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Dear Mr. Zukoski:

Enclosed is the decision on Appeal #97-13-00-0057 of the Record of Decision for the Rio Grande National Forest Revised Land and Resource Management Plan.

Sincerely,

/s/ Chris Risbrudt

CHRIS RISBRUDT
Director, Ecosystem Management
Coordination

Enclosure

Cc: Intervenors

APPEAL DECISION

OF THE

RIO GRANDE NATIONAL FOREST

LAND AND RESOURCE MANAGEMENT PLAN

COLORADO ENVIRONMENTAL COALITION, ET AL. (# 97-13-00-0057)

/s/ Sally D. Collins
SALLY D. COLLINS
Reviewing Officer for the Chief

January 19, 2001
Date

Table of Contents

Procedural Background.....	1
Decision Summary.....	2
The Rio Grande Revised Plan.....	3
Response to Concerns	
1. <i>Viability and Diversity</i>	4
2. <i>Livestock Grazing Capability And Suitability Determination</i>	8
3. <i>Wilderness</i>	11
4. <i>Wilderness Fish Stocking</i>	13
5. <i>Travel Management</i>	14
6. <i>Winter Recreation Impacts on Resources</i>	16
7. <i>Conditioning at Re-issuance and Issuance of FLPMA Authorizations</i>	17
8. <i>Clean Water Act</i>	19
9. <i>Continuous Monitoring</i>	19
10. <i>Supplemental DEIS</i>	22
11. <i>Maximum Size of Created Opening</i>	24

**Appeal Decision
Of The
Rio Grande National Forest Revised Land and Resource Management Plan**

Colorado Environmental Coalition, et al (#97-13-00-0057)

Procedural Background

This is my decision on your appeal of the Record of Decision (ROD) for the Rio Grande National Forest Revised Land and Resource Management Plan (Revised Plan) and its accompanying Final Environmental Impact Statement (FEIS). Regional Forester Elizabeth Estill signed the ROD approving the Revised Plan for the Rio Grande National Forest (RGNF) on November 7, 1996.

The appellant is Colorado Environmental Coalition, et al. (#97-13-00-0057) (hereafter “CEC”). Many parties were granted intervener status on your Notice of Appeal (NOA).

You filed your NOA with the Chief on April 17, 1997. The NOA was filed in accordance with Forest Service administrative appeal regulations at 36 CFR 217 and was timely filed. The Regional Forester subsequently transmitted the relevant records, information, and documentation for the appeal to the Chief on June 23, 1997.

The relief requested, if any, is set forth below:

Colorado Environmental Coalition et al. (#97-13-00-0057)

- You request “relief, interim management, and a stay” (NOA, pp. 156-160).

For relief, you state: “. . . [t]o correct these deficiencies and avoid judicial invalidation of the Plan, Appellants respectfully request that the Chief direct the Regional Forester to withdraw the Plan, and prepare a revised Plan based on new analysis prepared pursuant to NEPA.” (NOA, p. 156).

You further request as relief that “modifications that must be made in the Plan and FEIS to remedy their principal deficiencies”. For each “deficiency” identified you (NOA, pp. 156-160) request “. . . the Chief remand the decision approving the Forest Plan for reconsideration, and that the Regional Forester be directed to amend the EIS and Plan . . . “. You highlighted “deficiencies”, and provided specific recommendations, concerning: old growth forest, fragmentation, and viability of wildlife species (NOA, p. 156),

livestock grazing (NOA, p. 157), wilderness/roadless (NOA, p. 157), transportation management (NOA, p. 158), water quality/water quantity (NOA, p. 158), and monitoring (NOA, p. 159)

For interim management you requested “. . . the Chief immediately impose for the duration of the appeal, and for the duration of the formulation of a new Plan consistent with this appeal . . .” certain conditions concerning “timber harvesting of old growth”, “domestic sheep grazing within 2-20 miles of bighorn sheep habitat”, “roadless areas . . . managed as if they were designated wilderness”, “snowmobile use [prohibition] in Backcountry prescription areas”, and concerning “. . . timber harvesting that creates openings larger than 40 acres . . .” (NOA, p. 159).

Finally, you requested a “. . . stay of that part of the RGNF Forest Supervisor’s January 17 Trail Allocations decision . . . designating 67 trails as motorized” (NOA, p. 159-160). Reviewing Officer Bertha C. Gillam denied the stay on May 6, 1997.

Decision Summary

My decision identifies the issues raised by you, an analysis of appeal points, and my response. After a thorough review of the record, I have decided affirm in part and reverse in part the Regional Forester’s November 7, 1996 decision to approve the Revised Plan.

I affirm the Regional Forester with respect to the wilderness, winter recreation impacts on resources, wilderness fish stocking, travel management, Section 401 of the Clean Water Act, maximum size of created openings, and supplemental DEIS issues raised in the NOA and find that these portions of her November 7, 1996 decision comply with applicable federal law, regulations, and agency policy. I affirm with instructions the Regional Forester with respect to the continuous monitoring, and find that this portion of her November 7, 1996 decision complies with applicable federal law, regulations, and agency policy. However, I reverse the Regional Forester with respect to the conditioning at re-issuance and issuance of FLPMA (Federal Lands Policy Management Act) authorizations, viability and diversity, and livestock grazing suitability determination issues raised in the NOA, and find that these portions of her November 7, 1996 decision do not comply with applicable federal law and agency policy. The explanation for my decisions to affirm, affirm with instructions, or reverse on each of the issues presented in the NOA is set forth in detail below.

Some adjustment of land management activities may be required pending the completion of new analyses required by this decision. In order to expedite these adjustments, the Regional Forester is instructed to:

- (1) Provide appellants and this office with a work plan within one hundred twenty (120) days of the date of this decision that describes amendments and/or other actions (and a schedule for their completion) needed to bring the Revised Plan into conformance with applicable law and regulation consistent with the analysis

- in this decision;
- (2) Within sixty (60) days of the date of this decision, identify any projects and/or activities beyond those in the December 1, 2000 settlement agreement in *CEC v. Dombeck* that may require adjustment, so as not to preclude options for addressing the instructions and reversed issues identified in this decision. Provide this information to appellants and this office.

This decision is the final administrative determination of the Department of Agriculture unless the Secretary, by his own initiative, elects to review the decision within 15 days of receipt, under 36 CFR 217.17(d). By copy of this decision, I am notifying all parties of my decision on these appeals.

The Rio Grande Revised Plan

The Revised Plan is a programmatic framework for management of an administrative unit of the National Forest System.¹ The Revised Plan (pp. P-4 to P-5) explains what a land and resource management plan is and what it is not. The Revised Plan sets forth multiple-use objectives for the integrated resource management of the entire Forest (Chapter II). Among other things, the Revised Plan identifies land that is suitable for timber production and estimates the Allowable Sale Quantity (ASQ) and other resource outputs, all of which are estimates. The Revised Plan (Chapter III) also includes forest-wide standards and guidelines that operate as parameters within which projects must take place. Approval of any project must be consistent with the forest-wide standards. If a project cannot be conducted within these parameters, the project will not go forward (*see Swan View Coalition v. Turner*, 824 F.Supp. 923, 933 (D. Mont. 1992)). The Revised Plan "provides the framework to guide the day-to-day resource management operations of the Rio Grande National Forest, and subsequent land and resource management decisions made during project planning" (Revised Plan, p. P-4).

The Regional Forester states "[a]s a management strategy for the Rio Grande National Forest, this Revised Plan and FEIS are programmatic. The emphasis in the Plan is not on site-specific decisions. Rather, it provides overall systematic guidance and establishes management direction to govern future actions" (ROD, p. 5). The Revised Plan underscored this by explaining that, "specific activities and projects will be proposed to carry out the Plan's direction. Forest Service managers will do environmental analyses on all proposed projects incorporating data and evaluations in the Final Revised Forest Plan and FEIS. All project analysis will tier to the FEIS" (Revised Plan, p. P-2).

Finally, the Revised Plan also lists techniques that will be used to monitor implementation of the Plan. The Regional Forester states "I have directed that a

¹The Revised Plan and FEIS were prepared under the authority of: the Multiple-Use Sustained-Yield Act (MUSYA) (16 U.S.C. 528-531); the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the NFMA (16 U.S.C. 1601-1614); the 1982 Forest Service planning regulations (36 CFR 219); the NEPA (42 U.S.C. 4321-4335); and the Council of Environmental Quality NEPA regulations (40 CFR 1500-1508).

monitoring-and-evaluation process be implemented that displays the implications of our decisions and activities. To accomplish this, I make a pledge to you, that I am emphasizing Monitoring and Evaluation and asking that it get top priority as work plans are developed each year" (ROD, p. 2).

Response to Concerns

1. Viability and Diversity

I. Contentions

Your appeal contends the Forest Service violated the NFMA, NEPA, ESA and Forest Service Manual because the FEIS and Revised Plan failed to properly determine or provide for viability and diversity of wildlife species across the RGNF. Some of your key allegations are as follows:

- “The Forest Service fails to properly determine that it has maintained the viability and diversity of wildlife species across the Forest” (NOA, p. 36), and “The Forest Service has failed to determine viability as required by the plain meaning of the regulations” (NOA, p. 36),
- “...in order to determine whether or not a viable population exists, regulations require that the RGNF estimate the ‘number and distribution of reproductive individuals’ across the Forest.” (NOA, p. 36)
- “The FEIS fails to take a ‘hard look’ at the impacts of fragmentation on the RGNF....Forest fragmentation on the RGNF is likely a pervasive impact that threatens the viability of interior obligate species.” (NOA, p. 18),
- “The RGNF’s approach to maintaining viability fails to protect habitat (NOA, p. 41); “The RGNF Forest Plan Revision and FEIS fails to use the ‘best available data’ by relying almost exclusively on inadequate site-specific mitigation measures to maintain species viability and to conserve diversity” (NOA, p. 42); and “Site-specific mitigation measures cannot ensure viable populations of native species are well distributed throughout the Forest” (NOA, p. 44)
- “The Plan fails to identify and protect occupied sites for sensitive species through minimum management requirements or other land allocations, ignores federal regulations which require management of indicator species, fails to establish management territories, fails to manage large, interconnected habitat blocks for assemblages of species associated with particular ecosystems, and fails to incorporate proactive conservation strategies aimed at recovering declining populations.” (NOA, p. 42)
- “The Plan ... ignores federal regulations which require management of indicator species.” (NOA, p. 42),
- “The FEIS fails to take a ‘hard look’ at the impact of the Plan on old growth forests, old growth habitat, and the species that rely on old growth” (NOA, P. 10) and “The Forest Plan Revision fails to maintain the viability of species associated with old growth forests, aquatic ecosystems, and grasslands, shrubs, and meadows” (NOA, p. 56)

- “The FEIS fails to take a hard look at bighorn-domestic sheep interactions, and fails to maintain the viability of bighorn sheep”, (NOA, p. 66)

II. Analysis of Appeal Points

The 1982 Planning Regulations and Forest Service Manual provide direction concerning viability. The Revised Plan, FEIS, and record address viability with respect to 24 of the species that are on the Rocky Mountain Region’s list of sensitive species issued by the Regional Forester in 1993 and are known or suspected to occur on the RGNF. (FEIS, p. 3-117)

The approach used to evaluate the potential effects of plan alternatives on these species entailed the use of six Landtype Associations (LTA’s) and four parameters to assess habitat suitability: 1. structural-class composition, 2. percentage in an undeveloped condition, 3. density of open roads, and 4. spatial patterns. (FEIS, p. 3-113) The process used (FEIS, p. 3-120) entailed reviewing the literature to identify, for the 24 sensitive species, which landtype associations included their preferred habitat, and for purposes of the viability analysis, would be considered potential habitat on the RGNF.

The Revised Plan, FEIS, and record identify habitat requirements for the 24 sensitive species in very broad terms, often along with some general information on distribution in Colorado, near the RGNF, and/or on the RGNF, usually to display whether any records exist of the species being present on the RGNF. The RGNF does not describe how much of a given LTA or LTA/structural class is habitat for sensitive species, only that it provides potential habitat for a given species. In fact, the FEIS acknowledges that not all such potential acres of a given LTA were necessarily considered to be actual habitat for a given sensitive species: “This does not imply that all these acres are indeed habitat, or that these acres would result in a specific population number.” (FEIS, p. 3-120).

Significantly, there is a court ruling that did not require the determination of a minimum population number as demonstration that the viability requirement is being met. In its decision regarding litigation of the Northwest Forest Plan [Seattle Audubon Society v. Lyons, 80 F. 3d 1401, 1404 (9th Cir. 1996)], the Ninth Circuit Court of Appeals upheld Forest Service analysis and determination of viability which covered hundreds of species for which there were no estimates of numbers of individuals, saying: “...the record demonstrates that the federal defendants considered the viability of plant and animal populations based on the current state of scientific knowledge. Because of the inherent flexibility of the NFMA, and because there is no showing that the federal defendants overlooked any relevant factors or made any clear errors of judgment, we conclude that their interpretation and application of the NFMA’s viability regulation was reasonable.”

Thus, 36 CFR 219.19 does not require the Forest Service to make numeric population estimates. However, in order to conduct viability analysis to demonstrate that habitat is being managed to maintain viable populations, some information on species status or abundance must be obtained and used. As described above, the FEIS and other parts of the planning record contain information describing whether each sensitive species was

known to be present on the RGNF, but did not provide or consider adequate information regarding historic and current population status, trends, or distribution in relation to the planning area.

One of the allegations in your appeal concerns the impacts of fragmentation on the viability of certain species on the RGNF. (NOA, p. 18). The NFMA regulations do not specifically require an analysis of fragmentation. However, the FEIS and the record contain information showing that forest fragmentation and habitat connectivity were considered.

In addition to general allegations regarding viability, your appeal includes more specific allegations with respect to viability of certain species including species that rely on old growth (NOA p. 10, p. 56), and species associated with aquatic ecosystems, grasslands, shrubs, and meadows (NOA, p. 56), and bighorn sheep (NOA, p. 66). I have concluded, for the same reasons described above, that the Revised Plan, FEIS, and other material in the planning record do not provide an adequate basis for concluding that habitat will be managed under the Revised Plan to maintain viable populations as required by 36 CFR 219.19.

Your appeal also alleges that the Revised Plan and FEIS “...fails to use the ‘best available data’ by relying almost exclusively on inadequate site-specific mitigation measures to maintain species viability and to conserve diversity” (NOA, p. 42). The Revised Plan provides direction for habitat management that will affect species, including species for which viability is a concern. The Forestwide Objectives stated in the Revised Plan (Chapter II) are stated in general terms and are not specific to any given species or their key habitat needs, including any species for the FEIS identified a concern for viability. The Wildlife standards and guidelines that are provided, and most of the other standards and guidelines considered in the FEIS and provided in the Revised Plan, are stated in very general terms. The Wildlife standards and guidelines primarily address how potential adverse effects of management activities to some species and their habitats might be mitigated. The reliance on standards and guidelines that are largely site-specific mitigation measures and the analysis of the likely outcomes of the use of these measures, has not been done in a manner that supports a determination that the Revised Plan would result in management of habitat that maintains viable populations, consistent with 36 CFR 219.19.

Your appeal includes allegations that the Revised Plan does not comply with NFMA regulations regarding management indicator species (MIS). Specific regulatory requirements pertaining to MIS are part of 36 CFR 219.19.

Compared to the 1982 planning regulation, the Forest Service Manual uses a somewhat broader framework of “Management Indicators” which potentially allows the use of “communities or species habitats” in addition to species. For instance, the FSM definition of Management Indicators is as follows:

“1. Management Indicators. Plant and animal species, communities, or special habitats selected for emphasis in planning, and which are monitored during forest plan implementation in order to assess the effects of management activities on their populations and the populations of other species with similar habitat needs which they may represent.” (FSM 2620.5)

The material in FSM 2620 that pertains to MIS largely reiterates and provides further clarification of the NFMA requirements for MIS.

The RGNF did not select MIS as required by 36 CFR 219.19, but instead selected six landtypes associations as “management indicators”. (FEIS, 3-122) The FSM 2620 does provide a somewhat broader framework than 36 CFR 219.19(a) with regard to MIS by including “communities” in the definition of management indicators (FSM 2620.5, quoted above) and by stating, in part: “Management indicators representing overall objectives for wildlife, fish, and plants may include species, groups of species with similar habitat relationships, or habitats that are of high concern.” (FSM 2621.1, emphasis added). The Forest Service policy complements, but does not supercede, the NFMA planning regulations requiring the identification of MIS and related requirements pertaining to planning alternatives in 36 CFR 219.(a), as quoted above. Thus, the use only of LTA's by the RGNF does not meet the MIS requirements in 36 CFR 219.19(a).

Your appeal includes assertions related to maintaining the diversity of wildlife species across the RGNF. (NOA p. 36). Section 6(g)(3)(B) of the NFMA provides statutory direction for managing the National Forest System to provide for diversity of plant and animal communities.

The NFMA planning regulations address diversity at several points, including the following definition: “Diversity: The distribution and abundance of different plant and animal communities and species within the area covered by a land and resource management plan.” (36 CFR 219.3) The following sections of the NFMA regulations also use the term "diversity:" 36 CFR 219.26 and 36 CFR 219.27. Species diversity is primarily addressed in FSM 2620.

Based on my review of the record, I found very little information in the Revised Plan, FEIS, or other material concerning the diversity requirement of NFMA, related NFMA planning regulations, or agency policy as stated in the Forest Service Manual.

III. Decision

After reviewing the record, I find that the Revised Plan, FEIS and record do not meet the requirements of the NFMA and its 1982 implementing regulations at 36 CFR 219.12(d), 219.19, 219.26, or 219.27 with regard to viability (including management indicator species requirements at 36 CFR 219.19) or diversity. Forest Service policy as provided in FSM sections 2620 and 2670 concerning

viability, management indicator species, and diversity, were not met. The Regional Forester's decision is reversed concerning the issues related to viability and diversity. Future viability analyses should be based on efforts currently underway in the Region and at the national level of the Forest Service on this topic, and related program reviews.

2. Livestock Grazing Capability And Suitability Determination

I. Contention

Your appeal contends that the Forest Service violated the NFMA, the NEPA, the APA (Administrative Procedures Act), and the 1982 Forest Service planning regulations at 36 CFR 219.20 because the Revised Plan and FEIS failed to provide an adequate analysis and explanation of the livestock grazing capability and suitability determinations for the National Forest System lands on the RGNF. Specifically, your appeal contends that:

- “[t]he Forest Service has a legal obligation to determine the capability and suitability of lands for livestock grazing.” (NOA, p. 69).
- “[t]he Forest Service must explain its suitability determination.” (NOA, p. 73).
- “[t]he RGNF Forest Plan Revision FEIS and ROD fail to explain adequately the Forest Service’s ‘capability’ decision.” (NOA, p. 74).
- “[t]he RGNF Forest Plan Revision FEIS and ROD fail to explain adequately the Forest Service’s ‘economic suitability’ decision.” (NOA, p. 75).
- “[t]he RGNF Forest Plan Revision FEIS fails to analyze the ‘environmental suitability’ of livestock grazing.” (NOA, p. 76).
- “[t]he FEIS fails to analyze alternative uses foregone.” (NOA, p. 78).
- “[t]he RGNF Forest Plan Revision FEIS’s analysis of livestock grazing fails to comply with NEPA.” (NOA, p. 82).
- “[t]he ROD’s decision regarding suitability of livestock grazing based on the forest plan revision FEIS violate the APA.” (NOA, p. 83).
- “[t]he Forest Service contradicts itself on the proper level at which to determine suitability.” (NOA, p. 84).

II. Analysis of Appeal Points

You allege that NFMA and the 1982 Forest Service planning regulations at 36 CFR 219 require the agency to determine the capability and suitability of National Forest System lands for livestock grazing as part of the forest planning process. You assert that this requires the determination of whether grazing is appropriate in “particular areas” given the “value” of other uses diminished or foregone notwithstanding the area’s capability to support livestock. If scenic, wildlife, recreational, or other “values” of a particular area outweigh the grazing “value” in that area, you argue that the Forest Service should declare the area unsuitable to livestock grazing and prohibit the activity. You generally contend that the evaluation of environmental consequences, economic consequences, and alternative uses foregone in the capability and suitability determination was improperly done, inadequately explained and violated NFMA, NEPA, APA, and 36 CFR 219. The appellants also alleged that the Forest Service contradicted itself on the proper level (programmatic or site-specific) at which to determine suitability.

I agree with you that Federal regulations require the Forest Service to determine whether National Forest System land is capable of and suitable for livestock grazing as part of the forest planning process. As set forth in more detail below, while I disagree with you with respect to the capability determination in the Revised Plan and FEIS, I agree that the suitability determination prepared by the RGNF was inadequate and failed to meet the requirements of 36 CFR 219. I do not, however, agree with appellant’s contention that if the suitability determination reveals that non-grazing values outweigh grazing values, the area should in all instances be deemed unsuitable for livestock grazing. Nor do I agree that each specific land area of the RGNF must be identified as either suitable or unsuitable.

The RGNF consists of 1,852,000 acres of National Forest System land (Revised LRMP at P-9).² The procedure utilized by the RGNF to determine lands capable of and suitable for livestock grazing is set forth in the FEIS (FEIS pp. 3-181 – 3-192). While the criteria used by the RGNF to determine the forest acres capable of being grazed is generally understandable, it is virtually impossible to discern the criteria used by the RGNF to determine the total number of acres on the RGNF that is suitable for grazing.

The RGNF identified 625,437 acres of the Forest as being capable of supporting livestock grazing (FEIS p. 3-189). The capable acreage was derived by eliminating 1,335,617 acres of non-capable land which the RGNF defined as having one or more of the following characteristics: excessive slope (>40 percent); loose granitic soils, erosive soils, low vegetative cover, boggy areas; insufficient range improvements; no water within three miles; or areas that were covered by rock, road, or water surface. (FEIS p. 3-189, 3-183).

² Curiously, the total acreage of the RGNF derived by adding capable and incapable land in a table in the FEIS is substantially higher (1,961,054) than the total acreage of the RGNF referenced in the Revised Plan (Compare FEIS p. 3-189 with Revised LRMP p. P-9).

The RGNF then identified 576,995 acres as suitable for livestock grazing (ROD p. 20; see also FEIS p. 3-181, 3-189). Unfortunately, the RGNF failed to offer any explanation as to how it arrived at this figure. Compounding this problem were varying definitions of “suitability” employed by the RGNF. For example, in one part of the FEIS, the RGNF explained that the “suitability analysis identified where grazing is appropriate, considering rangeland conditions and other uses or values of the area” (FEIS p. 3-183). To that end, the RGNF identified “administrative sites, fenced recreation sites, fenced highway rights of way, designated management areas or parts there of (sic) (Research Natural Areas, Experimental Forest Areas), watersheds (for domestic use, etc.), areas inside city limits, research facilities, research study enclosures, special use sites, and critical habitat for T&E species” as “not appropriate,” i.e. not suitable, for livestock grazing (FEIS p. 3-183). Yet, on the very next page, the RGNF describes suitable lands as “those lands capable of supporting grazing on a sustained basis” (FEIS p. 3-184). These two statements are not coterminous.

The confusion was compounded by supplementary information submitted by the RGNF on June 18, 1998, in response to a request from this office for clarification on how the grazing suitability determination was rendered. Based on this supplementary documentation, it appears that the RGNF determined acreage suitable for livestock grazing by subtracting RNA acres, closed grazing allotment acres, and road acres from the capable acreage base (Record p. 105602).³ Overall, I find the suitability analysis by the RGNF misses the mark of what is required by the planning regulations.

At a minimum, the suitability requirements of the 1982 Forest Service planning regulations at 36 CFR 219.20 require the agency to determine “the appropriateness of applying certain resource management practices to a particular area of land, as determined by an analysis of the economic and environmental consequences and the alternative uses foregone (36 CFR 219.3). While there were several examples of environmental issues presented by livestock grazing on the RGNF (see, for example, the discussion on the domestic sheep – bighorn sheep interaction (FEIS p. 3-243); the effect of permitted livestock on recreational use of congressionally designated wilderness areas and the Continental Divide National Scenic Trail (FEIS p. 3-351), and the competition for forage between elk and domestic livestock (FEIS 3-243), none of these were discussed in the context of the suitability determination. Many of these issues were raised in comments submitted on the DEIS (FEIS App. N pp. 108, 109, 112, 113, 114). The discussion of economic “suitability” was similarly lacking. This evaluation should, among other things, take into account the budgetary impacts associated with grazing on land that is in unsatisfactory condition or on land that is subject to legal requirements under the Endangered Species Act or other environmental laws. Clearly, the cost of administering grazing on lands where one or both of these circumstances exists will be substantially higher than grazing on land where neither exists. The evaluation of “alternative uses foregone” also needed to be expanded. This statement without elaboration is insufficient to demonstrate that the RGNF made a “good faith” effort to

³ It appears that acres of road surface may have been eliminated from the capable land base (FEIS 3-183) as well as the suitable land base (Record p. 105602).

assess whether grazing in certain parts of the RGNF might foreclose other reasonable and legitimate uses of National Forest System lands.

III. Decision

For the foregoing reasons, I am affirming the Regional Forester's decision with respect to the capability determination on the RGNF but am reversing the Regional Forester's decision with respect to the suitability determination. By copy of this decision, I am directing the Regional Forester to instruct the RGNF to develop a new suitability determination. This analysis should be integrated and carried out in conjunction with other analyses required as a result of this decision.

Because I am reversing the RGNF suitability determination based on the foregoing analysis, I find it unnecessary to respond to the remaining contentions on this issue.

3. Wilderness

I. Contentions

Your appeal contends the following with regard to the evaluation of roadless areas on the RGNF:

- The Revised Plan and FEIS fail to properly evaluate the suitability and availability of roadless areas as potential wilderness in violation of 36 CFR 219.17 and the Forest Service Handbook 1909.12, Chapter 7 (NOA, p. 84- 87).
- The FEIS fails to address the site-specific "need" of roadless areas on the RGNF and their relative potential contribution to the National Wilderness Preservation System (NWPS). Specifically, the RGNF fails to provide data on Land Type Associations (LTA's), and their conclusion that "the RGNF roadless areas cannot meaningfully contribute to improving ecological representation within the NWPS" is unsupported by the record, and not informed by "high quality data as required by NEPA, and is thus arbitrary and capricious, in violation of the APA." (Administrative Procedure Act) (NOA, p.90-93)
- "The FEIS fails to adequately consider biotic factors in its wilderness 'need' evaluation" (NOA, p. 96).
- "The FEIS fails to adequately evaluate the need for additional wilderness to meet primitive recreation demand" (NOA, p. 99).
- The FEIS wrongly equates Backcountry and Wilderness Prescriptions (NOA, p. 103).

II. Analysis of Appeal Points

You contend the Revised Plan and FEIS fail to properly evaluate the suitability and availability of roadless areas as potential wilderness. (NOA, p. 84-87) Agency direction currently provides that, “[a]ll National Forest System lands determined to meet wilderness capability requirements are generally available for consideration as wilderness . . . an area recommended as suitable for wilderness must meet the tests of capability, availability, and need.” (Forest Service Handbook 1901.12, Chapter 7.22)

Appendix B of the FEIS describes the unroaded area inventory process used by the Forest. Table 3-78 of the FEIS lists fifty-three roadless areas, totaling 530,722 acres that were evaluated as potential Wilderness areas (FEIS, p. 3-354-3-355). The RGNF considered the criteria for availability for each area and explained that, “[u]nroaded areas that are suitable for wilderness must also meet the criteria of availability and need. Based on the write-up provided by the District, an evaluation of each unroaded area was done . . .” (FEIS, Appendix B, p. B-2). A summary of each unroaded area’s existing condition, capabilities, and manageability was provided (FEIS, Appendix B, p. B-7 through B-35). Complete write-ups of each unroaded area were contained found in the record and available to the public upon request (Record #107886).

The determination of “need” is based on the roadless area’s contribution to the local and national distribution of wilderness as demonstrated through the public involvement process. The record contains a “Wilderness Need” section, that considers each factor required in the FSH 1909.12, Chapter 7 23b (Record, Tab 6.13, Document #108519).

The Forest Service regulations require each roadless area to be evaluated for its “proximity to other designated wilderness and relative contribution to the [NWPS]” (36 CFR 219.17 (a) (2) (iv)). The FEIS assesses the contributions the unroaded areas on the RGNF could make towards the LTA’s that are minimally represented in the NWPS (FEIS, p. 3-354). The “Wilderness Need” evaluation (Record, Tab 6.13, Document #108519) contains an analysis of how the RGNF’s unroaded areas provide for and contribute toward underrepresented LTA’s. “The Rocky Mountain Region’s *Wilderness Needs Assessment* (Carr 1994) shows 14 of the Region’s 21 LTA’s are represented in the NWPS” (FEIS, p. 3-354). The FEIS displays which areas on the Forest contain these underrepresented LTA’s and states, “[t]hese areas are relatively small areas in comparison to the overall landscape, and do not comprise the dominant composition.” The RGNF further identifies low-elevation LTA’s in the *Wilderness Needs Assessment* that are managed by the National Park Service and Bureau of Land Management (FEIS, p. 3-354).

You contend that adequate consideration of biotic factors was not addressed in the needs determination. Management Area prescriptions for each roadless area were written, and public comment was solicited (Record, Tab 5.4, Document #104611). Included in this prescription are the effects of recreation, wildlife, threatened and endangered species, mammals, reptiles, minerals and range for all unroaded areas (Record, Tab 5.4,

Document #107883). In addition, the FEIS contains analysis of how biotic factors are affected by alternative. This includes biotic factors for wilderness and unroaded areas. The analysis points out that “dispersed recreation could include trampling vegetation, recreational stock grazing.” However, the analysis concludes, “[R]ecreation use, under all Alternatives, appears to have a relatively low impact on Sensitive plants, special concern plants, and significant plant communities on the Forest” (FEIS, p. 3-94). The concluding analysis for wildlife states, “Cumulatively there would be no major change in the current make-up of forest structure as a result of human activities . . . there will be a limited impact on the neotropical migrant birds associated with the RGNF’s spruce-fir forests” (FEIS p. 3-250).

The Revised Plan gives management themes for each alternative. Under alternatives A, E, and F, the theme for meeting primitive recreational demand was shown by managing all or part of the unroaded areas as recommended wilderness. Further, analysis shows the changing patterns of recreation use, and the ability of non-wilderness lands to provide opportunities for unconfined outdoor recreation experiences (Record, Tab 6.13, Document #108519, pp.1-2).

The Regional Forester decided not to recommend additional Wilderness based on the conclusions of the Wilderness Needs Assessment that is in Chapter 3 of the FEIS, Wilderness section. The Needs Assessment supports the conclusion that the existing Wildernesses on the Forest have the capacity to sustain more use. The Regional Forester also concluded that “[r]ecreation is an activity that is allowed, but is not the purpose for which Wildernesses were designated. Therefore, controls on activities are more evident, and restrictions on levels of use may come to bear as use increases over time” (ROD, p. 13).

Your concern that the FEIS wrongly equates Backcountry and Wilderness Prescriptions (NOA, p. 103) is addressed in the Travel Management section of this appeal decision (see Issue 5 below), including specific reference to inconsistency in the Pole Mountain area. The analysis of how Backcountry Areas were determined is also addressed in that section.

III. Decision

After reviewing the record, I find that the Revised Plan complies with 36 CFR 219.17 and direction in the Forest Service Handbook. The FEIS addresses “need” and contribution to the NWRPS and consistent with law, regulation and policy. Data on LTA’s is complete and is not arbitrary and capricious, and does not violate the Administrative Procedure Act. I find the RGNF did not abdicate its responsibility by not selecting small acreages of low-elevation LTA’s. The consideration of biotic species and competition with visitor use was analyzed and addressed the factors required by FSH 1909.12, Chapter 7, 23b. The FEIS evaluated the need for additional wilderness and the Regional Forester considered that assessment in her decision. The Regional Forester’s decision is affirmed.

4. Wilderness Fish Stocking

I. Contention

Your appeal contends the following with regard to wilderness fish stocking on the RGNF:

- “The Forest Plan’s provision allowing the stocking of non-native fish in wilderness violates the Wilderness Act, Forest Service policy, NEPA, and is arbitrary and capricious in violation of the APA.” (NOA, p. 108)
- The Memorandum of Understanding (MOU) with the Colorado Division of Wildlife “does not permit the Forest Service to unilaterally abdicate its responsibilities under the Wilderness Act and its own policy.” (NOA, p. 108)

II. Analysis

Management Area Prescription 1.11 states that, “[w]ilderness managers work with the Colorado Division of Wildlife (CDOW) on stocking of non-indigenous species” (Revised Plan, p. IV-3). This statement is in error and was so noted by the RGNF (RGNF Appeal Record Transmittal, p. 65). It will be corrected through the issuance of an errata sheet which will state that, “[w]ilderness managers work with the Colorado Division of Wildlife on stocking of indigenous species.”

Direction concerning NEPA and management of fish and wildlife with the States is clarified in a September 6, 1996, letter to Regional Foresters from the Deputy Chief of the Forest Service which provided that:

- We share responsibility with the States for managing fish and wildlife resources.
- We use the framework in the MOU’s between the Forest Service and state fish and wildlife agencies to coordinate actions and resolve differences.
- The NEPA process is triggered by Federal actions.

The document also states, “[i]n general, wildlife transplants and fish stocking activities by a State agency do not require Forest Service approval or decisions, are not Federal actions, and thus are not subject to NEPA (Record, Document #108939).

III. Decision

Upon review of the record, I find the Revised Plan meets the intent of NEPA, APA, Forest Service regulations and policy. The MOU does not authorize the Forest Service to abdicate its responsibilities but rather explains that the Forest Service must coordinate actions with the State of Colorado. The Regional Forester’s decision is affirmed.

If the Forest has not done so already, the Regional Forester is directed to issue an errata

sheet that corrects the error on Revised Plan, page IV-3, as noted above.

5. Travel Management

I. Contention

Your appeal contends the following with regard to travel management direction contained in the Revised Plan:

- The Plan Revision fails to provide any evidence and analysis for its decision to motorize a total of 67 trails, in violation of NEPA, Forest Service regulations and policy, and the APA (Administrative Procedures Act).” (NOA, p.109)
- The “FEIS fails to take a ‘hard look’ at the impacts of designating trails as motorized,” and “in designating trails for motorized use, the RGNF failed to consider factors required by the Forest Service’s travel planning regulations.” (NOA, p. 110, 113)
- The FEIS failed to evaluate the impacts of the proposal to motorize routes on the Pole Creek Mountain Roadless Area, in violation of NEPA and Forest Service policy,” and is therefore arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C., 706(2) (A). (NOA, p. 118-122)
- “The Forest failed to comply with NEPA and the APA regarding its decision to motorize Trail #885 [connecting Road 640 to Fremont Camp] (NOA, p. 123-125).
- The decision in the ROD to motorize trails listed as non-motorized on the 1983 Travel Map, was made without site-specific analysis and violates NEPA, Forest Service regulations, and the APA. (NOA, p. 127)
- The “Forest Service cannot rely on the EIS prepared for the Forest Plan because the Forest violated NEPA in preparing that environmental review.” (NOA, p. 129)
- The Forest Plan revision fails to comply with the National Trails System Act by permitting motorized use on the Continental Divide National Scenic Trail. (NOA, p. 131)

II. Analysis of Appeal Points

Land and resource management plans are programmatic documents and do not make site-specific decisions. The Revised Plan and its accompanying FEIS and ROD described travel management at the broad, programmatic level. The site-specific decision on trail designations was made in a separate decision by the RGNF Supervisor after the ROD for the Revised Plan was issued (Record, Document #103033, Trail Designation ROD).

“A Forest interdisciplinary team assessed all inventoried trails in the areas on the Forest allocated to the Backcountry Prescription (in Alternative G), for the purpose of establishing which ones should be motorized or non-motorized” (FEIS, Chapter 3, p. 356).

“Based on the write-up provided by the District, an evaluation of each unroaded area was

done based on the area's attributes (capability, manageability, and suitability) (FEIS, Appendix B, p. B-2). The effects on recreation from travel management were considered (FEIS, Chapter 3, p. 3-409).

You contend that Trail #885 connecting Forest Development Road 640 to Fremont Camp should not be motorized because Fremont Camp is considered eligible for placement on the Register of Historic Places and increased access will not maintain the camps integrity (sic) (NOA, p. 123) and thus constitutes an "undertaking" (NOA, p. 124). As explained in the aforementioned discussion, the site-specific decisions on trail designations were not made in the Revised Plan. Therefore, an analysis of the consequences of designating Trail #885 as motorized is outside the scope of the RGNF forest plan revision process.

The National Trails System Act authorizes but does not require the use of motorized vehicles on portions of the Continental Divide National Scenic Trail (CDNST) where such use was allowed by administrative regulations at the time of designation (Record, Document #107722, Section 8.9). All the trails you are concerned with were open to motorized travel at the time the CDNST was designated (Record, Document #109176, Forest Visitor Map), (Revised Plan, Alternative G Map), (Record, Document #107727, 1991 Travel Order), (Record, Document #103033, Trail Designation ROD). I can find no evidence that the Revised Plan designates any motorized use on the Continental Divide National Trail that did not already exist.

III. Decision

After reviewing the record, I find that the Revised Plan does meet the intent of NEPA, APA, Forest Service regulations and policy. The FEIS does analyze the impacts of designating trails as motorized, and considers factors required by the Forest Service's travel planning regulations, the National Historic Preservation Act and National Trails System Act. The Regional Forester's decision is affirmed.

6. Winter Recreation Impacts on Resources

I. Contention

Your appeal contends that, "[t]he Forest Service failed to fully disclose and take a 'hard look' at the environmental impacts of winter recreation on the Rio Grande National Forest." (NOA, p. 132)

II. Analysis

You contend that many of the adverse impacts attributed to winter recreational activities that are documented in the literature were ignored by the RGNF in preparing the Revised Plan and FEIS (NOA, p 132). However, the RGNF reviewed literature pertaining to

recreation, off-road vehicles, and snowmobile, including literature provided by the Biodiversity Legal Foundation (Record, Review Forms, Tab 8.5). It is apparent the Forest spent considerable time and energy reviewing literature sent during the comment period (Record, #108963, Tab 9.1).

The FEIS analyzes the impacts on wildlife from winter recreation activities including snowmobiling and cross-country skiing. As noted in the FEIS, “[t]he Biological Assessment made a finding of ‘no effect’ for all Alternatives with respect to T&E species. The Biological Evaluation made a determination of ‘may adversely impact individuals, but not likely to result in a loss of viability in the planning area, nor cause a trend to federal listing or a loss of species viability range-wide’ for all Alternatives with respect to Sensitive wildlife species” (FEIS, p. 3-127).

The FEIS concludes that “the greatest chance of impacting wildlife is when skiers interact with wintering big game. This impact is limited, since the wintering animals are in the lower country, which generally has poorer snow conditions and is not sought out by skiers” (FEIS, p. 3-133). The FEIS further points out “Knight and Gutzwiller (1995) outlined four categories of restrictions that may facilitate coexistence between recreationists and wildlife: spatial, temporal, behavioral, and visual. All except behavioral are addressed to some degree by the Standards and Guides” and each is addressed in the FEIS (FEIS, p. 3-134).

Analysis in the FEIS on the effects on flora from all forms of recreation use found that “under all alternatives (there) appears to have a relatively low impact on sensitive plants, special concern plants, and significant plant communities on the Forest” (FEIS, p. 3-94). The effects of each alternative on air quality was analyzed and concludes that “[n]one of the alternatives considered will substantially change air quality on the Forest (FEIS, p. 3-153).

Impacts on wilderness were not addressed because access to the wilderness in winter is extremely limited as shown on the Snowmobile Use Map (Record, #109181, Tab 6.14). Furthermore, the Wilderness Act prohibits motorized use in wilderness areas (36 CFR 261.16).

Cumulative impacts are discussed for each resource: wildlife, flora, air quality, and wilderness (FEIS, p. 3-139, 3-97, 3-154, 3-351). The FEIS discusses that cumulative effects on species viability from any of the Alternatives is considered small (FEIS, p. 3-139).

III. Decision

Based on my review, I find that the Revised Plan and FEIS adequately analyzed and disclosed winter recreation impacts on various resources, and that the Revised Plan is in compliance with NEPA. I find that the references cited in the Record (Tab 8.5) demonstrate that the Forest adequately used and considered relevant scientific literature related to winter recreation impacts upon air quality, wilderness, wildlife, flora and

cumulative impacts. I also find that the Forest used an appropriate level of high quality and accurate analysis to evaluate the impacts of winter recreation activities on forest resources. The Regional Forester's decision is affirmed.

7. Conditioning at Re-issuance and Issuance of FLPMA Authorizations

I. Contention

Your appeal contends that the Revised Plan fails to protect water resources and specifically, instream flows as required by law. (NOA, p. 146 through 148) Your specific contentions, presented below, focus on compliance with Section 505 of the Federal Land and Policy Management Act (FLPMA).

- “[T]here is nothing in the RGNF Forest Plan Revision that demonstrates an intention on the part of the Forest Service to comply with this provision (Section 505) of FLPMA with respect to rights-of-way issued for water projects.” (NOA, p.146)
- Using guidelines to comply with the resource protection sections of FLPMA is a violation, since the Revised Plan describes guidelines as discretionary, while compliance with FLPMA is mandatory. (NOA, p.146-147)
- “[T]he Guidelines erroneously attempt to distinguish between existing and new water projects. FLPMA Section 505 authorizes no such distinction.” (NOA, p. 147)
- The Forest Plan fails to “contain a meaningful Forest-wide Objective for achievement of watershed health.” (NOA, p.147)
- “Forestwide Objective 1-3 appears to renounce authority the Forest Service clearly has to minimize damage and protect the environment as required by FLPMA Section 505.” (NOA, p. 147-148)

II. Analysis of Appeal Points

Forest Plans do not change existing law and regulation. The FLPMA authorizes the imposition of terms and conditions (bypass flows) as a condition of use. The Revised Plan's language in Standard 5 is in error when it describes reestablishing water in dewatered stream “when feasible”. Bypass flows shall be established on a case-by-case basis where necessary to “minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise [to] protect the environment.” FLPMA sec.505; 36CFR 251.56. The guidelines describe a process to comply with FLPMA. However, based upon the distinction between Standards and Guidelines as described in the Revised Plan, I find that the flexibility inherent in the Guidelines is inconsistent with FLPMA and 36

CFR 251.56.

III. Decision

I find that the Revised Plan is not consistent with the Federal Land Policy and Management Act in its treatment of instream flows. The direction in the Standards and Guidelines does not reflect the mandatory nature of the law. The Forest Service is obligated to review re-issuance of special use authorizations and new applications in compliance with FLPMA and the Forest Service regulations. FLPMA is explicit in its requirements that the Forest Service establish terms and conditions to minimize damage to scenic and aesthetic values and fish and wildlife habitat and otherwise protect the environment. Since Forest Plans cannot be inconsistent with statutes and regulations, Standard 5 on page III-7 and Guidelines 1 – 3 following the Standard are legally invalid. Re-issuance of authorizations or new authorizations shall be made in compliance with section 505 and 36 CFR 251.56. The Regional Forester’s decision is reversed.

8. Clean Water Act

I. Contention

Your appeal raises the following concerns regarding livestock grazing and compliance with the Clean Water Act (CWA):

- The Revised Plan “fails to contain any statement that all management activities will comply with the Clean Water Act.” (NOA, p. 148)
- “The Forest Plan violates the planning regulations mandating compliance with the Clean Water Act § 401 by failing to require livestock grazing permit-holders to certify that they will meet state water quality standards.” (NOA, p. 148)

II. Analysis of Appeal Points

Your appeal referred to a 1996 district court decision in Oregon which concluded that grazing on National Forest System (NFS) lands was subject to the required state certification of 401 of the CWA.

In the Revised Plan, the Forest acknowledged the conflict and based on advice from EPA chose to maintain a position that grazing was a nonpoint source and not subject to sec 401 certification, pending the outcome of ongoing litigation (FEIS, App. N, p. 113). Subsequent to your appeal, the Ninth Circuit reversed the lower court’s decision and held

that grazing on NFS lands under Forest Service permit is not subject to requirements of Section 401 of CWA.

III. Decision

Based upon my review, I find that the Revised Plan clearly establishes it's intent to comply with the Clean Water Act. Regarding your contention that the Plan is deficient because it does not require a section 401 permit, I find that as a result of subsequent litigation, the requirement of range permittees to obtain a section 401 certification has been eliminated, which has negated the basis of your allegation. As a result, the Revised Forest Plan does comply with section 401 of the Act. Therefore, the Regional Forester's decision is affirmed.

9. Continuous Monitoring

I. Contentions

You contend "[t]he Forest Plan Revision violates NFMA by failing to provide for 'Continuous Monitoring', “. . . does not specify the frequency . . . “ [and does not] “provide for adequate and specific monitoring of all indicators”(NOA, p. 149).

II. Analysis of Appeal Points

The record (Section 12) documents the evolution of the planning team's “two-tiered” approach to monitoring and evaluation. This contrasts with your contention (NOA, p. 151) that “. . . the RGNF fails to provide any justification or explanation for how and why it chose this monitoring plan . . . “

The Regional Forester highlights the importance of monitoring by stating that she:

. . . directed that a monitoring-and-evaluation process be implemented that displays the implications of our decisions and activities. To accomplish this, I make the pledge to you, that I am emphasizing Monitoring and Evaluation and asking that it get top priority as work plans are developed each year” (ROD, p. 2).

The ROD clearly describes the Regional Forester's commitment to meeting the requirements at 36 CFR 219.11 (d) for monitoring and evaluating implementation of the Revised Plan (ROD, p. 20).

The Revised Plan Monitoring and Evaluation Strategy is described in Chapter V of the Revised Plan (p. V-1-V-30).

The Strategy described in Chapter V reflects adjustments made to incorporate concerns raised by the public during the comment after publication of period of the DEIS and the FEIS (Revised Plan, p. V-2). The programmatic strategy developed in Chapter V anticipates an “Annual Monitoring and Evaluation Report” as well as an “Annual Monitoring Operation Plan.” The Monitoring and Evaluation Report will contain recommendations . . . regarding the effects and outcomes of Forest Plan Implementation” (Revised Plan, p. V-15). The Annual Monitoring Operation Plan (AMOP) will be the implementation instrument, and describes “reasons, methods, locations, responsible persons, and estimated costs“ (Revised Plan, p. V-15). The Revised Plan, with its provisions for AMOP and Annual Monitoring and Evaluation Report demonstrates the Forest’s intent to set in motion a continuous monitoring process.

In addition, Table V-1 (Revised Plan, pp. V-18 through V-30) rigorously outlines the Forestwide Desired Conditions, Monitoring Objectives, specific monitoring methods, and specified monitoring frequencies. The Revised Plan (Chapter V, p. V-3) references 36 CFR 219.12 (k), which gives guidance that monitoring will be “on a sample basis” to “determine how well objectives have been met and how closely management standards and guidelines have been applied.”

I have compared the requirements of 36 CFR 219.12, 36 CFR 219.19, 36 CFR 219.21, 36 CFR 219.7, and 36 CFR 219.11 with the Revised Plan’s Table V-1 cited above, and find that each of the requirements is recognized as legally required by the Forest. This

includes requirements for the expected frequency of measurements, expected precision and reliability, and the time when the evaluation will be reported (36 CFR 219.12(k)(4)) as shown in Table V-1.

However, even though the Revised Plan has language that shows compliance, the monitoring effectiveness is questionable because substance is deferred to yet-to-be-determined Annual Monitoring Operational Plans. The Forest’s two-tiered approach to monitoring and evaluation does not assure that monitoring will be accomplished on the ground. Likewise it does not assure that likely results will be sufficient to measure the desired conditions and objectives cited in Table V-1. Furthermore, the monitoring plan does not assure that forest wide questions which require persistence over time will be addressed.

Monitoring implementation credibility may legitimately be questioned for any of the specific “Tools/Methods” and “Desired Conditions/Objectives”(Revised Plan, Table V-1, pp. V-18 – V-30). The potential problems associated with monitoring Management Indicator Species are illustrative, and, in fact, do not meet the NFMA regulations or FSM direction regarding MIS. The RGNF did not identify management indicator species, and therefore MIS were not used for the purposes intended and as required by the NFMA implementing regulations that state: “Population trends of the MIS will be monitored and relationships to habitat changes determined”(36 CFR 219.19(a)(2) and (a)(6) (See separate issue on Viability and Diversity).

You contend that continuous monitoring will not occur because you believe the frequency for measurements and reporting lack specificity. Although the frequency of monitoring and the Monitoring Table precision class leave much room for interpretation, the Planning Team and Regional Forester reasonably approached the requirements of the NFMA and associated regulations in developing the Revised Plan Monitoring and Evaluation Strategy (Chapter V, pp. V-1 through V-30).

It is clear from the Revised Plan, the FEIS, and the Record that the Forest was very much aware of the law, regulation, and policy concerning the issue of monitoring and evaluation. Furthermore, it is apparent the Forest adhered to that law, regulation, and policy in articulating a reasoned approach to establish realistic monitoring priorities and scales. The Revised Plan provides for monitoring flexibility yet still complies with 36 CFR 219.12(k). "Continuous monitoring" cannot specifically require monitoring of all resources, species, and management actions across the entire Forest each year. Realistic priorities and scales must be established.

The planning team built upon experience gained from the public meetings with stakeholders and built in flexible and adaptable requirements that would allow new knowledge and techniques to be incorporated. These requirements should provide the basis for precision and reliability as the Annual Monitoring Operation Plan is developed. As appropriate for a LRMP, the monitoring focus approved by the Regional Forester in the LRMP context, was a programmatic approach to monitor implementation of the Revised Plan. The ROD provides the same assurance that monitoring will be carried out as it does for other requirements of the Revised Plan.

III. Decision

After reviewing the record, I find the Revised Plan partially meets the intent and requirements of the NFMA, and the 1982 regulations at 36 CFR 219, with regard to LRMP implementation monitoring and evaluation efforts. The Regional Forester's decision is affirmed, in part, with instructions to further develop the substance of the Rio Grande's monitoring plan. The revised monitoring plan should be based upon ongoing efforts currently underway in the Region, and related program reviews.

The decision is reversed in regard to MIS monitoring because it does not comply with 1982 regulations at 36 CFR 219.19(a)(2)(a)(6).

10. Supplemental DEIS Due to Changes Between Draft and Final

I. Contentions

Your appeal raises contentions regarding your belief "[t]he RGNF violated NEPA by failing to prepare a Supplemental Draft EIS" (NOA, p. 151) because of :

- changes in “allocation of motorized trails” (NOA, p. 152), with related travel management, to permit motorized use in backcountry areas.
- changes in the predominant method of timber harvest (NOA, p. 153).

II. Analysis

The Forest planning team made several modifications to the analysis between the DEIS and FEIS to respond to comments received from the public and organizations. These changes include the development of the Backcountry Prescription used in Alternative G and resultant travel management strategy, and the addition of irregular shelterwood to the menu of silvicultural prescriptions modeled (ROD, p. 23). NEPA regulations (40 CFR 1502.9 (c) (1)) require that a DEIS or FEIS be supplemented if:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

The Regional Forester provided a general description of the alternatives and the logical outgrowth of how the alternatives respond to the revision topics (ROD, pp. 24 – 29).

The FEIS (Appendix N, p. N-1-N-323) shows the sub-issues of Travel Management and Harvest Methods were publicly vetted. The FEIS (Appendix N, p. N-242-N-253) addresses various topics relating to Travel Management. Harvest Methods were addressed in several comments, including FORPLAN (Appendix N, p. N-262, N-103), clearcutting (Appendix N, p. N-97), and shelterwood systems (Appendix N, p. N-99. N-103).

The overall issue about a Supplemental DEIS is subdivided below into the following topics to facilitate responding to your concerns: Travel Management and Harvest Methods.

A. Travel Management

You contend that "[b]ecause the Forest Service did not prepare a supplement to the Draft EIS, the public never had an opportunity to comment on the decision to manage 67 trails --- many in backcountry and/or roadless areas --- for motorized use" (NOA, p. 153).

The ROD did not include a decision on management of specific trails. The decision made by the Regional Forester was to select Alternative G, which included the Backcountry Management Area Prescription, Prescription 3.3 (ROD, p. 4). In the Backcountry Prescription, motorized travel is limited to designated roads and trails (Revised Plan, p. IV-17). These designated trails were selected in a separate site-specific decision by the Forest Supervisor on December 5, 1996 (Record, Document #103033). Therefore, the issue is whether the public had an opportunity to comment on the travel management strategy contained in Alternative G, which allows motorized travel on

designated roads and trails.

The effects, both on the environment and on the users, of implementing these alternative backcountry prescriptions were displayed in the DEIS (Chapter 3) and available for public comment during the 120-day public comment period (FEIS, p. 1-4). The Backcountry prescription found in Alternative G basically combines the non-motorized, non-motorized with limited use in winter, and motorized prescriptions of Alternative D and E into one allocation by allowing motorized use on designated trails (Revised Plan, p. IV-16, IV-17). Therefore the effects the management area direction contained in Management Area 3.3, Backcountry, were disclosed and available for public comment in the DEIS.

B. Harvest Methods

You are concerned about the change in the ratio of the amount of acres harvested using group selection and shelterwood between the DEIS and FEIS. In the DEIS, the use of group selection dominates over the use of single tree and shelterwood harvest in all alternatives. The preferred alternative from the DEIS (p. 3-161) would result in an average of 1305 acres per year harvested. In Alternative G of the FEIS, the use of shelterwood harvest dominates. This preferred alternative in the FEIS would result in an average of 1594 acres per year harvested (FEIS, p. 3-155). You contend that "[t]here is a significant difference between the impacts of group selection and those of shelterwood cutting . . . Shelterwood cutting, a much more intensive method of logging, will likely lead to much more fragmentation with resultant impacts on wildlife, then group selection" (NOA, p. 154). While differences would exist, I do not believe these are of such a magnitude that would require a Supplemental DEIS.

The FEIS discloses the effects on fragmentation by examining patch isolation, patch size, and edge effects (FEIS, p. 3-105). A comparison of the fragmentation and wildlife effects sections between the DEIS and FEIS show no appreciable differences in effects between the two analyses (DEIS, pp. 3-101-3-107, 3-113-3-132, 3-203-3-209; FEIS, pp. 3-105- 3-117, 3-127- 3-139, and 3-247-3-250). This is in part because of the relatively small number of acres that will be harvested by methods that cause fragmentation on a forest-wide basis.

Neither Forest-wide nor Management Area Standards and Guidelines dictate the mix of silviculture systems that will be used (Revised Plan, Chapters III and IV). The mix of silvicultural systems to be used is not a decision made in a Forest Plan, but rather made at the project level.

III. Decision

Since Alternative G is a combination of Alternatives D and E which were analyzed in the DEIS, the full range of environmental effects anticipated from implementation of alternative G were analyzed and displayed in the DEIS and available for public comment. The changes in silviculture methods displayed between the DEIS and FEIS did not result in any substantial changes to the effects on fragmentation and wildlife. There were also

no changes made to the proposed action between the DEIS and FEIS. Therefore, a Supplemental DEIS was not required. The Regional Forester's decision to not issue a Supplemental DEIS is affirmed.

11. Maximum Size of Created Openings

I. Contention

You contend that the Revised Plan fails to specify a maximum size of openings created by even-aged management as required by the 1982 Forest Service planning regulations at 36 CFR 219.27(d)(2) (NOA, p. 154-155).

II. Analysis

The 1982 Forest Service planning regulations at 36 CFR 219.27(d) provide the basis for the direction on limitation of openings created by even-aged management contained in the Rocky Mountain Regional Guide. The direction in the Regional Guide (as amended in May 1992, with technical corrections in June 1996) states in Chapter 3, p. 4 that:

The maximum size of openings created by even-aged management will be 40 acres, regardless of forest type, with the following exceptions:

- Where proposals for larger openings are approved by the Regional Forester after a 60-day public review.
- Where larger openings are the result of natural catastrophic conditions of fire, insect or disease attack, or windstorm.
- Where the area that is cut does not meet the definition of created openings.

The Revised Plan (p. III-17, Silviculture Standard #1) directs a maximum allowable opening of forty acres and refers to the same exceptions described above.

III. Decision

After reviewing the record, I find that the Revised Plan specifies the maximum size of openings that may be created by even-aged management as required by the planning regulations at 36 CFR 219.27(d)(2). The Regional Forester's decision is affirmed.