



August 20, 2022

BLM Hassayampa Field Office
VIA: Comment now Portal

RE: Black Canyon Corridor Travel Management Plan

Dear Sirs;

Please accept these comments as the vigorous opposition from a broad spectrum of multiple use motorized recreational interest groups to the Proposal and range of alternatives that have been provided. Our most specific concern involves the ongoing desire of local land managers to designate exclusionary corridors around any route that has been designated pursuant to the National Trails System Act. This type of exclusionary non-motorized corridor conflicts with recent decisions by the US Supreme Court, the Trails System Act and the Relevant Resource Management Plan for the SRMA. While the Organizations may be able to envision some type of corridor concept being applicable to the area, where uses unrelated to the trail are restricted or prohibited, we are unable to envision where trail usages are restricted or prohibited given the usages identified in the SMRA and relevant statutes and US Supreme Court decisions. The Organizations vigorously assert that the conflict with the RMP is unresolvable as the management direction for these areas as laid out in the RMP are not even arguably addressed in any alternative of the Proposal.

Prior to addressing our specific concerns with the Proposal, we believe a brief summary of each Organization is needed. The Trails Preservation Alliance ("TPA") is a volunteer organization created to be a viable partner to public lands managers, working with the USFS and the Bureau of Land Management (BLM) to preserve the sport of trail riding and multi-use recreation. The TPA acts as an advocate for the sport and takes the necessary action to ensure that the USFS and BLM allocate a fair and equitable percentage of public lands access to diverse multi-use recreational opportunities. TPA is referred to as "The Organization" for purposes of these comments.

1. The Proposals exclusionary corridors conflict with the US Supreme Courts 2020 Cowpasture decision applying the National Trail System Act.

The above Organizations wanted to provide a copy of the 2020 US Supreme Court ruling clarifying the management relationship of lands that are managed under multiple use mandates by the USFS and also designated as a National Trail System Route, such as the Black Canyon National Recreation Trail. We have been active participants in the winter travel planning on the multiple forests in California and are intimately aware of the conflict around management of these areas in the winter travel planning process and are intimately aware of the massive amounts of conflict that can result from the possible application of exclusionary corridors such as those now proposed. We are aware winter travel management is not at issue here but our experiences in these efforts remain highly relevant to the current effort.

In the 7 to 2 ruling entitled *US Forest Service vs. Cowpasture River Preservation Association*¹, the US Supreme Court addressed the management relationship of the National Trails System Act and the Multiple Use mandate of the US Forest Service for the corridors around NTSA routes and the designated trail itself. We have enclosed a complete copy of the Supreme Court decision and Congressional Research Service Report summarizing the decision. **The Supreme Court clearly stated the mere designation of any route under the National Trails System Act does not alter the multiple use mandate of the agencies managing this land.** Economic impacts of excluding multiple uses from these areas was a major concern in these discussions.

The Court also clearly found that the use of the right of way concept was not intended to alter the multiple use mandate but rather was a limited transfer of management authority between the Acts. The Court clearly stated if Congress had the desire to remove the multiple use mandates from these Routes, Congress clearly could have. The Court fought Congress did not do this. The Court compared the retained multiple use mandate of the National Trails System Act to the Congressional decisions to remove Wild and Scenic Rivers from the Multiple Use mandates for areas designated. The Court ruling provides significant protection for continued multiple use access to public lands and prohibits many of the proposed closures of the trail and adjacent areas to multiple usage recreation.

The Organizations would additionally note that many of the Organizations which have been seeking these exclusionary corridors in the travel plans on the Field Office, made these same arguments to the Supreme

¹ [18-1584 United States Forest Service v. Cowpasture River Preservation Assn. \(06/15/2020\) \(supremecourt.gov\)](https://www.supremecourt.gov/opinions/18-1584)

Court. The Court failed to apply these concepts, which are discussed in detail in the dissenting opinion that only garnered 2 votes, leaving little room for continued application or analysis of these positions in planning. The Organizations vigorously assert that the Proposal must be withdrawn and a range of alternatives provided that align with the 2020 US Supreme Court *Cowpasture* decision that mandates multiple use mandates remain on the lands regardless of the designation of routes by Congress.

2. Exclusionary Corridors and exclusive usage requirements directly conflict with the provisions of the National Trails System Act.

Given the Black Canyon National Recreation Trail is a NTSA designated route, Congressional requirements for its management and the intent of Congress in their efforts is critically important to the scope of allowed and prohibited on particular segments of trail. Since 1968, NTSA specifically identifies that **all** segments of the National Trails System shall be managed as follows:

“Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple use plans for that specific area in order to insure continued maximum benefits from the land.”²

Congress clearly had the opportunity to manage NTSA routes under a single management standard, such as “horse or hike only” and specifically chose not to require such management but rather specifically provides that management must be harmonized with existing multiple use goals and objectives for the areas. As discussed in later portions of these comments, Congress has provided great deal of documentation regarding why the NTSA has been framed in the manner it is currently in. Many of these concerns are highly relevant to the Proposal as the Organizations are very concerned that improper application of NTSA requirements in the Proposal would allow these types of decisions to be applied in other portions of the Black Canyon NRT. This larger scale application of exclusionary standards would immediately create many of the same conditions that are addressed and avoided in the Congressional reports prepared around the NTSA and related amendments.

² See, 16 USC 1246(a)(2) emphasis added.

Congress has resolved these conflicts in a clear manner and this has allowed a significant expansion of the number of NTSA routes, and this type of a concern is outside the scope of NEPA analysis for the Proposal but is also highly relevant to the discussion and our concerns. The NTSA also specifically identifies that all national trails shall be managed as follows:

“(2) National scenic trails, established as provided in section 1244 of this title, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass.”³

As the Black Canyon National Recreation Trail is a National Recreation Trail, Congress has specified that all national trails be managed to provide for the maximum outdoor recreational potential. This Congressional intent for this amendment was clarified in 1983 with the addition of NTSA subsection j which specifically permits multiple uses of all NTSA routes as follows:

“(j) Types of trail use allowed

Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. **Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles.** In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this chapter or other Federal laws, or any State or local laws.”⁴

³ See, 16 USC 1242 (a)(2).

⁴ See, 16 USC 1246 (j).

When subsection j was added to §7 of the NTSA in 1983 generally allowing a wide range of uses on all routes identified under any designation, Congress clearly stated the desire to permit multiple use of trails outside Congressionally designated Wilderness areas. This is clearly stated in the bill memo which provides as follows:

“A new subsection 7(j) is added to specify various types of potential uses which may be allowed on specific components of the National Trails System. The uses listed are not intended to be all inclusive, but to illustrate the wide range of recreation pursuits which may be served by various trails. While the new subsection would permit the appropriate secretaries to allow trail bikes and other off-the-road vehicles on portions of the National Trail System, the Committee wishes to emphasize that this provision gives authority to the secretaries to permit such uses where appropriate, but that it must also be exercised in keeping with those other provisions of the law that require the secretaries to protect the resources themselves and the users of the system.”⁵

The imposition of mandatory corridors not only directly conflicts with the letter of the NTSA, the intent of Congress but also conflicts with one of the basic rules of statutory interpretation. Any large scale exclusion of usages conflicts with Congressional requirements that usages of the Black Canyon National Recreation Trail be addressed on a segment by segment basis rather than forest or regional restrictions of usages.

When the evolution of the NTSA is reviewed in more detail, the reasoning for the various amendments provides a great deal of information and understanding around the current version of the NTSA. The direct material conflict the current provisions of the Proposal and related guidance documents provide to the explicit intent of Congress. The NTSA concept originated in the Executive Branch of the Federal Government with an order from President Johnson in 1966 which provides as follows:

⁵ See, H.R. REP. 98-28, 1983 U.S.C.C.A.N. 112 at pg. 6.

“In April 1966 Secretary Udall requested the Bureau of Outdoor Recreation to take the lead in a nationwide trails study. This assignment was made in response to President Johnson's Natural Beauty Message of February 8, 1966, in which he called for development and protection of a balanced system of trails—in the Nation's metropolitan areas as well as in the countryside—in cooperation with State and local governments and private interests.

He called for such a trail system to help protect and enhance the total quality of the outdoor environment as well as to provide much needed opportunities for healthful outdoor recreation”⁶

In response to this Presidential Order, the 1966 “*Trails for America*” report was created and addressed the compelling need at the time to develop a motorized recreational trail network, providing as follows:

“There is a pressing need for places in which to ride bicycles safely. Recreational riding, bike hikes, youth hostel activities, bicycle clubs, and the like are becoming increasingly popular for all ages. The need is especially acute in urban areas. Similar growth is being experienced in horseback and trail scooter (trail bike) demand. The Breeders Gazette reports horse registrations are on the increase and the demand for quarter horses is growing. More than 5 million Americans were reported to be riding trail scooters or motorcycles in 1966.”⁷

The 1966 Trails for America Report continues to address motorized usage on National Trails as follows:

“Trail scooters designed for trail travel pose the greatest problem of incompatibility. Beginning about five years ago with the introduction of small, light, relatively inexpensive machines, the popularity of trail scooters has grown rapidly. A survey of trail scooter owners in 1962 revealed that the typical owner

⁶ See, US Dept of Interior; Bureau of Recreation; *Trails for America; Report on the Nationwide Trail Study*; 1966 at pg. 3. (Hereinafter referred to as the “Trails for America report”)

⁷ See, Trails for America Report at pg. 21.

utilized the vehicle chiefly for Fishing and hunting or recreational riding. Trail scooters are prohibited on trails in National Parks and National Wildlife Refuges, as they are in wilderness and primitive areas of the National Forests. Forest Service regulations also prohibit motor vehicle use of National Forest trails where it may cause damage, harm other values, or constitute a safety hazard. Trail scooters are not permitted on the portions of the Appalachian Trail within National Forests. However, much trail mileage in National Forests is open to trail scooters. Reasonable restrictions on the weight, speed, and horsepower of trail scooters, and effective devices to reduce their noise and fire danger are advisable. Where special wild- land, wilderness, or wildlife values are involved, as in the National Parks, National Forests, National Wildlife Refuges, wilderness areas, and on the Appalachian Trail, the present exclusion of motor vehicles, including trail scooters, should remain.”⁸

The 1966 Trails for America Report makes the following management recommendations:

“Recommended Program. Federal land-managing agencies need to undertake farsighted recreation trail development if they are to meet adequately the growing public demand. Hiking, bicycling, horseback riding, and trail scooter riding have increased substantially on many trails and are certain to accelerate in rate of growth in coming years. Abundant opportunities to build proper trails or rebuild old ones for recreation exist on most Federal lands.”⁹

While many may be surprised to see the concern about a lack of motorized opportunity on Federal Lands in this report, this was clearly a significant concern for both agency and legislative representatives when the Trails for America Report was prepared. This explains why protecting a diversity of usages was a concern even when the NTSA was explored and adopted by Congress. At no point was the concept of a trail network for only horse and hiking usage even explored but rather what became the multiple use concept was always the goal of the process.

⁸ See, Trails for America Report at pg. 29.

⁹ See, Trails for America Report at pg. 134.

Congressional actions in response to President Johnson’s Order began in 1968 with the passage of the National Trails System Act, which designated the Appalachian Trail and Pacific Crest Trail and ordered a review of a trail running generally from Canada to Mexico along the Continental Divide of the United States.¹⁰ Extensive background information regarding multiple uses of corridors and trails designated under the NTSA was originally addressed in House Report 1631 (“HRep 1631”) and Senate Report 847 issued in conjunction with the passage of the NTSA in 1968. HRep 1631 provides a clear statement of the intent of Congress regarding multiple usages with passage of NTSA, and options that Congress declined to implement in the Legislation when it was passed. HRep 1631 provides as follows:

“The aim of recreation trails is to satisfy a variety of recreation interests primarily at locations readily accessible to the population centers of the Nation.”¹¹

HRep 1631 clearly and unequivocally states Congress declined to apply mandatory management corridors of any width in the Legislation. HRep 1631 states:

“Finally, where a narrow corridor can provide the necessary continuity without seriously jeopardizing the overall character of the trail, the Secretary should give the economics of the situation due consideration, along with the aesthetic values, in order to reduce the acquisition costs involved.”¹²

Congress also clearly identified that exclusionary corridors would significantly impair the ability of the agencies to implement the goals and objectives of the NTSA as follows:

“By prohibiting the Secretary from denying them the right to use motorized vehicles across lands which they agree to allow to be used for trail purposes, it is

¹⁰ See, Public Law 90-543 §5(c)(1)

¹¹ See, HRep 1631 at pg. 3873. A complete copy of HRep 1631 has been enclosed as Exhibit “a”

¹² See, HRep 1631 at pg. 3861.

hoped that many privately owned, primitive roadways can be converted to trail use for the benefit of the general public.”¹³

HRep 1631 clearly addresses the intent of Congress, and the internal Congressional discussions regarding implementation of the NTSA provisions for the benefit of all recreational activities as follows:

“However, they both attempted to deal with the problems arising from other needs along the trails. Rather than limiting such use of the scenic trails to "reasonable crossings", as provided by the Senate language, the conference committee adopted the House amendment which authorizes the appropriate Secretaries to promulgate reasonable regulations to govern the use of motorized vehicles on or across the national scenic trails under specified conditions.”¹⁴

The Senate Report S847 prepared relative to the Senate version of the 1968 NTSA provides the clear Congressional desire to address multiple uses as follows:

“The Bureau of Outdoor Recreation points out that there is a pressing need for places in which to ride bicycles safely. Recreational riding, bike hikes, youth hostel activities, bicycle clubs, and the like are becoming increasingly popular for all ages. The need is especially acute in urban areas. Similar growth is being experienced in horseback and trail bike demand. Horse registrations are in the increase. More than 5 million Americans were reported to be riding trail scooters or motor-cycles in 1966.”¹⁵

The 1968 Congressional mandate for the CDNST route identification was completed with a report to Congress from the Department of Interior Bureau of Outdoor Recreation in 1977 and associated environmental impact statement. This analysis specifically addressed many of the challenges and possible impacts to other legal usages that were faced in simply laying out a route connecting the Mexico and Canada borders generally along the Continental Divide and

¹³ See, HRep 1631 at pg. 3859.

¹⁴ See, HRep 1631 at pg. 3873.

¹⁵ See, Senate Report with S847 at pg. 2.

recommended revisions of the NTSA. This basis and analysis sheds a large amount of light on why the NTSA is applied in the manner it is and why the Proposal directly conflicts with federal law. The challenges addressed with the CDNST and the alignment of the Proposal with these concerns cannot be overlooked. The CDNST report specifically states as follows:

“planners and this report recommend the inclusion of approximately 424 miles of existing primitive road rights-of-way in the proposed alignment of the Continental Divide Trail. Most are so primitive in nature that they would offer a recreational experience little different in quality from that where motorized vehicles are excluded. In some national forest areas, and in particular in Montana, these "roads" are no more than the two tracks created by the wheels of a rancher's vehicle used occasionally to take salt, etc., to his stock summering in the forest. Such occasional vehicular use of the trail is provided for in the Act.

This report recommends a Continental Divide Trail routing that coincidentally uses primitive road rights-of-way such as along the east rim of the Great Divide Basin in Wyoming. The use of some 218 miles of lightly used road rights-of-way in the Basin was deemed to be justified because(1) the east rim was considered the best of two alternative routes, (2) the subject road rights-of-way are existing, (3) their use would be economical, (4) motorized use of these roads is very light and would have minimal adverse effect on hikers or horseback riders, and (5) the anticipated hiker-horseback use for this segment of trail is relatively small. This precedent is already well established on the Appalachian National Scenic Trail.

Therefore, Congress may wish to specifically recognize such coincidental use in any legislation establishing the trail. This, of course, should be subject to the following: the trail managing agency must find that such use would not impair the values for which the trail was established; that such use would not pose damage to natural and environmental values; that such use would not constitute a safety hazard to hikers or horseback riders: that such use would be compatible with other management objectives for the areas; and finally, the Advisory Council to the trail should deem it appropriate.”¹⁶

¹⁶ See, Department of Interior; Bureau of Outdoor Recreation; *Continental Divide Trail Study Report* 1977 at pg. 17.

The Organizations are unable to find any portion of the NTSA that requires all portions of a NTSA route be designated for the exclusion of motorized access, as is asserted in the Proposal and related regulations cited. Rather we are able to locate portions of the NTSA that allow closures of portions of any NTSA route to motorized and also specifically allows motorized usages on portions of the trail as well. From the Organizations perspective, this is a reflection of the multiple use mandate that has governed Federal Public lands from more than 50 years that has simply been tailored to relate to a trail covering long distances. This multiple use mandate has never excluded anyone entirely but rather protects all members of the publics access to some portion of all NTSA routes. This Proposal must be withdrawn and corrected to reflect an accurate interpretation of the NTSA provisions governing the allowable usages of NTSA routes. At no point does the NTSA provide for exclusion of all usages on the entirety of a trail.

3. Every Alternative of the Proposal directly conflicts with the SRMA designations made in the Resource Management Plan.

The 2010 Resource Management Plan that designated the SRMA that is ow the basis of the Travel Management Plan at issue identifies many criteria that are to be managed and improved once the various SRMA are designated. These requirements in no way align with the Proposal. While these characteristics of the SRMA are specifically allowed in the various scoping PowerPoints provided for in the original EA development, no analysis is provided for why these alternatives and priorities were not carried forward in conformity with the RMP.¹⁷ The Organizations would note that the specific requirements and general direction of the entire SRMA planning effort incorrectly applies the designations and requirements for the SRMA provided in the RMP for the area as follows:

“Desired Future Condition

Complete the Black Canyon Trail north and east of Highway 69 to connect with trails in Prescott National Forest. Analyze, build and designate the trail to provide a non-motorized experience along the historic sheep driveway. Identify exact locations of the trail and facilities in conjunction with the Yavapai Trails

¹⁷ A copy of this presentation is available here: [Introductions – B.L.M Staff \(blm.gov\)](https://www.blm.gov)

Association and other interested citizens. Maintain rural roaded-natural and semi-primitive motorized settings as suitable.... Locate and develop staging, or camping areas near communities and vehicle access points to service the north Black Canyon Trail and adjoining public lands for the following purposes: parking, unloading OHVs and horses, and picnicking.... **Administrative Actions** Work with citizen volunteer groups to complete a comprehensive strategy and trails plan for selecting and developing new single- and multi-use hiking, equestrian, and OHV trails for all lands in the SRMA.”¹⁸

Given that the expansion of OHV routes in the SRMA is specifically identified as a characteristic of the SRMA we must question how the current Proposal and the RMP can be reconciled. The Record of decision issued for the RMP also further clarifies the multiple use nature of the SRMA as follows:

“2.9.5. Travel Management

2.9.5.1. Management Actions

TM-46. Locate a motorized route, generally parallel to the Black Canyon Trail, to support a long distance motor vehicle route network.

TM-47. Build trails to link cultural public use sites to the Black Canyon Trail. Trails could lead to suitable sites including prehistoric hilltop structures, rock art, mining camps, and features of the historic Black Canyon sheep driveway.

Management decisions for the North Black Canyon Hiking and Equestrian Trails RMZ also relate to travel management, as do recreation management decisions RR-174 [106] and RR-176 [106].”¹⁹

The RMP ROD also clearly identifies that the Upper Agua Fria SRMA is to managed as follows:

“Upper Agua Fria River Basin SRMA

- Work with citizen volunteer groups to complete a comprehensive strategy and trails plan for selecting and developing new single- and multi-use hiking, equestrian, and OHV trails for all lands in the SRMA. Collaborate with the Arizona

¹⁸ See, DOI; Bureau of Land Management; *Agua Fria National Monument and Bradshaw-Harquahala Proposed RMP and Final EIS*; May 2007 at pg. 236.

¹⁹ See, DOI Bureau of Land Management; *ROD - ARMP: Bradshaw-Harquahala*; April 22, 2010 at pg. 108.

Game & Fish Department, Prescott National Forest, Yavapai County, Yavapai County Trails Association....”²⁰

The FEIS for the RMP further refines and clarifies the management direction for the Upper Agua Fria SRMA as follows:

“Maintaining or increasing the amount of land allocated to open space is one of the most effective ways to preserve existing natural values and recreation opportunities; and to extend new or increased levels of recreation activity in the future. Emphasize semi-primitive motorized settings with roaded-natural along primary routes. **Management Actions** Establish new trails, parking, and staging areas, where suitable, for hikers, equestrians, mountain bikers, ATVs, and four-wheel-drive enthusiasts.”²¹

Pursuant to the RMP the Black Canyon Trail crosses numerous SRMA designations many of which are expanding motorized on and around the trail. Given these clear and unequivocal statements of the desired condition for the management of these SRMA, we must question how any of these alternatives can be sustained as we are unable to identify any new trails or other infrastructure in either SRMA planning area. We are unable to identify any new parking areas or routes that may have been constructed under any Alternative.

The conflict between the RMP and the Proposal continues as the RMP clearly states that additional collaboration with local interests for planning for the future management of the planning area will also occur. This is clearly stated as follows:

“Work with citizen volunteer groups to complete a comprehensive strategy and a trails plan to select and to develop new single-use and multi-use hiking, equestrian, and OHV trails for all lands in the SRMA. Collaborate with the AGFD, Prescott

²⁰ See, DOI Bureau of Land Management; *ROD - ARMP: Bradshaw-Harquahala*; April 22, 2010 at pg. 179.

²¹ See, DOI; Bureau of Land Management; *Agua Fria National Monument and Bradshaw-Harquahala Proposed RMP and Final EIS*; May 2007 at pg. 141.

National Forest, Yavapai County, and land managers of other trails to link trails to trails on BLM's land..."²²

We are unable to identify any reference or other recognition of this additional engagement and collaboration occurring regarding the planning area. Again, this provision of the RMP is simply never mentioned in the Proposal. While the specific requirements provided for in the RMP are less than clear on what this specific engagement process may look like, clearly this provision requires more than mere compliance with NEPA requirements. That simply has not occurred.

While there are numerous assertions in the EA that the RMP has been complied with, we are unable to resolve this type of conflict with any factual basis. As a result of this conflict, we must question how any management could be excluding all motorized based on the RMP as creation of a parallel trail and improving the OHV trail network in the SRMA are characteristics identified in the RMP for the area.

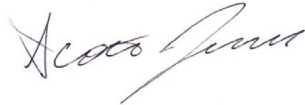
4. Conclusion.

The Organizations vigorously assert that the Proposal must be withdrawn in order to allow for the creation of a range of alternatives that complies with the recent US Supreme Court decision in the *Cowpasture* matter, complies with the mandate of the NTSA and relevant RMP provisions for the management of the SRMA. Several of the current alternatives are in direct conflict with case law, statute and the RMP and in our opinion never should have been analyzed. The Organizations vigorously assert that RMP requirements such as expanding OHV access in the SRMA, reviewing parking and other trailhead facilities and building a motorized trail that parallels the existing route must be addressed in the Proposal and simply have not been. The RMP further specifies that additional public outreach will occur regarding the future management of the area but we are unable to find any such public engagement even mentioned. Engagement with Collaborators and other required actions under NEPA is insufficient to comply with these requirements. Many of the RMP provisions simply have never even been mentioned in the RMP for reasons that remain unclear.

²² See, DOI; Bureau of Land Management; *Agua Fria National Monument and Bradshaw-Harquahala Proposed RMP and Final EIS*; May 2007 at Pg 142.

We would welcome any questions you may have and would willing provide any additional support you may need on this issue. If you have questions, please feel free to contact Scott Jones, Esq. (518-281-5810 / scott.jones46@yahoo.com) or Chad Hixon (719-221-8329 / chad@coloradotpa.org),

Respectfully Submitted,



Scott Jones, Esq.
TPA Authorized Rep



Chad Hixon
TPA Executive Director