROD. Cited in Objection #38.