



April 22 , 2014

Bureau Of Land Management Director (21 0)

ATT: Protest Coordinator

20M Street SE, RM 2134LM

Washington DC 20003

Protest/Appeal of Kremmling BLM FRMP & FEIS

Dear Sirs:

Please accept this correspondence as the appeal of the entirety of the Kremmling Field Office ("KFO") RMP and FEIS (collectively referred to as "The Plan") by the above Organizations. The Organizations are forced to appeal the plan in its entirety as many of the appeal points are foundational in nature and directly impact the balancing of resources in the Plan. These foundational analysis issues include failure to meaningfully analyze recreational economics, failure to apply accurate management documents for various species, failure to incorporate state planning documents addressing the importance of recreational usage of the planning area. The Organizations vigorously assert these failures have directly resulted in the KFO proposal that closes over 50% of multiple use recreational routes on the planning area, as recreational usage of the KFO is repeatedly identified as the primary usage of the planning area. The Organizations vigorously assert these decisions are arbitrary and capricious as a matter of law and fact and are made in violation of numerous federal planning requirements.

Prior to addressing the specific appeal points, a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization

of approximately 2,500 members seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations.

The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to insure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands.

Colorado Snowmobile Association ("CSA") was founded in 1970 to unite winter motorized recreationists across the state to enjoy their passion. CSA currently has 2,500 members. CSA has become the voice of organized snowmobiling seeking to **advance, promote and preserve the sport of snowmobiling** by working with Federal and state land management agencies and local, state and federal legislators. For purposes of this appeal, Colorado Off-Highway Vehicle Coalition, the Trail Preservation Alliance and Colorado Snowmobile Association will be referred to as "the Organizations" in this appeal.

The Organizations are vigorously opposed to the arbitrary and capricious manner that all economic analysis of recreational usage has been undertaken in the RMP and FEIS, despite recreational usage of the planning area being repeatedly and consistently identified in the RMP and FEIS as the primary usage of the planning area. The Organizations are deeply concerned with the accurate analysis of recreational spending in the planning process, as this is the primary method of recognizing recreational activity on public lands. This faulty analysis has led to daily spending profiles, total jobs estimates and total recreational spending amounts that are so low as to lack any basis in law or fact and directly conflict with BLM species specific analysis of the KFO planning area, USFS conclusions and process that have allegedly been relied on and analysis from a variety of other sources.

The Organizations vigorously assert that the KFO conclusions are arbitrary and capricious as a matter of law as the KFO repeatedly asserts application of USFS NVUM process in the KFO economic analysis but comes to conclusions that represent less than 20% of the average daily recreational spending found in the NVUM process. KFO conclusions on average daily recreational spending simply are insufficient to allow visitors to buy fuel and return home from a visit to the KFO planning area.

The arbitrary and capricious nature of KFO conclusions on recreational spending is further evidenced by comparisons of the KFO economic analysis of recreational spending per day, which provides conclusions of \$16.21 per day to that have been reached in the BLM Greater Sage Grouse analysis, which finds average recreational usage to be valued at \$121.96 per day. The Organizations vigorously assert this is prima facie evidence of the arbitrary and capricious nature of the economic analysis on the KFO as these analysis have occurred at basically the same time, using the same analysis methods and almost all the KFO planning areas are identified as GRS habitat. The KFO allocation of resources in the RMP is the direct result of a failure to meaningfully incorporate meaningful analysis of economics into the planning for and balancing of uses on the FO moving forward.

Throughout this appeal, the Organizations are forced to guess at numerous critical factors for economic analysis of recreation. The Organizations vigorously assert that these forced guesses at factors is direct evidence of a failure to comply with NEPA requirements of a detailed statement of high quality information and a hard look regarding the decision making process. Not only are these guesses direct evidence of a failure of NEPA, these failures have directly impaired the Organizations ability to create meaningful appeal points and discussions, which has further prejudiced the Organizations.

The arbitrary and capricious manner that economic analysis has been handled is further evidenced as conclusions simply have not been integrated in any manner into the KFO planning process, which appears to have merely filled in boxes on a form rather than integrate conclusions and analysis together. This position is directly supported by the changes between draft and final versions of these documents that doubled recreational visitation and spending but cut the number of jobs that result in local economies from this activity almost in half. This simply lacks any basis in law or fact.

The lack of integration of economics in the planning process is further evidenced by the fact that visitation between the draft and final versions of the plan has doubled but the amount of recreational opportunity has been reduced even further from the preferred alternative in the draft, without explanation. The Organizations vigorously assert that serving twice as many people with more than 50% less resources is a management position that warrants discussion. The Organizations would be very concerned regarding the factual and legal basis of this discussion if it were to be presented.

It is the Organizations position that the FEIS and RMP must be remanded to the Field Office for further analysis of the issues more specifically addressed in this appeal. The analysis of these issues and associated balance of uses that will result from meaningful analysis and a hard look at accurate information must then be provided to the public for an additional comment period.

It is the Organizations position that an RMP for this area that is based on accurate economic information and accurate application of management standards will look significantly different than the current management standards sought to be applied.

## **1. Introduction**

The Organizations have been heavily involved in the planning process for the KFO in a variety of capacities, including submission of extensive comments during the formal comment period, providing copies of additional economic analysis documents as they became available, active discussions and objections to economic analysis in the plans during SubRAC meetings, correspondence with the BLM State Office regarding the issues with economic analysis that appear systemic in BLM planning in Colorado and providing copies of new Endangered Species management standards and guidelines to the KFO as these documents have been released. Included in this appeal are the Organizations previous comments<sup>1</sup>; various correspondence with the BLM state office voicing our concerns on economic analysis in numerous RMPs and State office replies to these correspondence<sup>2</sup>; a copy of the cover letter regarding the release of the 2013 Lynx Conservation Assessment and Strategy<sup>3</sup>; Copies of correspondence submitted in response to SubRac meetings addressing concerns on the accuracy of economic analysis<sup>4</sup>; and a copy of the Forest Service NVUM analysis for Region 2.<sup>5</sup>

### **2a. NEPA standards of review require a hard look at consequences of management changes by the Agency.**

The Organizations believe a brief summary of the standard of review that are applied by Courts reviewing agency NEPA analysis is relevant to this discussion, as the Courts have consistently directly applied the NEPA regulations to EIS review of economic analysis. As a general review standard, Courts have applied an arbitrary and capricious standard of review for agency actions under NEPA. This standard is reflected as follows:

"...it required only that the agency take a **"hard look"** at the environmental consequences before taking a major action. *See, Kleppe v. Sierra Club*, 427 U. S. 390, 427 U. S. 410, n. 21 (1976). The role of the courts is simply to ensure that the

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<sup>1</sup> These documents are attached as Exhibit 1 of appeal.

<sup>2</sup> These documents are attached as Exhibit 2 of appeal.

<sup>3</sup> These documents are attached as Exhibit 3 of appeal. A complete copy of the LCAS is available at but has not been included with this appeal in order to avoid repetitive submissions. A complete copy of this report is available here: [http://www.fs.fed.us/biology/resources/pubs/wildlife/LCAS\\_revisedAugust2013.pdf](http://www.fs.fed.us/biology/resources/pubs/wildlife/LCAS_revisedAugust2013.pdf)

<sup>4</sup> These documents are attached as Exhibit 4 of appeal.

<sup>5</sup> These documents are attached as Exhibit 5 of appeal.. A complete copy of the Forest, Regional and national level analysis included in the NVUM process is available here. <http://apps.fs.usda.gov/nrm/nvum/results/>

agency has adequately considered and disclosed the environmental impact of its actions, and that its decision is not arbitrary or capricious. *See generally, Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 401 U. S. 415-417 (1971)."<sup>6</sup>

The CEQ regulations note that a detailed statement of the issues and methodology of analysis is a significant tool to be relied upon in the public comment process in order to satisfy the hard look mandate of NEPA. These regulations clearly state this relationship as:

"NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."<sup>7</sup>

Public scrutiny of the decision making process simply has not occurred in the KFO planning process as a direct result of the failure to provide basic information on numerous factors. The Organizations vigorously assert that a hard look has not been taken on numerous issues, such as the arbitrary and capricious nature of the review of economic contributions of recreation to the KFO planning area as directly evidenced by the 50% margin of error provided in the Plan for estimated visitor days and that the Plan provides an average recreational spending amount that is only 20% of the USFS NVUM analysis and BLM planning regarding other issues in the KFO such as the Greater Sage Grouse LUPA, where KFO spending conclusions represent only 15% of the recreational spending amounts found in these documents. These conclusions are completely irreconcilable with additional analysis from State partners and that of user groups.

**2b. The standard of review for economic analysis is a de novo standard as the Courts have consistently substituted their judgment regarding the accuracy of economic analysis.**

While the general standard of review for agency actions is an arbitrary and capricious standard of review, Courts have consistently held agencies to a much tighter level of review of economic analysis in the NEPA process, as the Court makes their own conclusions regarding the accuracy of review without deference to agency findings. Relevant court rulings addressing economic analysis of NEPA decisions have concluded:

***"an EIS serves two functions. First, it ensures that agencies take a hard look at the environmental effects of proposed projects. Second, it ensures that relevant information regarding proposed projects is available to members of the public***

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<sup>6</sup> See, *Baltimore G & E Co v. NRDC*; 462 US 87 (1983) at pg 98.

<sup>7</sup> See, 40 CFR 1500.1(b)

***so that they may play a role in the decision making process. Robertson, 490 U.S. at 349, 109 S.Ct. at 1845. For an EIS to serve these functions, it is essential that the EIS not be based on misleading economic assumptions.*"<sup>8</sup>**

The Court then discussed the significance of economic analysis in planning as follows:

"Misleading economic assumptions can defeat the first function of an EIS by impairing the agency's consideration of the adverse environmental effects of a proposed project. *See, South La. Env'tl. Council, Inc. v. Sand*, 629 F.2d 1005, 1011-12 (5th Cir.1980). NEPA requires agencies to balance a project's economic benefits against its adverse environmental effects. *Calvert Cliffs' Coordinating Comm. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1113 (D.C.Cir.1971). **The use of inflated economic benefits in this balancing process may result in approval of a project that otherwise would not have been approved because of its adverse environmental effects. Similarly, misleading economic assumptions can also defeat the second function of an EIS by skewing the public's evaluation of a project.**"<sup>9</sup>

The level of accuracy of the hard look at economic analysis applied by the Court in the Hughes River decision is significant as the Hughes River Court invalidated an EIS based on an error in the total economic contribution calculations of approximately 32%.<sup>10</sup> As more specifically addressed later in this appeal, the Organizations vigorously assert the error in economic calculations in the KFO planning is easily more than twice the 32% the Hughes River Court found sufficient to overturn the EIS in that matter. It is the Organizations position that failing to accurately establish current spending of users precludes any meaningful comparison of how management changes will impact these economic benefits.

## **2c. Standards required for application of best available science in the NEPA process.**

The Organizations believe a brief discussion of the agency standards for analysis of issues in the NEPA and land management process are very relevant to a review of the decision making process under an arbitrary and capricious standard of the hard look required by NEPA. The basic mandate to include documented economic and scientific analysis early in public lands planning process is provided by the Federal Lands Planning and Management Act ("FLPMA).

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<sup>8</sup> Hughes River Watershed Conservancy v. Glickman; (4th Circ 1996) 81 F3d 437 at pg 442; 42 ERC 1594, 26 Env'tl. L. Rep 21276.

<sup>9</sup> *See, Hughes River* Supra note 2 at pg .

<sup>10</sup> *See, Hughes River*, Supra note 2 at pg

FLPMA specifies the various criteria that must be incorporated at specific times in the development of a land use plan as follows:

**“(c) In the development and revision of land use plans, the Secretary shall–  
(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;...”**<sup>11</sup>

The basic mandate of FLPMA regarding the critical need for documented economic analysis is more specifically and extensively addressed in Appendix D of the BLM's Land Use Planning Handbook. **The Organizations must note that economic concerns are the only factor that is addressed in every step of the planning process laid out in the BLM planning handbook.**

The development of forest plans is further governed by the Multiple Use Sustained Yield Act that provides as follows:

***Multiple use* - the "management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people ...."**<sup>12</sup>

The MUSYA further mandates that a transportation network be provided to allow for usage of public lands to best meet the needs of the American people. The Organizations do not believe this statutory requirement can be achieved when there is an 50% margin of error in the estimated total visitor days to the KFO planning area built into the RMP and FEIS or best meeting needs of American people is achieved with management positions that doubling recreational visitation to the KFO planning area will result in almost 50% less jobs and can be supported with 50% less multiple use recreational opportunities than are currently available. These issues is more completely addressed in subsequent portions of this appeal.

These concerns are summarized in the NEPA regulations which clearly provide the reason for the need for high quality information to be provided in the NEPA process. NEPA regulations provide as follows:

**"(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. *The information must be of high quality. Accurate scientific analysis,***

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<sup>11</sup> See, 43 U.S.C. §1712

<sup>12</sup> See, 16 USC §531(a).

***expert agency comments, and public scrutiny are essential to implementing NEPA.*** <sup>13</sup>

The Organizations vigorously assert that high quality information on numerous issues has simply never been provided in the FEIS and RMP, as the Organizations are forced to theoretically address numerous issues despite the asserted priority and importance of the issues in the planning process. The lack of high quality information has materially impaired the Organizations ability to meaningfully and completely comment on a variety of issues.

It is well established that NEPA regulations require an EIS to provide all information under the following standards:

"... It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment..... Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses...." <sup>14</sup>

Federal statutes require that best available science be taken into account in all federal planning. The statutes also require planners to **discuss** how the best available science was taken into account, and how the science relied upon was interpreted and applied to the issues addressed in the plan. Best available science is specifically defined for planning purposes as:

"§ 219.11 Role of science in planning. (a) The Responsible Official must take into account the best available science. For purposes of this subpart, taking into account the best available science means the Responsible Official must:

- (1) Document how the best available science was taken into account in the planning process within the context of the issues being considered;
- (2) Evaluate and disclose substantial uncertainties in that science;
- (3) Evaluate and disclose substantial risks associated with plan components based on that science; and
- (4) Document that the science was appropriately interpreted and applied.

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<sup>13</sup> See, 43 CFR 1500.1(b)

<sup>14</sup> See, 40 CFR 1500.1



(b) To meet the requirements of paragraph (a) of this section, the Responsible Official may use independent peer review, a science advisory board, or other review methods to evaluate the consideration of science in the planning process.”<sup>15</sup>

The Organizations frequently cannot find any basis for the decisions that are more specifically addressed in the subsequent portions of this appeal meaning there can be no argument that the analysis is sufficient for purposes of the above standards. As there is no analysis, the decisions are arbitrary and capricious per se.

**3a(1). The KFO economic analysis of recreational usage is erroneous, an abuse of discretion and often conflicts with other BLM analysis of the planning area.**

Throughout the KFO planning process, recreational usage of the KFO lands is specifically identified as the primary reason for visitation to the KFO and this usage is repeatedly identified as a major economic factor for communities in the area. The level of importance of visitation to the local community economies that results from recreational usage simply is not reflected in the RMP or the levels of closures that are proposed in multiple use recreational routes in the planning area. The Organizations vigorously assert that closing almost 50% of routes available for multiple use recreational opportunities will have a significant impact on the economies of local communities, and will not result in the minimal changes to local economies that are asserted in the KFO planning documents.

The Organizations are very concerned that the economic impacts of closing over 50% of the existing trail network simply have not been addressed. These closures are in addition to the lost opportunities that will result from restricting the KFO usage from an open designation to a designated routes travel management standard. While the Organizations support and understand the need to move from open riding designations, this is a restriction on the recreational opportunities on the planning areas, as evidenced by the vigorous opposition that is consistently voiced by the hunting community as this management change directly impacts the ability to retrieve game. The closure of 50% of routes in addition to the lost open riding designations will clearly have an economic impact that simply has not been addressed. The Forest Service has clearly identified the economic benefits that accrue to a local community as the result of a multiple use trail network as follows:

**" RECREATION AND TOURISM ARE VITAL TO MOST RURAL COMMUNITIES:** This is true for virtually all rural communities but especially important to counties

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<sup>15</sup> See, 36 CFR §219.11.

with high percentages of public land. **Actions by public agencies to reduce or limit access to recreation on public lands have a direct impact on the local economy. Limiting access by closing roads, campgrounds, RV parking, and trails impact the surrounding communities.** Visitors to public lands utilize nearby communities for food, lodging and support facilities. Interests include hiking, photography, horseback riding, biking, climbing, backpacking, birding, hunting, sport fishing, and many more. Public land agencies' communication with community businesses is essential to job creation and stable rural communities."<sup>16</sup>

The Organizations strongly assert that if the development of a trail network will have a positive economic influence on local communities, the loss of that trail network will also have negative impacts on that same community. These impacts must be addressed to comply with NEPA requirements and other statutory planning requirements, and simply have not been addressed in the KFO planning process.

There are numerous areas where significant trail closures have been mandated and this has significantly impacted recreational usage of the area and directly resulted in adjacent communities seeing a significant negative economic impact. In analysis addressing the impacts of changes to winter multiple use routes in the Yellowstone area, significant changes in economic contribution have been found and extend far beyond those seen with the initial closure of the routes, which are summarized as follows:

“The study found dramatic changes in Yellowstone National Park snowmobile use patterns since 2004, when rules requiring snowmobile access to be 100% commercially guided on Best Available Technology snowmobiles were instituted. A total of 48% of residents, 33% of nonresidents, and 46% of outfitter clients indicated they had previously visited Yellowstone on a snowmobile. However, only 3% of residents, 9% of nonresidents, and 18% of outfitter clients have taken a snowmobile trip to Yellowstone since access rules were changed in 2004.”<sup>17</sup>

It is the Organizations position that recreational usage of these routes was significantly undervalued in the planning process, and this has resulted in significant changes in visitation

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<sup>16</sup> Dr. Glenda Humiston; USDA - Office of Rural Development; *Jobs, Economic Development and Sustainable Communities Strategizing Policy Needs and Program Delivery for Rural California*; Feb 2010 at pg 48

<sup>17</sup> See, Nagler et al; *2011-2012 Wyoming Comprehensive Snowmobile Recreation Report*; Prepared for Wyoming Department of Parks and Cultural Resources; October 2012 at pg 12.

and many of the communities adjacent to the Yellowstone park basically closing completely in the winter.

The Organizations are aware that there are many components to the analysis of recreational spending including total recreational spending in the planning area, total visitor days to the area, average recreational spending per user per day and the number of jobs that result from this spending. The Organizations vigorously assert that every component of the recreational economic analysis provided in the KFO Plan is incorrect to some degree and had directly impacted the allocation of resources in the RMP and FEIS. The failures of this analysis are compounded by the fact that much of this same analysis has been performed by the BLM with regard to the greater Sage Grouse LUPA and no comparison of the conclusions has been provided in the RMP. While the Organizations have concerns regarding the sufficiency of the GRSG analysis, these concerns are minimal in comparison to the differences between GRSG analysis and KFO economic analysis.

**3a(2). No draft or final economic analysis report has been provided in violation of relevant planning requirements and specific economic analysis requirements in Executive Orders.**

A review of the KFO RMP and FEIS reveals that analysis of economics is routinely identified as Socio-economics, which the Organizations believe may have contributed to the erroneous economic conclusions that have been reached. Economics and social issues are truly two factors that have significantly different analysis processes and resources available. The Organizations are aware that there is significant information provided in the FEIS and RMP regarding the social makeup of the KFO planning area including average ages of residents, racial make-up and housing costs. This basic social information is available for immediate download from a wide range of source including the Department of Commerce's office of Labor Statistics, Census results, the Department of Labors office of Labor Statistics, the State of Colorado, the Headwaters economic database that is available free of charge and a variety of other sources. The Organizations must note that at no point is the social information that is available for easy download from these sources a replacement for the analysis of economic issues with the plan and analysis of how proposed changes will impact local economies.

As previously addressed in this appeal, FLPMA, NEPA and MUSYA specifically require both economics and social issues be meaningfully addressed in the planning process with best available science. The specific need for and timing of draft economic analysis in Department of Interior planning actions has also been specifically addressed by Executive Order. The Organizations believe it is exceptionally relevant to our concerns to note this Executive Order only addresses the **mandatory nature of economic analysis** and is entirely silent on providing

socially related information, such as that provided in the KFO planning. On March 5, 2012 President Barack Obama specifically addressed economic analysis in Department of Interior planning as follows:

"Accordingly, in order to provide more complete information in the future regarding potential economic impacts when critical habitat proposals are first offered to the public, **I direct you** to take prompt steps to propose revisions to the current rule (which, as noted, was promulgated in 1984 and requires that an economic analysis be completed *after* critical habitat has been proposed) **to provide that the economic analysis be completed and made available for public comment at the time of publication of a proposed rule** to designate critical habitat."<sup>18</sup>

The Organizations vigorously assert that the mandate of this Executive Order requiring issuance of a draft economic analysis has clearly been violated in the KFO planning process, as the final resource plan and EIS has been released but the Organizations are unable to identify any meaningful economic analysis in this process.

Preparation of a single economic analysis report at any point in the KFO planning process would have immediately brought to light critical flaws in the limited economic analysis that has been provided, such as conflicting and inconsistent boundaries for analysis of issues, failing to define key terms in analysis, how total visitor days were estimated in the planning area etc. As an example the limited economic analysis in the KFO repeatedly asserts it is excluding local recreational spending but at no point is there any definition of what "local" defined as. The Organizations rely on the NVUM definition of within 50 miles and beyond 50 miles as the definition of local and non-local spending simply for the purposes of discussion and analysis. This analysis should not be deemed a waiver of the failure to define basic economic analysis terms in the KFO planning and the facial inconsistencies that result from the failure to apply these terms accurately and consistently. Definition of these types of terms is a critical components of any economic analysis. Changes in definition or application of these terms have been the basis for significant changes between the draft and final versions of these plans, such as the doubling of total recreational spending and total recreational visitor days to the planning office. Clearly these changes in analysis that are the basis for asserting double spending and visitation warrant some level of analysis in an RMP and FEIS to comply with statutory planning requirements.

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<sup>18</sup> See, Presidential Memorandum of February 28, 2012; Proposed revised habitat for the spotted owl; minimizing the regulatory burdens; Federal Register Volume 77, Number 43 (March 5, 2012).

Preparation of an economic analysis report would have included compiling significant information regarding visitation to the KFO that is critical to analysis and is routinely collected by the USFS without NEPA and statutory mandates of best available science standards as part of the planning process. Preparation of a single economic report would also have highlighted the conflicts between the KFO conclusions of those in other BLM planning activities, the USFS NVUM conclusions and multiple other sources of information identified in this appeal. The Organizations strongly assert the repeated assertions of the application of the NVUM process in the KFO planning is nothing but arbitrary and capricious given the facial conflict of the conclusions between the process. The Organizations vigorously assert that any attempt to explain why similar information was not collected during the BLM planning process to comply with best available science requirements, or the facial conflicts between the conclusions of documents that were allegedly reviewed as part of the KFO planning process would lack both factual and legal basis and be arbitrary and capricious as a matter of law.

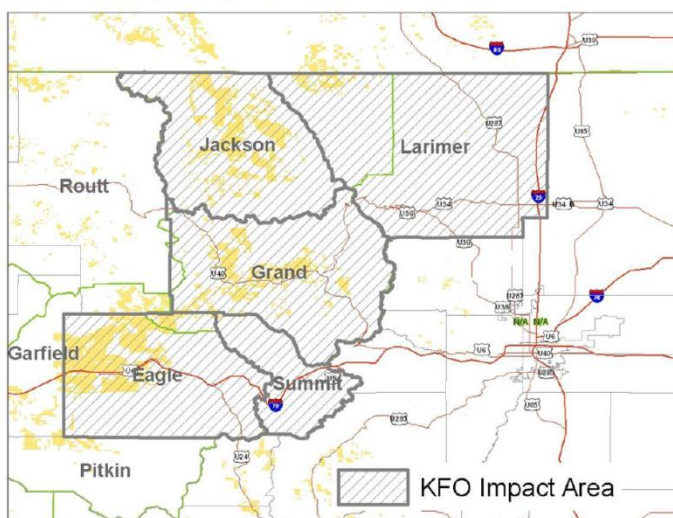
The Organizations vigorously assert that the EO is based on sound management practices and numerous statutory requirements and the KFO chose to proceed without the economic analysis at their peril for reasons that are unclear. The Organizations vigorously assert this decision has directly resulted in economic conclusions that are arbitrary, capricious and lack any basis in law or fact.

**3a(3) KFO analysis area chosen for socio- economic analysis in no way corresponds with visitation information in NVUM analysis for adjacent USFS lands.**

Throughout the KFO RMP, numerous assertions of reliance on or incorporation of the NVUM process in the KFO planning are made, but these assertions completely lack factual basis. On several important issues for recreational spending analysis there are critical portions of the FEIS analysis that simply are not provided, such as failure to provide the division of recreational spending across the four NVUM categories, how analysis boundary areas are established and correspond to visitation and many other issues. These issues are compounded by the fact that there have been significant revisions of the FEIS and RMP, including the economic analysis of recreational usage, much of which was never provided to the public for comment. It is the Organizations position that asserting consistency of analysis between KFO analysis and NVUM conclusions entirely lacks factual basis and is arbitrary and capricious as a matter of law.

The basic conflict between NVUM analysis and KFO analysis starts with defining visitation to the KFO planning area. The KFO asserts the boundary of the impact area is as follows:

Figure 3-7: Kremmling Field Office Impact Area



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The KFO analysis then describes recreational visitation to the planning area as follows:

"On their way to the Planning Area, and once they arrive, these visitors spend money on goods and services they would spend elsewhere if these opportunities did not exist. In this manner, the opportunities on BLM-managed public lands contribute to the local economy by attracting these visitors. These recreation estimates do not include visits from all local users because their expenditures do not represent new money into the economy. If the recreation opportunity used by local recreationists was not available on BLM-managed public lands, local recreationists would likely find substitute opportunities in the area. As a result, their spending would remain in the five-county impact area. After separating the contributions made from local residents, recreation contributes the most employment and labor income to the area economy of all resource programs; supporting 280 jobs and \$8.4 million in labor income on an average annual basis."<sup>20</sup>

The Organizations vigorously assert these two positions on analysis scope are completely irreconcilable, as the map provides a summary of the analysis area in the KFO planning describes the area that has been **excluded** from economic analysis for recreational spending. While these boundaries may have been used for social issues, this boundary in no way reflects the boundaries that are applied for the economic analysis.

<sup>19</sup> See, KFO RMP and FEIS at pg 3-238.

<sup>20</sup> KFO RMP and FEIS at pg 3-238.

These issues of the boundary of the analysis areas for the KFO economics are further compounded by the fact that the boundary areas asserted in no way correspond with the specific visitation information that is available for USFS lands as part of any forest specific visitation reports for lands adjacent to the KFO. While these data sets are not controlling for the KFO visitation, the Organizations vigorously assert these data sets are HIGHLY relevant to the KFO visitation as it has been the Organizations experience that users are often not aware of the managing agency for the areas that are providing dispersed recreational activities and resources. The Organizations vigorously assert that a proper understanding of visitation to the planning area would have immediately identified the errors in the conclusions for recreational spending that are identified in the RMP and FEIS.

The NVUM reports specifically identify that most out of region visitation to public lands in the KFO planning area originates in Boulder, Denver, Arapahoe, Moffat and Jefferson Counties in Colorado.<sup>21</sup> Each NVUM data set also identifies a strong percentage of visitors comes to that forest from out of state based on zip codes.<sup>22</sup> These NVUM datasets also specifically identify that visitors often travel more than 500 miles to reach these forests. These estimates range from 9% of visitors to the Medicine Bow National Forest to almost 50% of visitors on both the White River National Forest and Arapahoe/Roosevelt National Forests.<sup>23</sup> **The Organizations must note that each of these Forest specific NVUM visitor data sets specifically identifies visitation from "foreign counties" as one of the top five sources of visitation to their planning area. The Organizations vigorously assert there is simply no factual or legal basis to assert that visitors traveling more than 500 miles or from outside the State or Country are spending \$16 per day on average for their trips. As more specifically addressed in other portions of this appeal, a visitor only 50 miles from the KFO is unable to purchase sufficient fuel to travel to and from the KFO with only \$16.**

The Organizations vigorously assert that the failure to define such fundamental analysis tools as where are visitors to the planning area coming from consistently and accurately has directly contributed to the arbitrary and capricious conclusions that are more specifically addressed in the subsequently in this appeal. These failures of analysis are facial violations of the Hard Look at economic issues mandated by NEPA.

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<sup>21</sup> See, USDA Forest Service; NVUM Visitor Use Report Arapaho-Roosevelt NF; Round 2 Last updated May 23, 2012 at pg 43-46; See also USDA Forest Service; NVUM Visitor Use Report White River NF; Round 2 Last updated May 23, 2012 at pg 43-46; See also USDA Forest Service; NVUM Visitor Use Report Rout NF; Round 2 Last updated May 23, 2012 at pg 43-46.

<sup>22</sup> See, the respective forests round 2 NVUM reports on pg 16.

<sup>23</sup> See, the respective forests round 2 NVUM reports on pg 16.

**3b(1). The Western Governors' Association recently concluded that recreational spending is the driver for western economies.**

As previously noted, there are three general categories for providing conclusions of recreational spending information. The first the Organizations will be addressing is a total recreational spending amounts on a variety of geographic levels. Recreational usage of public lands is a significant portion of the Colorado economy, especially in the smaller mountain communities that have already lost more traditional sources of revenue, such as timber, farming and mining. The critical nature of recreational economics to the western economies was recently highlighted in the Western Governors Get our West Report that specifically stated:

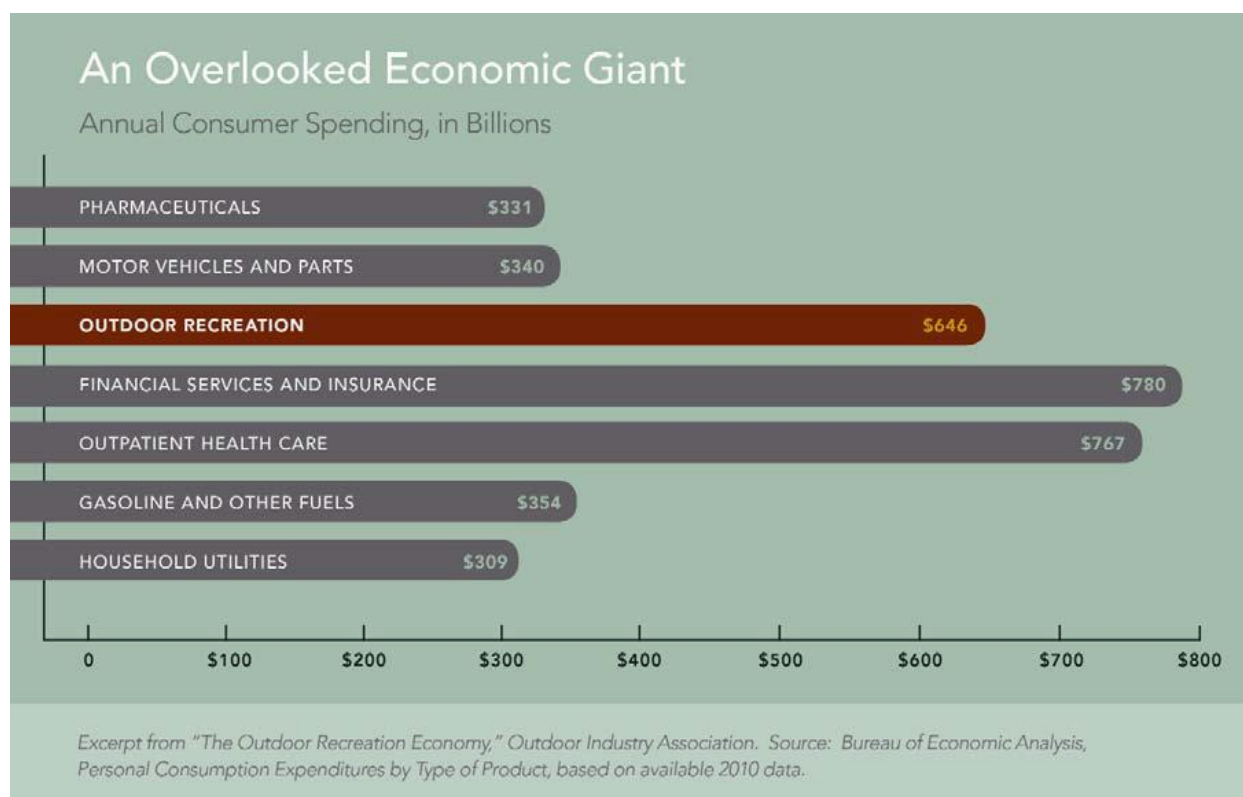
**"Spending on outdoor recreation is a vital part of the national and western economies. It means jobs and incomes and can be the lifeblood of many rural communities in the West. This snapshot helps highlight the value of this often overlooked sector- one that is not otherwise measured as a traditional pillar of the US economy."**<sup>24</sup>

The Western Governor's report makes some general level comparisons of recreational spending and other economic sectors that are consistently identified as important in the western United States. This comparison is reflected as follows:

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<sup>24</sup> Western Governors Association; *A Snapshot of the Economic Impact of Outdoor Recreation*; June 2012 at pg 4





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The Organizations believe this general comparison of spending profiles is relevant to the KFO planning process and many of the appeal points as the conclusions that are reached regarding total spending and average per day recreational spending that are found in the KFO analysis are woefully inadequate to create the total economic impact from recreational activity that has been identified in the Western Governors analysis above.

**3b(1). Proper integration of economic information in the planning process is an ongoing issue in federal planning.**

It has been the Organizations experience that the proper integration of accurate economic information is often a weakness of the public lands planning process in Colorado, which has resulted in the creation of many other longer term problems when decisions reflecting an imbalanced multiple uses are implemented. The Organizations concerns were recently identified as a major planning issue that is not just limited to Colorado. The Western Governors' Association released its *Get Out West* report in conjunction with its economic impact study of recreation on public lands in the Western United States. The *Get Out West* report specifically identified that proper valuation is a significant management concern as follows:

<sup>25</sup> *Id* at pg 1

**"Several managers stated that one of the biggest challenges they face is "the undervaluation of outdoor recreation" relative to other land uses."<sup>26</sup>**

The *Get Out West* report from the Western Governors' Association also highlighted how critical proper valuation of recreation is to the development of good management plans based on multiple use principals. The *Get Out West* report specifically found:

**"Good planning not only results in better recreation opportunities, it also helps address and avoid major management challenges – such as limited funding, changing recreation types, user conflicts, and degradation of the assets. Managers with the most successfully managed recreation assets emphasized that they planned early and often. They assessed their opportunities and constraints, prioritized their assets, and defined visions."<sup>27</sup>**

The Organizations believe our concerns regarding the KFO plans and those expressed in the Western Governor's *Get Out West* report virtually mirror each other. These concerns and possible impacts are also specifically addressed in the BLM manuals for the development of land and resource plans. These failure to properly analyze recreational economic concern will result in increases to many other management issues that were sought to be minimized with the creation of the RMP. There can simply be no factual argument made that recreation has not been significantly undervalued in the KFO and this has directed the range of alternatives previously provided and the final alternative provided for multiple use recreation on the KFO.

**3b(3). KFO conclusions regarding total recreational spending resulting from the KFO areas are arbitrary and capricious as a matter of law and fact.**

The Organizations believe there is significant merit in addressing the significant conflicts that exist between Federal, State and user group analysis of recreational spending in the planning area. Prior to addressing conflicts in planning area analysis, the Organizations believe identifying the importance of the total recreational spending to the Colorado economy is warranted. The Outdoor Industry Association recently concluded outdoor recreation contributes 13.2 billion<sup>28</sup> to the Colorado economy annually making recreational activity a compelling driver of the Colorado economy. Unfortunately this analysis was not of sufficient

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<sup>26</sup> Western Governors Association; *Get out West Report; Managing the Regions Recreational Assets*; June 2012 at pg 3. A Copy of this report has been included with these comments as Exhibit 1.

<sup>27</sup> *Get Out West Report* at pg 5.

<sup>28</sup> Full report is available here: [http://www.outdoorindustry.org/images/ore\\_reports/CO-colorado-outdoorrecreation-economy-oia.pdf](http://www.outdoorindustry.org/images/ore_reports/CO-colorado-outdoorrecreation-economy-oia.pdf). Website was accessed March 25, 2014.

detail to apply to a planning office proposal such as the KFO. The Organizations vigorously assert that a \$13.2 billion dollar total is completely unachievable at the spending amounts identified in the KFO planning process.

However, there are numerous other federal and state analysis of specific activities that are recreationally related that can be applied to field office planning, such as the KFO, as they provide regional or county level conclusions as part of their analysis. The Organizations vigorously assert there is significant conflict between these total spending amounts and the KFO conclusions that all recreational spending only accounts for \$12 million dollars annually. Many of these analysis are allegedly relied on for the development of the KFO RMP, but at no point is any analysis provided to address the significant differences between the totals found in these reports and the totals that are reached in the KFO planning process.

Colorado Parks and Wildlife (CPW) economic analysis reports found that just hunting and fishing contributes over \$334 million to the KFO planning area annually and \$63 million to Grand and Jackson Counties alone.<sup>29</sup> By comparison the 12 million in total recreational spending represents only 19% of the spending that CPW concluded results from just hunting and fishing activity on the planning office area. If the analysis area asserted to be relied on the KFO process is relied on the KFO conclusions drop to 3% of the total spending CPW found for hunting and fishing.

Colorado Tourism Office (CTO) found that tourism/travel contributed over \$218 million to Jackson and Grand County and \$1.8 Billion to the 5 county analysis area identified above.<sup>30</sup> The Organizations must also note that the Colorado Tourism office provided 14 years of county specific analysis as the basis for the current spending amounts, making these conclusions highly credible for the planning area. By comparison the KFO planning conclusions represent 5.5% of the amount CTO found for Jackson & Grand Counties, and represents approximately .6% of the spending in the planning area asserted to be relied on for KFO analysis.

COHVCO found that the use of registered OHVs for recreation alone provided over \$64 million to the KFO region.<sup>31</sup> It is significant to note that the scope of this study included only ATV, snowmobiles and motorcycles with state registrations. The study does not capture the full size 4x4 or jeep usage on the planning area, making this conclusion for total spending exceptionally

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<sup>29</sup> See, Colorado Parks and Wildlife; *Final Report- The economic impacts of hunting, fishing and wildlife watching in Colorado*; September 26, 2008; prepared by BBC Research and Consulting; at Section IV at pgs 15-17.

<sup>30</sup> See, Colorado Tourism Office; *The Economic Impact of Travel on Colorado 1996-2010*; September 2011; prepared by Dean Runyan and Associates at pages 37, 39, 41, 45.

<sup>31</sup> See, Colorado Off Highway Vehicle Coalition; *Economic Contribution of Off-Highway Vehicle Recreation in Colorado*; Prepared by the Louis Berger Group(2008) at pg 16.

conservative. Despite the conservative nature of this analysis, the KFO conclusion of total recreational spending only represents 18% of the total spending that has been identified for a single sector of the recreational market.

The Organizations also believe that it is very relevant to compare KFO total recreational spending amount with total amounts that would be achieved with the application of per day recreational spending amounts that have been identified in recently BLM planning and the USFS NVUM process to the total number of visitor days that are asserted to be occurring on the KFO for recreational purposes. The applications of these per day spending amounts yields the following results, which are again completely irreconcilable with the totals that are found in the KFO planning process.

Application of Greater Sage Grouse ("GRSG") average recreational per day spending profile of \$121.96 to the average recreational visitor days (740,000) would generate \$90 million for total recreational spending (almost entire Kremmling Field Office is GRSG habitat). As more completely discussed in subsequent portions of the appeal, these process should generate significantly similar conclusions as both apply the same IMPLAN model, over the same geographic area over the same timeframes of analysis. These conclusions are made even more relevant as these totals are entirely based on the visitation amounts reached in the KFO planning process that are the result of recreational activity on the planning office. The Organizations are unable to reconcile any assertions that 740,000 recreational visits would generate only 12 million annually with the GRSG conclusions that the same recreational usage would generate over \$88 million.

Application of the USFS NVUM average per day recreational spending conclusions would result in a total recreational spending amount for 740,000 visitor days of \$ 38 million to \$45 million in recreational spending in the planning area. The KFO planning process fails to provide sufficient breakdown of recreational visitation by user group to allow for the application of user group specific analysis that is provided as part of the NVUM analysis process. Rather the Organizations are forced to again rely on general visitation amounts that are developed in regional level reports from the NVUM process. The Organizations strongly assert the failure to provide this basic information is a failure of the hard look required of this issue by NEPA.

The analysis of the above planning documents is further expanded in later parts of this appeal. The KFO RMP notes that several of the above documents were analyzed as part of the review for recreational spending, but at no point is there any analysis or statement of what this analysis and review included. The Organizations vigorously assert that any asserted analysis of the above referenced documents as part of the KFO planning process would be arbitrary and

capricious as a matter of law given the disparity of the conclusions that are reached in the Federal and State analysis and the conclusions that are reached in the KFO plan.

**3c. KFO estimates of recreational visitor days are often highly variable throughout the RMP and FEIS and fail to satisfy hard look requirements of NEPA.**

The Organizations respectfully submit that the conflicting nature of the recreational visitor days evidenced in the Plan is a direct failure to comply with NEPA and other statutory planning requirements as there is a 50% margin of error built into any economic analysis or supply and demand analysis for resource usage. The impacts of these changes in visitation and recreational total spending simply have not been addressed in the RMP and FEIS. These concerns are more specifically addressed in subsequent portions of this appeal.

"KFO Field Office staff estimate that, on average, there are about 600,000 recreation visitor days annually to BLM-managed public lands in the Planning Area (RMIS 2012)."<sup>32</sup>

"**Impacts Resulting from Recreation Use and Visitors Services.** Average annual recreation visits are estimated at 697,563-737,713 general visits and another 132,869-140,517 wildlife related visits."<sup>33</sup>

The Organizations vigorously assert that the failure to accurately determine the actual number of visitor days for recreational activity is a facial violation of the detailed analysis of issues required by NEPA.

The Organizations further assert that failures to accurately address recreational visitation will directly impair any ability to integrate these conclusions into the planning process as mandated by numerous federal statutes and planning requirements of the BLM. There is simply no factual or legal basis for a conclusion that over 300,000 visitor days to a planning area will not impact the allocation of resources that are necessary to address these levels of visitor days. These levels of visitation will clearly impact the resources that are necessary for support of these levels of visitation and mitigation of possible impacts from the usage. These resources would include designated camp sites, trash and bathroom facilities, law enforcement, trails and other travel management related issues. The Organizations would be remiss in pointing out that the margin of error found in the KFO planning process exceeds the total number of visitor days that the Colorado River Valley asserts for recreational activity.

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<sup>32</sup> See, Kremmling Field Office Final RMP and FEIS - Volume 1 at pg 3-244.

<sup>33</sup> See, Kremmling Field Office Final RMP and FEIS - Volume 2 at pg 4-1042.

For purposes of this appeal, the Organizations are using an estimated visitor days to the KFO that is an average of these visitor days estimates, which would be 740,000 visitor days per year. This estimate is in no way to be relied on as a waiver of any portion of this argument, but is rather developed in an attempt to streamline discussions of related issues. The Organizations vigorously assert any issues that may result from the reliance on this average number of visitor days are wholly insufficient to address the conflicts between KFO analysis and the conclusions of other BLM and USFS analysis.

**3d(1). The KFO reaches conclusions on the average recreational daily spend that lack both factual and legal basis.**

The Organizations vigorously assert the total spending amounts for recreational activity found by the KFO are arbitrary and capricious and lack any legal or factual basis. This position is further supported by the conflict that exists between average spending amounts for recreational activity that are identified by the KFO planning process and the conclusions that are reached by credible research from the USFS, other BLM analysis, the State of Colorado on particular user groups and credible research from partner organizations. The Organizations will note that often average recreational spending varies based levels of visitation by particular user groups and total visitation but the average recreational spending amount for each user group is very consistent across the Country.

The RMP finds the total recreational spending on the KFO will be \$12-12.7 million per year.<sup>34</sup> The RMP finds an annual visitor days total of 740,000.<sup>35</sup> As the RMP provides both a total recreational spend and a total number of recreational visitor days, the average recreational daily spend relied on for development of the RMP is able to be developed by dividing the total spend by the total days as follows:

**\$12 million/740,000 visitor days = \$16.21 per day per user average recreational spending**

The Organizations believe the conclusion the average recreational user will spend \$16.21 simply offends basic logic and reason and the hard look required by NEPA, as there is no recreational activity that can be done for \$16 per day. The arbitrary and capricious nature of this conclusion is further compounded by the fact that every adjacent USFS forest specifically identify foreign

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<sup>34</sup> See, KFO RMP and FEIS; Volume 2 at pg 4-1042.

<sup>35</sup> See, KFO RMP and FEIS; Volume 2 at pg 4-1042 & KFO RMP and FEIS; Volume 1 at pg 3-244 and portions of this appeal more specifically addressing conflicts between estimated visitor days to the KFO for more explanation of this analysis.

countries as one of their top 5 sources of visitors and specifically identify visitation from most US states in their NVUM analysis process for visitation.

**3(d)(2) An average recreational spending amount of \$16.21 is insufficient to cover fuel necessary to travel to and return from outside the KFO for a day of recreation.**

The lack of factual basis in the conclusions of the KFO in recreational spending are immediately evident with application of the spending total to several common fact patterns for recreational usage. The lack of basic consistency in law or fact in the KFO spending conclusions is reflected in the fact that if Internal Revenue Service reimbursement rates for vehicle mileage are applied to the non-local KFO visitors who live at the boundary identified in the NVUM process of 50 miles from their destination, this group of users would not be able to reach the area and return home if they spent only \$16.21. The Organizations believe this basic relationship indicates a serious issue with the an KFO analysis as \$16.21 is only a sufficient amount of money to travel 29.3 miles at IRS mileage rates. This means that the average recreational user from out of the region would only get approximately half way to the KFO and then run out of fuel and be unable to return. Any assertion of the accuracy of the \$16.21 spending per day becomes even more problematic when NVUM visitation analysis, which notes high levels of visitation from outside Colorado and the Country, are incorporated drawing any total in this range further from a rational or legally sufficient basis for planning purposes.

The Organizations are aware that there are many factors incorporated into IRS mileage rates that may not be exceptionally relevant to federal planning such as depreciation. Even with application of actual expenses of travel for a user who is only 50 miles away, visitors from outside the planning area are unable to travel to the KFO and return home on the average spending amounts asserted in the RMP. For purposes of this discussion, the Organizations are assuming the average vehicle gets 20 miles to the gallon and fuel costs \$3.75 per gallon in the planning area. As a result, a visitor that traveled 50 miles (the out of region standard used in NVUM analysis) would need 2.5 gallons of fuel for each leg of his trip. Each leg of the trip would then cost \$9.37 (2.5 gallons x \$3.75 per gallon) to travel and a round trip would cost \$18.75 for a round trip. Based on the average recreational spend the visitor would end up almost 20 miles short of home and almost a gallon of fuel short, without undertaking any recreational activity after getting to the KFO, if he only spent \$16.21. These conclusions are direct evidence that the economic analysis of recreational spending in the RMP is faulty as a matter of law and fact and is arbitrary and capricious as a matter of law.

Any factual accuracy of the KFO conclusions for average recreational user spending at the \$16.21 amount is more problematic as this amount is an average. For this conclusion to be correct, it would mean there are large recreational groups that are able to recreate for

significantly less than \$16.21 per day to offset those user groups directly addressed in these comments, who on average spend 10x this amount per day. The Organizations believe this facially incorrect conclusion is the direct result of the failure to meaningfully analyze economics has lead to conclusions in the RMP.

**3e(1). USFS NVUM analysis has long been recognized as best available science on comparative recreational spending.**

Throughout this appeal, the Organizations are heavily reliant on USFS NVUM data for comparisons and the basis of appeal points, and this reliance is not academic or without legal basis. The Organizations will note that numerous references to application of USFS NVUM data and methodology are also made in the KFO RMP and FIES, making any comparisons between these two processes highly meaningful. The USFS NVUM process has long been recognized as best available science for recreational usage and now must be specifically addressed in federal planning. It is the Organizations position that the KFO conclusions and that of any portion of the USFS NVUM are wholly irreconcilable as a matter of law and fact and make the KFO conclusions violations of various planning laws requirements and executive orders as a matter of law.

The USFS began compiling National Visitor Use Monitoring information ("NVUM") data as the result of Executive Order #12,862 issued by President Clinton in 1993 which addressed setting customer service standards for **ALL** Federal agencies. The on-going importance of the issues originally addressed in EO #12,862 was recently reaffirmed with the issuance of EO #13,571 on April 27, 2011 by President Barack Obama. Over the 20 year lifespan of the NVUM process, there has been significant peer review of the analysis process and conclusions. The Organizations have found these conclusions to be rather conservative for motorized usage, but these concerns are very minimal here, as the KFO conclusions are significantly below any conclusions reached in the NVUM analysis. NVUM conclusions have now been recognized as best available science on the recreational spending of users, as more specifically discussed in subsequent portions of this appeal, but the comparison of the methodology of the NVUM process is highly relevant.

NVUM analysis of recreational spending is provided in two basic manners. The USFS provides a single national report with specific information for each user group and then each forest and region develops forest specific reports that apply the national level recreational spending amounts to the visitation levels of the specific region or forest. The USFS NVUM process provides a wide range of information regarding users and economic information which is divided into 4 national categories for each user group as part of a single national report. These categories are local day use; non-local day usage; local overnight use; and non-local overnight



usage.<sup>36</sup> Each group is provided a low, average and high spending amount. The national averages in each category are then adjusted to incorporate comparative local costs for using particular areas of the county, as costs of living and recreation vary significantly throughout the county. These multipliers for local costs are summarized as a below average, average and above average spending area. These localized categories are then multiplied by the visitation to a particular area in each category of user to allow for flexibility of the analysis process and develop site specific total spending conclusions. The failure to provide this information, which should have been developed for the application of the NVUM process has directly prejudiced the Organizations ability to meaningfully discuss errors in conclusions. The Organizations believe the failure to provide this information is a violation of NEPA as a high quality detailed statement of the analysis of the issue under the hard look standard has not been provided.

NVUM economic analysis is also provided at the Forest and Region level on a periodic basis and addresses a wide range of factors necessary to provide quality services to the visitors on public lands, such determinations of where people are visiting, average ages and gender. As part of these forest and region specific reports, economic information is also provided based on average visitation to the planning areas, which would reflect a summary of the specific spending profiles that are addressed in the national level user group specific data provided.

**3e(2). Basic consistency of BLM planning with USFS NVUM data is mandated by multiple Executive Orders and BLM national office requirements.**

Prior to expanding the analysis of economic concerns to analyze research from other federal agencies, the Organizations believe a brief discussion of the history of these federal analysis and the relationship of Forest Service analysis to BLM planning is warranted. Forest Service NVUM data has been collected pursuant to multiple Executive Orders that were equally applicable to all federal agencies. The Organizations will note that these Executive Orders and preliminary works of the Forest Service were available for BLM use well before the KFO ever started any planning relative to the current DRMP. As a result, the ability to conduct some type of comparison between the two processes was available and for reasons that are not clearly described in the RMP were never pursued further.

As a result of these Executive Orders previously discussed, the BLM national office in Washington DC has recently announced that the methodology used by the USFS in their NVUM process is now being relied on for the analysis of recreational spending on BLM lands as well.

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<sup>36</sup> See; White and Stynes; *Spending Profiles of National Forest Visitors, NVUM Round 2 Update*; November 2010 at pg 6. Hereinafter referred to as Stynes and White November 2010. A copy of this report is attached to this appeal as Exhibit "1".

This acceptance of NVUM process would lead to basic consistency of conclusions within a geographic area. As more extensively discussed later in these comments, the conclusions of the Region 2 NVUM data, or any forests that make up Region 2, and KFO conclusions are simply not reconcilable.

On September 11, 1993 President Clinton issued Executive Order #12,862 which addressed Setting Customer Service Standards for ALL Federal agencies. Order 12,862 specifically provided:

**"All executive departments and agencies (hereinafter referred to collectively as "agency" or "agencies") that provide significant services directly to the public shall provide those services in a manner that seeks to meet the customer service standard established herein and shall take the following actions:**

**(a) identify the customers who are, or should be, served by the agency;"**

As a direct result of EO 12,862 the Forest Service embarked on compiling significant amounts of data regarding the demographics and spending habits of recreational users of USFS lands. The USFS clearly identified that understanding the customer is of paramount importance to providing good customer service and developing good planning to provide a high quality customer service to recreational users. The results of this research has developed in the National Visitor Use Monitoring process and has uniformly been recognized as best available science regarding visitation and spending on public lands.

The on-going importance of the issues originally addressed in EO 12,862 was recently reaffirmed with the issuance of EO 13,571 on April 27, 2011 by President Barack Obama. With the issuance of EO 13,571 by President Obama, the BLM Washington Office entered into a cooperative agreement with the USFS to adopt NVUM findings and apply NVUM methodology to BLM lands. The background and benefits of this cooperative agreement are specifically outlined on the BLM's National Recreation Offices webpage as follows:

#### **"Background**

**In an effort to identify a uniform, agency-wide program to collect scientifically-defensible visitor use estimates, the BLM entered into an Interagency Agreement with the USDA Forest Service (FS). The program provides a pilot test of the Forest Service National Visitor Use Monitoring (NVUM) program at three BLM Field Offices (Moab, UT, Roseburg, OR, Dolores, CO) to determine the viability of this comprehensive visitor use methodology for possible long-term, BLM-wide application.**

## Benefits

**It is critical that the BLM has a standard consistent bureau-wide, scientifically-defensible method for visitor monitoring.** Implementing this pilot program allows BLM to evaluate, adapt, and modify (as needed) the FS NVUM system, providing BLM with valid and reliable baseline data, trend analysis, demand assessment, and forecasting. Such visitor monitoring information enables BLM to incorporate statistically valid visitor use monitoring information into planning and management decisions as well as long-term monitoring assessment. **The FS NVUM system provides BLM with accurate data with high confidence levels for reporting to Congress and constituents, thereby building credibility and establishing legal protection in decision-making. This program would also provide input for estimating regional socio-economic impacts associated with BLM visitor use.** The program would provide insight into the recreation settings and recreation experiences that BLM visitors want on the public lands. Finally, by working with the FS, BLM can achieve significant savings in research and development costs while also being able to have comparable data with a sister agency. This inter-agency, inter-department effort represents a major achievement between the two Departments and sister agencies."<sup>37</sup>

The Organizations must note that the national BLM pilot program offices are within the general planning region and under the same State office as the KFO. Given the clear vision that the BLM national office provided to comply with the mandates of multiple Executive Orders, the Organizations have to question why any BLM Field Office would not undertake a basic comparison of economic conclusions they have reached in their planning process to the USFS NVUM data. It is the Organizations position that type of review simply did not happen in this case, resulting in conclusions being reached in the KFO RMP and FEIS that are in violation of both Presidential Executive Orders and the BLM National Office position on this issue. These conflicts must be resolved and the public allowed to comment on the revised allocation of resources after multiple uses are rebalanced pursuant to these mandates.

### **3e(3). Consistency of BLM planning with USFS NVUM data is required under existing science partnership agreements between USFS and BLM.**

In addition to the adoption of NVUM data as the accepted conclusions and methodology for recreational spending analysis pursuant to Executive Orders, interagency strategies also

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<sup>37</sup> [http://www.blm.gov/wo/st/en/prog/Recreation/national\\_recreation/visitor\\_use\\_surveys.html](http://www.blm.gov/wo/st/en/prog/Recreation/national_recreation/visitor_use_surveys.html) as viewed 5/3/2013.

address the critical need to rely on partner agency research on particular issues to develop plans in a cost effective and timely manner. These partnerships are a critical tool in complying with requirements to develop plans in reliance with best available scientific research requirements. The need to manage in compliance with rapidly evolving bodies of research is specifically identified as a major concern for the BLM moving forward, as identified in the 2008 BLM Science Strategy, which states:

“In this era of rapidly expanding knowledge and methodologies of predicting future environmental changes, it is critical to keep up with the state of knowledge in resource management. By making use of the most up-to-date and accurate science and technology and working with scientific and technical experts of other organizations, we will be able to do the best job of managing the land for its environmental, scientific, social, and economic benefits.”<sup>38</sup>

The role that strategic planning documents play in determining the resources currently available and in identifying those resources that need to be developed is specifically and extensively discussed in the provisions of the 2008 BLM science strategy. This discussion specifically identifies:

“National management issues will be focused to reflect how they apply to the various biogeographic regions of the United States. The BLM identifies and prioritizes the science needs and problems that threaten the targets and goals from the National Strategy. Targets are established for managing specific goals or objectives.....The science needed to address the regional management issues will be defined. Science may include existing resource inventory, monitoring, and other data, as well as new information derived from research and project efforts.”<sup>39</sup>

BLM’s Science Strategy identifies a wide range of scientific research partners for the exchange of credible information and to be used to address issues that may arise. One of these partners is the US Forest Service,<sup>40</sup> making the extensive works of the Forest Service’s research stations and NVUM research cited in these comments fully applicable to management of BLM lands. Again the Organizations vigorously assert that these science agreements make the conclusions of the CRVO on these issues even more arbitrary and capricious and lacking factual and legal basis. Merely asserting there is consistency when there is none in fact is simply unacceptable.

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<sup>38</sup> BLM Science Strategy 2008 – Doc Id BLM/RS/PL-00/001+1700 at pg iv.

<sup>39</sup> *Id* at 16.

<sup>40</sup> *Id* at pg 10.

**3e(4). Forest Service NVUM data conclusions on daily average recreational spending are completely irreconcilable with KFO conclusions.**

As outlined in the previous two sections of the Organizations comments, basic consistency of economic analysis performed as part of BLM planning with USFS NVUM data conclusions and research has been required by both BLM National office management standards, BLM science strategies and multiple Presidential Executive Orders. Some of these documents have been in place well before the commencement of the KFO planning process. These specific requirements in addition to FLPMA requirements of reliance on best available science in the planning process and NEPA requirements of a hard look at the decision making process. While these planning requirements are clear, a comparison of the conclusions reached in the NVUM analysis and the KFO planning efforts leads to a single overwhelming conclusion. The Executive Orders and National BLM directives simply have not been complied with in the KFO planning process despite numerous assertions of reliance on NVUM conclusions for the planning process.

The US Forest Service recently released new National Visitor Use Monitoring reports and research for the Rocky Mountain region and many of the USFS lands that are adjacent to the KFO. The conclusions of this research find that average recreational spending per day is totally irreconcilable with KFO findings regarding recreational spending on public lands. The USFS NVUM data for Region 2 found the average recreational spending for a party on a trip was \$1,059 dollars.<sup>41</sup> The average trip within Region 2 was 5.7 days in length<sup>42</sup> and the average party consisted of 3 people.<sup>43</sup> As a result the average spending can be developed by dividing the average trip total by the average trip length and the average party size. The USFS NVUM region 2 research and analysis concludes that the average daily recreational spending total in R2 is \$61.92 per day. A copy of the Region 2 NVUM report is included with these comments for your reference.<sup>44</sup> The Organizations vigorously assert this total is utterly irreconcilable with the KFO conclusion that the average recreational user spends \$16.21 per day, especially given the high levels of motorized usage on the KFO. This imbalance of KFO uses must be corrected to accurately balance multiple use in the KFO process.

In addition to the Region 2 report that identifies spending profiles on adjacent Forest Service lands, the USFS NVUM also provides specific national level analysis of each type of recreational

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<sup>41</sup> USDA Forest Service; *Visitor Use Report - USDA Forest Service Region 2*; June 20, 2012 at pg 28. A copy of this report has been included with these comments as Exhibit 5.

<sup>42</sup> *Id*

<sup>43</sup> *Supra* note 35at pg 19.

<sup>44</sup> NVUM data may be further broken down to individual forest levels on the Forest Service website, allowing a more localized review of this information for BLM purposes. <http://apps.fs.usda.gov/nrm/nvum/results/>

users spending profiles to allow for a more meaningful analysis of visitor information and allow for the preparation of accurate economic analysis of recreation and actual visitation estimates for each user group. A complete copy of analysis is attached with this appeal as Exhibit 6.<sup>45</sup> Again this information has allegedly been relied on in the KFO planning process and economic analysis but the conclusions of the two works cannot simply be reconciled. The national level NVUM spending breakdown by user group provides as follows:

**Table 3. Visitor spending for high, average, and low spending areas by activity, \$ per party per trip (\$2007)**

Activity	Non-Local Day Trips			Non-Local Overnight Trips <sup>a</sup>			Local Day Trips			Local Overnight Trips <sup>a</sup>		
	Low	Avg	High	Low	Avg	High	Low	Avg	High	Low	Avg	High
Downhill skiing	\$126	\$130	\$181	\$468	\$798	\$893	\$68	\$64	\$69	\$359	\$386	\$489
Cross-country skiing	\$87	\$97	\$135	\$315	\$537	\$951	\$26	\$27	\$31	\$242	\$259	\$329
Snowmobile	\$116	\$129	\$180	\$377	\$642	\$1,139	\$72	\$74	\$74	\$289	\$311	\$394
Hunting	\$79	\$88	\$122	\$253	\$368	\$652	\$41	\$51	\$51	\$230	\$248	\$314
Fishing	\$52	\$55	\$77	\$214	\$331	\$548	\$36	\$38	\$38	\$154	\$161	\$205
Nature-related	\$56	\$65	\$90	\$269	\$473	\$826	\$36	\$37	\$42	\$182	\$195	\$247
OHV-use	\$98	\$109	\$151	\$219	\$277	\$491	\$63	\$58	\$58	\$125	\$134	\$170
Driving	\$42	\$54	\$75	\$338	\$576	\$1,021	\$28	\$32	\$30	\$259	\$278	\$353
Developed camping	n/a	n/a	n/a	\$183	\$206	\$300	n/a	n/a	n/a	\$178	\$171	\$217
Prim. camping/bpack	n/a	n/a	n/a	\$108	\$134	\$196	n/a	n/a	n/a	\$121	\$120	\$153
Hiking/biking	\$53	\$50	\$64	\$228	\$473	\$765	\$20	\$21	\$18	\$126	\$150	\$190
Other	\$60	\$72	\$100	\$216	\$330	\$569	\$36	\$40	\$32	\$170	\$187	\$237
<b>Total</b>	<b>\$58</b>	<b>\$65</b>	<b>\$90</b>	<b>\$214</b>	<b>\$366</b>	<b>\$648</b>	<b>\$34</b>	<b>\$34</b>	<b>\$29</b>	<b>\$165</b>	<b>\$177</b>	<b>\$224</b>
Ratio to average	0.90		1.39	0.59		1.77	0.98		0.84	0.93		1.27

Assuming there is an even division of usage across user groups of the KFO spread evenly between each of the above 4 categories and evenly across each user group, this would yield an average daily spend of \$160 per day for recreational usage.<sup>46</sup> In addition to the above summary chart of recreational activity average spending, the NVUM average spending analysis provides a specific breakdown of how each group is spending their money in pursuit of their chosen activity.<sup>47</sup>

For almost every category of spending addressed in the national level NVUM analysis of fuel costs for an average spending recreational activity far exceed the average total spending conclusions that are reached in the CRVO analysis. The average user conclusions are as follows:

<sup>45</sup> Stynes and White November 2010 at pg 6.

<sup>46</sup> The Organizations again vigorously assert the failure to provide this information regarding user groups and visitation is a facial violation of NEPA and direct evidence of why economic analysis reports are critically important in federal land management.

<sup>47</sup> Stynes and White, November 2010 at pg 7-21.

**Table 4a—Non-local visitor spending averages, all activities \$ per party per trip (\$2007)**

Spending category	NL- Day Trips			NL- Overnight Trips		
	Low	Average	High	Low	Average	High
Lodging	0.00	0.00	0.00	57.39	116.84	222.37
Restaurant	11.06	14.16	23.69	25.08	58.94	128.45
Groceries	7.76	8.07	8.04	44.81	57.25	72.25
Gas & oil	25.27	27.34	33.43	58.52	71.79	102.55
Other transp.	0.83	0.60	0.17	0.51	2.86	2.54
Entry fees	4.23	4.36	5.67	5.94	12.51	24.67
Recreation & entertainment	4.40	4.13	6.56	7.24	15.46	32.77
Sporting goods	2.64	2.89	2.89	8.11	13.29	19.95
Souvenirs and other expenses	2.02	3.12	9.52	6.88	16.57	42.60
<b>Total</b>	<b>58.21</b>	<b>64.68</b>	<b>89.97</b>	<b>214.49</b>	<b>365.51</b>	<b>648.15</b>
Sample size	896	2,224	213	2,175	7,338	1,248
Std. deviation	63.0	71.2	91.5	267.8	531.5	739.0
Standard error	2.10	1.51	6.27	5.74	6.20	20.92
Pct error (95%)	7.2%	4.7%	13.9%	5.4%	3.4%	6.5%

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The NVUM national conclusions provide a similar level of analysis for each of the user groups that are identified in the general chart that is previously cited.<sup>49</sup> While this detailed analysis of each user group is not specifically reproduced here, these conclusions are highly relevant to the arbitrary and capricious nature of the KFO conclusions as each category of user specifically identifies that more fuel is spent simply getting to their destination than the KFO asserts is necessary to drive to the KFO, recreate all day and return home.

National level NVUM analysis of spending identifies spending profiles for each forest adjacent to the KFO in terms of above average, average or below average recreational spending.<sup>50</sup> The NVUM spending study specifically identifies that the Medicine Bow/Routt, Arapahoe/Roosevelt and White River National Forest are at least average spending forests. As a result, the Organizations believe the KFO could be summarized as an average spending area as well. Even if the KFO were classified as a low spending recreational area, the differences in spending profiles are completely insufficient to provide any basis for the conclusions that are reached in the KFO analysis.

<sup>48</sup> Stynes and White, November 2010 at pg 7.

<sup>49</sup> Stynes and White, November 2010 at pgs. 9- 20.

<sup>50</sup> Stynes and White, November 2010 at pg 35 & 36.

In subsequent correspondence with the Colorado BLM State Office on recreational spending issues that have been repeatedly identified in RMPs throughout the state, copies of which are included with this appeal, there were assertions made that skiing activity on USFS lands accounted for the variations between the average recreational spending amounts in BLM planning and those found in USFS analysis. Even if skiing is excluded from analysis, the fact that no local user group spends less than \$21 per day will heavily impair any ability to obtain an average spending amount of \$16.27 that the CRVO asserts is accurately reflecting non-local visitors who must travel more than 50 miles to reach the planning office. USFS forest specific analysis finds there are several forests in the region that do not have significant skiing activity and have similar spending amounts to the regional average. Removing the skiing amounts from the user specific breakdown above and recalculating the averages does not significantly impact the averages above and do not address the massive differences in conclusions. The arbitrary and capricious nature of any assertion of skiing spending accounting for the difference in conclusions between KFO and NVUM analysis is evidenced by the conflict between KFO conclusions and GRSG economic analysis, which does not analyze any planning areas where significant skiing activity is present. The specific concerns of the GRSG comparison are addressed in subsequent portions of this appeal.

The Organizations vigorously assert the arbitrary and capricious nature of the KFO conclusion that the average recreational user spends \$16.27 per day is apparent as the NVUM analysis can find no user group that spends less than \$21. The Organizations must note that the \$21 average is a local user group spending profile that the KFO asserts has been excluded from analysis in their process. The lowest out of region spending profile that is identified is \$50, further drawing into question any average below that amount. **The NVUM analysis concludes the average out of town recreational visitor spends between \$65 and \$366 per night, again directly conflicting with the KFO conclusions that the average out of region user spends \$16.27 per day. These conclusions simply are irreconcilable with KFO conclusions and directly evidence the arbitrary and capricious nature of the KFO conclusions on average recreational spending of users. The Organizations vigorously assert that this systemic undervaluation of recreation in the planning process has directly resulted in an allocation of multiple uses that fails to integrate economic impacts of planning into the process and provides positions in the RMP and FEIS that in no way reflect the actual economic impacts that these decisions will have on local communities.**



**3d(5). The NVUM process specifically addresses how economics and visitation are integrated in the planning process.**

The Organizations believe it is important to understand the impacts that the relatively small changes in the per day user spending amounts can have on total spending as these are compounded by the total recreational visitation to the planning area. The potential impacts to management decisions that results from inaccurate calculations of the average economic spending of user groups is extensively discussed by Drs. White and Stynes regarding the development of a parking lot as part of a site specific analysis.<sup>51</sup> When the impacts specifically outlined in the parking lot example are expanded to allocation of resources on a landscape level plan, the negative implications and possibility of bad management decisions being made expands to a facially unacceptable level and would immediately create arbitrary and capricious decisions.

The Organizations would be remiss if a comparison of the NVUM examples of information necessary at the starting point for integration of economics into plan and KFO analysis were not made. In the NVUM parking lot example the following information is required to meaningfully integrate economics into planning:

"In this report, we have generated a number of distinct spending profiles that can be used for analyses focusing on specific recreation activities. These spending profiles can be used in national, regional, forest, and sub-forest level planning activities. For economic impact or contribution analyses, the spending profiles must be combined with 1) estimates of total visits, 2) estimates of the percentage of visits within given trip and activity segments, and 3) appropriate local input-output (I-O) models or multipliers." <sup>52</sup>

The facial insufficiency of the KFO analysis in comparison to the NVUM process is immediately apparent as **none** of the three factors the NVUM identifies as necessary for application of recreational visitation and spending to planning actions are available in the KFO analysis.

**4a. Recreational spending totals provided in the KFO RMP are totally inconsistent with other BLM analysis of the planning region.**

The arbitrary and capricious nature of the KFO spending profiles for recreation usage is further evidenced by the fact the KFO RMP conclusions are completely inconsistent with the

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<sup>51</sup> See, UDSA Forest service NVUM analysis; Stynes and White November 2010 at pgs 22-28.

<sup>52</sup> See, Stynes and White; November 2010 at pg 22.

conclusions of the BLM's Northwestern Colorado Greater Sage Grouse Land Use Plan Amendments (GRSG). The Organizations again assert the conclusions of the KFO process and GRSG analysis should be roughly consistent as each process has occurred over a common period of time, using similar methodology (IMPLAN) and similar geographic areas. As a result the average daily spending amounts for recreational usage should be reconcilable. However, the conclusions on average recreational spending are anything but reconcilable when the KFO conclusions and the GRSG conclusions, as GRSG analysis finds the lowest category of recreational spending (nonlocal day trips at \$34.26) is twice the average found on the KFO. The GRSG analysis concludes that non-local overnight recreational users spend on average \$209.47 (13x the KFO average) further conflicting with KFO conclusions.<sup>53</sup>

The overlap between the KFO planning area and GRSG analysis areas is overwhelming as specifically identified in the boundary map of the GRSG planning process identified below:

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<sup>53</sup> Northwest Colorado Greater Sage Grouse Draft LUPA/EIS- August 2013 Appendix M at pg M-33.



2013 and KFO was released in draft in 2011 and final in 2014. As a result, the Organizations believe there should be basic consistency between average daily spending conclusions between the GRSG analysis and KFO analysis of this issue. There simply is not.

The Organizations believe that a brief comparison of the economic data that is available in the 44 pages of economic analysis that are provided with the GRSG LUPA to the CRVO analysis will immediately identify the unacceptable quality of the KFO analysis. The Organizations would be remiss if the similarity of the GRSG analysis and data and USFS conclusions was not mentioned here. The similarity of data and analysis points is striking. None of this data or analysis points are identified or discussed in the KFO RMP and FEIS.

Appendix M of the GRSG LUPA provides 44 pages of economic analysis and very little socially related data, such as average age and racial background of residents, that is the predominate information found in the KFO review. The GRSG LUPA analysis includes a county by county breakdown of the total employment by sector, employment by sector as a percentage of total employment, income by sector, employment trends over 20 years, supply and demand for recreational opportunities, consumer surpluses by sector visitation, visitation totals and supporting information, visitation trends, direct, indirect and induced economic analysis with multipliers for multiple sectors of activity and average salaries for many sectors. **The Organizations are simply unable to find any mention of most of these factors in the KFO plan, again supporting the Organizations position of the arbitrary and capricious nature of the KFO conclusions.**

The GRSG DRMP provides the following breakdown of total recreational spending at the landscape level:

**Table 3.87. Visitor Spending from Recreation on BLM-Administered and National Forest System Lands in Socioeconomic Study Area**

Trip Type	Percent of Visits <sup>1</sup>	Estimated Number of Individual Visits	Average Party Size <sup>1</sup>	Estimated Number of Party Visits	Party Spending Per Visit (2010) <sup>1</sup>	Estimated Direct Expenditure (\$ millions)
Nonlocal Day Trips	10	430,881	2.5	172,352	\$63.68	\$11.0
Nonlocal Overnight on Public Lands	9	387,793	2.6	149,151	\$237.27	\$35.4
Nonlocal Overnight off Public Lands	14	603,233	2.6	232,013	\$522.63	\$121.3
Local Day Trips	49	2,111,316	2.1	1,005,389	\$33.56	\$33.7
Local Overnight on Public Lands	4	172,352	2.6	66,289	\$165.14	\$10.9
Local Overnight off Public Lands	1	43,088	2.4	17,953	\$216.48	\$3.9
Non-Primary Visits	13	560,145	2.5	224,058	\$376.62	\$84.4
Total	100	4,308,808	N/A	1,867,205	N/A	\$300.6

<sup>1</sup> National average for all National Forests. White and Gooding (2012). Party spending per visit is converted from 2009 to 2010 dollars using the Consumer Price Index (US Bureau of Labor Statistics 2012a).

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The Organizations believe it is critical to compare the conclusions that are reached in these documents for recreational daily spending as each represent planning for geographically adjacent planning areas done by the same federal agency with the same planning model at the same basic time. Logic would lead to a conclusion that results should be basically consistent. These results simply are not. This comparison of the two analysis provides stark contrasts in the daily average spending of recreational users rather than the consistency of conclusions that would be expected. The GRSG LUPA analysis estimates out of region recreational spending ranges from \$34.26 (nonlocal day trips) to \$209.67 (Nonlocal overnight trip). It is significant to note that NONE of these totals are of sufficient low levels to warrant an average daily spend of \$16.21.

The GRSG planning also provided a specific breakdown of spending profiles of non-local recreational visitation, as follows:

<sup>55</sup> BLM -Northwest Colorado Greater Sage Grouse Draft LUPA/EIS (August 2013) - Chapter 3 - Existing Conditions at pg 429. A full copy of this DEIS and DLUP is available here: <https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=48134>

**Table M.15**  
**Assumptions for Analysis of Impacts on Output for Recreation Activities**

<b>Economic Impact</b>	<b>Primary Study Area</b>	<b>Primary and Secondary Study Area</b>
<b><i>Nonlocal Day Trip</i></b>		
Direct Economic Impact <sup>1</sup>	\$25.45	\$25.45
Indirect Economic Impact <sup>2</sup>	\$2.66	\$3.85
Induced Economic Impact <sup>3</sup>	\$4.73	\$4.96
Total Economic Impact	\$32.84	\$34.26
Multiplier (total impact/direct impact)	1.29	1.35
<b><i>Nonlocal Overnight Trip</i></b>		
Direct Economic Impact <sup>1</sup>	\$146.58	\$146.58
Indirect Economic Impact <sup>2</sup>	\$28.59	\$28.85
Induced Economic Impact <sup>3</sup>	\$33.97	\$34.25
Total Economic Impact	\$209.14	\$209.67
Multiplier (total impact/direct impact)	1.43	1.43

Notes: Overnight expenditures are the simple average of expenditures on and off National Forest System lands. Details may not add to total due to rounding.

<sup>1</sup>Direct economic impact is the average expenditure per visit.

<sup>2</sup>Indirect impacts from IMPLAN reflect increased demand in sectors that directly or indirectly provide support for the recreation industry.

<sup>3</sup>Induced impacts from IMPLAN reflect increased demand in the consumer and government sectors.

Clearly an average spending amount of \$16.21 found for out of region visitation in the KFO analysis cannot be reconciled GRSG analysis that finds out of region recreational users spend between \$34.26 and \$209.67 per day. **Assuming an even split of visitation between day and overnight stays in the KFO planning area, these spending amounts would result in an average recreational spending amount of \$106.46 per day.** The Organizations also vigorously assert that the insufficiency of the KFO analysis is again reflected by the fact the Organizations must guess at visitation breakdowns to the planning area. Visitation is a critical piece of any analysis of recreational usage of public lands.

The Organizations believe a brief discussion of the application of the GRSG economic analysis totals to KFO total recreational user days provides a concrete example of our concerns regarding the total spending amounts previously addressed. While the Organizations are aware there are concerns regarding the factual division of usage, the Organizations believe this example provides sufficient basis for concern regarding the basic accuracy of the economic contribution analysis. **Application of the GRSG daily economic contribution to the total recreational visitor days (740,000) for the KFO reaches a total recreational spend in the KFO**

<sup>56</sup> See, Northwest Colorado Greater Sage Grouse Draft LUPA/EIS- August 2013 Appendix M at pg M-33.

**planning area of \$78,784,000.** This simply cannot be reconciled with KFO conclusions that recreational activity accounts for \$12 million in annual spending to the planning area.

The Organizations believe there must be basic consistency within the agency analysis in the region regarding recreational spending profiles and there currently is not. While the total amount of visitor days and land management allocations will impact total spending conclusions on a local level, average daily spending of a user group will not change significantly within a geographic region. The Organizations believe the KFO analysis is faulty when compared to other regional BLM analysis and must be corrected to avoid an imbalance of uses on the KFO based on facially faulty analysis.

**4b. KFO conclusions of per day user spending conflict with State and user group analysis as well as NVUM analysis.**

The Organizations believe the conclusions regarding economic analysis are directly in conflict with the NVUM data the conclusions are alleged to be based upon, and are completely irreconcilable with other BLM analysis of the planning area, as evidenced by the GRSG. In addition to these conflicts in value, the arbitrary and capricious nature of the conclusions is further evidenced as KFO conclusions conflict with a wide range of analysis that has been performed by the States of Colorado, Wyoming and numerous user groups. Many of these documents were allegedly reviewed in the development of the KFO economic analysis, but no discussion of how the significantly different conclusions were reconciled has been provided in the RMP or FEIS. The conclusions of these user group analysis are identified below:

CPW Big Game Hunting	\$106-216 <sup>57</sup>
CPW Small Game Hunting	\$87-\$94
CPW Fishing	\$67-\$118
COHVCO OHV	\$125-1,225 <sup>58</sup>
Wyoming State Parks	\$98.29- 159 <sup>59</sup>
Snowmobile usage	

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<sup>57</sup> See, CPW; *The Economic Impacts of Hunting, Fishing and Wildlife Watching in Colorado* September 2008 at section III, pg 11. A copy of this report not included in the appeal as this report was relied on for the development of the KFO RMP and FEIS.

<sup>58</sup> COHVCO, *Economic Contribution of OHV Recreation in Colorado*, August 2013 at pg A-3. A copy of this report has been included with this appeal as an exhibit to the original comments.

<sup>59</sup> Wyoming State Parks Snowmobile spending report attached with this appeal. It should be noted the daily spending totals do not include the purchase of equipment used for snowmobile recreation. A copy of this work has been included with this appeal as Exhibit "5". Must be noted these amounts do not include equipment purchases which average \$3367.28 per year

The arbitrary and capricious nature of the KFO conclusions on average recreational spending is directly evidenced by the fact that many of the above resources have allegedly been incorporated in the KFO analysis, but no explanation of how the conclusions are reached is provided, despite NEPA requirements of a detailed statement of high quality information on this type of analysis. Given the disparity of conclusions, the Organizations simply do not see any basis in fact or law for any conclusion other than the KFO conclusions being arbitrary and capricious and lacking factual and legal basis.

It should also be noted that motorized and non-motorized users carry often carry very similar gear in the backcountry in terms of jackets, packs etc and as a result spending profiles for basic gear should be very similar. Where differences occur is with the purchase of motorized equipment, which can often exceed \$12,000 per unit and operation of the unit. COHVCO analysis indicates that the average motorized user spends between \$19 and 40 per day in gasoline. These expenditures would account for the significant differences that the NVUM analysis concludes is present between non-motorized and motorized users even if costs of equipment are not accounted for in the spending profiles.<sup>60</sup>

**4c. KFO conclusions regarding average recreational spending directly conflict with the conclusions that are provided by case studies in the Western Governors recreational analysis.**

The erroneous nature of the KFO conclusions is immediately apparent when compared with outside research, such as the Western Governors Association study of the economics of recreational activity addressed previously. The Organizations note that while the Western Governors Study cited above did not provide specific calculations regarding average spending of recreational users, the study was issued with a large number of companion site specific case studies.<sup>61</sup> Many of these case studies did provide a total visitor days number and a total spending amount as part of their analysis and as a result an average daily spend for recreational activity could be calculated. Western Governors site specific analysis did not exclude local spending of recreational users, making the following comparison strong direct evidence of the arbitrary nature of the KFO conclusions that assert to have excluded local spenders, as local spending amounts are consistently lower than that of the “out of region” user groups the KFO alleges are the basis of the analysis.

After calculating the average daily spend for a wide range of recreational activities in locations throughout the west, the Organizations are forced to conclude that these case studies are entirely consistent with the outside data as these case studies had a total spending range of low

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<sup>60</sup> COHVCO, *Economic Contribution of OHV Recreation in Colorado*, August 2013 at pg A-3.

<sup>61</sup> See, Western Governors' Association; *The West; A Wealth of Recreational Opportunities Report*. A copy of this report is attached to these comments as Exhibit 4.



\$20 per day to a high of \$190 per day and the bulk of areas finding an average spend in the \$45 to \$70 per day range. Again these conclusions simply cannot be reconciled with the spending amounts determined in the KFO planning process. These conclusions must be corrected and usages rebalanced in the planning area.

**6a. KFO conclusions regarding recreational jobs are arbitrary and capricious, when compared to other BLM initiatives and State resources.**

As the Organizations have previously noted there are three major points of comparison for economic analysis issues, and the Organizations have identified significant concerns between the analysis of the KFO RMP and both USFS and BLM analysis for the planning area for both total spending and average spending per day for recreational usage. The KFO RMP conclusions regarding jobs resulting from recreational usage is also arbitrary and capricious and fails to comply with relevant planning statutes. The Organizations are aware that portions of the total jobs that are identified in the following conclusions are related to public lands that are not under KFO management but the KFO RMP conclusions simply cannot be reconciled in any manner with the conclusions from other forms of analysis as well.

The KFO RMP asserts all recreation accounts for 280 jobs<sup>62</sup> and tourism accounts for 367 jobs<sup>63</sup> within the planning area or 647 jobs total. The KFO conclusions are completely inconsistent with the conclusions that the BLM has reached as part of the Greater Sage Grouse planning despite most of the KFO planning area being designated as GRSG habitat and analysis using the same model over the same time frame. The BLM GRSG planning estimates that in Jackson, Grand, Larimer and Summit county planning area 808 jobs are related to hunting and fishing.<sup>64</sup> Estimates for Eagle county were withheld for confidentiality reasons as part of the GRSG planning. The GRSG also estimates that 11,758 jobs result from arts, entertainment and recreational usage of the multi-county planning area.<sup>65</sup> When combined the GRSG analysis finds that 12,566 jobs result from hunting, fishing and recreation in the planning area. The KFO position that KFO lands result in only 5% of jobs in the planning area completely lacks rational or factual basis. The Organizations vigorously assert that these conclusions simply cannot be reconciled and are further evidence of the arbitrary and capricious analysis process that has been applied in the KFO planning process.

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<sup>62</sup> See, Kremmling Field Office - RMP and FEIS at page 3-244.

<sup>63</sup> See, Kremmling Field Office - RMP and FEIS at page 3-254.

<sup>64</sup> See, Department of Interior, Bureau of Land Management; *Northwest Colorado Greater Sage-Grouse Draft LUPA/EIS* (August 2013) at Appendix M pg m-1.

<sup>65</sup> See, Department of Interior, Bureau of Land Management; *Northwest Colorado Greater Sage-Grouse Draft LUPA/EIS* (August 2013) at Appendix M pg m-2.

For further comparison, the State of Colorado estimates that hunting and fishing activity alone accounts for 4,065 jobs in multicounty analysis area<sup>66</sup>. Clearly, when all recreational activity is addressed the total should exceed that found in a single usage encompassed in the recreational usage category as a whole. The State of Colorado further found that tourism/travel in multicounty area accounts for 12,680 jobs.<sup>67</sup> Again, the Organizations vigorously assert that recreational usage in Jackson County is highly related to recreational activity given the low levels of overall development in Jackson County.

COHVCO economic contribution analysis further found that OHV recreation accounts for 1,016 jobs in the KFO region, or almost double the number of jobs are present from OHV recreation as the KFO asserts are present for all recreational usage.<sup>68</sup> Again the Organizations simply are unable to find any credibility in a conclusion that all recreational usage accounts for a significantly smaller amount of jobs than are found to result from a single sector of recreational usage.

CPW analysis specifically states as follows:

"In Jackson County, hunting and fishing activities directly or indirectly support more than 12 percent of all local jobs."<sup>69</sup>

CPW further concludes that Grand County is the 5th most reliant county in the state on hunting and fishing related jobs as 5.1% of their jobs are related to this activity.<sup>70</sup> The Organizations vigorously assert that these conflicts in analysis are direct evidence of the arbitrary and capricious nature of the conclusions that have been reached in the KFO planning process and evidence analysis that relied on something other than best available science for the analysis of these issues.

As extensively outlined in the comments previously provided on the KFO draft, CPW has consistently asserted there is a critical lack of access to the planning for purposes of hunting and fishing, and specifically addressing numerous areas on the KFO that are of specific concern. These concerns must be provided proper weight and analysis in the planning process as these are state partner planning documents developed for the KFO. At no point is there any basis provided to explain how these concerns are consistent with closure of 50% of routes to multiple usage.

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<sup>66</sup> See, CPW, Economic analysis of hunting and fishing at §IV page 16 & 17.

<sup>67</sup> See, CPW, Economic analysis of hunting and fishing at §IV page 16 & 17.

<sup>68</sup> See, COHVCO, Economic contribution of OHV recreation at pg ES-6.

<sup>69</sup> See, CPW, Economic analysis of hunting and fishing at §IV page 15.

<sup>70</sup> See, CPW, economic analysis of hunting and fishing at §IV page 15.

The Organizations vigorously assert that the KFO conclusions regarding recreationally related jobs are arbitrary and capricious as a matter of law and represent a significant failure of analysis in issues that are highly important to the tax base of local communities. These issues must be addressed accurately in order to develop a plan that meaningfully addresses these issues, and complies with statutory requirements that economic analysis be systematically addressed in the planning process.

**7a. There have been significant changes in economic totals for recreational spending and recreationally related visitation totals which have not been systematically analyzed.**

In addition to the failures in economic analysis addressed previously, the Organizations vigorously assert there has been a complete failure of the systematic integration of economics into the KFO planning process. The failure to meaningfully integrate these changes into the allocation of resources available for these uses compounds existing issues with resource allocation for recreational usage, which the KFO has repeatedly identified as the largest reason for visitation to the planning area.

**This failure to integrate economics into the planning process is evidenced by the fact that total recreational spending and total recreational visitation has doubled in the FEIS in comparison to the DEIS but recreational resources and opportunities on the KFO have actually reduced between the draft and final versions of the KFO plans.** Given that recreationally related visitation is doubling between the draft and final versions of the RMP, the Organizations believe that there would be some discussion of how these changes are addressed moving forward. Rather than providing a discussion of this issue, these changes are not even noted in the sections of the RMP that are prepared to directly address changes that have occurred between the draft and final versions of the RMP and EIS. The Organizations vigorously assert that this fact pattern lacks factual and legal basis and is direct evidence of the complete failure to meaningfully integrate economics and recreational usage in the planning process.

Prior to addressing the specifics of the failure to systematically incorporate best available science in planning, the Organizations believe the applicable standards for this process must be addressed. Federal Lands Planning and Management Act specifies the various criteria that must be incorporated at specific times in the development of a land use plan as follows:

**“(c) In the development and revision of land use plans, the Secretary shall–**

**(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;...”<sup>71</sup>**

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<sup>71</sup> See, 43 U.S.C. §1712

The development of resource management plans is further governed by the Multiple Use Sustained Yield Act that provides as follows:

***Multiple use - the "management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people ...." <sup>72</sup>***

The MUSYA further mandates that a transportation network be provided to allow for usage of public lands to best meet the needs of the American people.

Pursuant to the DRMP and DEIS recreational visitation of 359,021 days<sup>73</sup> in the KFO resulted in a total economic contribution of \$5.6 million to the KFO analysis area.<sup>74</sup> To support this usage the DEIS provided 872 miles of full size trails, 14 miles of ATV routes and 21 miles of motorcycle single track that were open to the public for recreational usage.<sup>75</sup> By comparison the FEIS provides an estimated visitation of 740,000 visitor days of recreational usage and 862 miles of full size, 12 miles of ATV trail and 15 miles of motorcycle trail.<sup>76</sup> For purposes of comparison the alternatives are compared as follows:

	<u>DEIS - 359,021 visitor days</u>	<u>FEIS- 740,000 visitor days</u>
Full Size Vehicle	872 miles	862 miles
ATV	14 miles	12 miles
Motorcycle	<u>21 miles</u>	<u>15 miles</u>
Total	907 miles	889 miles

The Organizations are not able to find any other portions of the FEIS where additional recreational opportunities have been provided to address the doubling of recreational visitation to the FO, compounding the failure to meaningfully analyze the impact that doubling recreational visitation would have on the scope and quality of recreational opportunities provided and the sustainability of resource allocations being made in the plan over the life of the RMP. This type of allocation of resources would include future parking area development, bathroom facilities and user visitation trends spread across the FO. The Organizations vigorously assert that a detailed statement of high quality information regarding how doubling visitation would impact resource allocations as less opportunity for recreational usage can possibly provide the same quality and scope of experience for recreational usage as was

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<sup>72</sup> See, 16 USC §531(a).

<sup>73</sup> See, KFO DEIS and DRMP at pg 3-240.

<sup>74</sup> See, KFO DEIS and DRMP at pg 3-239.

<sup>75</sup> See, KFO DEIS and DRMP Appendix p page v-4.

<sup>76</sup> See, KFO FEIS and RMP Appendix p at pg p-4.

provided under the DEIS. The Organizations believe such a discussion would clearly lack factual basis and would be legally indefensible as well.

The Organizations are also vigorously opposed to these arbitrary conclusions as they directly conflict with the methodology for application of economic and visitation data that is provided in the USFS NVUM process, more specifically the parking lot development example addressed in earlier portions of this appeal.<sup>77</sup> The Organizations vigorously assert that the implications of the NVUM parking lot example are far more significant when the same types of analysis applied in the NVUM parking lot analysis are applied at the field office level. Doubling of visitation to the parking lot area that is provided in the NVUM example would clearly result in significantly more opportunity for recreational usage of the area being provided and directly contradicts the KFO assertion that doubling recreational usage of the KFO will require no additional resources. The Organizations vigorously assert that the failure to provide any analysis of these identified impacts is arbitrary and capricious as a matter of law and a violation of numerous statutory requirements for federal planning.

**7b. The 41% decline in tourism/recreation related jobs is not explained and directly conflicts with the asserted doubling of visitor days and recreational spending between the DEIS and FEIS.**

The KFO's failure to meaningfully integrate economics into the planning process manifests itself in another manner as well. In the DEIS and DRMP, the KFO asserted that there were 1,095 jobs in the planning area as a result of recreation and tourism.<sup>78</sup> This estimate was reduced by 41% in the FEIS and RMP to an estimate of 647 jobs in total without explanation or analysis despite the fact that the KFO doubled the economic contributions and visitor days between the draft and final versions of these documents. The Organizations vigorously assert this type of analysis is arbitrary and capricious as a matter of law and fact as employee efficiency simply will not vary in the manner it has in the RMP and EIS, doubling visitation to any recreational facility will require more employees, not less. While the amount of increase is not relevant to this discussion, the positive relationship of these factors cannot be overlooked. The Organizations simply cannot surmise any rational basis for doubling visitation and reducing jobs related to this activity by almost half. Clearly this conflict in analysis evidences analysis based on something other than best available science.

In the DRMP and DEIS, the KFO asserted there was 938 jobs that were tourism related in the planning area.<sup>79</sup> For reasons that are unclear this estimate was reduced to 367 or experienced

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<sup>77</sup> See, UDSA Forest service NVUM analysis; Stynes and White November 2010 at pgs 22-28.

<sup>78</sup> See, Kremmling Field Office - Draft RMP and EIS- Volume One at page 3-248 & 2-238.

<sup>79</sup> See, Kremmling Field Office - Draft RMP and EIS- Volume One at page 3-248

a 62% decline over the two year period between release of the draft RMP and final RMP. Again no basis or discussion of why this analysis was changed between the documents has been provided. The Organizations again assert this type of analysis fails to satisfy relevant planning requirements and is direct evidence of the arbitrary and capricious nature of the economic analysis of recreational issues in the KFO planning process and evidences a complete failure of compliance with relevant planning statutes and requirements.

#### **8. The mandatory economic strategies workshop did not occur.**

The Organizations membership has been involved in meetings with KFO planning personnel since the release of initial notice documentation relative to the DRMP. While our members are actively involved, none can recall any public meetings regarding economic contribution analysis. A review of the RMP, EIS and KFO website yields no additional information regarding such a workshop. Economic Strategies Workshops are required under BLM planning standards as follows:

##### **"B. Economic Strategies Workshop**

The public involvement effort on all new RMPs, RMP revisions, and RMP amendments accompanied by EISs **must** include at least one economic strategies workshop. Such workshops provide an opportunity for local government officials, community leaders, and other citizens to discuss regional economic conditions, trends, and strategies with BLM managers and staff."<sup>80</sup>

The Organizations believe such a Workshop would have been exceptionally helpful in resolving many of the issues that are now raised in this appeal, as both the process relied for development of KFO economic contribution analysis and the results asserted to have been reached would have been found facially unsatisfactory and could have been resolved immediately in the planning process. Rather the Organizations now must appeal what is an unsatisfactory range of alternatives and final alternative to be released in the RMP at far greater expense to the office.

The Failure to comply with these BLM planning requirements has directly resulted in determination being made in the KFO planning process that lacks legal and factual basis, and has resulted in an allocation of resources in the KFO that fails to integrate recreational usage, which has been repeatedly identified as the major usage of the planning area, over the life of the RMP.

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<sup>80</sup> See, BLM LUP Handbook Appendix D pg 10.

## **9. No travel management maps for preferred Alternative are provided.**

The Organizations are opposed to the fact that the RMP provides for the creation of a hybrid alternative from the draft plan alternatives. At no point are there any maps provided that outline the travel management decisions for the new preferred Alternative and throughout the RMP and EIS no analysis of the hybrid alternative that is being adopted is provided. Many of the charts and other analysis are simply carried forward from the draft version of this document. The RMP does provide a detailed map package for travel management but this package is not clearly identified. It is the Organizations position the public should not have to guess on issues of this significance, and the failure to provide clear guidance regarding the

## **10a. Baseline standards for landscape level planning for wildlife are not supported by best available science.**

The Organizations are very concerned regarding the application of landscape level standards for the management of wildlife in the KFO planning process. It has been the Organizations experience that wildlife related issues are highly localized issues and that landscape level standards are frequently ineffective. This position has been echoed by recent Research Station USFS analysis, which concludes as follows:

"Actions such as limiting grazing or closing OHV trails have historically been some of the primary tools used by land managers in southern Nevada to reduce the effects of anthropogenic stressors on species of conservation concern..... It is evident from this body of research that very little is known about the relative threats posed to, or the mitigation actions needed to protect, virtually any species, except perhaps the desert tortoise. **Too often research jumps immediately to mitigation strategies without first determining what specific factors pose the greatest threats and are the most important to mitigate. In addition, the evaluation of potential threats typically focuses upon the usual anthropogenic suspects (e.g. OHVs, livestock grazing, invasive species, and climate change) without first carefully considering which factors are most likely to pose the greatest threats.**"<sup>81</sup>

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<sup>81</sup> See, USDA Forest Service, Rocky Mountain Research Station; *The Southern Nevada Agency Partnership Science and Research Synthesis; Science to Support Land Management in Southern Nevada; Executive Summary*; August 2013 at pg 38.

The Organizations will note that recreational impacts to wildlife at a landscape level is an issue that has been heavily researched in the Yellowstone National Park for an extended period of time, and these conclusions are virtually identical to those found by the USFS Research Station. The Yellowstone research has uniformly concluded:

“Based on these population-level results, we suggest that the debate regarding effects of human winter recreation on wildlife in Yellowstone is largely a social issue as opposed to a wildlife management issue. Effects of winter disturbances on ungulates from motorized and non-motorized uses more likely accrue at the individual animal level (e.g., temporary displacements and acute increases in heart rate or energy expenditures) than at the population scale. A general tolerance of wildlife to human activities is suggested because of the association between locations of large wintering ungulate herds and winter recreation. Habituation to human activities likely reduces the chance for chronic stress or abandonment of critical wintering habitats that could have significant effects at the population level, especially when these activities are relatively predictable.”<sup>82</sup>

In addition to the application of landscape level planning to address local issues, many of the standards and analysis fail to address the primary threat to the species, while asserting best available science requires closures to multiple use recreation. This type of a position is simply unacceptable, arbitrary and a violation of NEPA requirements regarding planning be based on best available science.

**10b. Landscape level big game habitat standards completely lack scientific basis.**

As previously noted the Organizations are deeply concerned regarding the application of landscape level management standards for the mitigation and management of local issues. The KFO RMP proposes to manage all habitat under the following standards:

"Desired Outcome: Create optimum winter range and summer/transition habitat conditions for big game, targeting a ratio of 60 percent foraging habitat to 40 percent escape/hiding/thermal/birthing cover.”<sup>83</sup>

The Organizations vigorously assert there is no basis for these standards, and such a standard would be highly questionable in nature as forage habitat is frequently impacted by many local

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<sup>82</sup> US Park Service; White and Davis; *Wildlife response to motorized recreation in the Yellowstone Park; 2005 annual report*; at pg 15.

<sup>83</sup> Kremmling RMP pg 2-113



issues such as terrain and variable levels of quality in the forage habitat. Much of the KFO planning area has been heavily impacted by the Mountain Pine beetle, which has clearly made previously quality forage habitat of a significantly lower quality. These issues simply cannot be addressed in the RMP process, but can only be addressed with the active management of resources, which this standard simply has not relationship too.

BLM has attempted to apply similar standards in the GRSG analysis, with standards for surface disturbance and these proposals have met with significant opposition from a wide range of groups, including Colorado Parks and Wildlife, the Agency that is currently primarily tasked with the management of the Grouse. These issues simply must not be overlooked and have clearly been identified as being based on something other than best available science.

**10c. Big horn sheep management standards applied in the TMP directly contradict with CPW management standards.**

The Organizations believe the management of big horn sheep habitat is another area where there is a very weak basis for KFO management decisions and closures have been impacted by the reliance on bad science and the undervaluation of recreational activity on the KFO. While there is an asserted concern about disturbance from motorized routes impacting big horn sheep, these concerns become untenable for the basis of management after further investigation. The investigation reveals there are no CPW plans in place for the management of sheep and all areas remain open for hunting. While there are no local management plans for big horn sheep in the KFO, CPW has created a statewide management guideline regarding the threats to the Big Horn.

Frustration from these arbitrary decisions in the KFO planning process is further increased when users realize the primary threat to sheep identified in the CPW state level planning documents remains unmanaged in areas that are closed to motorized users allegedly to protect sheep habitat. CPW has developed a statewide management plan for the big horn sheep. This plan clearly notes that motorized routes are a low priority management issue, as the primary threat to big horn sheep is a virus easily transferred from domestic herd animals. The CPW statewide big horn sheep plan explicitly states:

**"Bighorn sheep managers generally agree that bacterial pneumonia (also called "pasteurellosis") is the main reason for Rocky Mountain bighorn sheep population declines** across much of the west in recent decades.... There are a number of strains of *Pasteurellaceae* commonly carried by domestic sheep and goats that are highly pathogenic to bighorns, and introduction of a pathogenic

strain or another novel pathogen into populations can cause all-age die-offs and lead to low lamb recruitment.

**Based on a substantial volume of literature, one of the most important aspects of wild sheep management is to keep these species separated from domestic sheep and goats."**<sup>84</sup>

The statewide sheep management plan does discuss other factors that maybe impacting sheep on a localized level. These factors are summarized as:

"Other problems such as unregulated harvest, overgrazing, competition with other livestock, plant community succession and forestation of native ranges, and increasing human development of winter ranges have been identified as contributing to bighorn sheep declines either historically or presently."<sup>85</sup>

Clearly, these management factors fall well short of creating a sufficient basis to mandate route closures. The Organizations vigorously assert closing routes to motorized usage will not address the spread of disease from domestic herd animals to big horn sheep. Any assertion this management is proper is simply not factually and rationally based and must be avoided. Route closures are a poor tool to address the impacts of disease from herd animals, which is clearly identified as the single greatest threat to Big Horn sheep. Decisions that arbitrarily place one user group priorities significantly ahead of others is not good management and directly fosters conflicts between users and agency staff.

Concerns regarding possible disturbance of sheep from a low speed, low volume forest road in an area that remains open for hunting becomes more problematic when research comparing game response to hunting pressure in OHV areas is addressed. Research has found that big game response to hunting pressure has always been more significant than response to other factors in the same habitat areas, such as roads. CPW researchers have specifically concluded that game immediately move away from hunters without regard to the number of roads in the area when hunting season opens. This research specifically addressed the increasing level of movement from each hunting season as follows:

"After eliminating the effects of primary and secondary roads, elk were farther from primitive roads than random points within the study area for all 10-day

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<sup>84</sup> George et al; Colorado Division of Wildlife; *Colorado Bighorn Sheep Management Plan 2009-2019*; February 2009 at pg 2

<sup>85</sup> *Id* at pg 1.

intervals except 1-10 October (Table 2). Elk were farther from secondary roads through the period of 1-10 October after which elk dispersion patterns were indistinct relative to secondary roads. Elk locations relative to primary roads were similar to those for primitive roads in that elk were increasingly closer to primary roads during the 10-day intervals from 22 August to 10 October. After 11 October, the average distance of elk to primary roads increased through 30 November.”<sup>86</sup>

Clearly, management concerned about disturbance of animals must start by addressing the primary source of the issue. Management of secondary factors simply will never address the problem, but will significantly increase conflicts between agency personnel and the public and general levels of frustration. The Organizations have to note the high degree of frustration from management decisions that arbitrarily place some users at much higher priority than others and attempt to manage issues with tools that can never correct the issues.

**10e. Sage Grouse Habitat management standards do not apply best available science.**

The Organizations are deeply concerned that best available science has not been relied on in the KFO planning process as Sage Grouse habitat areas are addressed by limiting roads and trails that may have existed in the area.<sup>87</sup> This is an issue that has been highly discussed in the Greater Sage Grouse LUPA that has been occurring as the same time as development of the KFO plan. The Organizations vigorously assert that any decision regarding recreational usage made in the GRSG planning process will be far more favorable to that usage as the GRSG process more accurately reflects the importance of recreational usage of habitat areas as the GRSG estimates are simply more accurate than anything in the KFO analysis. These issues are discussed in previous portions of the appeal.

There is general consensus among researchers that road and trail activity has little to do with the decline of the Greater Sage Grouse and CPW research has provided conclusive analysis to this effect in the GRSG planning process. This research is clearly best available science on the issue and the KFO planning process must include this analysis as well. Mitigating the impacts of bad science in the GRSG planning process but applying the same bad science at the Field Office level makes little sense and would negate efforts currently targeting the development of plans based on best available science in the GRSG planning efforts.

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<sup>86</sup> Rumble, Mark A; Benkobi, Lahkdar; Gamo, Scott R; 2005. *Elk Responses to Humans in a Densely Roaded Area*; Intermountain Journal of Sciences. 11(1-2); 10-24 @ pg 17-18.

<sup>87</sup> Kremmling RMP Appendix P at page P-18.

The Organizations vigorously assert the possible impacts of road and trail usage is an issue that has been addressed in extensive research conducted by Colorado Parks and Wildlife and that the proposed threat/management and analysis is not supported by this research. While this research is in regard to the Gunnison Sage Grouse, rather than the Greater Sage Grouse, as noted in the status proposal for the Gunnison Sage Grouse, there is significant overlap in research between the Greater Sage Grouse and Gunnison Sage Grouse. The status decision clearly states:

"Gunnison sage-grouse and greater sage-grouse (a similar, closely related species) have similar life histories and habitat requirements (Young 1994, p. 44). In this proposed rule, we use information specific to the Gunnison sage-grouse where available but still apply scientific management principles for greater sage-grouse (*C. urophasianus*) that are relevant to Gunnison sage-grouse management needs and strategies...."<sup>88</sup>

Given the overlap of research and limited research that has been provided on this issue for the greater Sage Grouse, the Organizations believe this research is compelling for both species and has provided a complete copy of these comments for analysis of this issue based on best available science. This research specifically concludes as follows:

"To explore the role that roads may play on the population of GuSG in the Gunnison Basin, CPW conducted a GIS analysis of the frequency (at 100 m intervals) of the Euclidean distances for successful and unsuccessful nests to the nearest road. Roads include highways and county roads in Gunnison and Saguache counties. "Primitive" roads were not included as was done in Aldridge et al. (2012), thus making our analysis a more conservative approach. Figure 3 illustrates a declining trend in the number of nests further away from roads with no apparent impact on nest success (i.e., grouse are not "avoiding" roads as suggested in Aldridge et al. (2012)). Approximately 45% of the nests are within 300 m of a road and 70% of the nests are within 500 m. The frequency declines > 500 m from a road. Apparent nest success was similar across all intervals. This analysis does not account for age (yearling vs. adult), renesting (however, only 3.2% of females[6/185 nests] renested), or time (same female observed across years).

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<sup>88</sup> Department of Interior; Endangered and Threatened Wildlife and Plants; *Designation of Critical Habitat for Gunnison Sage-Grouse*; 78 Fed. Reg 2540 ( Jan. 11, 2013) at pgs 2552-2556.

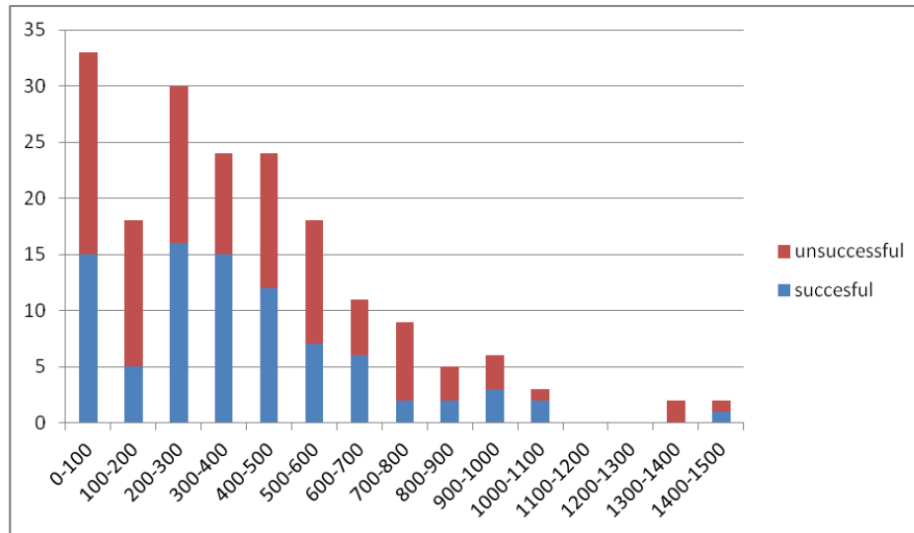


Fig. 3. Frequency of successful and unsuccessful nests (n=185) at 100 m interval distances from roads in the Gunnison Basin population (2005-2010). Roads include highways and county roads (primitive and 4-wheel drive roads are not included).

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The Organizations respectfully submits that the work and analysis provided in the comments of Colorado Parks and Wildlife regarding the lack of impact to Grouse activities from the dispersed road and trail network clearly represent best available science on this issue and must be addressed. Merely asserting an impact is present, in light of this research, fails to address statutory requirements that best available science be relied on in ESA issues.

**10f. Lynx management standards directly conflict with BLM management standards for the management of the species and best available science.**

The Organizations welcome reliance on the Kolbe article as authority for the management of the Lynx in the RMP and FEIS. Unfortunately, there have been significant changes in the management of the lynx between the release of the draft and final versions of the RMP that have not been included in the RMP analysis of habitat areas for the lynx. These changes were summarized in the 2013 Lynx Conservation Assessment and Strategy (2103 LCAS) that was adopted as part of a multi- agency process that involved the BLM. A copy of the 2013 LCAS was specifically sent to the KFO in order to avoid the reliance on out of date information in the planning process.

The 2013 LCAS clearly represents best available science and specifically superseded the 2001 LCAS that the RMP was based on, which was highly theoretical on many issues related to recreational activity in lynx habitat areas. Best available science planning requirements does

<sup>89</sup> See, CPW Gunnison Sage Grouse comments dated April 1, 2013 at pg 8-9. A complete copy of the CPW comments regarding the Gunnison Sage Grouse have been included with this document for your reference.

not mandate application of the most restrictive standards on any issue, and application of lesser restrictive standards for the management of species would reflect integration of economic impacts from public lands usage as part of the planning process. Lynx management is a major issue on the KFO as reflected by the fact that the RMP recognizes large portions of the planning area are lynx habitat.<sup>90</sup>

The Organizations wanted to highlight some of the more significant changes in lynx management standards between the draft Kremmling RMP and the 2013 LCAS including:

- Recreational usage of lynx habitat is a second level threat and not likely to have substantial effects on the lynx or its habitat. Previous theory and management analysis had placed a much higher level of concern on recreational usage of lynx habitat;<sup>91</sup>
- Lynx have been known to incorporate smaller ski resorts within their home ranges, but may not utilize the large resorts. Dispersed motorized recreational usage certainly does not create impacts that can be equated to even a small ski area;<sup>92</sup>
- Road and trail density does not impact the quality of an area as lynx habitat;<sup>93</sup>
- There is no information to suggest that trails have a negative impact on lynx;<sup>94</sup>
- Snow compaction from winter recreational activity is not likely to change the competitive advantage of the lynx and other predators;<sup>95</sup>
- Snow compaction in the Southern Rocky Mountain region is frequently a result of natural process and not recreational usage;<sup>96</sup>
- Winter recreational usage of lynx habitat should only be "considered" in planning and should not be precluded given the minimal threat this usage poses to the lynx; and<sup>97</sup>
- Failing to manage habitat areas to mitigate impacts of poor forest health issues, such as the spruce and mountain pine beetle, is a major concern in lynx habitat for a long duration.<sup>98</sup>

The Organizations vigorously assert that these factors must be incorporated into the planning process, both under requirements of best available science being relied on in the planning process and integration of economic analysis into the planning process. The Organizations believe these changes will significantly impact allocation and development of site specific

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<sup>90</sup> See, KFO RMP Map 3-17 at pg 165.

<sup>91</sup> 2013 LCAS at pg 94.

<sup>92</sup> 2013 LCAS at pg 83.

<sup>93</sup> 2013 LCAS at pg 95.

<sup>94</sup> 2013 LCAS at pg 84.

<sup>95</sup> 2013 LCAS at pg 83.

<sup>96</sup> 2013 LCAS at pg 26.

<sup>97</sup> 2013 LCAS at pg 94.

<sup>98</sup> 2013 LCAS at pg 91.

resources on the KFO planning area over the expected 20 year life of the RMP. Clearly the adoption of these less restrictive standards would allow more public access to lands identified as lynx habitat and must be incorporated in the RMP as the 2013 LCAS was released almost 1 year prior to the release of the KFO RMP and FEIS.

## **11. Conclusion**

The Organizations vigorously assert that there are numerous foundational analysis errors in the KFO RMP and FEIS that have directly contributed to the levels of closures to recreational opportunities that is now proposed. These failures of analysis represent facial violations. These analysis errors include the arbitrary and capricious manner that recreational usage has been valued at, despite recreational usage being repeatedly identified as the primary usage of lands in the KFO planning area. The KFO conclusions repeatedly assert reliance on USFS NVUM process for their analysis but KFO conclusions represent only approximately 20% of the average daily recreational spending totals found by USFS NVUM analysis. It is the Organizations position these conclusions are arbitrary and capricious as a matter of law and have directly resulted in the high closures to recreational opportunities.

The KFO conclusions for recreational spending have occurred under analysis of a single agency at the same time, using the same modeling methods, for the same geographic areas as the GRS planning process. Despite the similarity of analysis the KFO finds average daily spending amounts for recreational users that are less than 10% of the GRS conclusions for the same activity. This can be nothing but arbitrary and capricious as a matter of law and again have directly resulted in the high levels of closures to recreational opportunities proposed in violation of federal law, numerous Executive Orders and BLM planning guidelines.

The Organizations are further very concerned that economic analysis conclusions simply have not been integrated in any manner into the KFO planning process, which appears to have merely filled in boxes on a form rather than integrate conclusions and analysis together. This position is directly supported by the changes between draft and final versions of these documents that doubled recreational visitation and spending but cut the number of jobs that result from this activity in half. This simply lacks any basis in law or fact. The lack of integration of economics in the planning process is further evidenced by the fact that visitation between the draft and final versions of the plan has doubled but the amount of recreational opportunity has been reduced, without explanation.

It is the Organizations vigorous position that the KFO plan and all associated documents must be remanded to the KFO in order to allow for the development of economic analysis of recreational activity that reflects the significance of recreational usage of the KFO to local communities and the State of Colorado as a whole. Once the economic importance of

recreational usage is accurately established, resource allocation decisions must be remade to provide a balance of usages that reflects the economic importance of recreation and provides opportunities that can accommodate doubled visitation to the KFO planning area.

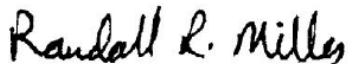
If you have questions regarding this appeal, please feel free to contact Scott Jones, Esq. at 508 Ashford Drive, Longmont, CO 80504. His phone is (518)281-5810 and his email is scott.jones46@yahoo.com.

Sincerely,



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