



December 14, 2023

Dear Planning Team Members:

Please accept this correspondence as input on the Three Peaks Travel Management Environmental Assessment. Our Organizations have been involved in stewardship, volunteerism, education, and motorized advocacy within the Royal George Field Office (RGFO) for many years.

## I. Who We Are

Before addressing our specific comments, we believe a 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 to protect and promote 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 Trails Preservation Alliance (TPA) is an advocacy organization created to be a viable partner to public lands managers, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of motorized trail riding and multiple-use recreation. The TPA advocates 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 multiple-use trail recreational opportunities. Colorado Offroad Enterprise (CORE) is a motorized action group dedicated to keeping motorized trails open in Central Colorado and the region. CORE has 15 adopted trails spread throughout the Salida, Gunnison, and Leadville Districts and has accumulated several thousand volunteer hours for the BLM and Forest Service over the past few years.

## II. Discussion

We are thankful for the opportunity to submit comments on this proposal considering the designated travel network. We advocate for and recommend Alternative C, which includes the most public access available for all uses being considered. Alternative C meets the Purpose and Need of this project by considering and managing potential impacts while still allowing much of the existing public access to be maintained. We recommend constructing route SP2215 to enable

public access near Jackson Hull Mountain. We recommend escalating levels of management, which Alternative C provides while still allowing reasonable public access.

### III. Alternatives

The Purpose and Need of this project are simple in that the desire is to create a designated route network where one has not been established beyond restricting travel to existing routes. This stated need has arrived from staff and public observations for managing travel to protect resources. Generally, we do not oppose seasonal closures for motorized use as proposed in Alternative C or Alternative D. There is no noticeable difference in managing adverse impacts from the preferred Alternative D and the 'Motorized' Alternative C. However, Alternative D restricts public access much more than Alternative C.

**Issue Statement #1** of this proposal would not change the eligibility (+5,000 acres) for Lands with Wilderness Characteristics (LWC), and this proposal deals solely with Travel Management Designations of **existing** routes, so there is no substantial or negative effect. Additionally, the RGFO proposed updated Resource Management Plan <sup>1</sup> states in section 3.1.13, page 3-22:

*No existing law or policy grants priority to preservation of lands with wilderness characteristics over other resources or resource uses, so BLM has the discretion to determine management of these areas in consideration of other priorities.*

Because the routes already exist in these two regions and the ground is already disturbed due to the presence of these routes, they should remain open to public access and not be closed to prioritize LWC. Routes within the project area can also be used by the public to access the LWC for quiet recreation.

**Issue Statement #2** of this proposal states this:

*This alternative would exhibit the greatest impact to vegetation resources, but not to the level as in the current situation. Alternative C installs management and controls route proliferation and thereby should help most areas achieve Standards for Public Land Health in the long-term.*

*When considering the reasonably foreseeable trends in the analysis area and the current situation, changes under Alternative C could result in improvements in land health and greater plant community resistance when compared to the No Action Alternative. The cumulative effects associated with this alternative are likely to have a beneficial impact to vegetation resources across the larger area as a whole.*

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<sup>1</sup> Proposed Eastern Colorado Resource Management Plan & Environmental Impact Statement – Volume 1: Executive Summary and Chapters 1-5, Royal Gorge Field Office, 2023.

Alternative C is a viable option to mitigate vegetation loss because of the route designations, signage, and management that will take place once a decision is reached. This option should be the first level of management prescribed instead of route closure.

**Issue Statement #3** of this proposal acknowledges the most opportunities for the most public land visitors to this area. Quite users will still have numerous options for hiking and other forms of activity with only 21 miles of designated routes in Alternative C, especially considering the two LWC areas that encompass well over 5,000 acres each within the project area and by maintaining the existing public access to those two areas.

**Issue Statement #4** of this proposal deals with potential dispersed camping and potential range management conflicts. If these issues were to be realized, the RGFO could implement designated dispersed camping as it has in other areas of the RGFO to mitigate camping-based conflicts.

**Issue Statement #5** of this proposal for Alternative C contains contradictory language:

*Alternative C establishes a designated route network for all inventoried routes in the analysis area. Under this alternative, 21.8 miles remain open, 2.1 miles are open with seasonal restrictions and 12.5 miles closed or limited to administrative use only. In addition, .3 miles of new road construction would occur under this alternative. Like Alternative D, this alternative establishes a designated route network for all inventoried routes based on Management Strategies that would minimize impacts to forest resources and includes management that inhibits the potential for disturbance through route proliferation. However, fewer miles of existing roads are closed, and this increased route availability would allow for greater access to legal wood product harvesting. The cumulative effects of Alternative C is likely to have a negative impact on forest resources.*

This statement contains no negative impacts for Alternative C until the last sentence, which arbitrarily claims, "*The cumulative effects of Alternative C is likely to have a negative impact on forest resources,*" despite the entire paragraph preceding that statement detailing the exact opposite likely outcome including establishing a designated route network minimizes impacts to forest resources and inhibits the potential for route proliferation, which would allow greater access to legal wood product harvesting. Alternative C should be chosen to enable initial route designation management to address issues while allowing public access.

**Issue Statement #6** of this proposal has a separate discussion item (IV.) in these comments.

**Issue Statement #7** of this proposal contains no on-ground examples of negative impacts in the planning area or for Alternative C. The proposal only cites hypothetical '*potential impacts*' as a justification for the closure of route SP3206.

*Alternative C largely mirrors the same impacts as Alternative A. The major difference is that Alternative C limits 11.3 miles of routes to Administrative Use only. Cumulatively, this decrease in public motor vehicle traffic could have beneficial impacts to wetlands health, road conditions, and decrease the sediment/contaminant/ invasive species loading into*

*water bodies. Also, Alternative C would close route SP3206, an area of with a myriad of potential impacts on water resources.*

Nothing specific in this section suggests Alternative D as a better option for the public when compared to Alternative C. We would also ask the RGFO, how are you measuring and quantifying the production and transport of sediment into water bodies? Additionally, is sedimentation above an acceptable level? This seems to be a very subjective opinion and perhaps observation based upon casual surveys by staff.

**Issue Statement #8** of this proposal concerning soil and erosion: if Alternative C were chosen for this proposal, it would manage potential issues.

*Alternative C largely mirrors the same impacts as Alternative A. The major difference is that Alternative C limits 11.3 miles of routes to Administrative Use only. Cumulatively, this decrease in public motor vehicle traffic could be beneficial for mitigating the soil resources impacts on the route itself and potential, sediment and contaminant transport from runoff. Most notably, Alternative C limits route SP 1054 to Administrative Use Only, while Alternative B designates the route as closed. While this is a route with potential impacts to soil resources, crossing cobbly loams at moderately high grades, limited the public motorized access should be sufficient in mitigating soil resource impacts at this location.*

The rationale suggests that Alternative C can mitigate potential soil resource impacts, and should issues occur in the future, the RGFO could certainly escalate management to address future problems should they rise to a problematic level. Technical solutions specific to erosion control could be implemented as a management prescription, if necessary, in the project area. Erosion and sedimentation are natural processes often needed to maintain a balanced hydraulic system. All erosion and sediment transport are not necessarily a problem, harmful, or a threat to natural systems. Many natural ecosystems/wetlands need and require sediment and the movement of sediment to remain healthy and in balance. How much sediment in the project area is too much, and how is this determined? Simply claiming erosion and sediment transport as a negative potential is insufficient to remove public access from public routes. These potential issues should be shown to be present on the ground, above problematic thresholds, and beyond the use of technical solutions to control and mitigate adverse sediment production generated by roads, trails, or parking areas before restricting public access.

The issue statements also contain no substance beyond speculation and no substantial impacts to LWC to prioritize Alternative D over Alternative C in this proposal. Alternative C addresses all the current potential concerns while still allowing public access to continue. Should issues arise, the RGFO can still implement further management prescriptions to address hypothetical problems. We recommend Alternative C to accomplish the Purpose and Need of this project while still balancing public access.

#### IV. Doomsday Scenarios

We are concerned with the language contained in Issue Statement #6. This language implies the RGFO is considering a doomsday scenario or worst case possible as a wildlife justification. It states Alternative C is not much better than the No Action Alternative for wildlife sustainability:

*This alternative is second only to the No Action alternative regarding negative impacts to big game priority habitats. The potential will be high for human disturbance on elk, mule deer, pronghorn, and bighorn sheep during their most sensitive periods. As discussed in section 5.6.1 this can lead to reduced winter survival and reproductive success, with potential for broad-scale impacts.*

The No Action Alternative section referenced in Alternative C contains this language:

*Increased disturbance to wildlife and reduced habitat quality would likely have negative impacts on important wildlife population parameters such as overwinter survival, reproduction, and recruitment of young. As a result, decline and stagnated growth of big game populations could occur. It is important to consider that declines in the previously mentioned population parameters (i.e. survival, reproduction, recruitment) can take years to cause population-level declines that can be detected with herd surveys. Further, since the effects of human disturbance compound other negative factors, and the effects of all those factors are complex, the effects will likely not be linear. For example, the effects of increased human disturbance in elk severe winter range may not be exhibited at a population scale until they coincide with a severe winter and cause extraordinarily high winter die-off in a herd. Thus, a stable big game population that has experienced increased recreation within priority habitats for a small number of years cannot be considered evidence of a lack of negative effects of human disturbance.*

The chosen hypothetical RGFO included in this proposal is an attempt to steer the decision towards Alternative D. Worst Case hypothetical scenarios for wildlife populations are not part of a NEPA review, and the courts have consistently rejected these arguments. The Supreme Court's ruling on Roberson v. Methow Valley Citizens Council<sup>2</sup> stated:

***'In sum, we conclude that NEPA does not require a fully developed plan detailing what steps will be taken to mitigate adverse environmental impacts and does not require a "worst case analysis."***

Additionally, the recent DC Court of Appeals ruling for Maine Lobstermen's Association v. State of Maine Department of Marine Resources<sup>3</sup> stated:

***'In this case, we decided whether, in a biological opinion, the Service must, or even may, when faced with uncertainty, give the "benefit of the doubt" to an endangered species***

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<sup>2</sup> Robertson, Chief of the Forest Service ET AL. v. Methow Valley Citizens Council ET AL., 1989

<sup>3</sup> United States Court of Appeals for the District of Columbia Circuit. Maine Lobstermen's Association, State of Maine Department of Marine Resources, ET AL. v. National Marine Fisheries Service, ET AL., 2023.

*by relying upon worst-case scenarios or pessimistic assumptions. We hold it may not. The ESA and the implementing regulations call for an empirical judgment about what is "likely". The Service's role as an expert is undermined, not furthered, when it distorts that scientific judgement by indulging in worst-case scenarios and pessimistic assumptions to benefit a favored side.'*

A review of the herd management plans that overlap with the project area does not justify this worst-case scenario as a likely reality. The plans all mention, or list, recreation as a concern and one that should be considered by Land Management Agencies when making decisions, but nothing documented in the herd plan rises to the level of stating that continued recreation will lead to a population level decline due to cumulative recreation in the big game herds within the project area. The highest recorded documented impact for the E-22 Elk Herd<sup>4</sup> was for a locoweed impact resulting in locoism that killed 200 elk in summer. This impact was attributed to low moisture for that year and had no connection to recreation. Still, the E-22 Elk Plan has been above the management objective number since 1990, and that plan states explicitly:

*Those population objectives are considered to be the most reasonable goal for this herd based on the quantity and quality of available habitat for elk, the recreational, economic and political desires of the people of the state, the level of conflicts between the elk herd and agricultural producers in the area, and the comments of land management agencies.*

Adding a seasonal close to all routes within the project area deemed to be sensitive areas can accomplish the Purpose and Need of this project, provide protections to wildlife, and still allow public access.

The Mule Deer plan referenced in section 5.6.1 of the proposal leaves out some specific details and data in that document.

*Recently completed Herd Management Plans for local bighorn sheep and mule deer herds point to increasing recreation and development as primary threats to those populations (Grigg 2020, Deschenes and Lamont 2022).*

This section is worded to suggest that recreation is a landscape-level threat to the Mule Deer population in D-16 and is on par with the loss of habitat due to development. The Herd management plan for D-16<sup>5</sup> does not state this implied fact and clearly outlines the most significant threat in the management plan is cougar predation.

*Since 1999, we have radio collared 1,086 adult does and 898 fawns in D-16 to examine annual adult survival and winter fawn mortality. From 1999-present, averaging across all years, the leading known cause of both doe (6.4%) and fawn (7.5%) mortality has been cougar predation. Cougar predation has ranged from 0 to 60% (avg. 28%) of the total mortality for does and 0 to 64% (avg. 32%) of the total mortality for fawns. However, it is*

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<sup>4</sup> Buffalo Peaks Elk Management Plan Extension, Data Analysis Unit E-22, Jamin Grigg, 2018.

<sup>5</sup> Cripple Creek Deer Herd Management Plan Extension, Data Analysis Unit D-16, Jamin Grigg, 2020.

*not known if cougar predation is limiting population growth in D-16, or if this population is experiencing density-dependence due to habitat limitations.*

The D-16 Mule Deer Management Plan states multiple times that this population may be habitat-limited, which might also account for the numbers. The Management Plan does list recreation as a concern and under the significant issues. Still, it does not mention recommendation specifics for recreation except to work with management agencies to balance wildlife needs with recreation.

The RBS-9 Big Horn Management Plan <sup>6</sup> contains conflicting statements about the herd size, objectives, issues, and recreation. The beginning of the plan states:

*The current population estimate in RBS-9 is stable at approximately animals. Key limiting factors for this population include the potential for disease outbreaks. Considering bighorn distribution, winter range capability, population density/density dependence, and the potential risk of contact with domestic livestock, our Wildlife Commission approved management objective is: Population target 375 bighorns (range 350-400)*

The plan then states:

***Strategies for obtaining objectives and addressing issues:*** *Both preferred alternatives are consistent with CPW's current management in RBS-9. Therefore, CPW does not expect a change in harvest management with this plan. The most significant issues for RBS-9 are limited winter range and the potential for disease transmission from domestic livestock, particularly from domestic sheep and goats (George et al. 2009). There are currently no active domestic sheep summer grazing allotments in this DAU, however, there are hobby livestock operations that provide a continual threat of disease transmission. CPW will continue to work with stakeholders and land management agencies to mitigate and address these issues.*

Referencing recreation, the plan states:

*The RBS-9 herd has become especially impacted by an increase in dispersed camping, mountain biking, and hiking. In general, recreation has increased significantly over the last 10 years in the RBS-9 area.*

The plan also references mountain biking and river activities because the plan area encompasses the Arkansas River Recreation Area. The herd numbers, however, have stayed consistent for the last 38 years. This would suggest two things. First, the growing level of recreation has not yet harmed herd numbers. Second, utilizing seasonal closures on motorized routes during sensitive times would certainly address future concerns from motorized recreation. The Alternative D justification in this proposal reinforces this suggestion:

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<sup>6</sup> Arkansas River Bighorn Sheep Herd Management Plan, Data Analysis Unit RBS-9, Bryan Lamont and Kyle Deschenes, 2023.

*Timing restrictions are used as the primary tool for protecting big game priority habitats under this alternative because they reduce human disturbance during the most sensitive periods, while still allowing motorized access at other times of the year.*

Why could Alternative C not provide this same benefit to wildlife if timing restrictions were used instead of outright route closure? After carefully reviewing the herd plans and the justification provided by the RGFO, we recommend Alternative C be adopted with seasonal closures to balance public access with wildlife concerns. We disagree with the doomsday scenario proposed and do not support the justification and management prescription in Alternative D to avoid such a, worst-case, hypothetical situation.

We would also like to point out the changed condition on the ground in Colorado as of December 18, 2023. CPW reintroduced Grey Wolves in Grand County. This event may seem far from the project area, but CPW has said they plan on releasing 30-50 wolves to begin the 'sustainable population' required by Prop 114. A reintroduction area along Hwy 50 in Gunnison County is contained in the Reintroduction Plan <sup>7</sup>. There is one county removed (Chaffee) from the project area in Fremont County, and considering the mileage wolves travel, it seems only a matter of time before wolf activity is detected in Fremont County and the project area. The CPW Wolf Reintroduction plan has this information:

*"Within Colorado, preliminary release locations are constrained by several geographic criteria. State statute requires that wolves be released only west of the Continental Divide (CRS 33-2-105.8). Fritts et al., (2001) found that wolves released in Yellowstone and central Idaho moved substantial distances in the months immediately after release (average distance was approximately 50 miles ranging from approximately 22 to 140 miles from the release sites)."*

Wolves can be expected in and around Fremont County in the future. This reintroduction will affect Elk, Mule Deer, and Big Horn Sheep behaviors, survival rates, and herd numbers. This proposal does not address this changed condition and assumes wildlife numbers will remain constant if recreation is limited in the project area. This assumption is a significant flaw in this proposal and should be considered during this planning process.

Wolves in Colorado will alter the big game landscape by changing animal and herd behavior beyond what is accounted for in the herd plans, migration corridors, winter range, and population estimates. Some research, contradictory to this proposal, suggests that ungulates will seek out human areas to escape predation. Bacon and Boyce 2016 <sup>8</sup> suggest Big Game Animals (Ungulates) will flee wildlife protection areas when a large new predator is reintroduced into an area.

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<sup>7</sup> Colorado Parks & Wildlife, Colorado Wolf Restoration and Management Plan, 2022.

<sup>8</sup> Landscape of Fear for Naive Prey: Ungulates Flee Protected Area to Avoid a Re-established Predator, Michelle Bacon and Mark Boyce, 2016



The Study Introduction contains this information:

*"Historically, large predators in North America were perceived as competition for food and a risk to the safety of settlers and their livestock (Kellert et al. 1996). Predators were heavily hunted, trapped and poisoned to the point where species such as the cougar (Puma concolor), wolf (Canis lupus), and grizzly bear (Ursus arctos) were extirpated from much of their original range (Berger 1998; Terborgh et al. 2000). In the absence of predators, ungulates and other wildlife minimize their risk of human encounters by avoiding areas used for agriculture and recreation (Cuiti et al. 2012). Our activities, however, also can alter hidden interactions that exist within an ecosystem, sometimes to the point of disassembling entire natural communities (Hebblewhite et al. 2005; Ripple et al. 2014)."*

*"Indirect effects that predators have on other ecosystem components merit careful attention because they can have implications for the way that human-wildlife conflicts might reignite."*

The Discussion Section Contains this information:

*"The shift in distribution of cervids, particularly mule deer, during the decade of cougar re-establishment demonstrates that cougars have restored a landscape of fear in the Cypress Hills, causing prey to leave the security of the protected park and forest cover that now harbors a highly effective predator. During the period of our study, radiotelemetry data for Cougars showed that the predator remained primarily within the confines of the protected forest (Figure 1). Analysis of aerial ungulate surveys showed that deer and elk shifted their distribution outside the Park during the same time period, when cougar presence was the only significant change in the region."*

*"Prey that had lived with little fear of large predators for ca. 40-50 generations must now trade-off between avoiding humans and avoiding predators. Indeed, in some instances, humans might act as a shield against cougar predation because they present less risk of mortality for prey (Berger 2007) and because cougars are deterred from human-dominated areas (Morrison et al. 2014)."*

This study mentions Wolves but directly looks at Cougars as the large predator reintroduction study species. Indeed, the Colorado Wolf Reintroduction will have similar results for this state's Elk and Deer populations. The Yellowstone Wolf Reintroduction documents state that a single Wolf kills about 2 Elk per Wolf per month to sustain itself over a calendar year encompassing all four seasons. That will drive Elk and Deer numbers down in Colorado, and we don't yet know how our big game animals will react to a reintroduced large predator.

Will they stay in the protected areas (this proposal) we set up for them, or will they move towards human activities to escape the reintroduced large predators? If Wolves are released close to Chaffee County or eventually make it to Fremont County, no pre-release wildlife protection and big game planning will be valid after reintroduction. This changed condition should not preclude public access to the project area to maintain a pre-wolf environment and pre-wolf objectives.

Alternative C with this changed condition, it is still the best management option to include seasonal closures while maintaining public access. The RGFO will then still need to be vigilant and monitor wolf expansion and movement to track the changes to big game herds and numbers that will result. Ironically, this research may also paint a different picture relative to the cougar predation problems documented in D-16. It is entirely possible that human activity and development are preventing further population-level declines by cougars for Mule Deer.

## V. Escalating Management

Our organizations generally favor escalating management to mitigate existing and hypothetical future issues. This allows the RGFO to take steps at managing impacts while also testing management prescriptions without implementing more restrictive measures that may not be needed. More restrictions could be implemented, but we recommend reserving those options when lesser implementation fails with documentation. The Preferred Alternative D in this proposal adopts route closures that may not be needed to accomplish the Purpose and Need. If seasonal closures are implemented as proposed, closing more routes to public access beyond that of seasonal closures for wildlife concerns is more restrictive than needed in this proposal.

The court held standard for management decisions based on wildlife concerns has shown to be what is '*likely*' to occur. It is more likely that implementing minimal management prescriptions to increase the level of management (this proposal) above currently restricting travel to existing routes and by designating a public route system, wildlife population numbers will continue to align with the management objectives and the specifics outlined in the Herd Management Plans. Wolf reintroduction is an unknown, but it is also likely that negative impacts on a population level scale will result in ungulates due to wolf predation. Once this likely scenario occurs, human activity may contribute to ungulate survival.

Implementing escalating management is our recommendation, and we support Alternative C with the construction of route SP2215 and the re-evaluation of SP3206. Further restrictions should not be considered until negative impacts are documented on the ground and beyond acceptable levels.

## VI. Recommendation

We thoroughly recommend Alternative C with the construction of SP2215 and the re-evaluation of SP3206 to allow public access to Jackson Hull Mountain and its vicinity. Alternative C does not pose management challenges beyond Alternative D. The same management strategies included in this proposal can be implemented while keeping 20 miles of public routes open. Public access and wildlife can coexist, and doomsday scenarios should not be used as an evaluation tool in a proposal that could permanently remove public access. Escalating management is a successful strategy, and route closure should be the end of that spectrum when all other management

prescription options have been utilized and exhausted. Wolves in Colorado will pose new management problems for wildlife population numbers, and wildlife could look to human activity as a protective mechanism in contrast to human avoidance at all costs, as presented in this proposal.

We are generally disappointed in the direction of this proposal when compared to meeting the needs of public access, dispersed camping, and all the additional recreational experiences that take place on public roads that are difficult to quantify fully. This proposal acknowledges the public's growing desire to experience public land via public access and the desire to engage in multi-day adventures by incorporating dispersed camping. However, this proposal does not analyze a single alternative that could expand public access opportunities and does nothing to address and satisfy the desire for dispersed camping. This proposal discusses hypothetical negative impacts of the public being allowed to recreate in the project area and discusses hypothetical dispersed camping impacts and dispersed camping conflicts but does nothing to propose a new public route with designated dispersed campsites to help fulfill this public desire. Aside from Alternative A being the control variable to measure proposed Alternatives against, nothing discussed in this proposal might help meet public needs besides closing routes to the public or restricting areas. This fundamental flaw assumes that the only reasonable management strategies to apply in the future require restriction and closure. This pathway can't help but prejudice a project outcome by assuming public use on public land is a net negative. Closure should not be used as a management prescription until alternative options are exhausted. We recommend against unnecessary restriction and recommend Alternative C with additional route construction be chosen as the only viable Alternative contained within this proposal.



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