



September 24, 2016

BLM White River Field Office  
Att: Heather Sauls  
220 East Market St.  
Meeker, CO 81641

Re: White River FO TMP

Dear Ms. Sauls;

Please accept this correspondence and enclosed attachments as the comments of the Organizations identified regarding the Environmental Assessment for the White River Field Office ("WRFO") Draft Travel Management Plan ("The Proposal") in favor of the travel management portions of Alternative "C" of the Proposal. The Organizations support the determination that travel management is a local issue and not well suited to field office level decision making. While the Organizations can support travel management portions of Alternative C the Proposal, the Organizations are vigorously opposed to the Wilderness Characteristics area inventory and possible designation of ACEC areas in the Proposal under all alternatives for a wide range of reasons outlined in these comments.

The Organizations submit that the proper NEPA vehicle for analysis of the large number and scale of changes that are proposed is an Environmental Impact Statement rather than an Environmental Assessment. If proposed WCA analysis is adopted, this decision would alter the management of almost 20% of the acreage in the WRFO and these impacts could be greatly expanded with the adoption of various unspecified ACEC that are proposed. There needs to be significant additional information and inventory actions on WCA areas and ACEC areas that are proposed to be created based on a Rocky Mtn. Wild citizen proposal. After a complete review of the Proposal, the Organizations are not able to identify any detailed or site specific

information about ACEC boundary areas or the asserted importance or relevance associated with the ACEC area and the Organizations are forced to rely on secondary information about possible ACEC designations in the WRFO. Without this basic information, NEPA compliance and management based on best available science simply cannot be achieved as the USFWS has clearly stated that several species in the area are not worthy of listing and the USFWS is unsure of the factors that might be contributing to the possible decline of the species. As a result any management of ACEC areas would conflict with these clear statements of best available science on these species.

The Organizations are also opposed to the internal BLM decision that was made as part of the most recent RMP amendment regarding oil and gas exploration on the WRFO, mainly that the inventory of possible ACEC areas, submitted almost 5 years after the close of the 1997 RMP constitutes "new" information that is worthy of analysis more than 10 years after it was submitted. This decision simply sets a horrible management precedent, as any party who is opposed to an RMP can now create their own user inventory of an issue without outside input, assert it is new and a new RMP amendment process will be commenced. This is simply a horrible precedent in light of the extensive RMP review of ACEC issues in the 1997 RMP.

The Organizations must also express frustration with what has become the large scale, ongoing amendment of the WRFO RMP over the last several years and this has directly undermined this documents effectiveness as a management tool. Additionally, this places an undue burden on the public who have now been involved with this document for the better part of a decade. While the Organizations are aware that the new BLM planning process provides for a more fluid and ongoing planning process, the Organizations do not believe this process has been reflected in the WRFO planning.

Prior to addressing the merits of the Proposal, we believe a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization seeking to represent, assist, educate, and empower the more than 135,000 registered 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.

CSA was founded in 1970 to unite the more than 30,000 winter motorized recreationists across the state to enjoy their passion. CSA has become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling through working with Federal and state land management agencies and local, state and federal legislators in telling the truth about our sport. For purposes of these comments, CSA, COHVCO and TPA are collectively referred to as "The Organizations".

**1a. The determination to allow amendment of an RMP based on decades old inventory of issues already addressed in planning is not supported by law.**

The Organizations are very concerned with the precedent that has been set by the previous private decision by BLM land managers to amend the RMP based on the out of date citizen inventory of possible ACEC. This simply sets an untenable precedent that conflicts with all relevant case on these type of late inventory and new information. The US Supreme Court recently held in Marsh v. Oregon Natural Resources Council that:

"These cases make clear that an agency need not supplement an EIS every time new information comes to light after the EIS is finalized....To require otherwise would render agency decision making intractable, always awaiting updated information only to find the new information outdated by the time a decision is made." <sup>1</sup>

The relevance of the **Marsh** decision addressing new information cannot be overlooked as a multi-stage planning decision was challenged based on new information from a third party. The Court failed to compel an amendment to the existing EIS to review this new third party information. With the decision to undertake extensive RMP amendments based on the out of date Rocky Mountain Wild inventory, the WRFO has now allowed such a plan amendment based solely on information that was created by the party now seeking a plan amendment. The precedent that anytime any environmental organization is unhappy with any portion of an RMP, all they have to do is create a document, assert it is new information and land managers will then undertake a complete review of the RMP is astonishing and unprecedented. This precedent also puts the WRFO in exactly the intractable position of always trying to plan to new information, which has clearly been found unnecessary.

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<sup>1</sup> See, Marsh v. Oregon Natural Resources Council, 490 US 360, 364 ; 104 L.Ed.2d 377, 109 S. Ct. 1851 (1989)

17 ACEC areas, encompassing more than 100,000 acres were identified in the 1997 WRFO RMP<sup>2</sup> and significant management changes were made in these ACEC areas, such as limiting OHV travel to designated routes<sup>3</sup> and creating strict reseeding guidelines to avoid the impacts of invasive species on these plants.<sup>4</sup> Additionally 243,000 acres of land were withheld from disposal as they were within ACEC areas of designation. <sup>5</sup>

Many of the issues now sought to be relied on for the designation of ACEC areas were in place in 1997 and determined not to be the basis for ACEC designation, such as the various plant related listing efforts discussed subsequently in these comments. The 1997 RMP has extensive management of Penstemon and other plant species now thought to be the basis for ACEC designations and the Penstemon was properly identified as "possibly threatened"<sup>6</sup>. The Organizations assert that simply because a habitat area was declined to be designated as an ACEC previously does not mean the area must be re-reviewed in every planning effort subsequent to the determination. The Organizations also vigorously assert that ACEC designations should not be relied on as a substitute for ESA listing after 30 or more years of efforts have yielded no headway on an ESA listing.

The Organizations are **VIGOROUSLY** opposed to any attempt to obtain habitat and listing designation effects in resource management planning for several species, such as the Penstemon, that have been the basis of extensive review and analysis by the USFWS for more than 30 years. The Organizations vigorously assert that the designation of ACEC for these species would provide the administrative end-around of the ESA listing process that the Organizations are vigorously opposed to. The Organizations are very concerned with the possible designations of expansive new ACEC areas in a travel plan, and as a result consulted the Rocky Mountain Wild's webpage for more information after general statements regarding this Organization being the source of the late ACEC inventory of the FO that has not been made available for public review in the EA.

Rocky Mountain Wilds ACEC information was clearly available to planners for publication as part of this planning process and has been improperly withheld from the public without an attempt to address or justify this decision. This has directly and materially impaired the public ability to comment on this portion of the proposal. The following species based discussions are not intended to be a complete review of this issue, as this is impossible as the boundary and

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<sup>2</sup> See, 1997 WRFO RMP at pg D-35.

<sup>3</sup> See, 1997 WRFO RMP at pg 2-11.

<sup>4</sup> See, 1997 WRFO RMP at 2-17.

<sup>5</sup> See, WRFO RMP at pg D44-D45.

<sup>6</sup> See, WRFO 1997 RMP at pg 18.

basis of proposed ACEC areas has not been made public. Rather these species specific examples of the provided to identify the faulty information that is often provided in citizen petitions. The Rocky Mountain Wild webpage provided the following exceptionally limited information on ACEC creation in the WRFO as follows:

"Meeker, CO (August 5, 2016) – The Bureau of Land Management (BLM) announced this week that 64,720 acres of habitat for critically imperiled wildflowers, in four separate areas, would be considered for protection through designation as Areas of Critical Environmental Concern (ACECs). In the meantime, the areas will be provided with some protection from oil shale mining, oil and gas development and other threats. Four species of critically imperiled wildflowers depend on habitat in the areas being considered for protection. Graham's penstemon and White River penstemon live only on oil shale formations in Colorado and Utah. Oil shale and tar sands mining and traditional oil and gas drilling threaten 100 percent of known White River penstemon populations and over 85 percent of the known Graham's penstemon populations. These two species are the focus of an ongoing legal battle over whether they should be protected under the Endangered Species Act. Dudley Bluffs twinpod and Dudley Bluffs bladderpod are protected under the Endangered Species Act. Protecting their habitat will help them to recover so that they no longer need Endangered Species Act protection."<sup>7</sup>

The Organizations vigorously assert that none of these species are the basis for additional review or "new circumstances" since the 1997 RMP was released as the 1997 RMP correctly identified the Penstemon as possibly endangered at the time the plan was created.<sup>8</sup> Both species of Penstemon and the beardtongue have been under ESA review since the mid-1980's<sup>9</sup> and petitions from Rocky Mtn. Wild for the designation of critical habitat was declined as far back as October 27, 1983.<sup>10</sup> Additionally, there were extensive reviews of the Penstemon in the 1997 plan. Given that these species have been under review for possible listing for more than 40 years, any assertions of possible impacts to the species from land management decisions is both insulting and completely without basis in fact or law.

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<sup>7</sup> See, <http://rockymountainwild.org/press-release-blm-agrees-to-consider-protecting-64720-acres-of-habitat-for-rare-wildflowers> accessed September 7, 2016

<sup>8</sup> See, 1997 WRFO RMP at pg 18.

<sup>9</sup> For a detailed review of this long history of the management of these species by the US Fish and Wildlife Service please see <http://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=Q2QI>

**1b. Planning reviews conducted with the 1997 RMP were sufficient and citizen petitions on ACEC designations are neither new or a change in circumstance.**

The Organizations are very concerned that additional ACEC areas are proposed to be identified but there is no information provided on these areas to the public despite the existence of these documents for more than decade. The Organizations can see absolutely no logic in the decision to withhold this information from the public in the planning process now being undertaken. This decision has materially and directly impacted the ability of the public to comment on proposed ACEC areas in the inventory.

**1c. Citizen ACEC petitions for the WRFO are simply out of date are not the basis for any management actions.**

As the Organizations have clearly stated in this section of the comments, there have been many changes in various species management standards in the WRFO planning area since the 2003 citizens petition for ACEC areas. The Organizations submit that these issues were clearly on management radar during the creation of the 1997 RMP as petitions relative to these species were in place more than 20 years before the issuance of the 1997 RMP. Clearly these were issues land managers and the USFWS were aware of in the §7 consultation process and chose to acknowledge in the lack of clarity on the issues by not taking any additional protective actions in the planning process. The Organizations submit that these decisions and subsequent listing changes are highly relevant to the importance or relevance of areas addressed in this citizens petition. The Organizations submit that as a result of these changes, the citizens petition must be dismissed as out of date and now directly conflicting with a wide range of determinations on species and boundaries.

**1d. Plant species simply are not provided the same level of protection as wildlife in management under federal statutes.**

The Organizations are very concerned that the ACEC analysis appears to make the determination that any sensitive or possibly threatened or endangered species is in this status due to a lack of habitat and that planning restrictions will help the species recover. As a result of this conclusion, any habitat in a proposed ACEC appears to make that ACEC important. The Organizations are very concerned that no basis is provided for this determination and after a review of the sensitive species and potential threatened or endangered species that many species decline is rarely related to a lack of habitat. This is a serious concern moving forward.

In addition to our concerns regarding the assumption that species are declining due to a lack of habitat a review of the Rocky Mountain Wild Proposal for ACEC on the WRFO operates with a critical flaw when reviewing species importance, mainly that all threatened species are treated the same for protection. This simply is not the case as it is well established that plant species simply do not receive similar levels of protection under the ESA and other planning requirements. As the Ninth Circuit recently vigorously reaffirmed:

"Section 9(a)(2) contains separate protections for plants, but does not use the term "take." See 16 U.S.C. § 1538(a)(2). Section 9 thus demonstrates that when Congress uses the word "take," it means to describe an adverse action against animals, not plants. And, as the district court noted, unlike the section 9(a)(1) protections for "fish or wildlife," the section 9(a)(2) prohibitions relating to plants require "deliberate or malicious conduct."<sup>11</sup>

Planning for habitat when habitat is not the problem diverts critically needed resources away from other issues where significant benefit could be achieved with those limited resources. Elevating species that do not receive the same level of protection to an elevated level of protection diverts resources away from the wildlife species Congress has placed in an elevated position of protection.

## **2. Relevant US Supreme Court rulings mandate agencies balance management priorities based on the cost benefit analysis of the standard.**

The Organizations are concerned that several of the factors in ACEC analysis appear to be towards closures of ACEC areas to address issues that are entirely unrelated to recreational activities or other usages more generally. Prior to addressing the specific species and reviewing the threats to the species, the Organizations believe that a review of the relevant standards of review is highly relevant to this issue. The US Supreme Court recently specifically addressed this issue and stated as follows:

"And it is particularly so in an age of limited resources available to deal with grave environmental problems, where too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems."<sup>12</sup>

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<sup>11</sup> See, Center for Biological Diversity vs. BLM & USFWS et al; Case: 14-15836, 08/15/2016, ID: 10086302 at page 12.

<sup>12</sup> See, Entergy Corp v. Riverkeeper Inc et al; 556 US ; 475 F3d 83; (2009) Opinion of Breyer J, at pg 4

Given this clear statement of concern over the wasteful expenditure of resources for a certain activity in an attempt to manage an environmental issue, the Organizations are very concerned regarding what could easily be the wasteful expenditure of resources for the protection of several species in the Proposal. The Organizations submit that proper balancing of enforcement costs with the benefit to any species is exactly the type balance that the Supreme Court has expected the agencies to undertake as part of any planning process. If this balancing of resources had occurred in the WRFO process, the Rocky Mountain Wild inventory would have been dismissed as untimely in 2003 and there would have been no further review of the decision.

### **3a. An EIS is required to support the Proposed changes.**

The Organizations undertake a large amount of travel management planning and are aware that an EA is frequently the standard of analysis for a local travel plan or a plan at something smaller than a field office level. Travel management at the field office level is frequently undertaken with an EIS.

Recent oil and gas amendment was undertaken at the EIS level of analysis despite smaller levels of lesser impacts to the landscape than ACEC and WCA planning now being undertaken. The Organizations have serious foundational concerns regarding the Proposal in its current form and the sufficiency of the decision that only an EA is required to be undertaken. The Organizations vigorously assert that an EIS is required as implementation of the WCA recommendations in the EA would alter the management of almost 20% of the WRFO, and the impacts of the unspecified number of ACEC to be designated expands possible impacts. BLM guidelines for EIS development support this concern as they conclude:

“New circumstances or information” are “significant” and trigger the need for supplementation if they are relevant to environmental concerns and bearing on the proposed action and its effects (i.e., if the new circumstances or information would result in significant effects outside the range of effects already analyzed). New circumstances or information that trigger the need for supplementation might include the listing under the Endangered Species Act of a species that was not analyzed in the EIS; development of new technology that alters significant effects; or unanticipated actions or events that result in changed circumstances, rendering the cumulative effects analysis inadequate.”<sup>13</sup>

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<sup>13</sup> See, BLM Manual 1790-H-1790-1 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK at 1795.3.1



Given that the involvement of endangered species issues that were not previously analyzed in the planning process is a primary factor to trigger an EIS, the Organizations cannot find any basis in law or fact to separate the ranging ESA claims that are frequently involved in Rocky Mountain Wild ACEC inventory from the need for an EIS as BLM representative have already determined this information is a change in circumstance and new information. AS the BLM has chosen to move forward, albeit erroneously, the BLM should be required to use the proper NEPA vehicle for analysis and avoid the need for possible additional amendments of the RMP in the future.

**3b. More information is needed for meaningful public comment on route density proposals.**

The Organizations submit that significant additional information must be provided to the public regarding proposed management standards in the Proposal. The information on route densities provided in the proposal is insufficient as the map of route density under Alternative A identifies "proposed route densities" under current management rather than the actual route density in these areas. In order for the public to meaningfully comment on the validity of the proposed changes to route density, some of which are very significant, the public needs to know what areas are currently in conformity with proposed route density restrictions and what areas would need closures to reach proposed objectives in order to provide meaningful comments and this information has not been provided.

**3c. Public notice for changes unaffiliated with travel management is insufficient as many actions are outside the purpose and need of the Proposal.**

The Organizations must express a high level of frustration with the handling of the ACEC and WCA designations in the Proposal, as these process are in no way related to travel management and fall outside the purpose and need for the Proposal. These inventory and planning decisions clearly reflect a significantly expanded scope of planning that conflicts with the basic purpose and need for the Proposal. The Proposal clearly states the purpose and need of the project as follows:

**"1.4. Purpose and Need for Action**

The purpose of WRFO's Travel and Transportation Management Resource Management Plan Amendment (hereafter, Travel Management RMPA) is to ensure that public lands are managed according to the principles of multiple use and sustained yield identified in the Federal Land Policy and Management Act of 1976 (FLPMA) while maintaining the valid existing rights and other obligations already established.

The need for the action is that the existing travel management decisions within the RMP are no longer adequate as they are inconsistent with current BLM travel management planning guidance (i.e., Travel and Transportation Manual 1626 and Travel and Transportation Management Handbook H-8342-1, CO-IM-2007-20) and do not account for changes in circumstances.

### **1.5. Decision to be Made**

Based on the analysis contained in this EA, the BLM would decide whether or not to amend the travel and transportation management direction in the 1997 White River Record of Decision and Approved Resource Management Plan, as amended. Under the National Environmental Policy Act (NEPA), the BLM must determine if there are any significant environmental impacts associated with the Proposed Action warranting further analysis in an Environmental Impact Statement (EIS). The State Director is the responsible officer who would decide one of the following:

- To amend all or portions of the travel management decisions in the RMP;
- To analyze the effects of a change in management direction in an EIS; or
- Not to amend any of the travel management direction in the RMP."<sup>14</sup>

The Organizations are aware that the Rocky Mountain Wild submitted various citizen based inventory information at some time subsequent to the issuance of the 1997 RMP for the WRFO. For reasons that remain unclear have not been provided to the public in any manner in subsequent planning efforts to implement these recommendations. The Organizations are intimately familiar with these citizen inventories and have found them to be badly out of date, based on something other than best available science and often in conflict with multiple use principals in other planning areas.

The Organizations vigorously assert that the BLM properly failed to act on this information when it was submitted at some time prior to current planning efforts, as these factors/designations had recently been addressed in the 1997 RMP. Despite the extensive public outreach associated with the 1997 RMP development, Rocky Mtn. Wild chose not to submit this information until more than six years after completion of the RMP. The Organizations submit this information is now badly out of date and not the basis for public review. If the BLM should choose to move forward with the ACEC and WCA inventory in planning, this information must be fully and completely reviewed in the public process in order to insure best available science is applied and various other planning requirements for this issues are complied with. As neither the ACEC or WCA information has been provided for public review in the EA, no management changes can be supported.

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<sup>14</sup> See, WRFO EA at pg 4.

### **3d. Special notice requirements for designation of ACEC areas have not been complied with.**

In addition to failing to provide sufficient information regarding possible ACEC areas, the Organizations submit that the EA fails to state any intent to designate areas of critical environmental concern as part of the planning process as the EA is clearly identified as follows:

"Travel and Transportation Management Resource Management Plan Amendment for the WRFO"<sup>15</sup>

Given this clear statement of the scope of the Environmental Assessment, many of the public could easily be misled into thinking the EA is limited to just travel management document. After a more complete review of the EA the scope of this document is well outside just a TMP and the document simply fails to properly identify the true scope of management changes being addressed.

The failure to specifically identify the designation of ACEC areas in the planning process is a per se violation of BLM regulations regarding the possible designation of Areas of Critical Environmental Concern ("ACEC") specifically provide for specific public notice as follows:

"32 Special Notice Requirement for Plans involving ACEC's/ The planning regulations require special notice in the Federal register for RMP's or plan amendments involving proposed ACEC's (43 CFR 1610.7-2), The notice must provide for at least a 60-day public comment period. The notice must describe proposed ACEC's included in the BLM's preferred alternative and specify resource use limitations, if any that would occur. The notice should also identify potential ACEC's (those which satisfy the relevance and importance criteria) which are not proposed for ACEC designation in the preferred alternative.... For Environmental assessment level plan amendments, the notice is published sufficiently early enough to afford the public timely notice and opportunity for meaningful input and involvement in the analysis and evaluation."<sup>16</sup>

Given the exceptionally clear and narrow scope of the title of the EA, the Organizations are opposed to any changes that are outside the designation of areas as open, closed or restricted to designated routes as these decisions would conflict with BLM planning requirements for ACEC. The title simply fails to convey any intent to add designations to the existing RMP that would then be used as the basis for TMP type decisions.

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<sup>15</sup> See, WRFO EA at pg 1.

<sup>16</sup> See, BLM manual 1613.32

**3e. Special management necessary for ACEC areas is not identified and plants are not identified as the basis for ACEC designations.**

The Organizations are also opposed to the failure to provide any outline of special management that is to be undertaken after the designation of ACEC areas in the Proposal. This information is critical in allowing the public to meaningfully comment on the Proposal and specifically required under federal regulations. These regulations specifically provide:

"ACEC designations highlight areas where special management attention is needed to protect and prevent irreparable damage to important historical, cultural and scenic values, fish or wildlife resources or other natural systems or processes.... The ACEC designation indicates to the public that the BLM recognizes that an area has significant values and has established special management measures to protect those values. In addition, designation also serves as a reminder that significant values or resources exist which must be accommodated when future management actions and land use proposals are considered near or within the ACEC. Designation may also support a funding priority."<sup>17</sup>

The Organizations are unable to find any reference to the special management actions that are to be taken in furtherance of the proposed ACEC, and thus cannot comment on this portion required for an ACEC designation. The Organizations would note that why the regulations specifically identify many factors to be the basis for ACEC designations, plants are not one of them and reflecting the position of Congress on the protection of plant species in comparison to wildlife species. The Supreme Court concern is also reflected in the regulations regarding identification of funding priorities.

**3f. Designations of ACEC boundaries for beardtongue and Penstemon protection is premature and without basis in best available science.**

The Organizations also submit that the recent withdrawal of several species noted in press release document for possible ESA listing by the USFWS is HIGHLY relevant to our opposition to the creation of ACEC areas to protect these species as part of the Proposal. The USFWS reasoning for the withdrawal of the proposed listing of two plant species is as follows:

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<sup>17</sup> See BLM Manual 1613 - Areas of Critical Environmental Concern at pg 1613.02

"SUMMARY: We, the U.S. Fish and Wildlife Service, withdraw the proposed rule to list Graham's beardtongue (*Penstemon grahamii*) and White River beardtongue (*Penstemon scariosus* var. *albifluvis*) as threatened species throughout their ranges under the Endangered Species Act of 1973, as amended. This withdrawal is based on our conclusion that the threats to the species as identified in the proposed rule no longer are as significant as we previously determined. We base this conclusion on our analysis of new information concerning current and future threats and conservation efforts. We find the best scientific and commercial data available indicate that the threats to the species and their habitats have been reduced so that the two species no longer meet the statutory definition of threatened or endangered species. Therefore, we are withdrawing both our proposed rule to list these species as threatened species and our proposed rule to designate critical habitat for these species."<sup>18</sup>

This statement is highly relevant to our concerns about the possible designation of ACEC areas as the USFWS has clearly and strongly said these plants are not eligible for listing under the ESA. Given that the USFWS has clearly stated that they are unsure as to the factors that are contributing to the decline of the species, the Organizations submit that ANY management restrictions that could be put in place in the ACEC process would not be supported by best available science.

USFWS is currently reviewing a petition from Rocky Mountain Wild regarding the possible designation of critical habitat for Beardtongue and Penstemon. It is the Organizations position that this matter must be resolved prior to the designation of any ACEC for protection of the species to insure that determinations made in the ACEC process are consistent with the conclusions of the USFWS on this issue and to recognize that the listing attempts for these species have not been occurring for more than 30 years. If the USFWS has clearly stated they are not sure of the threats to the species, how can an ACEC be found relevant or important to the survival of the species? The Organizations submit this relationship cannot be established.

**4a. Creation of ACEC areas conflicts with clear statements in the EA and must be provided to the public for review and to satisfy NEPA requirements.**

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<sup>18</sup> See, USFWS proposed listing of Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rules To List Graham's Beardtongue (*Penstemon grahamii*) and White River Beardtongue (*Penstemon scariosus* var. *albifluvis*) and Designate Critical Habitat, Federal Register / Vol. 79 , No. 151 / Wednesday, August 6, 2014 / Proposed Rules

The Organizations would be remiss if concerns were not raised regarding the internally conflicting nature of the EA regarding both ACEC and WCA was not also addressed. The conflicting nature of these documents and concerns that result are further expanded when compared to other provisions of the EA that clearly state:

"13. The BLM will not consider creating any new special designations, such as Areas of Critical Environmental Concern, through this RMPA. "<sup>19</sup>

The Organizations are vigorously opposed to the creation of any ACEC in the TMP planning process, as there is no information provided regarding areas that are proposed to be managed as ACEC or the factors that are being relied on for the designation of these areas. This lack of information is a per se violation of NEPA planning requirements. It is well established that NEPA regulations require an EA 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>20</sup>

The regulations included the development of the Council of Environmental Quality, which expands upon the detailed statement theory for planning purposes.

"You must describe the proposed action and alternatives considered, if any (40 CFR 1508.9(b)) (see sections 6.5, Proposed Action and 6.6, Alternative Development). Illustrations and maps can be used to help describe the proposed action and alternatives."<sup>21</sup>

These regulations clearly state the need for the quality information being provided as part of this relationship as follows:

"The CEQ regulations require NEPA documents to be "concise, clear, and to the point" (40 CFR 1500.2(b), 1502.4). Analyses must "focus on significant environmental issues and alternatives" and be useful to the decision-maker and

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<sup>19</sup> See, WRFO EA at pg 7.

<sup>20</sup> 40 CFR 1500.1

<sup>21</sup> BLM Manual H-1790-1 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK – pg 78.

the public (40 CFR 1500.1). Discussions of impacts are to be proportionate to their significance (40 CFR 1502.2(b)).”<sup>22</sup>

The Proposal provides the following information on possible ACEC designations proposed as follows:

"18. As committed to in the 2015 Oil and Gas Development ROD/Approved RMPA, the BLM will evaluate the Rocky Mountain Wild ACEC nominations, submitted on January 21, 2003, and on March 9, 2007, that are located within the boundaries of the WRFO to determine whether they satisfy the relevance and importance criteria consistent with the BLM's land use planning regulations. The BLM will evaluate these ACEC nominations prior to issuing a Decision Record for the Travel Management RMPA and will provide interim management for any areas found to meet the relevance and importance criteria."<sup>23</sup>

The Organizations have fully reviewed the current TMP, and can find absolutely no information regarding possible designations of ACEC areas or the factors relied on for the creation of such an area. This is a per se violation of the NEPA requirements of a detailed statement of high quality information on the planning decisions and analysis. The Organizations are very familiar with the citizen proposals for ACEC areas based on our experiences on other planning areas. The Organizations have found these citizens proposed ACEC areas inaccurate, overly protective, based on badly out dated science and elevating resource concerns above all other multiple uses making a public review of these proposals a critical step in the review process. Again this type of management decision directly conflicts with clear statements in paragraph thirteen previously referenced that no special designation areas would be created in the Proposal and also is a per se violation of basic NEPA requirements for an EA.

**4b. Abuse of the USFWS listing process should not provide the basis for ACEC designations.**

The Organizations submit that the Rocky Mountain Wild, and their partners, behavior in the ESA petitioning process for the several species of Beardtongue and Penstemon should not be rewarded with the designation of **any** ACEC areas. Such a decision would be directly contrary to efforts currently in place within the DOI to address these abuses of the listing process as they have started to occur at an unprecedented level. The Organizations submit that the abuse of the listing process cannot create the basis for creation of any special management areas in associated RMP amendments as such a special designation outside the ESA petition process

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<sup>22</sup> BLM Manual H-1790-1 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK – pg 4.

<sup>23</sup> See, WRFO EA at pg 7.

would completely undermine the value and ongoing refinement of the ESA process and render the expertise of the USFWS valueless on these species.

After a review of the 25 filings/documents with the USFWS that have resulted from these species over the last 33 years, this course of action is clearly the abuse of the ESA petitioning process that the USFWS has chosen to address with heightened citizen petitioning requirements under the ESA<sup>24</sup> and USFWS efforts to prioritize species based on the necessity of listing.<sup>25</sup> It must be noted that the clearly identified basis for not listing these plant species, mainly unclear threats and challenges to the species, would have resulted in these species being identified as a low priority for listing. As a low priority for listing resources would be targeted to scientific research to determine why the species is declining in order to insure that management actions being taken were actually benefitting the species.

The Organizations vigorously submit that many departments within the DOI have looked at many of the factors identified for the creation of these ACEC areas and have previously determined that these factors do not warrant management action. The Organizations vigorously assert that these previous management decisions must be honored, rather than avoided by designation of ACEC areas.

**5. Wilderness Characteristics Areas need significant additional review for solitude opportunities, seasonal usages and other interests.**

The Organizations are opposed to the management of any Wilderness Characteristics area in a manner that excludes or reduces multiple use access that has been provided in the area. The Organizations submit that such a WCA designation simply lays the foundation for the closure of these areas to motorized usage in the future site specific travel management decisions. The Organizations would be remiss if the massive expansion of these areas without proper analysis in the WRFO travel plan was not a concern moving forward. These concerns are further expanded when compared to other provisions of the EA that clearly state:

"13. The BLM will not consider creating any new special designations, such as Areas of Critical Environmental Concern, through this RMPA."<sup>26</sup>

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<sup>24</sup> See, DEPARTMENT OF THE INTERIOR Fish and Wildlife Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions Federal Register / Vol. 80, No. 98 / Thursday, May 21, 2015 / pg 29286

<sup>25</sup> See, DEPARTMENT OF THE INTERIOR, Fish and Wildlife Service Draft Methodology for Prioritizing Status Reviews and Accompanying 12- Month Findings on Petitions for Listing Under the Endangered Species Act, Federal Register /Vol. 81, No. 10 / Friday, January 15, 2016 / pg 2229.

<sup>26</sup> See, WRFO EA at pg 7.



Given that a Wilderness Characteristics area is a special designation, the Organizations cannot reconcile this statement with the expansions that are proposed. This conflicting position will also limit public input the factors relevant to the designation of Wilderness Characteristics Areas as this is a clear statement that no special designations are being reviewed.

After reviewing the site specific inventory data, the Organizations submit that this inventory is simply an insufficient basis for management changes in these areas, as many ongoing activities are simply not addressed that could impact the solitude of the areas. Solitude of an area simply cannot be determined with a single visit to an area on a single day, as often visitation fluctuates highly based on the day of the week and use during hunting seasons or possible snowmobile visitation to the area as many areas are not accessible in the summer but become easily accessible after a significant snowfall via snowmobile.

The Organizations further submit that the public cannot meaningfully comment on Wilderness Characteristics of solitude and naturalness of any area as route inventory information has not been made public and the public is simply unable to determine what routes are in an particular area without this information. If a route has been identified as such in a travel management inventory, that route should also be reflected in the Wilderness Characteristics inventory of the area. Even if the route is not built by man or periodically maintained or fails to qualify with other criteria for Wilderness Character review, these routes provide access to the area and will directly impact the solitude that is available in the area.

The Organizations are aware that 301,900 acres across 33 units (20% of the Field Office) were found possibly having Wilderness Characteristics in the 2013 inventory. Previous Wilderness reviews for the WRFO have reviewed many Wilderness Characteristics areas with far greater detail than current inventory (IE: rights of way, seasonal usage and leases) and found only 91,469 (6% of FO) eligible for possible designations. Many of these areas were not managed as Wilderness Characteristics areas after the previous inventory, which raises the question of how they became suitable for such management at this time. The Organizations are aware that there has been significant increases in population of local communities and an increased awareness of the recreational opportunities in the WRFO at the state level since the 1997 RMP making a decline in utilization of any area of the FO highly unlikely. Any new areas found suitable for Wilderness Characteristics designation should provide detailed information on why these areas are now suitable for designation when they were not previously.

**6. Economic impacts of Wilderness Characteristics designations must be addressed.**

The Organizations are also very concerned that such an expansion of WCA areas directly conflicts with local planning efforts being undertaken in partnership with the USFS and BLM. Rio Blanco County and many local communities have chosen to become a leader in the State of Colorado in targeting multiple use recreation as an economic driver for that area. Designation of 20% of the Field Office for possible closure in the future to multiple use recreation is inconsistent with the county decision that has been made in partnership with the BLM and USFS.

Expanding WCA management will clearly have economic impacts to communities in WRFO planning areas that must be balanced in the planning process. COHVCO research in 2009 on the economic contribution and number of jobs resulting from OHV recreation in northwestern Colorado found these are significant contributors, as those conclusions are as follows:

<b>Contribution</b>	
<b>Direct Impact</b>	<b>NW CO</b>
Direct Sales	\$38,810,143
Number of Jobs	514
Labor Income	\$15,726,777
Other Property Type Income	\$5,046,453
Indirect Business Taxes	\$4,911,339
<b>Other Economic Activity</b>	
Indirect and Induced Sales	\$17,260,416
Number of Jobs	139
Labor Income	\$5,409,525
Other Property Type Income	\$3,829,771
Indirect Business Taxes	\$1,117,435

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A copy of the 2009 updated COHVCO study is included with these comments for your reference. COHVCO is also working on a completely new study on this issue in order to more accurately reflect the OHV usage in the state of Colorado when compared to the updated version of a 2001 study that is currently available. Preliminary research indicates that spending on OHV recreation has more than doubled when compared to the 2009 study, making accurate balancing of this factor critical to the designation of WCA or ACEC.

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<sup>27</sup> See, COHVCO study at pg 16.

## **7. Lynx management standards proposed conflict with best available science.**

The Organizations are very concerned that the scientific basis for management of OSV usage of lynx habitat as it is directly conflicting with best available science, which appears to be a major issue with the entire travel management plan. The Proposal clearly states:

"Over-snow motorized travel would be limited to designated routes in:

- Canada lynx habitat (2,329 acres)."<sup>28</sup>

The Organizations submit that such a standard directly conflicts with new management standards required under the 2013 Lynx Conservation Assessment and Strategy ("LCAS"). A complete copy of this document has been provided with these comments for your complete review. The 2013 LCAS includes new less restrictive management standards for many activities in lynx habitat and corridors, when compared to the 2000 LCAS and Southern Rockies Lynx Amendment, along with an extensive update of best available science on lynx management on a wide variety of issues. Much of this research and management represents significantly more clarity on several issues, even when compared to the Southern Rockies Lynx Amendment. Regarding recreational usage of lynx habitat, the 2013 LCAS moves even further from outdated management standards that were once summarized as "no net gain" for motorized winter usage, and were often incorrectly applied to summer recreation as well. The 2000 LCAS, which has now been superseded by the 2013 LCAS, has frequently been asserted by those against increased parking and access and it is our hope that the 2013 changes will be recognized as best available science and management for future planning documents to avoid any further issues with recreational trail usage, parking development and snow compaction.

The Organizations wanted to highlight some of the more significant changes in lynx management standards in 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>29</sup>

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<sup>28</sup> See, WRFO EA at pg 15.

<sup>29</sup> See, Interagency Lynx Biology Team. 2013. Canada lynx conservation assessment and strategy. 3rd edition. USDA Forest Service, USDI Fish and Wildlife Service, USDI Bureau of Land Management, and USDI National Park Service. Forest Service Publication R1-13-19, Missoula, MT. 128 pp. at pg 94. (Hereinafter referred to as the "2013 LCAS")

- 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>30</sup>
- Road and trail density does not impact the quality of an area as lynx habitat;<sup>31</sup>
- There is no information to suggest that trails have a negative impact on lynx;<sup>32</sup>
- Snow compaction from winter recreational activity is not likely to change the competitive advantage of the lynx and other predators;<sup>33</sup>
- Snow compaction in the Southern Rocky Mountain region is frequently a result of natural process and not recreational usage;<sup>34</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>35</sup>
- Failing to manage habitat areas to mitigate impacts of poor forest health issues, such as the spruce and mtn pine beetle, is a major concern in lynx habitat for a long duration.<sup>36</sup>

The Organizations are aware that the 2013 LCAS represents a significant change in management standards for a wide range of issues from the 2000 LCAS and Southern Rockies Lynx Amendment. It is our intent in providing a copy of the 2013 LCAS at this time that complete incorporation of this best available science, which reflects the minimal impacts of recreational usage of lynx habitat will streamline any site specific planning issues in the future. The RMP standards must be brought into consistency with best available science that has been clearly stated on this issue.

## **8. Conclusion.**

The Organizations generally support the travel management portions of Alternative "C" of the Proposal, but this support is very limited as there are critical informational items that must be more fully resolved prior to a complete endorsement of any alternative by the Organizations. Additionally, the Organizations support the determination that travel management is a local issue and not well suited to field office level decision making.

While the Organizations can support travel management portions of the Proposal, the Organizations are very concerned regarding the Wilderness Characteristics area inventory, that there needs to be significant additional information on several issues to provide for meaningful

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<sup>30</sup> 2013 LCAS at pg 83.

<sup>31</sup> 2013 LCAS at pg 95.

<sup>32</sup> 2013 LCAS at pg 84.

<sup>33</sup> 2013 LCAS at pg 83.

<sup>34</sup> 2013 LCAS at pg 26.

<sup>35</sup> 2013 LCAS at pg 94.

<sup>36</sup> 2013 LCAS at pg 91.

public comment on the issue and the management of several species conflicts with best available science. Additionally, there needs to be significant additional information provided regarding the ACEC areas that are proposed to be created based on a Rocky Mtn. Wild citizen proposal. Without this basic information, NEPA compliance simply cannot be achieved.

Please feel free to contact Scott Jones at 518-281-5810 if you should wish to discuss these matters further or if you should wish to have further information regarding these concerns.

Sincerely,



D.E. Riggle  
Director of Operations  
Trails Preservation Alliance

Scott Jones, Esq.  
COHVCO/TPA Authorized Representative  
CSA President

Enclosures