Congressional Hearing
"The Impact of Forest Road Closures"
Testimony of Commissioner Mike McKee, Uintah County Utah
March 12, 2012

Mr. Chairman and Members of the Committee,

I am Mike McKee, County Commissioner of Uintah County, Utah where I represent over 30,000 citizens. Thank you for holding this hearing on the Impacts of Forest Road Closures and its negative impacts on my constituents. In Uintah County we are proud of our history, our heritage, and the multiple uses on our public lands from recreation to development of our natural resources.

Today I will more specifically speak of the Ashley National Forest in Uintah County. In Uintah County, only 15% of our land is privately owned. Because of the small percentage of private land in our County, the Ashley National Forest is often referred to and used as "our back yard." We remain committed to responsible development of our public lands in an environmentally safe manner.

Net results of the Ashley National Forest Travel Management Plan and the impacts to our area. (Record of Decision signed September 9, 2009)

Roads. The preferred alternative eliminated approximately 373 miles of existing roads. These roads provided access to recreation, hunting, fishing, game retrieval, wood gathering, camping, as well as a loss of opportunity for the elderly and handicapped to enjoy the beauty of the forest.

These roads have been taken off the map all in advance of further planning consideration of wilderness proposals that are yet to be determined.

Dispersed Camping. A quality and quantity of a recreational experience has been severely compromised. Our citizens go to the forest to get away from population centers and to have a remote privacy experience. With these changes, camping becomes more congested with motor homes lined up by the side of each other and next to the roads with dust, noise and increased traffic. Recreationists find their experience to be less than desirable. This issue was of great concern to the citizens of our County. Several individuals passed petitions to "Stop Proposed Travel and Camping Restrictions on Public/Forest Lands." These petitions were brought in to the Commissioners and there were nearly 9,000 individuals who signed.

Custom and Culture of the Community. Hunting, fishing, camping, and enjoyment of the great outdoors has always been an important part of our heritage. Many of our citizens view the Ashley National Forest as an extension of their own back yard. Local use and visitation is very high on the Ashley National Forest.

Socioeconomic use of the Ashley National Forest. Timber harvest, which was once an important use of the forest, is close to non-existent on the Ashley National Forest today. Hunters, fishermen and tourists from outside our area have contributed greatly to the socioeconomics of our community when they used the Ashley National Forest. Forest Supervisors have stated that the niche for the Ashley National Forest is recreation. As community leaders, we are puzzled with management decisions that have the effect of closing down much of our forest for recreational opportunities. If the Forest is not to be used for timbering and recreation, we are left to wonder what then the purpose of our Forest is.

Cooperating Agency Status. Uintah County has cooperating agency status with the Ashley National Forest. The Forest Service is required to consult with local governments in preparing a roads analysis pursuant to 36 C.F.R. Part 212.2(b) in preparing a travel management plan. The 2004 planning rules also direct the Forest Service to consult and coordinate with local governments as part of the public participation process. For the most part, Uintah County believes the Forest Service did not meet the legal requirement of including Uintah County in the cooperating agency status process.

Flawed process

Federal Register statement. The November 2, 2007 Federal Register stated in the summary that "the decision will be to determine whether to include .....and change dispersed vehicle camping designations from allowing travel up to 300 feet off road to 150 feet off road." Obviously moving from 300 feet to 150 feet was predecisional. This violates NEPA.

Failure to work with local governments on alternatives. Uintah County had numerous public meetings and developed a Travel Management Plan for designated routes on the Forest and a Dispersed Recreational Plan. These plans were adopted by Resolution on August 27, 2007 into the County General Plan. We solicited the Forest Service asking for these plans to be adopted, but at a minimum for these plans to be one of the alternatives.

Inaccurate maps and narrative. The cooperators and the public never had an opportunity to properly analyze the proposed actions. The maps and narrative never matched each other. In hindsight it appeared the maps were followed and in other cases the narrative was adhered to. The public never had reliable information to analyze and comment on. Uintah County repeatedly tried to get accurate maps, and we were denied.

Lack of Analysis. Forest Service failed to fully analyze the environmental effects in the closure of roads and reduction in reduced camping areas.

DEIS Fails to Conform to Legal Mandates. Forest Service must consider and identify public, outstanding and Reserved Rights-of-way as part of its Travel Management Planning for the Ashley National Forest.

Uintah County appealed to the local Forest Service, to the Regional level and both of those appeals were denied. It was appealed to the Under Secretary of the Natural Resources and Environment, United States Department of Agriculture, Federal level on March 10, 2010. We personally had a follow up visit in Washington, DC and were assured they would get back with us. To this date there has been no response to the County from the Federal level.

Michael McKee

Michael J. McKee, Commissioner
Uintah County, Utah

UINTAH COUNTY

FILE COPY

STATE OF UTAH

Our past is the nation's future

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July 16, 2009

received
JUL 21 2009
ISW

Kevin Elliott, Forest Supervisor
Kris Rutledge, Project Leader
Ashley National Forest
366 North Vernal Avenue
Vernal, UT 84078
(435) 781-5196

Re: Draft Environmental Impact Statement for the Ashley National Forest Travel Management Plan

Dear Mr. Elliott and Ms. Rutledge,

Uintah County provides the following comments on the Draft Environmental Impact Statement (DEIS) for the Ashley National Forest Travel Management Plan (ANF TMP), Roosevelt/Duchesne, Flaming Gorge and Vernal Ranger Districts.

I. SUMMARY OF MAJOR RECOMMENDATIONS

Write an environmental assessment (EA) to address specific cross-country motorized vehicle use;

Develop process including coordination with local governments and the public to resolve issues of jurisdiction;

Prepare a travel analysis that meets the criteria in the Forest Service Manual and Handbook;

Inventory and map the allegedly unauthorized roads and trails, and prepare maps that depict these roads and trails with a landownership layer;

Develop data regarding levels of service for forest roads and the number of vehicles using the roads during high recreation use seasons, *e.g.* summer and hunting;

Develop data regarding snowmobile use during the winter;

Develop or refine recreation user data, focusing on motorized versus non-motorized; and mixed uses;

Delete the unlawful roadless area management and related closures;

Write a supplemental or new DEIS and submit for public comment.

II. SUMMARY OF ALTERNATIVES

A. No Action Alternative

According to the DEIS, the No Action alternative would retain approximately 1,587 miles of open National Forest System roads and motorized trails, including approximately 988 miles of road allowing mixed traffic. Off road dispersed camping access and game retrieval would continue to be allowed up to 300 feet from designated routes. The 111,805 acre "hatched travel area" on the Vernal Ranger District would remain open to motorized vehicles on designated routes and existing, undesignated routes as long as resource damage was not occurring. DEIS at 2-12.

The No Action Alternative, however, does not address the current public use of roads and trails that the ANF classifies as 'unauthorized' and therefore closed. The ANF LRMP did not address these routes and roads. *See* Ashley National Forest (ANF) LRMP and FEIS (1986). The Forest Service has neither signed nor officially closed these routes, either pursuant to road closure procedures, 36 C.F.R. §261.50; or in a public NEPA process. The Forest Service did not enforce the alleged closures for the last 23 years. As a consequence, the public and public officials cannot be expected to understand that the use of these roads and trails will be unlawful or that they have always been closed, as recently claimed by the ANF Supervisor.[1]

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[1] The ANF Supervisor told Utah local governments on June 30, 2009 that these roads have been administratively closed since the previous LRMP in 1986. CLG has not been able to find a record of the closures and Appendix A of the DEIS note administrative closures for only a few of the 672 allegedly unauthorized routes that were not put on the maps. or analyzed in the DEIS.

B. Preferred Alternative

Under the identified preferred alternative, the designated road and motorized trail system would total 1,705 miles (357 miles of new or changed routes including 'administratively closed routes' and 1,348 miles of existing routes, which include administratively closed roads). This alternative would eliminate approximately 328 miles of existing, but "undesignated" routes in the "hatched travel areas" on the Vernal Ranger District. DEIS at 1-10.

Outside of these routes, the ANF TMP also eliminates what the Forest Service considers "unauthorized routes," which are not forest roads and occur outside the Vernal Ranger District hatched travel area or which are found in the Flaming Gorge National Recreation Area (FGNRA) and Roosevelt/Duchesne Ranger District.[2] These include roads, which are unclassified, user created, unplanned, non-system, and undetermined roads that are currently being used by the public. DEIS at 2-3.

According to the Forest Service, wheeled motorized vehicle travel by the public is not permitted on these "unauthorized" routes, with the exception of the hatched travel areas on the Vernal Ranger District. [Minutes of Utah Local Government Meeting June 30, 2009.] The exact mileage of unauthorized and undesignated routes existing on the Forest is unknown. The ANF decided that it was unreasonable to complete the inventory of all unauthorized and undesignated routes due to the extensive number of routes over the entire forest and the exorbitant cost and amount of time that would be associated with such an inventory. DEIS at 1-4.

The miles of unauthorized routes "indicated" by the data used in the DEIS are estimated to be 373 miles in the Roosevelt/Duchesne District, 480 miles in the Flaming Gorge District, and 583 miles in the Vernal Ranger District, of which 368 miles are considered "undesignated" within the hatched travel area. DEIS at 2-12. The public cannot document the miles of roads and trails not considered, because the DEIS states that it did not inventory or quantify all of the 'unauthorized' roads and trails.

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[2] A road is generally defined as "Forest road or trail. A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources." 36 C.F.R. §212.1 (2005). The DEIS classifies all undesignated roads or trails as unauthorized.

Appendix A uses Forest Service numbers but since they are not on the maps and no other identification, such as a name or location, is provided, the reader cannot determine which road or trail is to be closed or the rebut the reasons given. The local governments conclude that the DEIS greatly under-estimates the miles of roads and trails that are excluded from the DEIS but will nevertheless be closed to the public after completion of the EIS.

Thus, when the ANF claims that the preferred alternative increases access, this is materially incorrect and misleading. Any expansion claimed in the DEIS is limited to the narrow class of roads recognized by the Forest Service. The DEIS and the ANF deliberately omit the fact that the TMP will close at least 480 miles of travel routes in the FGNRA.

While the DEIS purports to list some of the "unauthorized routes" in Appendix A, the numbers assigned to the routes do not correspond to numbers used in 1971 or 1991 road maps produced by the Forest Service. As a result, it is literally impossible to divine where these routes are and determine whether they are important for particular recreation uses.

The failure to disclose the roads and trails to be closed in the DEIS is compounded by repeated assurances over the last three years from the Flaming Gorge District Ranger that the Forest Service would not close ***any*** roads without first consulting with the county commission. At no time until the public hearings on May 14, 2009 did the Forest Service acknowledge that this assurance applied only the roads that met the Forest Service technical definition of a road, rather than the Webster's Dictionary definition of a road or trail.[3]

Because allowing public access to these unauthorized (also known as user-created, unclassified, or non-system) roads, trails, and/or areas would allegedly not meet the purpose and need for the project, the estimated 1,436 miles of unauthorized routes are restricted to non-motorized use in all action alternatives, unless they are proposed for motorized use designation. DEIS at 1-16, 2-3. These "non-system routes" will be closed and stabilized, reclaimed, or obliterated as funds allow. DEIS at 2-5.

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[3] A road is an identifiable route, way or path between places. Roads are typically smoothed, paved, or otherwise prepared to allow easy travel; though they need not be, and historically many roads were simply recognizable routes without any formal construction or maintenance. http://en.wikipedia.org/wiki/Road

Finally, under management common to all alternatives, no areas would be open to cross-country motor vehicle use, but limited motorized access for dispersed camping would be permissible within 150 feet of designated roads and designated motorized trails where getting to the site would not involve: crossing alpine or meadow areas; crossing a live stream, camping within 100 feet of a water body such as a lake or live stream (excluding reservoirs), or camping within ¼ mile of a developed campground. DEIS at 2-2.

III. DEIS FAILS TO MEET LEGAL MANDATES IN FOREST SERVICE RULES AND POLICY

A. Forest Service Must Document Jurisdiction and Identify Public, Outstanding and Reserved Rights-of-Way As Part of Its Travel Management Planning for the Ashley National Forest

The County has repeatedly emphasized in scoping comments and at the two cooperator meetings held that under the 2005 Travel Management Rule (TMR), the Forest Service must first consult and coordinate with them as to all of the roads and trails in the ANF located within the County in order to determine jurisdiction. The Forest Service rejected this comment on the basis that resolution of jurisdiction in coordination with local governments were outside the scope of the EIS. *See e.g.* Forest Service Response to Scoping Comments Feb. 2008. The DEIS also dismisses the issues of jurisdiction and coordination and wrongfully refuses to analyze the jurisdictional issues in depth. DEIS at 1-17. Forest Service policy requires that the travel management plan process first resolve the issues of jurisdiction through coordination with local governments and the public, and thus the ANF failed to follow binding Forest Service policy from the very outset and admits as much in the DEIS.

The Forest Service has materially misrepresented the proposed action and alternatives by limiting the universe to roads that the Forest Service recognizes. The DEIS entirely omits an estimated 1,436 miles of roads, of which at least one-third, are in the FGNRA, that the Forest Service considers unauthorized or unclassified. The DEIS incorrectly assumes ownership and control over these rights-of-way and effects their closure, without first delineating or identifying the public, outstanding or reserved rights-of-way over which the Forest Service has no authority. FSM 2718.5, 2719 (limited control over reserved or outstanding rights), 2718.31 (R.S. 2477 rights-of-way are subject to and controlled by state law). The FGNRA was not established until 1968 and much of the

land within the NRA was privately owned and acquired by the United States. Thus, an unknown number of roads and trails that were used by the public are reserved or outstanding rights over which the Forest Service has no or limited jurisdiction. 36 C.F.R. §251.110(b) (R.S. 2477); FSM 2718.7 (R.S. 2477); 2734.2 (outstanding or reserved rights-of-way); 5430.5, ¶¶6, 7 (defining outstanding and reserved rights); *see also United States v. Srnsky*, 271 F.3d 595, 601 (4th Cir. 2001) (common law implied easement is a reserved right).

The DEIS also fails to disclose and consider access rights and continued access with respect to public and private rights-of-way, including the roads and trails necessary to reach private land and grazing allotments. The Rock Springs Grazing Association (RSGA), which sold significant acreage to the United States, reserved its rights-of-way. Other land owners and grazing permittees have access rights-of-way which were not extinguished when the NRA was established. There is no evidence in the DEIS that the ANF considered these rights and other public and private rights-of-way. A Mr. Peters testified that the DEIS closes the road that he uses to reach his land near Bulkhead [Haystack]. The assumption in the DEIS that all unclassified or unknown roads are unlawful, without documentation of the research done (if any), and without coordination with local governments and the public, does not meet the legal steps set out in the Forest Service Handbook for Travel Planning, FSH 7709.55, ch. 11, 12 (2008).

B. Outstanding and Reserved Rights Undocumented[4]

The proposed the DEIS will directly affect public access over the numerous public roads that are outstanding or reserved rights, including R.S. 2477 rights-of-way, located in the FGNRA and will affect access right to private land and grazing allotments. The County has a recognized ownership interest on behalf of the public in the public roads. *Kinscherff v. United States*, 586 F.2d 159, 160 (10th Cir. 1978); Wyo. Stat. §24-3-101. The earlier County maps document the existence of many roads in the FGNRA prior to its reservation by Congress in 1968. Ex.**, National Park Service Map, Roads and Trails, Flaming Gorge Recreation Area Project (1962); Ex. _, Forest Service 1971 Travel Map. Thus, there is a presumption that there are public and private roads within the FGNRA, which

[4] The Forest Service manual defines an outstanding right as " A property right or interest owned by someone other than the present landowner." FSM 5430.5 ¶6. A reserved right is "A right created by the grantor in a clause in an instrument or conveyance by which the grantor reserves some right, interest, or profit in the estate granted." 5430.5 ¶7.

are valid existing rights, 16 U.S.C. §§460v-2, §460v-5,[5] and that these roads should remain available for public use. Sweetwater County adopted all of these routes by resolution when the Department of the Interior attempted to eradicate the public rights-of-way under R.S. 2477.

Despite the foregoing, the DEIS merely provides: "The Forest Service recognizes documented rights-of-way held by State, county, or other local public authorities. This includes rights-of-way under Revised Statute (R.S.) 2477 that have been evaluated by the authorized Forest Service official in order to make an administrative determination of validity; or that have been adjudicated through the federal court system." DEIS at 1-17. As a result, the Forest Service explains that roads and trails under the jurisdiction of other entities (such as state and counties) are not analyzed in the DEIS, but are shown on maps of the alternatives. DEIS at 1-9.

Because the Forest Service officials told the Uintah County Commission on numerous occasions that it would not close any roads in this travel plan, the county reasonably assumed that the public rights of access were not at risk. Not only has the Forest Service misrepresented that the DEIS maps identify all of the public rights-of-way, the Forest Service must inventory, document and analyze the Forest Service jurisdiction in the TMP process. As shown below, in making TMP designations, the 2005 TMR and implementing policy directives, effective January 7, 2009, 73 Fed. Reg. 74689 (2008),[6] clearly require the Forest Service to first make collaborative, non-binding administrative determinations as to its jurisdiction over roads and trails within the ANF. Collaboration means the full participation of the Coalition of Local Governments. The Forest Service has yet to fully engage in its mandate to determine jurisdiction. The scheduling of the meeting for June 30, 2009 or

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[5] *See also* SWCCD goals, objectives and policies for the county transportation system and public rights of access, including those under R.S. 2477, in the *Sweetwater County Conservation District Land & Resource Use Plan & Policy*, pp. 21-24.

[6] The Forest Service Manual ("FSM") and Forest Service Handbooks ("FSH") codify Forest Service policy, practice, and procedure. They serve as the primary basis for the internal management and control of all programs and the primary source of administrative direction to employees of the Forest Service. The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff in more than one unit to plan and execute assigned programs and activities. The FSH is the principal source of specialized guidance and instruction for carrying out the direction issued in the FSM. *Cleveland v. U.S.*, 546 F. Supp.2d 732 n.4 (N.D. Cal. 2008).

the offer of July 6, 2009 to meet with specific counties comes entirely too late to be meaningful, especially when the offer appears to expire July 16, 2009. *See* email of K. Rutledge July 6, 2009.

These issues were raised more than 18 months ago but at that time the Forest Service flatly refused to address the issues of jurisdiction on the basis that it was outside the scope of the EIS. The failure to comply with the 2005 TMR and implementing directives is arbitrary and capricious and grounds for setting aside the proposed road designations. *Cotton Petroleum Corp. v. U.S. Dept. of Interior, Bureau of Indian Affairs*, 870 F.2d 1515, 1527 (10th Cir. 1989).

The ANF now claims that it requested information on road jurisdiction more than two years ago. This is untrue, just as was the case for the ANF Supervisor's contention in May of this year that the ANF had provided the local governments with road maps more than 5 years ago. Uintah county requested road maps at the March 2008 cooperating agency meeting. The maps were provided in November 2008. This was the first set of maps ever provided and, as shown in these comments, they are entirely deficient.

The fact that the TMR protects valid existing rights of access does not insulate the Forest Service from considering jurisdiction in its travel management analysis. Valid existing rights of way are to be recognized "**[i]n making designations**." 36 C.F.R. §212.55(d) (2005) (emphasis added). Furthermore, "questions of valid existing rights are best examined at the local level, where they can be individually evaluated." 70 Fed. Reg. 68264, 68282 (2005).[7] Coordination, therefore, with appropriate Federal, State, county, local, and tribal governments in designating roads, trails, and areas for motor vehicle use is required. 36 C.F.R. §212.53.

The Forest Service may not "consider a road or trail on NFS lands for designation unless there is legal public access to that road or trail," nor may the Forest Service regulate uses within the scope of outstanding or reserved rights-of-way if the agency has not acquired the right to do so. 70 Fed. Reg. at 68276, 68282.[8] Thus, the Forest Service must first consider jurisdiction on a collaborative

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[7] The TMR preamble is a significant indication of intent in the drafting of regulations and entitled to deference. *U.S. Dept. Of Labor v. Wolf Run Mining Company*, 446 F. Supp.2d 651, 654 (N.D. W. Va. 2006).

[8] Examples include a valid outstanding or reserved right-of-way for a road or trail in existence at the time title to the underlying land was acquired by the United States, and a right-of-way for a road or trail acquired by the United States where the owner of the underlying land may have retained control of the right-of-way and reserved the right to allow

basis for administrative purposes: "Most NFS roads are intertwined with networks of State and county roads (often crossing NFS lands), and cooperative planning among affected agencies is essential." 70 Fed. Reg. at 68269.

The ANF appears to claim jurisdiction over all roads located within the NRA, as shown on the maps and listed in the DEIS appendices. The maps, however, do not account for reserved rights-of-way and easements, particularly those held by the Rock Springs Grazing Association. Moreover, as noted by at least one witness at the May 14, 2009 public hearing, the Forest Service claims jurisdiction over a road leading to private land, when that right-of-way exists pursuant to R.S. 2477 and once vested is a valid existing right assuring the landowner access. Other routes, which existed before the NRA, also provide access to grazing allotments and land and are also presumptively reserved or outstanding rights-of-way. The maps included in these comments provide a small sample of the roads over which the Forest Service claims erroneously claims jurisdiction. Even where the TMP does not propose to close the affected roads, it ignores the fact that these roads may be reserved or outstanding roads or rights-of-way that are not under Forest Service jurisdiction due to their status as outstanding rights or reserved rights. 36 C.F.R. §251.110(b); FSM 2718.5; 2718.31; 5430.5, ¶¶6, 7. Because the DEIS assumes jurisdiction without documentation (despite requests for it), it fails to address the outstanding and reserved rights within the FGNRA. The Forest Service lacks the authority to classify or to put these roads into the travel plan, which is limited to roads over which the Forest Service has documented jurisdiction.

The 2009 travel management directives also clearly require the Forest Service to **"[d]etermine jurisdiction** over all forest service transportation facilities." FSM 7703.3 (emphasis added). A forest transportation facility includes a forest road or trail, including bridges, culverts, parking lots, marine access facilities, safety devices, and other improvements appurtenant to the forest transportation system. 36 C.F.R. §212.1. The Forest Service Manual, in fact, provides an administrative framework for meeting this requirement by providing guidance in documenting jurisdiction, transferring jurisdiction, and exercising jurisdiction over forest roads, based on such factors as the right of

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others to use it. *Id.* The Forest Service does no exercise jurisdiction or control, including closing such routes. *See* FSM 2734.2: "The holder of outstanding rights perfected on acquired land prior to Forest Service acquisition, reservation in deeds, easements, or agreements made at the time of acquisition of the land. . . may exercise those rights without obtaining a special use authorization."

individuals and local public road authorities to own, operate, maintain and use these roads. 73 Fed. Reg. at 74694.

"When jurisdiction over a forest transportation facility is uncertain [the Forest Service must] coordinate with Federal, State, county and local public road authorities and consult with the Office of General Counsel. Legal research and title searches may sometimes be necessary to establish jurisdiction over a forest transportation facility." FSH 7709.55, Ch.11.4.

> In determining jurisdiction:
> 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. . . [The Forest Service may] not manage, maintain, or designate roads and trails over which the Forest Service lacks jurisdiction. FSM 7715.72.

To date, the Forest Service has failed entirely in meeting the jurisdiction and coordination mandate. Consequently, the ANF TMP cannot be consistent with governing rules and policies until the Forest Service initiates collaborative, non-binding administrative determinations as to its jurisdiction over roads and trails within the ANF. *See SUWA v. BLM*, 425 F.3d 735, 757 (10th 2005) (encouraging agency non-binding, administrative R.S. 2477 determinations for its own purposes, such as land use planning).

C. 2005 Roads Analysis Must Be Integrated with the TMP Process While Providing for Public Participation

1. Travel Analysis Not Done Properly

In their scoping comments, the Coalition of Local Governments requested that the Forest Service reopen the roads analysis process to provide for close coordination with local governments

and public involvement in determining the minimum road system necessary.[9] The Forest Service responded that the 2005 roads analysis process was only internal and was unrelated to the TMP. In both cases, the ANF is incorrect.

The roads analysis completed in 2005 proceeded without addressing the request for coordination or the access needs or the rights of the county residents and permit holders. There was no consultation with local governments or the public and no copies of the completed roads analysis provided to the local governments, except upon request. Local Governments are entitled to understand the basis upon which the Forest Service relies for its assumption that these roads and trails should be closed. *See e.g.* DEIS, Appendix A. The 2005 roads analysis omits most of the roads and trails now addressed in the DEIS. This means that the DEIS proposes to close roads and trails without any travel analysis, even though the Forest Service Handbook requires a travel analysis as the first step for a TMP. FSH 7709.55, ch. 11.3. The gaps in the 2005 roads analysis are especially evident for the FGNRA, where fewer than 28 road segments were assessed. *see* Table E.1 All Risks by Route (3/2005).

The TMP is to be integrated with the roads analysis (now called travel analysis) into the travel plan decisions. FSH 7709.55 ch.2; FSM 7703.11, ¶1 ("Use travel analysis (FSM 7712; FSH 7709.55, ch. 20) to consider the criteria in 36 CFR 212.55. Travel management decisions involving the designation of NFS roads, NFS trails, and areas on NFS lands must be informed by travel analysis conducted at an appropriate scale, as well as appropriate site-specific environmental analysis and public involvement."); FSM 7703.12, ¶2 ("To identify the minimum road system, all administrative units must complete a travel analysis that addresses appropriate broad-scale concerns, as identified by the unit manager. A roads analysis that was completed in accordance with Publication FS-643, "Informing Decisions About Managing the National Forest Transportation System," satisfies the requirement to use travel analysis to identify the minimum road system.").

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[9] The Forest Service's 2001 Roads Policy, 66 Fed. Reg. 3206 (2001), requires the Forest Service to identify the minimum road system needed for safe and efficient travel and for the administration, utilization and protection of National Forest System (NFS) lands. Roads no longer needed to meet forest resource management objectives should be either decommissioned or considered for other uses, such as for trails. 36 C.F.R. §212.5. "Roads analysis" was renamed "travel analysis" to reflect its broader application in informing travel management decisions regarding motor vehicle use on NFS roads and trails. 72 Fed. Reg. 10632 (2007).

The policy revision replaced the term 'roads analysis' with 'travel analysis' but retained the objectives and content. Nor is the roads analysis an internal process, despite statements in the DEIS that it is. The rules pursuant to which the ANF did the analysis required the Forest Service to coordinate with local governments and to disclose the analysis to the public. 36 C.F.R. §212.5 (2001); FSM 7730, Publication 643. The ANF roads analysis, which was completed in March of 2005, actually assigns different road numbers, partial or no location information, and names that lack any cross-reference with the DEIS.

Without a map or a cross-reference index, which the ANF recently told the local governments will not be available, it is impossible to match the 2005 roads analysis findings with the decisions proposed in the DEIS. Not only did the ANF not follow Forest Service rules and policy for a travel analysis, but it has made it impossible for the public to fully understand the decisions being proposed.

With respect to the forest roads, the policy emphasizes that Local Governments and the public are entitled to fully understand the basis for any road and trail closures and the effects that such closures will have on land uses, such as maintenance of water facilities and projects, maintenance of watershed health and productivity, forest biological resources, livestock grazing permits, and recreation access. These decisions are to be made on the basis of resource issues and access needs, neither of which is properly displayed or discussed in the materials available pertaining to the travel management plan. 36 C.F.R. §§212.5(b) (2001), 212.53 (2005). Thus, the assumptions shown in the proposed action regarding roads needed for access are fundamentally flawed.

The Forest Service now responds:

> The Forest 2005 roads analysis was an internal document. . .There is no requirement to seek external comments during the development of internal documents. The Travel Management process does not require utilization of, or even close coordination to the 2005 Roads Analysis in its completion. The baseline for the Travel Management process is the existing travel regulations which were made independent and prior to the completion of the 2005 Roads Analysis. DEIS at 1-18.

2. Roads / Travel Analysis Required by Rule and Policy

The ANF response completely disregards the Forest Service rules and policies and is factually incorrect. As provided for by the 2001 Roads Policy, the roads analysis must, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. 36 C.F.R. §212.5(b) (2001). Specifically, "Both local agency and public involvement are key features of the roads analysis methodology." 66 Fed. Reg. 3206, 3208 (2001) (through "the roads analysis process, responsible officials can use local public involvement to identify roads that are needed for access and those roads that are no longer needed"). The March 2005 roads analysis files were apparently completed before the roads rule was revised in May 2005. Thus, the Forest Service had to involve the public and local government in its roads analysis and, as seen above, it was not supposed to be an 'internal process.' During the roadless area review in 2006 and 2007, the County requested the roads analysis on several occasions and was told there was none. By speaking to the ANF engineering division in 2008, it was discovered that indeed the ANF had done a roads analysis in 2005 and the files were promptly provided. It does not appear that the ANF did a written report which most forests did when they performed the roads analysis mandated in 36 C.F.R. Part 212 and the orders of the Chief. *See e.g.* Dakota Prairie Grasslands Roads Analysis 2002.

The new travel management directives were adopted in order to consolidate the 2005 TMR with the 2001 roads analysis policy. 72 Fed. Reg. 10632 (2007). The key objective is to integrate roads analysis with travel management planning. *Id.* at 10634. Contrary to the Forest Service's statement that the TMP process does not utilize the roads analysis, the Forest Service manual specifically requires the Forest Service to "make travel management decisions that are informed by travel analysis." FSH 7709.55, Ch. 21(3). The DEIS statement that it did not integrate or "inform" the TMP with the previous roads analysis is an admission that the ANF chose to ignore Forest Service policy and direction, which is otherwise binding on the ANF. *Everett v. United States*, 158 F.3d 1364, 1369 (9th Cir. 1998) (holding that while the manual does not have the force and effect of law is provides interpretation of the rules and guidance in its application). The Forest Service adopted the travel manual with notice and public comment and intended that it be followed by individual forests.

Thus, although the identification of the minimum road system pursuant to 36 C.F.R. 212.5(b)(1) and the designation of routes and areas pursuant to 36 C.F.R. 212.51 are independent

regulatory requirements, the Forest Service stated that the travel analysis "can and should be used for both." 73 Fed. Reg. at 74692.

As further required by agency directive, the Forest Service must utilize "appropriate public involvement to identify key roads analysis issues." FSH 7709.55, Ch.21.3. *See also* FSH 7709.55, Ch.21.11 ("obtain input from external groups, other members of the public, and other governmental agencies"). In the DEIS, the ANF admits that it did not coordinate with government agencies or the public in the roads analysis issues. When the issues were raised in scoping and at cooperator meetings, they were dismissed as being outside the scope of the EIS. *See* Ashley Issue Tracking and Comment Tracking (Feb. 19, 2008).

When an agency adopts an action that is based on a study that is not designed for purpose to be made of it, the administrative action is arbitrary and capricious and a clear error in judgment. *Humana of Aurora, Inc. v. Heckler,* 753 F.2d 1579, 1583 (10th Cir.), *cert. denied,* 474 U.S. 863 (1985). Consequently, the proposed action is arbitrary and capricious unless and until the ANF incorporates a valid roads analysis phase into the travel management plan. The Forest Service must also meaningfully collaborate with Local Governments who have special expertise over resource and access issues and with the public.

As noted above, because the Forest Service assigned different road numbers and reportedly cannot provide a cross-index, the County could not evaluate the roads to be closed (Appendix A) against the previous work done in 2005. The Forest Service assumption that it has the discretion to prepare a travel plan while ignoring its underlying roads / travel analysis or by not fully disclosing it, is wrong. Because this was to be one of the most important first steps in travel planning, the ANF must unfortunately start the travel planning process again with additional information, scoping, and a second DEIS.

V. NEPA PROCEDURES VIOLATED

A. The DEIS Fails to Disclose and Analyze the Roads to be Closed to Public Use

1. Meaningful Public Comment Stymied

The DEIS fails to fully disclose the effects of the proposed action and fails to fully inform the public, so it can make meaningful and informed comments. The DEIS entirely omits an estimated 1,436 miles of roads that the Forest Service considers unauthorized or unclassified, without first delineating or identifying the public, outstanding or reserved rights-of-way over which the Forest Service has no authority DEIS at 2-12.

The ANF DEIS failure to make the effort to inventory the affected roads and trails, to display them on the maps for the 'no action' alternative, and to analyze the respective environmental, social and economic impacts of their closure violates NEPA. The County and the public cannot fully understand the scope or impacts of the proposed action, because so many roads and trails are omitted and not displayed. In addition, most of the 4000 series roads analyzed in Appendix A are not on the maps and are not described either by nickname, or location. It is impossible to determine their locations or what impacts the proposed action will have. *See* Exhibit A, Table displaying omitted roads and previous history.

This omission is a *per se* violation of NEPA. NEPA's twin aims are informed decisionmaking and meaningful public involvement. *Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983). In Wyoming, when the subject matter of a proposed action concerns access, the failure to "provide sufficient information to identify existing roads" in the project area is a *per se* violation of NEPA. *Wyoming v. USDA*, 570 F. Supp.2d 1309, 1326 (D. Wy. 2008) (setting aside roadless rule prohibiting road construction or reconstruction and timber harvesting in inventoried roadless areas); *see also California v. Block*, 690 F.2d 753, 764-765 (9th Cir. 1982) (setting aside roadless EIS in part due to the failure of the EIS to include individual analyses of the proposed roadless area units so the public could not provide specific comments). Like the doomed 2000 Roadless Rule FEIS, the DEIS proposes to make significant changes in forest management without providing the site specific information to the public.

By the Forest Service's own admission, the DEIS does not reflect all of the roads and trails to be closed to public use and reclaimed. DEIS at 1-4 ("The exact mileage of unauthorized and undesignated routes existing on the Forest is unknown and obtaining a complete inventory of all unauthorized and undesignated routes is not considered reasonable due to the extensive number of routes over the entire forest and the exorbitant cost and amount of time that would be associated with such an inventory"). This is an admission that the DEIS does not contain the best available data or

even the data necessary to inform the public or decision makers of the scope and impacts of the proposed action.

Under NEPA, the Forest Service may not refuse to conduct an inventory when the impacts of the proposed action on the over 1,400 miles of unauthorized roads and trails would clearly be significant. DEIS at 2-5 (non-system routes would be closed and stabilized, reclaimed, or obliterated as funds allow). The Forest Service cannot make an informed decision when it fails to consider "every significant aspect of the environmental impact of a proposed action." *Baltimore*, 462 U.S. at 97. The public cannot make meaningful comments, when they have no way of knowing which routes will be closed and how crowded the remaining recreation access will be. The difficulty of commenting is demonstrated with the ANF public comment sheet that asks the public to identify routes that are omitted and to specify how they are used. The structure and omitted information in the DEIS prevents the public from identifying roads, since the DEIS does not show all of the routes omitted and many of the applicable maps do not fit on the most common computer screens.

The Forest Service, therefore, must restart the DEIS and complete an inventory of all roads and trails within the ANF in consultation with the Coalition of Local Governments and other agencies with jurisdiction over rights-of-way. *Wyoming*, 570 F. Supp.2d at 1323 (EIS set aside for NEPA violations where "the Forest Service also acknowledged that these maps did not contain the best data available, even though it had access to better data for the maps"). The cooperating agencies and the public cannot "meaningfully 'participate' in determining the scope and significant issues to be analyzed in the EIS." *Id.* at 1333.

2. Significant Impacts on Recreation Use Omitted from DEIS

The FGNRA attracts weekend and vacation visitors year-round for hunting, fishing, hiking, camping in addition to boating. As the ANF Supervisor has often stated, motorized recreation use on the ANF has increased about 616% since 1986. These recreation users cannot even determine if their routes are to be reclaimed and closed because they are not on the maps and are not analyzed in the DEIS. Appendix A is entirely inadequate because it is impossible to link the identified routes to maps in the DEIS or even previous Forest Service maps. The routes are not identified by township, range and section and the DEIS uses road numbers not previously used on earlier ANF travel maps.

The Supervisor's statements that these roads were closed in the 1986 LRMP finds no documentation in that plan or other orders. *See ** infra.* These roads were not posted and the closures were not enforced. Thus, the Supervisor's alleged 'secret closures' cannot provide the basis to omit these roads and trails from the maps, the DEIS analysis or the No Action Alternative. Their omission greatly misrepresents the extent of recreation closures and skews the entire EIS in violation of NEPA's full disclosure and meaningful public input mandates. The omission taints every aspect of the DEIS from conformance with the LRMP to the analysis of the environmental and recreation impacts.

Until the Forest Service adequately inventories and identifies the unauthorized routes in the ANF, the County "cannot meaningfully provide input on the scope of the proposed EIS by commenting on the direct, indirect, and cumulative impacts" of the ANF TMP. *Id.* The same is true with respect to the significant differences between Appendix A and the maps which must be reconciled.

Consequently, the DEIS is fatally flawed and the Forest Service must start over beginning with adequate scoping: "With NEPA's purpose in mind-adequate and full disclosure-maps accurately depicting the areas covered by the Roadless Rule are the most basic and fundamental information needed to begin the scoping process." *Wyoming,* 570 F. Supp.2d at 1333.

B. Narrowed Scope of Proposed Action Excludes Connected and Cumulative Effects in Violation of NEPA

1. Cross-Country Motorized Use Distinguished

The Utah and Wyoming counties learned only a week ago that the ANF has redefined the proposed decision from a travel management plan to summer off-highway vehicle (OHV) designation. The efforts by the ANF to redefine the nature of the travel decisions violates the NEPA. It also violates the Forest Service travel planning rules and policies by not meeting the criteria for a TMP set out in the manual and handbook. FSH 7709.55. While OHV use can be part of a TMP or it can be separately addressed, the ANF cannot tell the public it is preparing a TMP, then call it an OHV decision, but still effect road closures. By attempting to obscure the decisions to be made, the DEIS also fails to fairly and accurately disclose the proposed actions in the preferred alternative and its

direct, indirect, and cumulative effects. Alternatively, the ANF Supervisor is misrepresenting his proposed decision to placate objections, even though he has ample authority to close the ANF to cross-country motorized vehicle travel without an EIS.

Supervisor Elliott told the cooperators on June 30, 2009 that the decisions in the DEIS would be limited to summer motorized OHV use and any closed designations in the EIS would not lead to a physical closure and reclamation of a road or trail without additional NEPA analysis and public comment. The Supervisor did acknowledge that the roads designated as closed could be gated.

According to the Supervisor, the DEIS is only being done to regulate summer OHV motorized vehicle use on the ANF.

Numerous public meetings have been held to address the TMP written comments were submitted in addition to the public testimony. In virtually all cases, the public urged the Forest Service to not close any road or trail. Because the DEIS does not disclose all of the affected routes to be closed, the public was hard pressed to identify by forest road number or to identify which of the routes listed in Appendix A were most important to them. Nevertheless, the consistent comment was to not limit public access by closing any road or trail.

Significantly these comments did not promote unlimited cross-country motorized access. The Forest Service in its efforts to sell the TMP have pointed to OHV abuses as requiring the closure of roads and trails. These are two very different land uses and the ANF improperly equates cross-country OHV use with motorized vehicle use on existing roads and trails. The Forest Service has ample authority to prohibit cross-country motorized use without preparing a travel plan and without closing a significant percent of the roads and trails in the FGNRA. 36 C.F.R. §261.51. Instead, the site-specific and limited erosion areas are simply a smoke screen to effect much greater limits on motorized recreation use.

2. Record Shows DEIS Addresses a TMP, Not Merely Summer OHV Use or Motorized Cross-Country Travel

The Supervisor's statements are at odds with the notice of intent to prepare an environmental impact statement (EIS) originally published in November 9, 2007, as well as numerous statements and text in the DEIS itself.

> NEPA requires that a federal agency announce the proposed action and the alternatives from the outset. 40 C.F.R. §§1501.3; 1508.22. The 2007 notice of intent stated: "Roosevelt/Duchesne and Flaming Gorge Ranger Districts Travel Management Plan, Ashley National Forest; Duchesne, Daggett, and Summit Counties, UT, and Sweetwater County, WY." 72 Fed. Reg. 63548 (2007); 72 Fed. Reg. 67595 (2007) (extending scoping comment deadline).

The Forest Service has never published a revised notice of intent to change the proposed action from a travel management plan to only summer OHV designation.

In addition to the notice of intent informing the public that a travel plan would be written, the DEIS itself uses the term "travel management plan" throughout. The pagination states: "Ashley National Forest Travel Management Plan DEIS." Moreover, the proposed action is described as a travel plan governing motorized use on forest roads and trails. In direct contradiction to the Supervisor, the DEIS also states that the undesignated and unauthorized roads will be closed and decommissioned. DEIS, §1.8, 1-10 ("This alternative [proposed action] would also eliminate approximately 328 miles of existing, undesignated routes."); §2.2.1, 2-5 ("Non-system routes that are not displayed on the Motor Vehicle Use Map would be closed and stabilized, reclaimed, or obliterated as funds allow. Further site-specific environmental analysis is not needed to close the route but may be conducted to determine the appropriate method of closure.").

When the Forest Service addresses only OHV use, it is typically done in an environmental assessment (environmental assessment), not an EIS. Travel management plans, which cover designation of forest roads based on the previous part 212 roads analysis, decommissioning of roads, and regulation of all motorized uses, are almost always accompanied by an EIS. *See e.g.* 73 Fed. Reg. 41028 (2008) (Santa Fe National Forest Motorized Travel Management Plan); 73 Fed. Reg. 31054 (2008) (Salmon-Challis National Forest Travel Management Plan and Off-highway Vehicle Designation); 72 Fed. Reg. 61607 (2007) (Apache-Sitgreaves National Forest Travel Management Plan).

By comparison, an OHV designation is adopted in an EA, notice of which appears on the Forest Service web site for each forest. *See e.g.* Plumas National Forest OHV designation. As noted earlier, the Forest Service can issue an order closing the FGNRA to cross-country motorized use pursuant to 36 C.F.R. §261.50. Thus, if the real objective is to address OHV problems outside of the roads and trails, as often stated by the Supervisor, he could have issued an order three years ago. Instead, it is quite clear, that the Forest Service recent efforts to redefine the decision and actions recognize that the process is fatally flawed due to the multiple failure to follow Forest Service rules and policy.

The Supervisor's re-characterization of the decisions to be made based on the DEIS also contradicts the communications with the cooperating agencies in the planning revision process. The ANF has told the local governments that the TMP is being done to integrate the travel management into the plan revision.

Significantly, the DEIS fails to address the objective in either the ANF LRMP or the recreation objectives that guide the FG NRA and the plan revision. Thus, there is no analysis how the proposed travel changes will meet these recreation and travel objectives. The plan revision assessment shows that at least 75% of the recreation use consists of day or overnight visits by persons living within a three-hour's drive. Recreation Assessment (2008) at 4. About one-third camp overnight at developed or along the roads. *Id.* at 9. Thus, the overwhelming majority of the recreation visitors to the ANF must use motorized vehicles, due to the fact that they are making day or weekend trips and they use the land which can be readily reached by vehicles. The Recreation Assessment assumes a decline in outdoor recreation, based on reduced use of national parks and fewer hunting and fish licenses. Recreation Assessment at 11, citing in *Evidence for a fundamental and pervasive shift away from nature-based recreation*, Oliver Pergams & Patricia Zaradic, University of Illinois, 2008.

C. DEIS Alternatives Fail to Meet NEPA Criteria

1. Omission of Material Scoping Issues Violates NEPA

Because the notice of intent and related materials described the proposed action as a travel management plan, the local governments submitted scoping and cooperator comments identifying areas where the Forest Service needed more information regarding the roads and trails affected and needed to resolve issues of jurisdiction. These comments mirrored the important elements of any travel plan, as defined by the Forest Service road rules, 36 C.F.R. §212.55, and Forest Service travel policy, FSM 7700; FSH 7709.55.

The ANF responded that those issues were outside the scope of the EIS and would not be addressed. [Issue Tracking and Comment (Feb. 2008) provided at Cooperator Meeting Materials]. The counties and local government cooperators told the Forest Service on many occasions during the cooperator meetings that the Coalition of Local Governments believed several of the alleged 'forest roads' were in fact private and public rights-of-way. On each occasion, the ANF responded that the issue of jurisdiction was irrelevant. The local governments also asked that the Forest Service identify the basis for its assumption of jurisdiction. More recently, the Coalition asked that the Forest Service map the roads that it assumes are unauthorized and are therefore to be decommissioned. 36 C.F.R. §212.5(b)(2) (identification of unneeded roads to be decommissioned). The ANF said that they had no time to do so and that it was not necessary.

The DEIS omitted several material scoping issues, thus violating NEPA. An agency can decide an issue is insignificant if it is covered in another environmental review or it has no significant impact. 40 C.F.R. §1501.7(a)(3). Other roads on the National Forest or NRA do have environmental effects and, thus, these related roads and the hidden decision to close all such roads must be disclosed and the effects analyzed. The existing roads and trails are also relevant to meeting the current ANF LRMP objectives, those specifically for the FGNRA, and the plan revision.

The scoping issues are to define the scope of the EIS. 40 C.F.R. §1502.9. The scope of an EIS must include connected, similar and cumulative actions. 40 C.F.R. §§1502.14 and 1508.25. The ANF rejection of the connected and related actions identified in the scoping process on the basis that they did not meet the Purpose and Need violated NEPA. The purpose and need does not define the scope, it is defined by the connected, similar, and cumulative actions. 40 C.F.R. § 1502.9. An EIS does not comply with NEPA when it excludes similar, connected or cumulative actions. Here the ANF Supervisor aggressively narrowed the scope of the EIS to exclude all but the roads pre-selected by the Forest Service. By excluding these roads and trails, the Forest Service artificially limited the

analysis and disclosure of the impacts for the preferred alternative as well as all of the other alternatives. NEPA does not allow an agency to so narrowly define the scope of the action and exclude other related actions and their impacts.

The ANF erred because those were precisely the issues to be addressed in travel planning. FSH 7709.55, §11.4 ¶2. (When jurisdiction over a forest transportation facility is uncertain, coordinate with federal, state, county, and local public road authorities and consult with the local Office of the General Counsel. Legal research and title searches may sometimes be necessary to establish jurisdiction over a forest transportation facility."). *See also* Forest Service Manual 7703.3. Moreover, the same policy requires the Forest Service to begin with a complete inventory of all roads, FSH 7709.55, and to evaluate the necessity of the roads based on the roads/travel analysis. The ANF admits that it did neither thereby omitting the significant cumulative effects and failing to disclose those effects.

2. DEIS Should Have Considered an Alternative That Meets Projected Recreation Demand

Both the TMP and the plan revision records repeatedly state that motorized recreation use of the ANF has increased exponentially. The plan revision even predicts that nonmotorized recreation will decline as compared with motorized recreation. Thus, the DEIS needs to consider an alternative that provides more motorized recreation, with upgrading roads and trails to address resource issues. Certainly the public comments that the ANF has received in both scoping and at public meetings shows a high demand for continuing existing access. The ANF rejects the alternative of keeping all roads open on the basis that there is resource damage and it would not meet the purpose and need. But an alternative the calls for upgrading and maintaining roads and trails would. Such an alternative is also necessary to meet the Desired Future Condition (DFC) and current land use plan objectives.

3. Alternative Violates NEPA

Alternative A in The DEIS ('no action alternative) misleads the public by not displaying or showing the 'unauthorized roads' on maps. The no action alternative is intended to inform the public of the extent of the change in terms, of environmental, social and economic impacts. By excluding a

significant percent of the affected roads and trails from disclosure and analysis, the Forest Service minimizes the impacts, thereby violating NEPA's mandate of full disclosure.

Uintah County in cooperation of the ANF and the public spent many hours developing a trail system that addressed user concerns and needs with full expectation that their efforts would be considered in any Forest transportation decisions. This was a well thought out plan and considered user needs and the creation of a transportation plan that provided for a connected system that provided access to areas of historical use. As a result of this coordinated effort Uintah County officially adopted these roads and trails as a part of the County's transportation plan by Resolution RES 08-27-07 R1 and R2 and transmitted maps of that action to the ANF.

At no time did the ANF notify the county or the public that they were not going to include the output of a process which they encouraged and participated in as part of the transportation plan. As a result many think it is hopeless to continue participating further in the process as ANF will do what ever it wants regardless of their input.

A reasonable expectation would be that this plan would be considered as an alternative in the DEIS. Instead many of the roads and trails from the plan were dropped from consideration as the do not appear in any of the alternatives. The output of this effort should have been presented as a alternative. If included as a alternative it would provide feedback to those that participated in this effort as to why roads and trail they consider important were dropped from consideration.

D. CONSISTENCY WITH COUNTY PLANS

The DEIS foils to address consistency with Uintah County plans with respect to Uintah County's Transportation Plan it's Public Land Policy and Public Lands Implementation Plan. CEQ regulations require, "To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." (40 CFR 1506.2 (d)).

Uintah County's plan and policy provide the following:

PUBLIC LANDS POLICY

Public Access, RS-2477 Roads

It is the County's position that:

The access across and to public lands is critical to the use, management, and development of those lands and adjoining private lands.

All roads, trails, rights-of-way, easements or other traditional access for the transportation of people, products, recreation, energy or livestock shall be preserved for public use. None of these may be closed, abandoned, withdrawn, or have a change of use without full public disclosure and analysis.

Future access must be planned and analyzed to determine its disposition at the completion of its intended life. This is to insure needed access is maintained or that such access is removed and resulting disturbances are reclaimed.

Roads covered by RS-2477 should remain open and the County will take any action needed to protect these rights. This includes identification, inventory, and participation in any legal process to protect them.

Access to all water related facilities such as dams, reservoirs, delivery systems, monitoring facilities, livestock water and handling facilities, etc., must be maintained. This access must be

economically feasible with respect to the method and timing of such access. Unreasonable restrictions may result in the loss of use of such facilities and property rights.

Off Highway Vehicles (OHV)

It is the County's position that:

OHV's have become an important segment of the Basin recreation industry and is an important tool and mode of transportation for farmers, ranchers, and resource development.

It supports the current policy of open recreation areas.

It will support limiting of OHV to existing roads and trails and the development of designated trail system only in areas that demonstrate documented and substantiated adverse impacts. These designations must occur only in situations where it has been substantiated that adverse impacts can not be mitigated by other management methods.

When the necessity for a closure has been established, additional trails and areas must be opened to offset the loss of that recreational opportunity.

Public Land Management agencies must implement and maintain an aggressive OHV program to educate users on how to reduce resource impacts. This is to be followed by an aggressive enforcement program.

The non-recreational use of OHVs, such as development and livestock operations, must be provided for in all areas unless restricted by law.

PUBLIC LANDS IMLEMENTATION PLAN

Travel/Transportation

Prior to taking any action that will result in changing the nature of use or closing roads, trails, ways, and/or open ATV areas, agencies must fully analyze the impacts of such actions.

This analysis must include:

Determination of legal status with respect to RS 2477, easements, right of way, user rights, and enabling statutes.

Impacts on other roads, trails or ways.

Impacts on other facilities, such as improved campgrounds, camping areas, boat launches, etc.

Impact on fish and game management, such as the ability to control fish and game populations and the increase of fishing and hunting pressure on more accessible areas and the affect on the quality of the outdoor experience in the more accessible areas.

Impacts from loss of access on management capabilities including, but not limited to, fire protection, timber harvest, weed control, watershed management, the ability to use fire wood and other forest product permits for thinning and fuels reduction and wildlife.

Any acknowledgment of existing rights, or granting of a rights of way or easements, must provide for a width adequate to allow for maintenance and to accommodate design dimension needed to provide for safe and efficient enjoyment of such grant.

The width dictated by state and/or federal design standards as necessary to accommodate proposed uses shall determine the width provided by such grants or acknowledgments.

Restriction placed on the use of Off Highway Vehicles (OHV) must provide for the following:

Access by OHV for permitted users to conduct operation, such as livestock and development activities.

Access by OHV for individuals who are physically impaired.

Access for retrieval of big game within 24 hours of a kill, where a kill has been verified by a record on a license and the animal remains in the field.

<u>County Roads and Rights-of-Way</u>

Uintah County does not recognize the authority of any federal or state agencies to close any roads designated on Uintah County's RS 2477 map, as well as any Class B or D roads. Uintah County reserves the sole right to open, close, grant rights of ways, and/or restrict access or the time frame of access on any roads described or depicted on the appropriate Uintah County road maps.

VI. SPECIFIC ROAD COMMENTS

These comments address two classes of roads and routes: those which are outstanding or reserved rights not acquired by the Forest Service and those roads and routes that are important to meeting the recreation demand in the FGNRA and elsewhere on the ANF.

A. ANF DEIS Incorrectly Assumes Jurisdiction Over Rights-of-way Predating NRA

The ANF DEIS treats all 'unclassified roads' as unauthorized when unclassified roads are not necessarily unauthorized roads. The term 'unauthorized' means that the Forest Service has researched jurisdiction and determined that there is no legal basis for the road. When the roads rule was first revised in 2001, the Forest Service distinguished between classified roads, which included forest roads, state, county, private, and other authorizations. 36 C.F.R. §212.1 (2001). Unclassified roads included "Roads on National Forest System lands that are not managed as part of the forest transportation system, such as unplanned roads, abandoned travelways, and off-road vehicle tracks that have not been designated and managed as a trail; and those roads that were once under permit or other authorization and were not decommissioned upon the termination of the authorization." 36 C.F.R. §212. (3) (2001). In the 2005 rule revision, the Forest Service deleted the terms and definitions of "classified roads" and "unclassified roads" which were defined as unknown. The 2005 TMR retained only the definition of a forest road, as a road "wholly or partly within or adjacent to and serving the NFS that the Forest Service determines is necessary for the protection, administration, and utilization of the NFS and the use and development of its resources." 36 C.F.R. §212.1 (2005).

The ANF thus appears to reason that if it does not have to identify classified roads, which would have included private rights-of-way and outstanding public rights-of-way, then a travel management plan can be limited to only forest roads with all other roads being unauthorized. Unfortunately, this conclusion is incorrect. The Forest Service is also required to document Forest Service jurisdiction over roads within the National Forest System unit and resolve disputes as to jurisdiction. FSM 7703.3.

Forest Service travel maps for the ANF dated 1991 and 1971 respectively display numerous roads as primitive roads and trails, which are not shown on the DEIS maps or which are to be closed.

With respect to the 1971 map, these roads are reserved or outstanding rights that predate the NRA and are presumptively not forest roads. They cannot be closed without violating valid existing rights. These primitive roads provide access to inholdings and grazing allotments and many remain available for use by the recreating public. These roads and trails were expressly excluded from the land rights acquired from RSGA and the rights-of-way are outstanding rights. Other lands, including grazing allotments established under the Taylor Grazing Act (TGA), 43 U.S.C. §315, include rights-of-way for the ranchers using the grazing permit or lease. These rights-of-way were established before 1976 and are preserved under the TGA and R.S. 2477. These are also excluded from the definition of a forest road and cannot be closed. The DEIS does not make any of these important distinctions and assumes erroneously that all are 'unauthorized' and can therefore be closed and reclaimed.

The ANF admits that it never examined all of the roads and trails and thus failed to determine if they were reserved or outstanding rights. The excuse that it was too time-consuming expensive, or unreasonable does not justify violation of legal rights or Forest Service policy.

B. Roads and Trails Popular for Recreation Use

Uintah County sponsored a hearing so members of the public could speak to the ANF TMP. The consistent message from people in attendance and written comments urged the Forest Service to not close a single road or trail. This position is certainly consistent with the documented popularity of the FGNRA with residents throughout southwestern Wyoming and northeastern Utah. This also reflects the position of the Wyoming Game and Fish Department (WGFD) when it wrote the ANF in 2007. The WGFD recommended not closing any roads and trails on the basis that dispersed rather than concentrated access provided better quality recreation and avoided crowding. *See* Ex. **, Letter of WGFD to ANF, April 17, 2007. The WGFD further concluded that recreation access does not appear to have adversely affected wildlife numbers.

The public spoke again in petitions signed by more than six thousand Forest users which by number is approximately one fourth of the county residents. The opinions expressed in these petitions are that they wish the existing roads to remain open, concern over impacts to users and the process used in developing the TMP.

Many of the roads and trails to be closed are found in Inventoried Roadless Areas (IRAs) that were identified under the Roadless Rule in 1998. Notes under proposals in Appendix A indicates that the relationship of a proposal to a IRA was a point of consideration when developing the alternatives. The ANF roadless areas in the FGNRA were adopted by Forest Service employees outside of the land use planning and public processes. The land within the FGNRA had never been considered to be roadless and were never studied under the Roadless Area Review and Evaluation (RARE). These areas are still roaded as that term is defined in agency handbook as they are accessible by motor vehicles.

Enforcement of the roadless rule in Wyoming was enjoined a year ago, *Wyoming*, 570 F. Supp.2d at 1326, and the ANF lacks the legal authority to manage these areas under the rule or to close rules. The roadless areas are not part of the ANF LRMP. Any effort to manage these areas puts the ANF at risk for a contempt of court action. Previous comments objected to the classification of these areas as roadless and the ANF plan revision is not sufficiently final as to allow the ANF to implement its classification. Several roadless areas are immediately adjacent to the Wyoming Checkerboard, where the FGNRA lands are subject to private rights-of-way and significant development. Road closures or proposals that increased restrictions in these IRAs need to be cancelled as well. DEIS, App. A.

VII. PREFERRED ALTERNATIVE DOES NOT CONFORM TO FOREST PLAN RECREATIONAL DIRECTION

As required by the National Forest Management Act (NFMA), the proposed ANF TMP must be consistent with the 1986 ANF Forest Plan. 16 U.S.C. ¶1604(I). *See also Neighbors of Cuddy Mtn. v. U.S. Forest Service*, 137 F.3d 1372, 1376 (9th Cir. 1998).

If the proposed ANF TMP does not conform to plan components, it may not go forward unless it is modified for consistency or if the Forest Plan itself is contemporaneously amended. 36 C.F.R. §219.8(e). As demonstrated below, the ANF TMP's preferred alternative is inconsistent with the recreational components set forth in the ANF Forest Plan, and the Forest Service must either modify the proposed action to make it consistent with the plan, amend the plan to allow for the proposed action, or reject the proposed action altogether. *Id.*

A. Proposed Road Closures and Dispersed Recreation Restrictions Conflict with the Over-arching Recreation Goal for the Ashley National Forest

The Forest Service agrees that the primary recreation goal for the ANF is to provide a "broad range of recreation opportunities within land capabilities and according to recognized public need" and that the "desire for motorized trail access has increased." DEIS at 3-1, 3-7 (quoting ANF Plan at IV-14).

In the Uintah basin, for example, "growth in OHV use has increased 616% over eleven years." *Id.*at iii. Furthermore, "With more use has come a stronger desire for motorized trails both during the summer for recreational riding and during the fall to facilitate access to camps and hunting areas." *Id.*

Despite the recognized need to meet recreation demand for motorized access and motorized recreation, however, the preferred alternative would eliminate approximately 328 miles of existing routes in the hatched travel areas and an estimated 1,436 miles of travel routes are restricted to non-motorized use. DEIS at 1-16, 2-3. These routes would be closed and stabilized, reclaimed, or obliterated as funds allow. DEIS at 1-10, 2-5.[10] In addition, limited motorized access for dispersed camping would be reduced to within 150 feet of designated roads and motorized trails (current management allows for 300 feet) and camping would not be allowed within 100 feet of a water body such as a lake or live stream (excluding reservoir). *Id.* at 2-2.

The blanket road closures and dispersed camping restrictions may not be proposed without first determining whether the significant reduction in recreational opportunities is consistent with the recognized public need as required by the ANF Forest Plan. The Forest Service even acknowledges the potential adverse effects:

The action to limit motorized travel up to 150 ft. off of designated routes to access dispersed camping sites would result in excluding access to numerous historic dispersed camping

[10] As previously explained, the Forest Service incorrectly assumes ownership and control over these rights-of-way and effects their closure, without first delineating or identifying the public, outstanding or reserved rights-of-way over which the Forest Service has no authority or control. The Forest Service unlawfully classifies these "non-system" routes as "unauthorized" or "undesignated." DEIS at iii.

locations . . . The 100 ft. camping restriction from water would affect several historically used dispersed camping sites throughout the Forest that are located less than 100 ft. from water. There would likely be some resistance resulting from this new restriction because people are naturally drawn to camping adjacent to water. Camping close to water is appealing because of fishing access; convenience in obtaining water for cooking, drinking, and washing; soothing sounds of flowing water; and often cooler temperatures
DEIS at 3-19, 3-21.

As to these effects, the Forest Service merely concludes: "This does not pose any conflict with the Forest Plan as the majority of dispersed camping occurs within the F and N Management Area Prescriptions on the Forest." *Id.* at 3-19. The prescription for dispersed recreation for Management Area F, however, provides: "Dispersed recreation is favored over other resources." ANF Plan at IV-10. *See also id.* (management prescription for the Flaming Gorge National Recreation Area (FGNRA) provides that "[d]ispersed recreation use is high and will be managed at standard service level").

The DEIS completely fails to identify the actual proposed travel route closures or to reconcile the inconsistency of the proposed road closures with existing management direction emphasizing recreational opportunities, especially the classification of the FGNRA for roaded recreation. Ex. Recreation Opportunity Spectrum Map. The consistency analysis, in fact, only addresses potential Forest Plan conflicts of **opening** administratively closed roads. *See e.g.*, DEIS at 3-22 (nine proposals to adopt motorized trails open to all vehicles to access the reservoir for dispersed camping and fishing opportunities do not conflict with current management), 3-23 (Proposal 1007 on the Flaming Gorge RD intends to open up currently administratively closed Sols Canyon road to public access and allow motorized mixed traffic does not conflict with current management), 3-26 (Proposals 3074.5 and 3074.6 located on the Roosevelt-Duchesne RD near Rock Lake aim connecting the Rock Creek and Farm Creek drainages for OHV travel do not conflict with current management), 3-27 (Proposal 1011, to adopt a motorized trail through riparian habitat, would conflict with current trail management practices and management actions the Forest has taken to reroute motorized trails off of wet meadows), 3-29 (proposals to access current dispersed camping—located over 150 ft. from designated routes having suitable historic use, with limited ground disturbance do not appear to conflict with the Forest Plan). As noted on page 25, the WGFD also supported keeping all roads and trails open to ensure high quality dispersed recreation. *See* Ex. **.

The Forest Service then summarily concludes that all "action alternatives are consistent with Forest Plan management direction." DEIS at 3-7.[11] To the contrary, the preferred alternative's **de-emphasis** on recreation access conflicts with the ANF Forest Plan's primary recreation objective, and the DEIS must be revised to provide for a meaningful consistency review.

While the ANF Plan Revision is not even out in draft, the desired future condition written in August 2006 and the core assessment files published last year confirm the major role that motorized recreation plays on the entire ANF and especially the FGNRA. In contrast, the draft Ecosystem Diversity Evaluation did not identify OHV use as a problem, except in the sand dunes. It generally noted risks to water quality from soil salts and increased invasive species. Ecosystem Diversity Evaluate (July 9, 2008) pp. 164-171.

This is true regardless of whether the Forest Service considers the public's use of these travel routes as unauthorized. The fact remains that the Forest Service has allowed the public to use the roads and trails which are the product of recognized public need and sharp increases in the demand for motorized recreation. The DEIS must address whether the recreational opportunities they provide fit within ANF "land capabilities." ANF Plan at IV-14. The DEIS should consider how to meet current and future motorized recreation demand rather than how to restrict it.

A. DEIS Misstates and Completely Omits Binding Management Guidelines

The Forest Service misstated or omitted applicable management direction for recreational use and thus failed to disclose found Forest Plan inconsistencies that need adequate resolution. While the Forest Service is quick to point out that the Forest Plan allows for the obliteration of roads or trails, DEIS at 3-8, it can only do so if they are unnecessary to meet Forest Service management objectives or if the road or trail is causing resource damage. ANF Plan at IV-14; Ex. **, WGFD Scoping Letter (repeating its original support for all roads in the ANF LRMP DEIS and then stating "We recommend no roads be closed unless supported by sound biological or resource data.") Because the Forest Service did not link the roads analysis to the DEIS, we cannot evaluate that important conclusion.

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[11] The conformance or consistency review, 16 U.S.C. §1604(I), is basically non-existent with minimal resource analysis scattered throughout the document. *See e.g.*, DEIS at 3-74 (only dedicated consistency analysis and limited to soils)

Furthermore, the DEIS egregiously omits key management objectives and direction, namely, to **"retain"** travel routes. ANF Plan at IV-14. This omission is particularly arbitrary because it is recognized as of paramount importance in the current travel management plans. Flaming Gorge Travel Management Environmental Assessment, p.3 (1995) ("Retain needed access"). The DEIS does not attempt to quantify demand or needed access by the number of vehicles or visitors. It also omits access to inholdings and permittees.

Another glaring omission is the DEIS' failure to consider Desired Future Condition (DFC). The Forest Service is obligated to implement the preferred alternative adopted in the 1986 Forest Plan to achieve DFC. ANF Plan at IV-1. The DFC provides for "special emphasis" on recreation because of the ANF's "unique characteristics, public demand, and management direction." Thus, "Recreation facilities, including the trail system as dispersed areas and developed sites will be upgraded and maintained at acceptable standards and new improvements added to provide meeting public resource needs. The present mix of various recreation activities and opportunities that exist today are expected to continue into the future. Developed and dispersed area recreation demand will be met. . . " *Id.* at IV-3. The DEIS omits any discussion of DFC.

The draft plan revision does not change the recreation objectives and would increase motorized recreation.

> Opportunities to enhance tourism and serve a growing local population are sought out, such as promoting the existing Scenic Byways and Backways, highlighting day use activities, providing opportunities for aging and physically challenged Forest users, and providing additional interpretation and education for historic and natural resources in the area.

August 2006 draft DFC p.6

> The transportation system provides the access needed to maintain facilities and infrastructure such as buildings, recreation facilities, municipal water systems, dams, reservoirs, range improvements, vegetation treatments, mine sites, oil and gas wells,

electronic and communication sites, utility corridors, transmission lines, and gas and water lines.

August 2006 draft DFC p. 7. The DEIS proposes to close roads to stock water ponds on the grounds that they are in an IRA or conflict with meadows (within the grazing allotment). *See e.g.* DEIS, Appendix A, ##2021, 2270. This too is inconsistent with the ANF LRMP and plan revision's draft DFC.

Each of the above recreation uses requires motorized vehicles for access and recreation. In fact, the dispersed recreation opportunities currently provided can only be restricted when visible indicators are triggered, such as when overstory shows signs of damage due to competition and root exposure. Otherwise, the Forest Service must "[m]aintain current use level and management practices." ANF Plan at D-1, Limits of Acceptable Change (Dispersed Recreation) D-1.

The Forest Service also unlawfully ignores supplemental plan direction for the Flaming Gorge National Recreation Area (FGNRA) which takes precedence. ANF Plan at IV-57. The supplemental direction was provided because of the FGNRA's unique statutory purpose: (1) public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization, and disposal of natural resources as in his judgment will promote or are compatible with, and do not significantly impair the purposes for which the recreation area is established. 16 U.S.C. 460v-1,. Pub. L. 90-540, Sec. 2, Oct. 1, 1968, 82 Stat. 904.

In implementing this statutory mandate, the FGNRA supplemental direction adopted several pertinent management decisions pursuant to which the proposed ANF TMP must conform: (1) continue to provide a high quality, varied recreation experience to the full capacity of the area; (2) give special consideration in planning to providing for the increased use of vehicle campers, trailers, and motor homes; (3) provide for public access to shoreline areas; both trails and roads are needed; and (4) coordinate with other federal, state, and county agencies in transportation system planning. ANF Plan at A-1, A-7, A-8, A-21.

The Forest Service's failure to address and resolve the DEIS' clear inconsistencies with the foregoing Forest Plan direction, especially as the preferred alternative, renders the DEIS fatally

flawed. Both the current 300 foot dispersed camping allowance and the public's current use levels are presumptively consistent with the Forest Plan, unless the Forest Service can show resource damage on a site-specific basis.

The ANF Forest Plan classifies the entire FGNRA as roaded natural recreation opportunity spectrum. The proposed decisions also contradict the recreation management.

B. Proposed 150 Foot Dispersed Camping Requirement Unfounded and Contrary to Regulation

The DEIS at 1.4 Purpose and Need for Action lists the purpose of this project to improve management of public summer motorized use by designated roads and motorized trails and limiting dispersed camping to areas up to 150 feet from designated roads and trails. By establishing this distance in the proposed action, the Forest Service has eliminated opportunities for consideration of other distances or the retention of the 300 foot restriction. This action violates Forest Service direction and prevents analysis and disclosure of impacts resulting from this decision.

One of the identified goals for the ANF TMP is to: "[I]ncorporate consistency in travel management practices with other Utah Forests. This includes limiting dispersed camping to within 150 feet of designated routes, and where appropriate, within specified time periods. DEIS at 1-2. There is, however, no Utah Forest Service directive requiring or encouraging the use of the 150 foot dispersed camping rule. Indeed, in Wyoming, the Forest Service continues to use the 300 foot dispersed camping rule. *See* Travel Plan Decision Notice, Wasatch-Cache National Forest, p.4 (2003) (allowing travel up to 300 feet off designated open roads for dispersed camping).

In fact, the Forest Service misled the Wyoming public when it represented that the ANF TMP would not change dispersed camping limits in Wyoming. *Casper Star Tribune On-Line* (May 20, 2009) ("Elliott told residents the dispersed camping limits would remain at 300 feet in Wyoming"), http://www.trib.com/articles/2009/05/21/news/
wyoming/d436841bc9b311d6872575bc0081a2a0.txt: To the contrary, all action alternatives propose reducing the distance to 150 feet throughout the ANF. DEIS at 3-15. In recent meetings, the ANF Supervisor has also stated that the Forest Service would not necessarily enforce the 150 feet rule.

This simply opens the door to arbitrary enforcement and suggests that the standard itself is arbitrary and not founded on sound site specific data.

The across the board proposed 150 foot dispersed camping requirement is also contrary to the 2005 Travel Management Rule which provides for dispersed camping: "In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specific distance of certain designated routes . . solely for the purposes of dispersed camping. . . ' 36 C.F.R. §212.51(b). USDA promulgated this rule to address specific local needs and provided that "designation decisions should be made at the local level, based on site-specific evaluation of local conditions and public involvement." 70 Fed. Reg. 68264, 68274 (2005).

The Forest Service, therefore, may not apply a blanket dispersed camping limit on all roads and trails without conducting a site-specific evaluation consistent with Forest Plan management direction and with full public consultation. The DEIS instead adopts the blanket standard based on alleged Utah guideline that was not officially adopted by Region 4 in accordance with public notice and comment procedures. 36 C.F.R. Part 216.

The Forest Service precedent for dispersed camping provided for 300 feet from existing roads and trails in the 2000 BLM and Forest Service Off-Highway Vehicle Plan and FEIS for Montana, North and South Dakota. The Forest Service Record of Decision explained the decision not to adopt the 150 foot or the 50 foot limits considered in the FEIS.

> Alternative 5 allows for dispersed camping within 300 feet of a road or trail provided recreationists use the most direct route and select their site by nonmotorized means. This greater distance than in alternative 1 (50') was important particularly in areas without any developed campgrounds. This allows people to move away from the dust and noise generated on the road or trail. Agency recreation specialists expect relatively little use of this exception, as most popular dispersed campsites already have a road accessing them.

Off-highway Vehicle Record of Decision and Plan Amendment for Montana, North Dakota and Portions of South Dakota (January 2001) p. 6.

The DEIS fails entirely to analyze the issues of dust and noise by limiting camping to within 150 feet of the designated roads. It also fails to address the public safety issues of families camping that close to a road with traffic, when the traffic that will be heavier due to the other road closures.

The DEIS fails to analyze and disclose the impacts of reducing the 300 feet off-road travel exception to 150 foot for fire wood gathering. At 3.1.8 Effects Common To All Action Alternatives, on page 3-19 paragraph 4 the 300 feet exemption is noted to apply to campsites, firewood gathering by permit and game retrieval. Beyond this paragraph only the impacts to dispersed camping are addressed, the impacts to firewood gathering are not. The impacts' to firewood gathering is important as it is a forest use. Thus, it is important that impacts to this use are fully addressed and that the cooperators and the public are informed of related proposed actions, their impacts, and allowed an opportunity to comment.

The ANF defends the 150 foot dispersed camping as necessary to comply with regional consistentancy policy. While the Forest Service can adopt regional guidelines, this has not occurred in conformance with the planning rules, 36 C.F.R. §219.12(b)(2) (requiring procedures adopting regional guidelines to include notice and comment in accordance with 36 C.F.R. Part 216). Had the FS followed such direction significant impacts such as health, safety and environmental would have been disclosed. Additionally such analysis would have reviled that such a policy on the ANF infact will lead to a great inconsistency on the ANF. The majority of the area around the Forest, the NRA, BLM and two other Forest will be open to 300 feet while the ANF it is reduced to 150 feet. The majority of the dispersed camping use is from the immediate area and frequent all of these areas.

VIII. CONCLUSIONS

The DEIS suffers from significant omissions in data and information that prevents the public and local government cooperating agencies from effectively providing public comments. The omissions relate in large part to the ANF's failure to follow Forest Service rules, manual and handbook for travel planning.

Notwithstanding the time and effort, the DEIS is so fatally flawed by lack of data, poor data and information that it must be revised entirely. This should occur because the TMP in its present form will reduce recreation use of the ANF and the FGNRA or crowd people into smaller areas and fewer

roads and trails, thus diluting the objectives for which the FGNRA was established and the current land use plan objectives.

As stated at page one of these comments, the ANF needs to take a number of discrete steps to meet the legal and factual requirements for a TMP. Failure to follow these steps will force the local governments to carefully consider other legal avenues to ensure that the public access to this recreation resource is protected and that high quality recreation use is preserved throughout the Forest and NRA.

By reference we wish to incorporate the comments submitted by the Wyoming Coalition of Governments members.

Comments addressing concerns regarding specific routes are attached.

To facilitate communication and understanding, and to guide Uintah County on future actions, we hereby request a written response to our comments. Uintah County remains committed to the development of a well coordinated Travel Management Plan.

Sincerely,

UINTAH COUNTY COMMISSION

Darlene R. Burns

Darlene R. Burns, Chair

Michael J. McKee

Michael J. McKee

Mark D. Raymond

Mark D. Raymond

Uintah County has previously submitted their Uintah County Transportation System Map adopted by Resolution 02-09-09 to the Ashley National Forest Service which displays its RS2477 Roads or Trails. No Travel designations should be proposed until Jurisdiction is resolved.			
		Specific Route Concerns by Uintah County July 16, 2009	
ID	Prop #	Recommendation	Justification
D1	2005	Road to remain open	This is an RS2477 Road and is shown on the Uintah County Travel System Map and should be designated as such on the FS Motorized Travel Plan Map.
D2	2150	Road to remain open	Road adds variety to OHV 50" or less recreation creating a challenging multi-loop trail and multiple connections for skilled riders and should be signed as such
D3	2039	Road to remain open	Route provides hunter access and creates a small loop as an existing designated route.
D4	2451	Road to remain open	This is an RS2477 Road and is shown on the Uintah County Travel System Map and should be designated as such on the FS Motorized Travel Plan Map.
D5	2001, 2002, 2004, 2026	Roads to remain open	Good hunting areas, used for dispersed camping and allows hunters to remain on existing road for game retrievel.
D6	2090	Road to remain open	Connects multiple routes and hunting areas, provides access for dispersed camping, is access to stock water pond and for checking on cattle in area.

D7	2038.1 2038.2 2038.3 2038.4	Roads to remain open	Existing OHV 50" or less Trail for recreation. Currently very heavily used trail. Uintah County has recently inspected this trail, there was little indication of recent maintenance although some steeper areas show signs of erosion and the trail is now eroded to bedrock in most places and there is little chance of further cutting. It is clear that damage in these areas could be repaired or mitigated. Stream crossings have been rocked and increases in siltation are unlikely. This is an important route and with proper mitigation and maintenance resource concerns could be alleviated. There is evidence that considerable investment has been made in past maintenance and that investment should be protected. Add Trail #034 to creat loop route for OHV's by connecting lower Forest Systems roads.
D8	Trail 034	Change to OHV less than 50"	Open as OHV Trail creating loop with Trail 2038.2.
D9	Incorrect Road Number on Map	Known as Ridge Top Road Road to remain open	Will provide dispersed camping opportunities.
D10	2040	Road to remain open	Road is an RS2477 road and part of the Carter Military Trail. Needs to remain on the map as a historical route. However County acknowledges Alternate Route #026 to mitigate resource damage to stream and meadow.
D11	2116	Trail to be designated OHV travel	Designated as an OHV Trail would connect to #2046.2 as a loop trail. Road was on 1999 FS Inventory map connecting both roads.
D12	NA	OHV Trail	User created OHV trail to be designated as a OHV less than 50" from top of Big Brush Creek Cave to Outlaw Trail to RS2477 County proposal ID #C7. Existing OHV trail from Iron Springs #026 is not showing connector trail to Big Brush Creek Cave and northward to Rte #026. This trail is very popular and heavily used trail to access the awe inspiring natural wonder, Big Brush Creek Cave. This trail is a prime candidate for an "Adopt a Trail" by County and user groups.

D13	New Proposal	Designate as mixed Use road	On Red Cloud Loop Road From Iron Springs Campground going West to Kaler Hollow as mixed use with lower speed limit signage posted. Easy route for Novice riders, with access to Oaks Park. To make consistant Rte #044-08 north bound and south bound and Rte #063 east bound and west bount fit together. Also narrow dugways could be mitigated with propoer signage and awareness.
D14	New Proposal	OHV Trail	From Fire Fighters Memorial on HWY 191 coming South to HWY 44 intersection and continuing west to Burnt Creek as part of OHV 50" or less Trail system.
D15	Trail 009	OHV Trail to remain open	Needs to be put back to motorized OHV Trail 59" or less trail as originally built for connecting Northern Don Hatch Trail System to systems leading into Uintah County and Daggett County. User groups have expressed willingness to rebuild, maintain and police.
D16	New Proposal	Create OHV Trail	Create OHV Trail less than 50" from Manila Park Road to Greendale Jct. south bound to Trail #2456
D17	#017	Marsh Bench Road #017 should remain open to mixed use	To Access dead fall for firewood, hunting opportunities, camping, non-motorized trail heads, scenic area views of Marsh Peak. Easy to patrol, enforce rules and maintain because of quality of road. Benefit to all users including mountain biking, x-country skiers, etc. Road is part of Uintah County Recreational Plan map as mixed use. Proposed user group policing.
D17B	#2028	Mixed Use	Proposal #2028 Connect #017 Marsh Bench to #031 Sink Ridge as mixed use. This would complete a loop route that would benefit all forest users both summer and winter usage. Non-motorized as well as motorized. Would be easy to sign, resource concerns could be adressed with proper mitigation and easier to patrol when connected as a loop. Proposed self user group policing.
L1	2347	Open area west of Paradise Reservoir Dam to dispersed camping	This area is currently being used for dispersed camping and overflow camping.

L2	2233	RS2477 Road	An RS2477 Road and should remain on the Forest Service map. This proposal is unclear. Proposal #2012 (?) is not shown on the map but the County has concerns regarding OHV use on the other side of the stream.
L3	2013	Correction to narrative	An established OHV route connecting into Blanchett Park Road. Does not create loop or acces to Paradise Park Reservoir. It is a well used route.
L4	2348	Name (Johnson Bench Road ?) is incorrect. Should be FR 104 aka Paradise Park Road. Allow dispersed camping further into Summit Park north and south of FR 104.	There is a strong history of dispersed camping here. Inside the hatched area.
L5	2450	Ground-truthing to confirm narrative	Should remain open as the main access road on the Forest Service map. Narrative incorrect as to condition of road.
L6	Cliff Lake road # 459	Create access road from end of road #459 to Dam.	Provide access road to dam and otherside of the lake. Used primarily by Irrigation Company to maintain dam and regulate water levels. Resource concerns could be mitigated by moving road into timber area.Mitigation on this road has been proposed by canal company and user groups. As damage being done by OHV's using the creek for access to the dam.
L7	Trail 049	Access to Whiterocks Reservoir	*An RS2477 Road and old historical route from Cliff lake to Whiterocks Lake was first established in the early 1920's as a freight supply road for the initial construction of the Whiterocks Reservoir. After construction, this road was used by motorized for recreation, fishing, hunting, camping, and reservoir maintenance. Closing of this road to non-motorized needs to be reviewed as to policy and legal procedure. Ouray Irrigation Administrative access to Ouray Park Irrigation as a special permit holder has to have a maintained motorized trail for at minimum of an adequate emergency dam failure response. In the current permit it does not state that the permit holder is responsible for access maintenance to the County's knowledge. Thus, putting the responsibility on the Forest. Candidate for "Adopt a Trail by user groups."

L8	2010, 2011, 2014, 3016	Chepeta Lake Road (FR110) should be available to OHV use from Pole Creek junction to Chepeta Lake	An RS2477 Road and should remain on the Forest Service map. Facilitate fishing, camping and hunting access. This route is well establised and is compatible with OHV use. OHV's should be confined to this road using proper and approriate signage.
L10	2253.3	Lower Grouse Creek Road - narrative is incorrect	The lower part of Grouse Creek Road is not appropriabe for mixed vehicle use. Would be OK for OHV's
L11	FR 104	Allow mixed vehicle use from Forest Service Boundary to Bills Park.	It would create an OHV loop road. FR 104 is a wide and well maintained road. It would need to have appropriate signage.
M1	Trail 049	RS 2477 Trail from Cliff Lake to Chepeta Lake open to ATV's	Is an RS2477 Trail and should remain on the Forest Service map. Trail should be made available to OHV to facilitate fishing and hunting access. This is a well establised trail and is compatible with managed OHV use. OHV's should be confined to the designated trail with some barriers and proper signage.
O1	New Proposal #2456	Mixed Use	(Alternate) To Don Hatch trail Beginning North bound trail #2456 to Greendale Junction Rte 158, then west bound to #1248.3 continuing west bound to #1248.7, Red Canyon Lodge. Open route #188 to accommodate mixed use to Flaming Gorge Lodge. This would open up travel opportunities for ATV's and tie in to the lodges for overnite lodging, food, gas, supplies, etc. Daggett County, Red Canyon and Flaming Gorge Lodges are highly supportive of this action. From Red Canyon Lodge proceed west to Rt. #372 to connect to Rt. #603, Meadow Park, then west along HWY 44 to Rt #539 Deep Creek. This would connect the entire south, north and west major travel systems. Also would be great for socio-economic value and promotion for recreation in Uintah and Daggett Counties. It would also benefit Vernal City because use will be tieing into the Buckskin Hills Trailhead, County, BLM trails, from Red Mountain and the Buckskin Hills to the Ashley National Forest Trail Systems. County would support user group maintenance, signage, and policing of this proposal as a good neighbor to Daggett County.
O2	2070.2 2038	Anderson Creek	2477 Road*

O3	New Proposal Road #249	Anderson Creek to beginning of Ashley National Forest Road #249	An RS2477 Road through private property and is shown on County maps as well as County Recreational Plan Map on the Forest. Show this as an ATV trail. To Stay consistent with with trails for alternative B and would be maintained and policed by Uintah County.
O4	New Proposal #249	OHV Trail	From Forest Service Route # 249 going South Bound on Route #249 through private property (Bert Stagg) . Mitigate trail off of private property to continue as OHV trail south to old saw mill road #551 and back to Iron Springs via Rte. #026. Provides for spectacular scenic views. Pleasure riding trail currently exists, well traveled, user groups would be willing to maintain and polic.
O5	New Proposal #2064 & 2065	OHV Trail to remain open	These trails are very popular for dispersed camping, pleasure riding, scenic, etc. They provide OHV travel opporunities for citizens of both Uintah and Daggett Counties. Mitigation of resource concerns given to user groups to "adopt a trail."
O6	New Proposal #290	Change to Mixed use	To be consistent with both north bound routes from Brownie Junction. Concern over dugway traffic could be mitigated with proper signage and awareness.
	By reference we are hereby incorporating all previous comments		
	and maps regarding roads and trails including RS2477 claims.		

UINTAH COUNTY

STATE OF UTAH

Our past is the nation's future

COMMISSIONERS:
Michael J. McKee
Darlene R. Burns
Mark D. Raymond
ASSESSOR - Rolenne Rasmuessen
ATTORNEY - JoAnn B. Stringham
CLERK-AUDITOR - Michael W. Wilkins
RECORDER - Randy J. Simmons
TREASURER - Wendi Long
SHERIFF - Jeff Merrill
SURVEYOR - John Slaugh

November 13, 2009

USDA Forest Service, Intermountain Region
ATTN: Harv Forsgren, Regional Forester and Appeals Deciding Officer
Federal Building
324 25th Street
Ogden, Utah 84401

Re: Uintah and Daggett County's Appeal of Ashley National Forest Motorized Travel Plan Record of Decision and Final Environmental Impact Statement

Dear Mr. Forsgren:

Appellants Uintah and Daggett Counties respectfully submit the following pursuant to 36 Code of Federal Regulations Sections 215.13 and 215.14:

ELIGIBILITY TO FILE THIS APPEAL

Uintah County is eligible under 36 Code of Federal Regulations (CFR) Section 215.13 to file this appeal, because Uintah County submitted substantive written and oral comments during the 45-day comment period for the draft environmental impact statement associated with the above-referenced subject.

Daggett County is eligible under 36 CFR 215.13 to file this appeal, because Daggett County submitted substantive written and oral comments during the 45-day comment period for the draft environmental impact statement associated with the above-referenced subject.

IDENTIFICATION OF APPELLANTS

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Telephone: 435-781-5380

Daggett County
c/o Daggett County Board of Commissioners
95 North 100 West
P.O. ox 219
Manila, Utah 84046

PROJECT OR ACTIVITY BEING APPEALED

Appellants appeal the Record of decision (ROD) and Final Environmental Impact Statement (FEIS) for the The Ashley National Forest Motorized Travel Plan of 2009 (ANFMTP).

RESPONSIBLE OFFICIAL

The name and title of the Responsible Official behind the ANFMTP ROD and FEIS is Kevin B. Elliott, Forest Supervisor Ashley National Forest (ANF).

DATE OF ANFMTP ROD AND FEIS

The ANFMTP ROD was signed September 9, 2009. The ANFMTP FEIS was published in September, 2009. The date of official legal notice of the ANFMTP ROD in the Vernal Express is September 30, 2009.

CONTROLLING REGULATIONS

The regulations under which this appeal is filed is Title 36 Code of Federal Regulations (CFR) Section 215.11 and other relevant sections under 36 CFR Part 215.

SPECIFIC CHANGES SOUGHT AND RATIONALE FOR THOSE CHANGES

Uintah County Seeks the Following Changes to the ANFMTP ROD and FEIS:

1. Adopt a motorized travel plan which is reasonably consistent with the Addenda Map to the Transportation Plan for Uintah County For Travel Management and Disbursed Camping Areas in the Ashley National Forest (Exhibit 1 hereto), adopted by Uintah County Commission Resolution No. 08-27-07 R1 on August 27, 2007 (Exhibit 2 hereto), and the Addenda Map to the Transportation Plan for Uintah County for Recreational Travel Management and Disbursed Camping Areas in the Ashley National Forest Within Uintah County (Exhibit 3 hereto), adopted by Uintah County Commission Resolution No. 08-27-07 R2 on August 27, 2007 (Exhibit 4 hereto) (both maps and supporting resolutions collectively referred to hereafter as "Uintah County Travel Plan" or "UCTP"), by taking the following steps:

a. Revoke and rescind the ANFMTP ROD and FEIS.
b. Revoke and rescind the Selected Alternative of the ANFMTP ROD and FEIS. *This includes revoking and rescinding the 150 feet limitation on off-road motorized travel for dispersed camping and wood retrieval and 0 foot limitation on off-road motorized travel for game retrieval.*
c. Reopen the EIS process on the ANFMTP.
d. Perform a good-faith, full NEPA analysis of the UCTP including:

Rationale: The rational for this requested change is that Ashley National Forest ("ANF") is obligated to adopt a motorized travel plan that is the product of careful collaboration and interaction between ANF and local governments. *See* 36 CFR 220.5(e) (careful examination of reasonable alternatives such as the UCTP), 36 CFR 219.9 (collaborative and participatory approach to planning, engaging local governments), 36 CFR 219.9(a) (public participation and involvement), 36 CFR 219.9(a)(1) (engage interested individuals and organizations including affected private landowners), 36 CFR 219.19(a)(2) (engage and coordinate efforts with local governments and seek their assistance in addressing management issues), 40 CFR 1501.1(b) (emphasizing cooperative consultation among agencies), 40 CFR 1501.6(a) (lead agency shall use analysis and proposals of cooperating agencies having jurisdiction over subject matter to the maximum extent possible), 40 CFR 1506.2(d) (FEIS must discuss inconsistency with local government plan and ANF's efforts to reconcile), and 40 CFR 1506.6(a) and 1506.6(c)(1) (ANF to make diligent efforts to involve public in the process – especially if there is significant controversy over the proposed action). The ANFMTP Selected Alternative conflicts with the will and undermines the trust and good-faith expectations of Uintah County and the many Uintah County citizens who tried to have a say in the ANFMTP process, a process which largely left Uintah County and its citizens out of the loop. The UCTP alternative reflects the will of Uintah County and the overwhelming preference of its citizens. is a product of extensive work and input from Uintah County and its citizens. The UCTP alternative is the product of careful collaboration among a broad cross section of local interests and stake holders, carried out in good faith reliance on repeated assurances of ANF cooperation and support.

2. Include in the ANFMTP revised planning and EIS process, a procedure to make non-binding determinations and/or agency recognition of Uintah County's RS 2477 right-of-way claims for those claimed RS 2477 roads and trails across ANF land as depicted in the UCTP maps (Exhibits 2 and 4 hereto), in the map entitled Uintah County RS 2477 Routes & ANFMTP Selected Alternative Routes, attached as Exhibit 5 hereto, and in such additional amended and updated maps, if any, that Uintah may submit to Forest Service from time to time to document its RS 2477 road claims across ANF land. Make provision in the revised ANFMTP ROD and FEIS for this procedure to continue after entry of the ROD for such additional rights of way claims that Uintah County may assert from time to time.

Rationale: The ANFMTP must not impinge on valid and existing rights. The road map labeled "Figure 1 ROD Selected Alternative" fails to recognize all of Uintah County's RS 2477 claimed rights of way over roads and trails over ANF land. *See* Exhibits 2, 4 and 5 hereto. *See also* Map Comparing Routes of UCTP to ANFMTP Selected Alternative Routes, attached as Exhibit 6 hereto. To overcome this continuing violation and impingement on Uintah County's valid property interests in RS 2477 rights of way, the ANFMTP ROD and FEIS should include a process for recognition of Uintah County RS 2477 roads and trails and provide for amending the ANFMTP ROD and FEIS to allow for these additional roads and trails previously not recognized.

Rationale: (a) Any administrative or on-the-ground management decision to close or restrict motorized travel roads referenced in the above-referenced maps violates NEPA, because the ANFMTP FEIS and ROD do not identify those roads subject to closure and restriction nor do they analyze the impacts of such closures and restrictions.

(b) Closures and restrictions of Uintah County's RS 2477 roads constitutes a breach and violation of Uintah County's property interests under RS 2477, which property interest vested in such roads and trails prior to the 1897 reservation of ANF lands over which the RS 2477 roads and trails cross.

(c) On-the-ground closures of additional non RS 2477 roads and trails shown on the above-referenced maps are inconsistent with the policies and preferences of Uintah County and its citizens and thus are not supported by governing regulations. *See* the regulatory authorities cited in the "rationale" portion of paragraph no. 1 above. Act.

(d) On-the-ground closures of already-established roads and trails shown on the above-referenced maps constitute de facto wilderness management of ANF lands, in violation of the multiple use mandate of the National Forest Management Act of 1976, 16 U.S.C. 1601(d), the Multiple Use Sustained Yield Act of 1960, 16 U.S.C. 475, 528, and the 1984 Utah Wilderness Act's prohibition and moratorium against the creating of any more wilderness on Forest Service lands without Congressional approval. PL 98-428 Sept. 29, 1984 Secs. 101(b)(2) (insuring that forest service lands not congressionally designated as wilderness shall be available for "nonwilderness multiple uses") and 201(b)(3)-(5) (releasing to multiple all RARE II lands not designated as wilderness and forbidding further statewide roadless evaluations absent Congressional direction).

(e) On-the-ground closures of already-established roads and trails shown on the above-referenced maps constitute de facto adherence to the 2001 Roadless Area Inventory, Roadless Area Rule and de facto Roadless Area management which is really just de facto wilderness management, all in violation of the authorities cited in the previous paragraph (NFMA, MUSY and Utah Wilderness Act). The 1984 Utah Wilderness Act says no to further attempts by Forest Service to conduct statewide roadless reviews in Utah or otherwise perform de facto management of forest ground as if were wilderness without Congressional approval. Moreover, the 2001 Roadless Rule was declared illegal twice in a court ruling (United States District Court for the District of Wyoming) intended to be applicable nationally – or at least outside the jurisdiction of the Ninth Circuit Court of Appeals. Wyoming v. United States Dept. of Agriculture, 277 F.Supp 2d 1197 (D. Wyo. 2003); Wyoming v. United States Dept. of Agriculture, 570 F.Supp 2d 1309 (D. Wyo. 2008).

4. Revoke and rescind the decision to limit motor vehicle use for dispersed camping and wood retrieval to within 150 feet from motorized roads and trails. Continue with the current policy which allows motor vehicle use for dispersed camping and wood and retrieval to within 300 feet from motorized roads and trails.

Rationale: See related arguments set forth throughout this document.

5. Revoke and rescind the decision that disallows motor vehicle use off of designated routes for the purpose of game retrieval. Continue with the current policy which allows motor vehicle use for game retrieval purposes to within 300 feet from motorized roads and trails, similar to the limitation for dispersed camping.

Rationale: It is arbitrary and capricious to say that one vehicle may travel up to 300 feet from a designated route to set up an overnight or multi-day camp sight *365 days a year*, but that another motor vehicle may not travel *any distance* from a designated route for the *much shorter amount of time* required to retrieve game, *for the brief period of game hunting season*. This is illogical and nonsensical and does not rationally relate to or promote any legitimate resource protection or management objective. Moreover, this sudden and drastic change to longstanding policy and practice will have the result of significantly reducing the amount of hunting and therefore destabilize the wildlife management goals and assumptions of State wildlife management agencies.

6. Throw out the current purpose and need statement, and go back and reopen the purpose and need portion of the EIS process.

Rationale: The purpose and need statement in the current FEIS is improper and violates NEPA, because it pre-supposes the ultimate alternative which ANF selected. It simply states that the ultimate end result is needed – go from 300 feet to 150 feet restrictions for dispersed camping. This turns the NEPA process on its head. ANF instead should cite some need or purpose – if any exists - that changing 300 restriction would allegedly serve, and then ANF should open itself to a range of alternatives for achieving that purpose and need – if any exists - as well as go through the public process to determine the extent and validity of the asserted purpose and need. Instead, ANF violates NEPA by simply stating in the purpose and need, the ultimately selected alternative. This is pre-decisional arbitrary conduct at its worst – running completely contrary to the spirit and letter of NEPA.

7. Prepare a map of the ANF area showing every single map and trail that exists on the ground and how each alternative in the ANFMPT FEIS purports to affect each road and trail.

Rationale: ANF has failed to do this. Therefore, the public does not know how the ANFMTP alternatives will affect all of the roads and trails existing on the ground. ANF has no excuse for failing to do this. Any contention that certain roads and trails were not published or disclosed in the maps because they are not authorized, is circular and begs the whole question and reason for the NEPA process. How can the public judge or be sure they are not being railroaded with the secret closure of existing roads without it ever being apparent due to lack of disclosure? Not disclosing to the public all of the existing roads and trails keeps the public in the dark about how the ANFMPT alternatives will affect those roads and trails. ANF has failed to do this; therefore, the entire ANFMTP EIS violates NEPA in failing to provide the public full disclosure and failing to provide for informed decision-making, all in violation of NEPA.

8. Repair and rehabilitate the current ANF mindset which arbitrarily presumes that a given road or trail existing today on the ground must have been user created by recent illegitimate OHV use.

Rationale: This mindset flies in the face of undisputed facts (i.e., prior maps including USFS maps) which show the vast majority of these on-the-ground roads were legitimately established long ago and recognized on maps.

9. Conduct the proper NEPA analysis and issue the needed EIS(s) with respect to the elimination, non-recognition, and/or deletion of any and all roads and trails that ever showed up on prior Forest System Maps for the ANF area, but which do not show up on the ANFMTP Selected Alternative.

Rationale: ANF cannot, without going through NEPA, just issue a new map that suddenly has missing on it roads and trails that used to be on prior ANF maps. But that is what has happened here on a large wholesale scale, thus subverting the NEPA values of informing the public and properly involving the public. To effectively shut down roads and trails that used to be on prior ANF maps, is to effect a substantial change to federal lands and the human and forest environment which demand that the change go through the NEPA process.

Daggett County Seeks the Following Changes to the ANFMTP ROD and FEIS:

1. Include in the ANFMTP revised planning and EIS process, a procedure to make non-binding determinations and/or agency recognition of Daggett County's RS 2477 right-of-way claims for those claimed RS 2477 roads and trails across ANF, including but not limited to the Sols Canyon Road. Make provision in the revised ANFMTP ROD and FEIS for this procedure to continue after entry of the ROD for such additional rights of way claims that Daggett County may assert from time to time.

Rationale: The ANFMTP must not impinge on valid and existing rights. The ANFMTP ROD and FEIS should include a process for recognition of Daggett County RS 2477 roads and trails and provide for amending the ANFMTP ROD and FEIS to allow for these additional roads and trails previously not recognized.

The Travel Management Rule at 36 CFR § 212.55(d) requires that the responsible official "shall recognize valid existing rights" when making the travel designations that were made in the ANFMTP ROD and FEIS. This mandates at the very least a right-of-way validity determination process to be part of the ANFMTP planning and EIS process. For all routes determined to be valid Daggett County rights of way, ANF must then seek a right or permission from Daggett County to participate in the regulation of use on that road. Support for this point comes from the Department of Agriculture's explanatory written comments to the public set forth in the initial public notification in the Federal Register on November 9, 2005. Discussing Rule 212.55(d) of the TMR, the Department stated in part:

property interest vested in such roads and trails prior to the 1897 reservation of ANF lands over which the RS 2477 roads and trails cross.

(c) On-the-ground closures of additional non RS 2477 roads and trails shown on the above-referenced maps are inconsistent with the policies and preferences of Daggett County and its citizens and thus are not supported by governing regulations. *See* the regulatory authorities cited in the "rationale" portion of paragraph no. 1 above. Act.

(d) On-the-ground closures of already-established roads and trails shown on the above-referenced maps constitute de facto wilderness management of ANF lands, in violation of the multiple use mandate of the National Forest Management Act of 1976, 16 U.S.C. 1601(d), the Multiple Use Sustained Yield Act of 1960, 16 U.S.C. 475, 528, and the 1984 Utah Wilderness Act's prohibition and moratorium against the creating of any more wilderness on Forest Service lands without Congressional approval. PL 98-428 Sept. 29, 1984 Secs. 101(b)(2) (insuring that forest service lands not congressionally designated as wilderness shall be available for "nonwilderness multiple uses") and 201(b)(3)-(5) (releasing to multiple all RARE II lands not designated as wilderness and forbidding further statewide roadless evaluations absent Congressional direction).

(e) On-the-ground closures of already-established roads and trails shown on the above-referenced maps constitute de facto adherence to the 2001 Roadless Area Inventory, Roadless Area Rule and de facto Roadless Area management which is really just de facto wilderness management, all in violation of the authorities cited in the previous paragraph (NFMA, MUSY and Utah Wilderness Act). The 1984 Utah Wilderness Act says no to further attempts by Forest Service to conduct statewide roadless reviews in Utah or otherwise perform de facto management of forest ground as if were wilderness without Congressional approval. Moreover, the 2001 Roadless Rule was declared illegal twice in a court ruling (United States District Court for the District of Wyoming) intended to be applicable nationally – or at least outside the jurisdiction of the Ninth Circuit Court of Appeals. Wyoming v. United States Dept. of Agriculture, 277 F.Supp 2d 1197 (D. Wyo. 2003); Wyoming v. United States Dept. of Agriculture, 570 F.Supp 2d 1309 (D. Wyo. 2008).

(f) Daggett County has a recognized ownership interest on behalf of the public in the public roads. *Kinscherff v. United States*, 586 F.2d 159, 160 (10th Cir. 1978); Wyo. Stat. §24-3-101. The following maps document the existence of many roads in the FGNRA prior to its reservation by Congress in 1968. See National Park Service Map, Roads and Trails, Flaming Gorge Recreation Area Project (1962), and Forest Service 1971 Travel Map. Thus, there is a presumption that there are public and private roads within the FGNRA, which are valid existing rights, 16 U.S.C. §§460v-2, §460v-5, and that these roads should remain available for public use.

3. Revoke and rescind the decision to limit motor vehicle use for dispersed camping and wood retrieval to within 150 feet from motorized roads and trails. Continue with the current policy which allows motor vehicle use for dispersed camping and wood and retrieval to within 300 feet from motorized roads and trails.

ANFMTP EIS violates NEPA in failing to provide the public full disclosure and failing to provide for informed decision-making, all in violation of NEPA.

7. Repair and rehabilitate the current ANF mindset which arbitrarily presumes that a given road or trail existing today on the ground must have been user created by recent illegitimate OHV use.

Rationale: This mindset flies in the face of undisputed facts (i.e., prior maps including USFS maps) which show the vast majority of these on-the-ground roads were legitimately established long ago and recognized on maps.

8. Conduct the proper NEPA analysis and issue the needed EIS(s) with respect to the elimination, non-recognition, and/or deletion of any and all roads and trails that ever showed up on prior Forest System Maps for the ANF area, but which do not show up on the ANFMTP Selected Alternative.

Rationale: ANF cannot, without going through NEPA, just issue a new map that suddenly has missing on it roads and trails that used to be on prior ANF maps. But that is what has happened here on a large wholesale scale, thus subverting the NEPA values of informing the public and properly involving the public. To effectively shut down roads and trails that used to be on prior ANF maps, is to effect a substantial change to federal lands and the human and forest environment which demand that the change go through the NEPA process.

PORTIONS OF THE ANFMTP ROD AND FEIS WITH WHICH APPELLANTS DISAGREE AND EXPLANATION FOR DISAGREEMENT

1. ANF's adoption of Alternative B as the Selected Alternative, to the extent inconsistent with the UCTP and prior ANF maps.

Explanation: See the discussion throughout this document, including but not limited to the discussion concerning ANF's failure to consider and work cooperatively with Uintah County concerning the UCTP, the failure to adopt an alternative in collaboration with Uintah and Daggett Counties as the federal regulations cited herein require, and the Selected Alternative's closure and restrictions of roads in a manner inconsistent with the UCTP, inconsistent with the counties' RS 2477 valid and existing property rights, and inconsistent with ANF's own prior historic maps.

2. ANF's failure to include the UCTP as a main alternative in the EIS.

Explanation: See above.

3. All of the FEIS alternatives provide insufficient opportunity for a recreational experience, and the FEIS failed to adequately disclose and analyze each alternative's impacts to recreational opportunities.

It is also arbitrary that the ANFMTP purports to eliminate approximately 328 miles of existing routes in the hatched travel areas and an estimated 1,436 miles of travel routes are restricted to non-motorized use. The blanket road closures and dispersed camping restrictions may not be proposed without first determining whether the significant reduction in recreational opportunities is consistent with the recognized public need as required by the ANF Forest Plan. The ANFMTP fails in this regard.

8. The ANFMTP FEIS failure to address the fact of current and long time public use of roads and trails which ANF at some point in time summarily classified as "unauthorized" and therefore closed them with no ANF LRMP or other NEPA event as support for such summary action, and yet the public has continued to use these roads and trails continuously for 23 years or more, precisely because of the lack of any public notice or process for purporting to close them.

Explanation: ANFMPT EIS neither signed off on nor officially closed so-called already "unauthorized" routes, neither in the current EIS process, nor in any prior road closure procedures under 36 CFR § 261.50, nor in any other public NEPA process. Instead those roads showed up on a map one day with the words "Unauthorized" summarily tagged to them. Yet these roads have remained open to unfettered public use and access fro the last 23 years. In the absence of proper discussion and coverage in the ANFMTP FEIS, the public cannot be expected to understand that the use of these roads and trails will be unlawful or that they have always been closed, as recently claimed by the ANF Supervisor.

9. The failure of the ANFMTP FEIS and to inventory the routes which it considers to be "unclassified" or "unauthorized" and consider the characteristics of the "unauthorized roads and trails."

Explanation: There is no way for the Counties as cooperating agencies nor the public to know if ANF's characterization of these roads as "unauthorized" is legitimate, because ANF has failed to inventory them. The ANF incorrectly claims it is unreasonable to complete such an inventory, claiming the miles of such roads is prohibitive. Not true. For example, the DEIS at 2-12 estimates there to be only 583 miles of such roads in the Vernal Ranger District, of which 368 are in the hatched travel area. That is not prohibitive. The public cannot document the validity and legitimacy of ANF's assertion as to the "unauthorized" nature of these roads without ANF inventorying them as part of the NEPA process, so that the public may scrutinize the validity of ANF's claim. To fall short of this is not adequate public disclosure under NEPA. Due to the failure of this inventory, the Counties have reason to fear that the ANFMTP EIS and ROD greatly understate the number and miles of roads and trails that are excluded from the Selected Alternative. If it is within the means of ANF to inventory these claimed "unauthorized" roads, then such an effort is required under NEPA and Forest Planning regulations in order to facilitate proper public review and scrutiny.

The seriousness of this failure to inventory alleged "unauthorized" (not just those routes that meet ANF's definition of a road, but roads that meet the Webster's Dictionary

11. Related to the preceding item, the failure of the ANFMTP FEIS to disclose to the public which private and public rights-of-way and access, including the roads and trails necessary to reach private land and grazing allotments, will be cut off under the Selected Alternative.

Explanation: See the preceding discussion regarding the duty to recognize valid and existing rights. Landowners and permittees throughout the ANF musty have adequate access to realize and enjoy their property and permit interests. ANF has no authority to extinguish those access rights, certainly not without adequate inventory, notice and public participation in the cutting off of those access rights. The ANFMPT FEIS and ROD fail to indicate that ANF considered and inventoried these rights and other private rights of way, and duly gave public notice and opportunity to comment and otherwise participate in the cutting off of those access rights. ANF officials told the Uintah County Commission on numerous occasions that it would not close any roads in this travel plan; therefore, the County reasonably assumed that the public rights of access were not at risk. Yet the ANFMPT Selected Alternative Map fails to recognize all of Uintah County's road claims. *See* Exhibits 2, 4 and 5.

12. The failure of the ANFMTP FEIS and Selected Alternative Map to account for or depict rights-of-way and easements reserved by private landowners who reserved such rights over lands USFS acquired from them by purchase.

Explanation: See the discussion throughout this document. These are reserved rights which are not under Forest Service jurisdiction due to their status as outstanding rights or reserved rights. 36 CFR 251.110(b); FSM 2718.5; 2718.31; 5430.5, ¶¶6, 7. The silence on this subject in the ANFMPT FEIS, ROD and Selected Alternative Map, implies a hostile assumption of jurisdiction by ANF that excludes these outstanding or reserved rights. This needs to be changed.

13. The ANF's apparent claim of jurisdiction over all roads located within the Flaming Gorge NRA, as shown on the Selected Alternative Map for the Flaming Gorge Ranger District. That map fails to account for reserved rights-of-way and easements.

Explanation: The 2009 travel management directives require the Forest Service to "[d]etermine jurisdiction over all forest service transportation facilities." FSM 7703.3 Many travel routes existed before the NRA provided access to grazing allotments and land and are also presumptively reserved or outstanding rights-of-way. Even where the ANFMTP Selected Alternative does not propose to close the affected roads, it ignores the fact that these roads may be reserved or outstanding roads or rights-of-way that are not under Forest Service jurisdiction due to their status as outstanding rights or reserved rights. 36 CFR 251.110(b); FSM 2718.5; 2718.31; 5430.5, ¶¶6, 7.

14. The ANFMTP FEIS is missing an integrated roads analysis done in cooperation with local government and public input.

15. The ANFMTP FEIS fails to show the public via a map all of the roads and trails currently existing on the ground in order to properly disclose all of the closures and restrictions that will take place under the Selected Alternative.

Explanation: The FEIS entirely omits many miles of roads that the Forest Service considers unauthorized or unclassified, without first delineating or identifying the public, outstanding or reserved rights-of-way over which the Forest Service has no authority. By ANF's own admission, the ANFMTP FEIS and ROD to not reflect all the roads to be closed to public use and reclaimed, and do not display them on the maps for the 'no action' alternative, and to analyze the respective environmental, social and economic impacts of their closures and restrictions, all in violation of NEPA. The County and the public cannot fully understand the scope or impacts of the proposed action, because so many roads and trails are omitted and not displayed. In fact this omission is a *per se* violation of NEPA.

ANF must restart the EIS process and complete an inventory of all roads and trails within the ANF in consultation with Uintah and Daggett Counties and other agencies and stakeholders with interests and jurisdiction over rights-of-way. Until that happens, the cooperating agencies and the public cannot meaningfully participate' in determining the scope and significant issues to be analyzed in the EIS.

16. The ANFMTP FEIS fails to discuss consistency with relevant Uintah County plans.

Explanation: The FEIS fails to discuss consistency with the Uintah County Ashley National Forest Travel Plan & Dispersed Camping Areas resolution and map (Exhibits 1 & 2 hereto), the Uintah County Ashley National Forest Recreation Plan and Dispersed Camping Areas resolution and map (Exhibits 3 & 4 hereto), and the Uintah County Public Lands Policy and Public Lands Implementation Plans (Exhibit 7 hereto). CEQ regulations require, "To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." (40 CFR 1506.2 (d)).

17. The ANFMTP FEIS and ROD fail to account for the disappearance of roads and trails that show up on earlier Forest Service travel maps but not on the ANFMTP Selected Alternative Map.

Explanation: Forest Service travel maps for the ANF dated 1928, 1933, 1945, 1955, 1971, 1991 and 1999 respectively display roads and trails which are not shown on the ANFMTP Selected Alternative Map, meaning they are to be closed. Roads depicted in such maps cannot be peremptorily removed without going through the proper NEPA process, particularly those roads which predate the FGNRA and are presumptively not forest roads. Many such roads provide access to in-holdings and grazing allotments and

WHY THE RESPONSIBLE OFFICIAL'S ANFMTP DECISION FAILED TO CONSIDER SUBSTANTIVE COMMENTS

1. Uintah County does not know why ANF failed to give good faith consideration to the UCTP. The UCTP was not even considered as part of the Chapter 2 alternatives. Uintah County Commissioner Darlene Burns was told directly and unqualifiedly by a member of the ANFMTP planning team that ANF did not consider the UCTP as an alternative, despite the fact that Uintah County presented the resolutions and maps (Exhibits 1-4 hereto) to ANF officials as part of the planning process.

WHY THE ANFMTP ROD AND FEIS VIOLATE LAW, REGULATION AND POLICY

1. See the foregoing discussion. In addition, the ANFMTP ROD and FEIS violate the following authorities:

a. 36 CFR 220.5(e) "The EIS shall document the examination of reasonable alternatives to the proposed action." The ANFMTP failed to examine the UCTP as a reasonable alternative.

b. 36 CFR 219.9 "The responsible official must use a collaborative and participatory approach to land management planning, in accord with this subpart and consistent with applicable laws, regulations and policies, by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other Federal agencies, federally recognized Indian Tribes, Alaska Native Corporations, State or local governments, or other interested or affected communities." (Emphasis added)

The ANFMTP EIS process failed to appropriately involve Uintah and Daggett Counties in this process, as evidenced primarily by ANF's failure to seriously consider the UCTP.

c. 36 CFR 219.9(a) "*Providing opportunities for participation.* The responsible official must provide opportunities for the public to collaborate and participate openly and meaningfully in the planning process, taking into account the discrete and diverse roles, jurisdictions, and responsibilities of interested and affected parties. Specifically, as part of plan development, plan amendment, and plan revision, the responsible official shall involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program. The responsible official has the discretion to determine the methods and timing of public involvement opportunities."

As shown in the purpose and need statement, the change to the 150 feet restriction was pre-decisional without meaningful public participation in a range of alternatives designed to address whatever need prompted that change (that need was never identified.) The public has been denied the opportunity for meaningful participation in the effective

ANF mischaracterizes this subsection when it claims that it's only authority is to designate motorized travel on certain roads and trails. This subsection also allows designated ***area*** use. Thus ANF has misapplied this rule by citing it as justification for prohibiting all off route travel.

h. 36 CFR 212.55(d) Criteria for designation of roads, trails and areas. "*Rights of access.* In making designations pursuant to this subpart, the responsible official ***shall*** recognize: (1) ***Valid existing rights; . .***" This regulation "requires responsible officials in designating roads, trails, and areas to recognize valid existing rights, including valid outstanding or reserved rights-of-way for a road or trail. Examples include a valid outstanding or reserved right-of-way for a road or trail in existence at the time title to the underlying land was acquired by the United States, and a right-of-way for a road or trailed acquired by the United States where the owner of the underlying land may have retained control of the right-of-way and may have reserved the right to allow others to use it. Forest service may not regulate uses within the scope of these rights-of-way if the agency has not acquired the right to do so." FR Vol. 70 68282 (Wednesday November 9, 2005).

The ANFMTP ROD and FEIS and Selected Alternative Map have failed to follow these requirements. There is no recognition of valid existing rights found in these documents or in any other document in the record of this EIS, and there is no record of ANF ever having sought permission.

i. 40 CFR 1501.1(b) "Purpose. The purposes of this part include: . . . (b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document." (Emphasis added)

The predominant experience in this process has been adversary comments after completion of the EIS, rather than meaningful cooperative consultation before hand. Again, the UCTP was set aside and not considered in good faith by ANF, and the 150 feet restriction was arbitrarily handed down with little or no consultation, contributing to the present appeal.

j. 40 CFR 1501.6(a) "The lead agency shall" (1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time. (2) Use the environmental analysis *and proposals* of cooperating agencies with jurisdiction by law or special expertise, *to the maximum extent possible* consistent with its responsibility as lead agency." (Emphasis added)

Appellants have jurisdiction over their county RS 2477 roads. Cooperating Agency Uintah County submitted the UCTP as a proposal on how to regulate travel over roads in the ANF, including roads over which Uintah County has jurisdiction. ANF ignored and set aside this proposal, refusing to consider it as a main alternative, thus violating the foregoing regulation.

stages of the planning process after the decisional dye was cast and word was coming back to ANF of Uintah County's feeling railroaded on the UCTP issue, in order to project a false image of NEPA-worthy cooperation with Uintah County on that issue. See e.g., the Reader's Guide to the FEIS and Summary Section of the FEIS (August 19, 2009 Advanced Copy).

3. The ANFMTP ROD and FEIS unlawfully interfere with and violate Uintah County's property interest in vested RS 2477 Rights of Way to the extent the Selected Alternative closes and/or restricts public travel on roads and trails in the Uintah County portion of the ANF which are shown to be valid and existing RS 2477 Rights of Way in Exhibits 2, 4 and 5 hereto.

4. The 150 feet limitation on motorized access to dispersed camping areas and wood retrieval on the south slope of the ANF, and total ban on road departure for game retrieval, constitute decisions that were arbitrary and capricious in the making, arbitrary and capricious as end results, and were done without necessary cooperator and public notice, comment, input and careful analysis to make it legitimate and lawful under NEPA. These new restrictions are not rationally related to legitimate and lawful forest management and resource protection values and goals under NFMA.

Arbitrary and capricious in the making: During the planning process ANF articulated different sorts of reasons for the 150 feet limitation, ranging from accommodating UDWR, to accommodating the USFS Regional Office, to achieving a regional/national policy of consistency (ignoring the fact that USFS in surrounding states and the Uintahs' north slope have stuck with the 300 feet rule), to aiding magistrates in prosecuting violations, to aiding alleged wilderness values by reducing the human camping footprint (applying unsound logic that packing all the campers into a 150 foot radius of the road somehow makes a softer footprint than spreading them out along a 300 foot radius.")

Arbitrary and capricious in the result: The ANF goal inferred by the counties and the public is to further cut off the citizens of Uintah County from access to the most cherished recreational values in the ANF. It logically advances no resource or recreational value. It is counter-intuitive to the basic principle of preserving the landscape by not over-concentrating the camping population (300 foot radius down to 150 foot radius).

Little or no regard for public sentiment and wishes: The Regional Forester should consider that the 150 feet rule and the way it was rolled out stirred significant public controversy and diminished trust and good will between ANF and the citizens of Uintah County, as evidenced by the thousands of signatures generated on a petition drive protesting these restrictions. *See* copy of petition and signatures in Exhibit 8 hereto. This represents a significant percentage of the adult population of the Basin and is a remarkable expression of public frustration over this 150 feet limitation rule. ANF did not do itself any favors when its top brass brushed the 6,000 signature petition off as "a

CONCLUSION

For these reasons and other reasons stated in appellants' prior written and verbal comments, all of which are incorporated herein by reference, the Appeals Deciding Officer should make the changes and grant the other relief requested above.

Respectfully submitted this 13 day of November, 2009.

UINTAH COUNTY, UTAH

By: Darlene R. Burns
Darlene Burns
Board of Commissioners Chair

Respectfully submitted this 13 day of November, 2009.

DAGGETT COUNTY, UTAH

By:
Stewart Leith
Board of Commissioners Chair

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UINTAH COUNTY

STATE OF UTAH

Our past is the nation's future

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March 10, 2010

Mr. Harris Sherman
Under Secretary for Natural Resources and Environment
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Re: Uintah & Daggett Counties' Appeal of The Ashley National Forest Motorized Travel Plan of 2009 - Appeal No. 10-04-00-0031 A-215

Dear Under Secretary Sherman:

The purpose of this letter is to seek your discretionary review and relief from a recent adverse USFS Motorized Travel Plan record of decision and affirming Intermountain Region decision on appeal, which have caused a public uproar of crisis proportion and a regional public vote of "no confidence" in the integrity and competency of Ashley National Forest management.

Subject and Status of Appeal

The Ashley National Forest Motorized Travel Plan of 2009 (ANFMTP) record of decision (ROD) was signed September 9, 2009. The ANFMTP Final Environmental Impact Statement (FEIS) was published in September, 2009. The date of official legal notice of the ANFMTP ROD in the Vernal, Utah Express newspaper is September 30, 2009.

On November 13, 2009 Uintah and Daggett Counties, Utah (appellants) timely appealed the ROD and FEIS for the ANFMTP. On December 31, 2009 the United States Department of Agriculture, Forest Service, Intermountain Region mailed to appellants' counsel a decision denying appellants' appeal, indicating the decision constitutes the final administrative determination of the Department of Agriculture (hereafter "USDA Decision"). Because the USDA Decision constitutes final agency action, appellants are able to pursue an APA action for federal judicial review of the Decision anytime prior to six years from its date.

However, we would first invoke the authority inherent in your position to provide discrete, common-sense discretionary relief from the effect of the USDA Decision, in order to restore public confidence and avoid the needless expense and protracted delay that a judicial proceeding would visit upon all concerned.

Here is the specific relief that you could provide in order to restore public confidence in Ashley NF management. You may want to consider flying to Salt Lake City and then to Vernal to announce these steps to the Governor and then to the public in a regional public meeting, in that order, if you would please, in order to quell the crisis:

Extraordinary Relief – Five Simple Steps To Restoring Public Confidence

1. Suspend implementation of the ANFMTP while conducting – in cooperation with Uintah and Daggett Counties as full co-partners - a comprehensive inventory of all roads in the planning area which are of interest and value to the Counties and the local public, including a review of all roads appearing on Ashley NF maps in existence on or before 1999. That is *the* only way to restore public confidence, Mr. Under Secretary. If you doubt this claim, then please come to Vernal and prepare to spend several hours listening to sworn testimony from hundreds, if not thousands, of responsible citizens who feel completely robbed of their cherished stake in reasonable access to the Ashley Forest. This should be a grass-roots, public-level-upward undertaking, not a top-down bureaucratic thrust that belittles public input as so much uninformed hooliganism. The locals know where the roads are much better than the bureaucratic short-term transplants do, with their reflexive revisionist urges to selectively look the other way on valid historic map data.

2. Revise the proposed ANFMTP to recognize all valid and existing roads identified in the foregoing inventory, *before implementing the RMP*. Ashley NF owes the people of Utah an adult-to-adult rational explanation for every road that once existed on historic ANF maps which do not make it on the ANFMTP, not a hoodwinked parent-to-child pat on the head to run along and not obsess over old roads. Old roads? ANF personnel just may learn a thing or two about those "old roads" if they rationally engage in a cooperative, boots-on-the-the-ground public inventory process respectful of public input and duly cognizant of historic map data.

3. Revise the proposed ANFMTP to provide for off-road motorized travel up to 300 feet from a road for dispersed camping, wood retrieval and game retrieval, and drop the arbitrary 150 foot rule, which feigns concern for human footprints by cramming the campers, the wood gatherers and the game retrievers who used to disperse their footprints over a 300 foot radius, into an area now half that size. Where is the eco common sense in that change, Mr. Under Secretary? It is completely counter-productive and can only be taken as overtly hostile for the sake of being hostile to the established citizenry who love and utilize Forest values, rather than pro-environment.

4. Implement a procedure to provide for agency recognition of Uintah County's RS 2477 right-of-way claims for roads and trails across ANF land established prior to the 1897 forest reserve, as documented by credible maps and other historic information from that era. Make provision for this RS 2477 recognition process to continue after the proposed ANF MTP is finalized.

5. Finally, revoke all road closures in the ANF which are inconsistent with the above-referenced inventory.

We realize these are firm and passionate sentiments. But they are well founded, Mr. Under Secretary. What you have here in northeastern Utah is a basic meltdown of public confidence. Your far-away office has to somehow realize the crisis in confidence and trust that exists with the tens of thousands of people who constitute the local Utah citizenry at the foot of the Ashley Forest. Rather than our lawyers' nit-pick with yours for years, why not instead pursue a course of action needed to immediately restore public confidence and trust? This is one of the main reasons for your office: to step into a crisis of fairness and fix it.

Conclusion

We would love to sit down with you and explain the foregoing concepts in greater detail, and as mentioned, we would love to have you visit Salt Lake City and Vernal to meet with the Governor and our constituents. We long to hit the "reset" button and commence a positive working relationship with Ashley NF. We're confident you can provide this reset by coming to Utah to personally implement the five simple steps outlined above.

Thank you.

Sincerely,

UINTAH COUNTY BOARD OF COMMISSIONERS

Darlene R. Burns, Chair | Michael J. McKee | Mark D. Raymond

cc: Utah Governor Gary Herbert
Utah Lt. Governor Greg Bell
Utah Association of Counties
Utah Congressional Delegation
Ashley National Forest
USFS Intermountain Region
Uintah County Public Lands Council

Ashley Motorized Travel Plan
Ashley National Forest
#10-04-00-0025 A-215 Tammy Ferguson
#10-04-00-0026 A-215 Orlan Anderson
#10-004-00-0027 A-215 High Uintas Preservation Council
#10-04-00-0029 Wyoming Coalition of Local Gov.
#10-04-00-0030 Wildlands CPR, et al.
#10-04-00-0031 A-215 Uintah & Daggett Counties

APPEAL ISSUE 1: The Ashley National Forest (ANF) Record of Decision (ROD) for the motorized travel plan did not include and/or identify all routes, trails, roads correctly on the Forest, nor did the forest analyze these routes appropriately in the Final Environmental Impact Statement (FEIS) or through the National Environmental Policy Act (NEPA).

RESPONSE: The travel analysis process is guided by agency directives. Forest Service Manual (FSM) 7712.1(5) specifies that a complete inventory of unauthorized routes is not required to conduct travel analysis. This is further explained in the preamble that accompanied the publication of this manual section in the Federal Register (FR): "As a practical matter, in areas where there are no restrictions on motor vehicle use, there is no way to conduct a complete inventory of user-created routes, since users of motor vehicles can create new routes while the inventory is underway" (73 FR 74691, December 9, 2008).

The Travel Management Rule (2005) requires the designation of those roads, trails, and areas open to motor vehicle use on Forest System Lands. The rule prohibits the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that are not consistent with the designation. The Forest Service (FS) must strike an appropriate balance in managing all types of recreational activities and providing access opportunities to a wide variety of users on National Forest System (NFS) Lands. To this end, a designated system of roads, trails, and areas for motor vehicle use, established with public involvement, will enhance public enjoyment of the National Forests while maintaining other important values and uses on NFS lands.

The Forest undertook an extensive effort to spatially locate NFS roads and trails and the unauthorized routes which showed current or past motor vehicle use and which could be interpreted as travel ways for motor vehicles (FEIS, pp. 2-13). The Forest appropriately reviewed and considered previous roads and trails data from multiple sources, including county maps, when developing the Travel Plan.

Specific to one appellants issue, the Dyer Mine road crosses private property and the FS does not have public Right of Way authority across private property, and hydrology and other resource concerns exist along Iron Springs road route as it travels in a stream/wash area and above Big Brush Creek Cave (FEIS, p. A-35; FEIS, p. A-84).

Although no additional NEPA is required to establish the management status of unauthorized roads as closed, there would typically be analysis of the methods used to physically close any roads. This would involve public scoping and provide an additional chance for interested parties to submit comments.

The Forest made a reasonable effort to inventory unauthorized roads and trails and this inventory was consistent with agency directives.

APPEAL ISSUE 2: When completing the ANF Motorized Travel Plan, the FS did not follow the rules and policy for travel analysis (i.e. lacks science-based analysis, inadequate public involvement, and failure to identify the minimum road system).

RESPONSE: Consistency of the Travel Plan with the Road Analysis is addressed in the FEIS Response to Comments on the Draft Environmental Impact Statement (DEIS) (FEIS, p. 5-15). There are two components for travel analysis: one to identify issues, benefits, problems, and risks to inform decisions related to identification of the minimum road system per 36 CFR 212.5(b)(1); and another which informs designation of roads, trails and areas for motor vehicle use per 36 CFR 212.51. These two processes may be conducted concurrently or separately, and each can be used to inform the other (FSM 7710, p. 18).

The 2005 ANF Roads Analysis included issue identification via formal and informal public involvement (ANF Roads Analysis, p. 20). This analysis followed guidance in the Roads Analysis: Informing Decisions about Managing the National Forest Transportation System to identify potential impacts of roads and/or motorized access on wildlife, water quality, cultural resources, right-of-way issues, and potential changes to road management objectives associated with the minimum road system (USDA, 1999). Although prepared under direction of the 2001 Travel Rule, the 2005 Roads Analysis is consistent with requirements in 36 CFR 212.5(b)(1) and guidance provided in FSH 7709.55, Chapter 20.

The travel management planning in the FEIS includes the analysis required under 36 CFR 212.51 to inform designation of roads, trails, and areas for motor vehicle use. The 2005 Roads Analysis was one information source used to develop the route designation proposals. Additional information was obtained through extensive public involvement in development of the proposed action and throughout preparation of the draft and final EIS (FEIS, p. 1-12).

The FEIS states "The ANF Travel Management Plan along with the Roads Analysis will be use[d] in determining the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of NFS lands" (FEIS, p. 1-7). The "minimum road system" as defined by the selected alternative was informed by the travel planning process in the FEIS and the 2005 Roads Analysis (ROD, p. R-17).

This issue was appropriately addressed by the Responsible Official. The 2005 Roads Analysis was completed as required and the change conditions outline in the decision is analyzed in the FEIS for this decision.

APPEAL ISSUE 3: The ANF Motorized Travel Plan and ROD did not appropriately analyze effects to unroaded areas, Inventoried Roadless Areas (IRA), wilderness, and potential wilderness.

- There is no rationale for adding routes within undeveloped areas.
- Roads and trails to be closed in IRA contradict injunction order prohibiting the ANF to manage in IRA.
- On-the-ground closures of existing roads and trails constitutes de facto adherence to roadless area management, the ANF lacks the legal authority to manage these areas.
- The ANF illegally used the travel planning process to add roads to IRA.
- The FS avoids Roadless Rule restrictions by identifying routes in IRA as motorized trails and does not evaluate the effects on roadless characteristics of IRA.

- On-the-ground closures of existing roads and trails constitutes de facto wilderness, violating multiple acts and laws to create wilderness without Congressional approval.

RESPONSE: The FEIS discusses wilderness potential and roadless areas, including summaries of the various judicial actions relative to the 2001 Roadless Rule (FEIS, pp. 3-135 through 3-150). The common theme in travel planning analysis is that the FS recognizes the importance of undeveloped areas and has an obligation to consider the effects of the alternatives on the undeveloped character of IRA and potential wilderness areas (36 CFR 220.5). The FEIS discloses the effects of changes in motorized vehicle access on the undeveloped character of potential wilderness areas (FEIS, pp. 3-144 through 3-150). The ROD also recognizes the need to continue providing motorized recreation opportunities consistent with the 2005 Travel Rule (ROD, pp. R-6, R-7).

The FEIS and ROD describe the intent of the ANF Motorized Travel Plan is to identify routes and areas, including potential wilderness and IRA, where motorized use can be sustained without damaging other resources (FEIS, p. 1-16; ROD, pp. R-3, R-7). The FEIS discloses the effects of alternative travel designation proposals on the undeveloped character of potential wilderness consistent with FSM 1923, FSH 1909.12, and FSH 1909.17 which provide agency policy on the management of roadless areas and recommended wilderness (FEIS, pp. 3-144 through 3-150).

The analysis discloses there are existing low-standard system roads in potential wilderness (including IRA) (FEIS, pp. 2-22 and 3-137). The selected alternative reduces motorized vehicle use in potential wilderness by not designating more than 50 miles of existing unauthorized roads and trails that are currently being used (FEIS, p. 2-33). The decision retains roughly the same amount of designated motorized routes in potential wilderness and IRA as currently exists. The selected alternative does not designate any new roads in potential wilderness areas (including IRA) (FEIS, pp. 5-9; 5-52 through 5-53; ROD, pp. R-6, R-7). The ROD includes rationale for the selected alternative and modifications (ROD, pp. R-6 through R-8).

The 2001 Roadless Rule does not preclude motorized travel on existing system routes in IRA, nor does it preclude designating or constructing new motorized trails (FEIS, pp. 2-22). The FEIS discloses the effects of changes in motorized vehicle access on the undeveloped character of potential wilderness areas (FEIS, pp. 3-144 through 3-150). The selected alternative will retain most of the currently authorized motorized use, but does not significantly add to the designated routes in potential wilderness or IRA (ROD, p. R-7).

The appellant alleges the Forest lacks the authority to restrict motorized and mechanized uses within potential wilderness and IRA and is thereby illegally creating "defacto" wilderness. The law most relevant to this issue is the Travel Management Rule (36 CFR Part 212, Subpart B). 36 CFR 212.55 outlines criteria for "...consider[ing] effects on [NFS] natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of [NFS] lands...."

In conclusion, the FEIS includes the appropriate level of analysis for evaluating the effects of the selected alternative and decision on the undeveloped character of potential wilderness and inventoried roadless areas (IRA). The Responsible Official appropriately exercised his authority to designate roads and trails within potential wilderness and designate motorized vehicle trails in IRA.

APPEAL ISSUE 4: The FS did not follow the rules of the FS travel rules in regards to setting dispersed camping limitations to 150 feet off system routes and the prohibition of any off road motor vehicle use for game retrieval and effects on fuel wood gathering; nor did they conduct required NEPA including public involvement for these actions that have substantial environmental controversy.

RESPONSE: The ANF Travel Management Plan is consistent with the Travel Management Rule and the FSM. The Travel Management Rule specifies that the responsible official may include a limited use of motor vehicles within a specified distance of certain forest roads or trails for the purposes of motorized dispersed camping or retrieval of game (36 CFR 212.51(b). The FSM directs the Regional Forests to coordinate these designations to promote consistency within states and among adjoining administrative units (FSM 7715.74(3), 2009; FEIS, p. 1-2).

The decision does not limit or affect the ability to gather firewood. The travel management decision designates roads, trails and areas for motor vehicle use in accordance with 36 CFR 212.51 by creating a motor vehicle use map (MVUM) with certain exceptions. One of those exceptions is for "motor vehicle use that is specifically authorized under a written authorization issued under Federal Law or regulations" (36 CFR 261.13(h)). Therefore, use of motor vehicles off the designated system for firewood gathering may still be authorized under a firewood permit (FEIS, pp. 2-1 through 2-3). The decision recognizes the importance of dispersed recreation across the Forest. It designates multiple short unauthorized and undesignated routes that currently access areas where dispersed recreation (i.e. fishing and camping) is occurring (FEIS, p. 2-14).

The Travel Plan identifies well-established, desirable motorized dispersed camping sites and incorporates access to some of them. There will be some displacement resulting from dispersed camping restrictions within the Forest in Utah, but overall impacts to motorized dispersed camping are expected to be minimal. The majority of motorized dispersed camping on the Forest occurs within the Flaming Gorge Recreation Niche and Vast Backyard Recreation Niche Areas. The majority of the Flaming Gorge Recreation Niche Area is located within the State of Wyoming where no changes are proposed to access dispersed camping, and various proposals have been identified to designate more access for motorized dispersed camping opportunities. A majority of motorized dispersed camping within the Vast Backyard Recreation Niche Area already occurs within about 150 feet of designated routes. As previously stated, the Forest identified and developed proposals to access established motorized dispersed camping areas beyond 150 feet from current designated routes. The Forest visitors most likely to be impacted by the proposed motorized dispersed camping restriction would be hunters because they tend to use isolated areas that are accessed infrequently for short durations. The majority of Forest visitors would be able to continue accessing various traditionally utilized motorized dispersed camping areas. The restrictions are limited to motorize dispersed camping, so forest visitors who backpack, horseback, or do not use motorized access would not be affected (FEIS, pp. 3-20, 3-21).

Not all Forest land allowing motorized dispersed camping access located 150 or 300 feet from system routes is appropriate, accessible, or desirable for motorized dispersed camping. Along any given route, numerous physical limitations of the site can restrict motorized dispersed camping opportunities. For instance, travel may not be possible immediately off of system roads due to steep slopes, heavily forested areas, irregular terrain, wet meadows, streams, rocks, fences, etc.

Within Utah, 150 feet on either side of the road (excluding those areas identified by the resource specialists as areas of concern) will be considered available for motorized dispersed camping. In Wyoming, 300 feet on either side of the road would be considered available for motorized dispersed camping.

The hatched travel area within the Vernal Ranger District poses a unique situation. The decision eliminates the hatched travel area, so that motorized travel will be restricted to designated routes only. The Forest conducted extensive field work to identify popular areas and established motorized dispersed camping areas within the hatched travel area. Routes to these areas were then identified so that access could be retained for future use.

The decision imposes a restriction of 100 feet for motorized dispersed camping near live streams and natural lakes. This requires vehicles to camp at least 100 feet away from water sources in order to help protect water quality and fish habitat (FSH 2509.22-10). The restriction for camping 100 feet from water would affect several traditionally used motorized dispersed camping sites throughout the Forest that are located less than 100 feet from water. This restriction would not apply to artificial water bodies such as reservoirs and, therefore, should not affect dispersed camping along the Flaming Gorge Reservoir (FEIS, pp. 3-21, 3-22).

Off Highway Vehicle (OHV) operation for general travel, hunting and big game retrieval will not be allowed off any designated motorized route. Section 212.51 of the final rule "provides that in designating routes, the Responsible Official may include in the designation the limited use of motor vehicles within a specified distance of certain designated routes, and if appropriate within specified time periods, solely for the purposes of big game retrieval or dispersed camping." The Forest Supervisors in Utah and Wyoming support the prohibition of motorized travel off of designated routes for game retrieval. The Forest does not recognize a need to harvest game and then enlist motorized means to retrieve that game. Hunters are obliged to make a thoughtful decision prior to taking game including the hunter's ability to transport their game from the field to their home. (FEIS, p. 1-20)

APPEAL ISSUE 5: The ANF FEIS fails entirely to analyze the issues of dust and noise by limiting camping to within 150 feet of the designated roads. The ANF also fails to address the public safety issues of families camping that close to a road with traffic, when the traffic . . . will be heavier due to the other road closures."

RESPONSE: The decision does not reduce dispersed camping; it designates distances off roads and motorized trails where motor vehicle use is allowed to access dispersed camping. Users may continue to access areas through non-motorized methods for camping greater than 150' from routes. The FEIS does recognize that there will be differing levels of impacts associated with designated uses. Users have the ability to determine the acceptable level of dust and noise desired by site selection ranging from sites along maintenance level 4 or 5 routes to several proposals to designate routes that access dispersed camping areas located beyond 150 feet from primary roads. Camping nearer to a road may pose some added safety concerns if dispersed camp sites are along a busy route allowing for faster travel, such as paved roads. As noted above, most dispersed camping occurs along less improved, secondary and tertiary roads, where travel is generally slower and less frequent. Therefore, the proposal to shorten access for dispersed camping in Utah would not create unsafe settings for Forest visitors (FEIS, p. 3-21). The Responsible Official properly addressed this issue.

APPEAL ISSUE 6: These restrictions run counter to ANF Land Management Resource Plan (LMRP) recreation direction, which is to provide a "broad range of recreation opportunities within land capabilities and according to recognized public need" and that the desire for motorized trial access has increased. The Forest failed to consider alternatives that meet projected recreation demands.

RESPONSE: This project was initiated because the Forest recognized a need for improving management and enforcement of motorized use; OHV use in particular. There has been unanticipated growth in OHV use since the 1986 ANF LMRP was written. Forest monitoring of motorized use, known conflicts and impacts, and enforcement issues form the basis of the need for change. A desired result from this project is to provide ample motorized recreational opportunities that minimize the potential for user conflicts and resource impacts, and to create a sustainable road and trail system with the resources available to the forest. The forest intends to meet these objectives, but biophysical, fiscal, and socio-political realities necessitate that progress will occur incrementally over time. A route network that has evolved over many years cannot be instantaneously transformed to meet all idealized objectives. The proposed action and actual decision represent practical and substantial measurable progress towards the desired ends (FEIS, Summary).

The Forest Supervisor has properly followed the LMRP, the travel rule and the Flaming Gorge National Recreation Area requirements, in providing a broad range of recreation opportunities within land capabilities and according to recognized public need (Forest Plan, pp. IV 14-16, A-1, A-6 thru A-8; FEIS, pp. 5-4 and 5-5, 5-36 thru 38). The decision to limit motorized access to 150' from routes for dispersed camping does not restrict users from accessing these areas for camping and other non-motorized activities; it only restricts access by motorized vehicle.

The Forest Supervisor has provided that future needs will be analyzed and implemented through annual assessments consistent with policy and regulations. The MVUM will be reviewed and reissued annually, per direction in FSM 7711.3. Adjustments to dispersed camping access may be made during these reviews to reflect on-the-ground conditions (ROD, p. R-6).

APPEAL ISSUE 7: Dispersed Camping areas have been reduced by approximately 70%; 50% being the reduction from 300 to 150 feet; the other 20% from now non-designated camping areas.

RESPONSE: The decision does not reduce dispersed camping; it designates distances off roads and motorized trails where motor vehicle use is allowed to access dispersed camping. It also recognizes the importance of dispersed recreation across the forest. It designates many short routes that currently access areas where dispersed recreation (i.e. fishing and camping) is occurring (FEIS, p. 2-14). Dispersed camping off all roads and trails, when accessed by foot, horse, or other non-motorized travel is not restricted or designated. Dispersed camping is allowed on most areas of the Forest, as long as cultural and natural resources are not damaged (ROD, p. R-4).

APPEAL ISSUE 8: There was inadequate public involvement and issues presented to the Forest during scoping that were not considered nor selected. The selected alternative "conflicts with the will and undermines the trust and good-faith expectations of Uintah County and the many Uintah County citizens who tried to have a say in the ANF Travel Management Plan (TMP) process, a process which largely left Uintah County and its citizens out of the loop."

RESPONSE: The public was allowed to participate in the designation of NFS roads per 36 CFR 212.52 and 40 CFR 220. Between March 2007 and the publishing of the Notice of Intent in November 2007, 26 workshops, open houses, field trips, and meetings were held. The audience at these meetings included the general public, special interest groups, county and state governments, and other federal agencies. The meetings, open houses and workshops were held in Vernal, Duchesne, Manila, Green River, Lapoint, and Salt Lake City. Field trips were conducted on all the Ranger Districts.

Newspaper articles and press releases were published in the Uinta Basin Standard, Green River Star, Rocket Miner, Vernal Express, and Salt Lake Tribune. Radio ads, news articles, the ANF Web site, and flyers were used to announce the times and dates of the public events. A Notice of Availability of the DEIS was published in the FR on Friday, April 17, 2009, starting a 90-day legal comment period. The DEIS and maps were sent to individuals, Tribal governments, cooperating agencies, federal, state and local government agencies, and organizations and special interest groups. Four public meetings were held in Duchesne, Manila, and Vernal, UT and in Green River, WY in May and June, 2009. The Forest developed cooperating agency status with the State of Utah and the four counties where Forest land occurs, Sweetwater County, WY; and Daggett, Uintah, and Duchesne Counties in UT.

Cooperating agency representatives participated in the review of public comments, identification of issues and alternatives, briefings, and document reviews with the project NEPA Coordinator and Forest Supervisor (FEIS, pp. 1-12 and 5-6). The Forest developed cooperating agency status with the State of Utah and the four counties where Forest land occurs, Sweetwater County, WY; and Daggett, Uintah, and Duchesne Counties in UT. Cooperating agency representatives participated in the review of public comments, identification of issues and alternatives, briefings, and document reviews with the project NEPA Coordinator and Forest Supervisor (FEIS, p. 1-12).

The FEIS described public involvement opportunities and how public input was used in preparation of the DEIS. Many comments and proposals were received, and all were carefully reviewed and considered. Public input is reflected in the proposals in Appendix A and the issues tracked throughout the analysis. However not every proposal or comment could be used. Some recommended actions that were inconsistent with law or policy, or were outside the scope of the project purpose and need. The content of each comment received, including the text of petitions, was considered during preparation of the FEIS. Comments are not treated as votes, and establishing the number of people for or against an action is not the objective of the comment analysis process (FEIS, p. 5-6).

APPEAL ISSUE 9: There were mistakes and/or inconsistencies in data presented in maps, tables and appendices.

RESPONSE: The ANF TMP identifies the need for information quality updates. The FEIS states that it does not present a complete inventory of the transportation system and information provided is derived from the best available information (FEIS, p. 1-9).

The Forest Supervisor correctly applied the FS Travel Management Rule, by providing the best information available concerning existing roads and trails, authorized and unauthorized routes, as well as proposing open, closed, and seasonally closed designations by vehicle class. The Rule identifies that information on roads, trails, and designations will contain incorrect information, but

the process allows for corrections to be made with corrected information coming from agency specialists and interested publics. The Rule specifically directs that temporary roads and trails, and unauthorized roads and trails, should not be displayed on the MVUM, but may be displayed during the analysis and planning process. The ANF TMP identifies the need for information quality updates and states specifically that the Plan does not present a complete inventory of the transportation system. The Travel Plan and maps comply with the Data Quality Act and the FS rules for data quality.

APPEAL ISSUE 10: The Forest violated the law by not describing how each alternative meets the requirements of the Clean Water Act (CWA) and has acted arbitrarily and capriciously in violation of the law.

RESPONSE: Water quality, specifically compliance with the CWA, is one of the issues analyzed in depth (FEIS, p. 1-8). The FEIS describes the existing conditions for water quality, including disclosure of 303(d) and 305(b) listed waters (FEIS, pp. 3-56, 3-57). Effects to water quality are addressed in Sections 3.2.5 and 3.2.7 of the FEIS, including miles of unpaved motorized routes in 303(d) watersheds (Table 3.2.8) (FEIS, pp. 3-63 through 3-70; 3-74). Table 3.2.9 addresses specific proposals that would require a stream alteration permit under the CWA (FEIS, p. 3-68, 3-69). Section 2.2.3 specifies that Best Management Practices (BMP) for soil and water resources would be applied to maintenance of routes and to route closures (FEIS, p. 2-8). Required disclosures in the FEIS describe the State of Utah's Water Quality Anti-degradation Policy required under the CWA to provide for maintenance of water quality to protect existing instream beneficial uses. In addition, the CWA directs each State to establish a Nonpoint Source Management Plan. The State of Utah Division of Water Quality and USDA Forest Service Intermountain Region have agreed through a 1993 Memorandum of Understanding to use Forest Plan Standards and Guidelines and the Forest Service Handbook (FSH) 2509.22 Soil and Water Conservations Practices (SWCPs) as BMP to meet the water quality protection elements of the Utah Nonpoint Source Management Plan (FEIS, pp. 3-173, 3-174).

The analysis comparing effects of the alternatives on water quality concludes increased contributions to any 303d listed stream is anticipated only under Alternative A, where motorized travel would result in continued impacts to wetlands, floodplains, and stream channels (FEIS, p. 3-70). The Beneficial Uses and High Quality of water in the streams draining the analysis area would be maintained through the proper implementation of BMP (the Soil and Water Conservation Practices) as described within the project-specific design features (FEIS, pp. 2-8, 3-70; ROD, p. D-2).

In conclusion, the FEIS includes the appropriate level of analysis for evaluating the effects of the alternatives on water quality, specifically the CWA. The Responsible Official's decision complies with the CWA as stated in the ROD (ROD, p. R-19).

APPEAL ISSUE 11: Routes proposed for inclusion in the minimum road system should not be designated as such because of resource concerns, and therefore the decision does not comply with Executive Orders 11644 and 11989. The forest failed to minimize the effects of off-highway vehicles to NFS Lands.

RESPONSE: FS direction for travel planning, specifically off-road use of motor vehicles on Federal lands is provided by E.O. 11644 as amended. Section 3(a) of E.O. 11644 directs the FS to

promulgate regulations that provide for designation of trails and areas for off-road motor vehicle use. The regulations require that designation of these trails and areas be based upon protection of NFS resources, promotion of public safety, and minimization of conflicts among uses of NFS lands. Section 9(b) was added to E.O. 11644 when it was amended by E.O. 11989. Section 9(b) specifically authorizes the FS to adopt the policy to designate those areas or trails that are suitable for motor vehicle use and to close all other areas and trails to that use (ROD, p. R-21).

The ANF conducted extensive field surveys of proposed routes and identified site-specific mitigation and/or maintenance recommendations. For proposed routes not currently in the travel system, full implementation would not occur until mitigation is met (Soil and Water Report, pp. 34-37). By implementing the mitigation/maintenance measures required to protect resource values, the Forest Supervisor's decision is appropriate (ROD, p. R-19).

This project was initiated because the Forest recognized a need for improving management and enforcement of motorized use – OHV use in particular. There has been unanticipated growth in OHV use since the 1986 ANF LMRP was written. Forest monitoring of motorized use, known conflicts and impacts, and enforcement issues form the basis of the need for change. A desired result from this project is to provide ample motorized recreational opportunities that minimize the potential for user conflicts and resource impacts, and to create a sustainable road and trail system with the resources available to the forest. The Forest intends to meet these objectives, but biophysical, fiscal, and socio-political realities necessitate that progress will occur incrementally over time. A route network that has evolved over many years cannot be instantaneously transformed to meet all idealized objectives. The proposed actions represent practical and substantial measurable progress towards the desired ends (FEIS, Summary).

APPEAL ISSUE 12: The decision to eliminate an alternative that would not allow any motorized routes in roadless areas violates NEPA.

RESPONSE: An alternative that would not allow any motorized routes in roadless areas, and include decommissioning all routes within their boundaries was considered but dismissed from detailed analysis with rationale (FEIS, p. 2-21). This alternative would not authorize designation of any new motorized routes, including trails, in the roadless areas and would require closing existing designated roads to public motorized access. This alternative was dismissed from detailed analysis in the FEIS, as eliminating all motorized travel within IRAs would fragment the existing transportation system and not meet the Purpose and Need of the Proposed Action (ROD, p. R-15). Neither the 2001 Roadless Rule (including recent court decisions) nor the 2005 Travel Rule precludes motorized vehicle travel on existing system routes in potential wilderness or roadless areas (FEIS, p. 2-22).

Alternative D was developed to address roadless areas, potential wilderness, and non-motorized opportunities (FEIS, p. 2-18). All Action Alternatives analyzed the effects of motorized vehicle use on wilderness attributes, and Alternative D analyzed reduced motorized vehicle use in potential wilderness and roadless areas (FEIS, p. 2-33). The Project Record includes correspondence from the U.S. Environmental Protection Agency communicating their satisfactory review pursuant to NEPA and CEQ regulations (40 CFR Parts 1500-1508).

The FEIS considered and analyzed a reasonable range of alternatives to meet the intended Purpose and Need for the Motorized Travel Plan. The responsible official appropriately exercised their

authority in instructing the Interdisciplinary Team (IDT) on the alternatives carried forward for detailed analysis.

APPEAL ISSUE 13: Not considering unauthorized, user-created travel routes, and not including them in the motorized travel plan amounts to closure, and therefore, violates R.S. 2477 public right-of-way claims, other governmental agency land use and travel plans/policies, and access to private property and grazing allotments.

RESPONSE: The purpose of the decision is to identify which NFS roads and trails and which areas on NFS lands, if any, will be designated for specified motor vehicle use on the Motor Vehicle Use Map (MVUM). 36 CFR 212.51(a); 212.56. The regulations define NFS roads and trails as those roads and trails which the Forest Service determines are within or adjacent to a National Forest and necessary for protection, administration and utilization of the NFS, and which are not authorized by a legally documented right-of-way held by a public road authority. 36 CFR 212.1. The focus of the analysis was on the motorized transportation system, rather than on real property title claims. Through the travel management planning process, the Forest attempted to identify NFS roads and trails that are important to the local motorized transportation system by coordinating with state and local government. Where no legal documentation of a public highway right-of-way was produced, high priority was placed on designating these NFS roads or trails on the MVUM for continued motor vehicle use where appropriate, given other transportation and resource concerns.

As a result of making these designations on the MVUM, motor vehicle uses that are not consistent with the designations will be prohibited on NFS lands, unless exempted by federal regulation. 36 CFR 261.13. Those exceptions include use of motor vehicles within legally documented public highway rights-of-way, or where the operator holds a written authorization recognized under federal law or regulations. The decision of the Forest Service to designate, or not to designate, a road or trail for motor vehicle use does not affect the ability to validate any claims under R.S. 2477, or any other claims for public highway rights-of-way on NFS lands. The decision in no way precludes or forecloses the ability of claimants to assert and carry their burden of proof in an appropriate forum for any such claims that they may assert. Should that documentation be produced, the exception under the travel management rule for legally documented public rights-of-way would apply to the route.

The MVUM will also depict State and County roads and trails on NFS lands. By definition, roads and trails within legally documented public highway rights of way are not NFS roads and trails, and are not subject to the designation process and prohibitions on motor vehicle use under Forest Service rules.

While the appellant and others may claim there are roads or trails that are within rights-of-way established under R.S. 2477, many of these claimed rights-of-way are not legally documented in accordance with federal law. Without evidence of legal documentation of a public right-of-way for these roads and trails that is recognized by federal law, the Forest was required by the travel management rule to consider whether to designate them as NFS roads or trails. Although the Forest Service may "make a non-binding administrative determination as to the potential validity of an R.S. 2477 right-of-way claim for land use planning and management purposes," 73 Fed. Reg. 74,689, 74,694 (Dec. 9, 2008), nothing requires the agency to do so. See Kane County v. Salazar, 562 F.3d 1077, 1086 (10th Cir. 2009). Therefore, under the rule, and consistent with applicable law,

the Forest was not required to determine whether or not R.S. 2477 claims were valid, but only whether or not there was legal documentation for these claims.

It is important to distinguish between the situation where a claim that an R.S. 2477 right-of-way exists on federal land has been made, and where it has been demonstrated that a valid right-of-way exists in accordance with federal law. As discussed by the U.S. Court of Appeals for the 10th Circuit in a recent decision, there is a presumption that on federal land, ownership and management authority lies with the federal government. Kane County v. Salazar, 562 F.3d 1077, 1086 (10th Cir. 2009). A county is not entitled to exercise unilateral management authority based on the mere claim for a right-of-way, but must carry the burden of proof of title in a court of law, or obtain some other recognition of such rights under federal law. Id. For this decision, there is therefore a presumption that Forest Service designations for motor vehicle use, and prohibitions of motor vehicle use govern on NFS lands, unless or until it is demonstrated that a valid public highway right-of-way exists in accordance with federal law.

Forest Service directives provide, and the courts have held, that federal land managing agencies lack authority to make legally binding adjudications of the validity of claims for rights-of-way under R.S. 2477. See 73 Fed. Reg. at 74,694 ("Adjudicated R.S. 2477 rights-of-way are not under the jurisdiction of the Forest Service. The Forest Service does not have the authority to adjudicate R.S. 2477 rights-of-way."); SUWA v. BLM, 425 F.3d 735 (10th Cir. 2005); Friends of Hope Valley v. Forest Service, cv-001900 (E.D. Cal. 2004). Accordingly, unless legal documentation of a public highway right-of-way is produced in accordance with federal law, motor vehicle use on a road or trail that meets the definition of an NFS road or trail is governed by the travel management rule. Legal documentation may consist of a valid deed, federal court decree issued under the Quiet Title Act, 28 U.S.C. 2409a, a Recordable Disclaimer of Interest issued under 43 U.S.C. 1745, or similar documentation acceptable to the Forest Service that would be recognized under federal law.

Numerous court decisions have confirmed that the Forest Service has authority under the Property Clause of the U.S. Constitution and the agency's Organic Act (16 U.S.C. 551) to reasonably regulate uses of roads and trails on NFS lands, irrespective of whether the roads and trails are located within an R.S. 2477 right-of-way. See, e.g., Adams v. U.S., 3 F. 3d 1254 (9th Cir. 1993); United States v. Garfield County, 122 F. Supp. 2d 1201 (D. Utah 2000); United States v. Jenks, 129 F. 3d 1348 (10th Cir. 1997); United States v. Vogler, 859 F. 2d 638 (9th Cir. 1988); Clouser v. Espy, 42 F.3d 1522 (9th Cir. 1994); Elko County v. Glickman, 909 F. Supp. 759 (D. Nev. 1995); United States v. Nye County, 920 F. Supp. 1108 (D. Nev. 1996); see also 36 CFR 251.50(e)(3) (providing for regulation of uses within R.S. 2477 rights-of-way that are situated in a wilderness area or that are non-routine operation or maintenance). Application of the travel management rule to these roads and trails is reasonable, given the purpose of the rule to protect resources and manage conflicts among uses, and the inability of the Forest Service to definitively adjudicate title to any R.S. 2477 claims that may be asserted (see, e.g., 70 Fed. Reg. 68,265, Nov. 9, 2005). Finally, the determination of the potential validity of R.S. 2477 claims is an exceedingly complex matter that could easily overtake and paralyze the travel management process by requiring the agency to obtain a determination of the validity of all potential R.S. 2477 rights-of-way claims that may be asserted in the area under consideration before taking action to protect NFS land, resources, and visitors from unregulated motor vehicle use.

In conclusion, it is reasonable for the Forest Service to assume responsibility for management of motor vehicle uses on these roads and trails that may affect NFS lands and resources, where doing

so does not foreclose future claims under R.S. 2477, limits but does not eliminate *all* uses of the road or trail, and does not make any irreversible or irretrievable decisions regarding the use or condition of the roads or trails. The analysis evaluated the effects of the proposed designations for motor vehicle uses and the resulting prohibition or restrictions of uses. This analysis included consideration of the uses that were allowed on legally documented public highway rights-of-way. The effects of the decision were determined by the motor vehicle uses that will or will not occur as a result, regardless of whether the use or prohibition would fall within any right-of-way claims. Since the analysis clearly depicts the motor vehicle uses and prohibitions that will result from the decision, and the decision does not in any way alter or affect any right-of-way claims that may be made in the future, the deciding officer made all determinations required under the rule and the analysis was sufficient.

APPEAL ISSUE 14: A phased cultural resource review is both unlawful and arbitrary.

RESPONSE: The Forest disclosed the cultural resources affected environment and effects analysis, including information on the phased cultural review process, in the FEIS (FEIS, pp. 3-157 through 3-166). The Forest outlined the proposed process in a report sent to the Utah State Historic Preservation Office (SHPO), Wyoming SHPO, Ute Tribe, and Eastern Shoshone Tribe in March of 2009. The Utah SHPO and Wyoming SHPO agreed with the Forest's planned phased approach for identification and evaluation during the project (FEIS, p. 3-159). The Project Record includes documentation of Utah SHPO and Wyoming SHPO concurrence, including the specific use of a phased approach (Letter, Wyoming State Parks & Cultural Resources, Richard L. Currit Senior Archaeologist/NEPA Coordinator to Kevin B. Elliott, Forest Supervisor, March 24, 2009) (Letter, State of Utah-Department of Community and Culture, Lori Hunsaker, Deputy SHPO to Kevin B. Elliott, Forest Supervisor, March 16, 2009).

The "Staged Opening" in the ROD describes that not all routes in the selected alternative will be designated as open to motorized vehicle use or listed on the MVUM until after the routes have been fully evaluated for cultural concerns (ROD, pp. R-5, R-6, R-20 and Appendix C). Some routes that were not on the MVUM are in need of the National Historic Preservation Act Section 106 compliance analysis. Once the Forest completes compliance analysis on these routes and is acceptably cleared, these routes will be added to the MVUM during annual updates (ROD, pp. R-5, R-6 and Appendix C).

Based on the concurrence of the respective SHPO entities, the annual review, and the reissuance of the MVUM, per direction in FSM 7711.3, this issue has been adequately addressed.

UTAH ASSOCIATION OF COUNTIES
A Unifying Voice for County Government

RECEIVED
DEC 4 2009
UINTAH COUNTY
COMMISSION

December 2, 2009

Kevin Elliott, Supervisor
Ashley National Forest
366 North Vernal Avenue
Vernal, Utah

Re: December 1, 2009 meeting to attempt informal resolution of Uintah and Daggett Counties' Appeal of Ashley National Forest (ANF) Motorized Travel Plan FEIS and ROD

Dear Mr. Elliott,

The letter to you from Connie Brooks dated December 2, 2009 accurately summarizes the discussion that took place at the December 1, 2009 meeting in Vernal. I would reiterate that appellants urged suspension of the FEIS and ROD and a stay of the local governments' appeals pending a full comprehensive inventory of all roads in ANF. This much needed and long-overdue inventory would be the joint effort and product of ANF and the appellants and their constituents, followed by a cooperative determination of the status, associated valid rights and jurisdiction of each such road so identified. This would provide the missing and much-needed baseline of information for NEPA worthy decision making and impact analysis.

Neither you nor your colleagues disputed the need for such an inventory. You simply declined the offer to engage in it, stating your desire to instead let the FEIS and ROD stand and then let such additional information on roads trickle in and distill on ANF post-decision and post-implementation, as may happen to trickle in and distill. The letter and spirit of NEPA took a hit yesterday as you uttered this rationale–partially from handwritten notes that were apparently prepared before the meeting began.

And further for the record, you offered no counter-suggestion of your own for conciliation.

Sincerely,

J. Mark Ward
Utah Association of Counties
Counsel for Uintah and Daggett Counties, Utah

cc: Harv Forsgren, Regional Forester
324 25th Street
Ogden, UT 84401

Uintah Co.
Commission

5397 South Vine Street, Murray, Utah 84107 • 801.265.1331 Fax 801.265.9485

UTAH ASSOCIATION OF COUNTIES

A Unifying Voice for County Government

RECEIVED
DEC 8 2009
UINTAH COUNTY
COMMISSION

December 7, 2009

Kevin Elliott, Supervisor
Ashley National Forest
366 North Vernal Avenue
Vernal, Utah

Re: Follow-up to December 2nd letter summarizing December 1, 2009 meeting to attempt informal resolution of Uintah and Daggett Counties' Appeal of Ashley National Forest (ANF) Motorized Travel Plan FEIS and ROD

Dear Mr. Elliott,

Although the context of my December 2nd letter to you already makes this pretty obvious, still that letter failed to expressly incant the words which I incant now, to wit:

Because informal resolution was not achieved during our December 1st meeting, Uintah and Daggett Counties desire that their appeal of the Ashley Forest Motorized Travel Plan FEIS and ROD continue to proceed on its normal track all the way to formal resolution. Thanks.

Sincerely,

J. Mark Ward
Utah Association of Counties
Counsel for Uintah and Daggett Counties, Utah

cc: Harv Forsgren, Regional Forester
324 25th Street
Ogden, UT 84401

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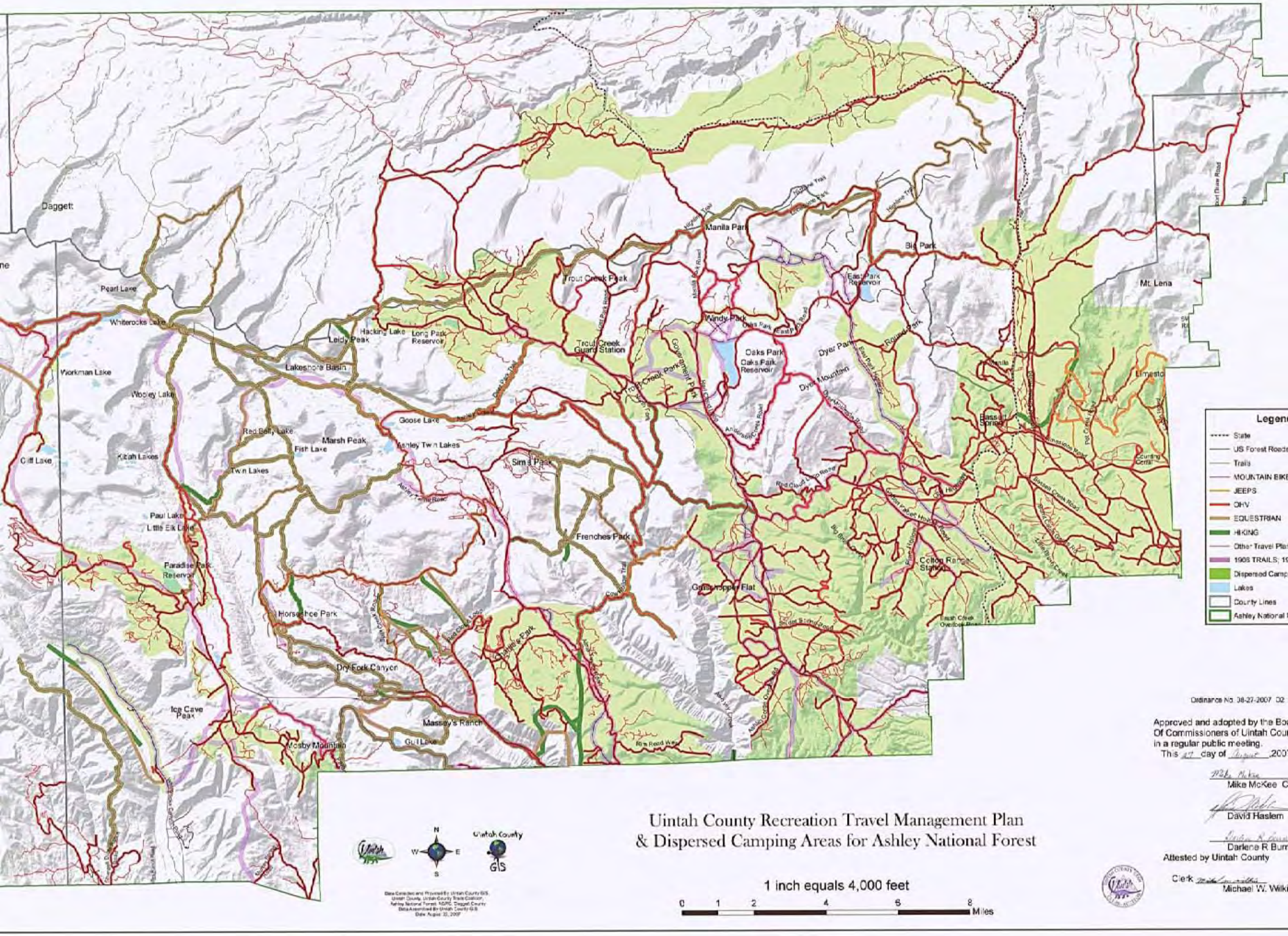

Uintah County Recreation Travel Management Plan
& Dispersed Camping Areas for Ashley National Forest