United States Department of Agriculture
Forest Service
Pike and San Isabel National Forests
Cimarron and Comanche National Grasslands
Pikes Peak Ranger District
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File Code: 7710
Date: April 14, 2009

Dan Wagman
3472 Research Parkway
Suite 104, PMB 513
Colorado Springs, CO 80920

Dear Mr. Wagman:

This letter is in response to your inquiry of March 25, 2009.

The administrative road beyond the terminus of Forest Service Road 371 has not been closed using the Code of Federal Regulations. It has never been a Forest Service system public road and thus not subject to those regulations. It was created by the utilities company in 1932 for the purpose of operation and maintenance of the water pipeline, under authority and general terms of a special use permit to Colorado Springs Utilities. The permit is issued for the purpose of: "operating and maintaining a water transmission line and associated facilities for the transmission of municipal water supply which includes... 2.5 miles of 16 ft wide maintenance road."

The current Special Use Permit was issued under authority of the Federal Land Policy/Management Act of October 21, 1976 et seq., which authorizes the general terms and conditions of the permit, including Part I, Item F: Nonexclusive Use and Public Access, which states:

> *Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.*

and Part VII, Item D: Health, Safety and Environmental Protection, which states:

> *Holder shall take all measures necessary to protect the health and safety of all persons affected by its activities...(3) that causes or threatens to cause a hazard to the safety of workers or to public health or safety or serious and irreparable harm or damage to the environment.*

The adverse damage and need for protection identified by the District Wildlife Biologist for the Yellow Lady's Slipper, a Region 2 sensitive species, after review of the *Continued Monitoring of Cypripedium calceolus in Emerald Valley*, Gorge Cameron, 2004 and field inspection, resulted

in recommendation on August 26, 2004 to restrict motorized use of the special use access road by installation of a gate.

Colorado Springs Utilities hired Cabalka Consulting to produce a report, "Rosemont Pipeline/Dam Modifications Study in 2003. This report recommended controlling 4WD access to Emerald Valley Road and improvements to reduce future vehicle damage to the pipe. A Forest Service Inspection Report of June 30, 2005 also recommended installation of a gate to prevent future damage to resources and facilities. A meeting with Mr. Bruce Newell of Colorado Springs Utilities to review these and other findings resulted in a request by Colorado Springs Utilities to gate the access road as documented in a July 6, 2005 letter to Mr. Scott Campbell, Field Operations Manager.

The protection of the sensitive species, damage to the maintenance road, the exposure of the pipeline by OHV use of the maintenance road and the shooting and cutting of holes in the pipeline by unknown persons and other adverse damage to the road, as noted by you to Frank Landis of my staff in an e-mail dated May 8, 2005, have made it a necessary to restrict all unauthorized motorized use of this maintenance road by the public. Public notice of this proposed action was posted on site for ten months in advance of the gate installation. No negative response was received.

National Forest System Road 300 (FSR 300) is under a seasonal road closure, Order Number 89-10, that is authorized by and pursuant to 36, C.F.R. 261.50 (b), that has been in effect seasonally from December 1st to April 1st since it was issued on April 24, 1989. This Order was issued April 24, 1989 and documented in the Supervisor's Order Justification Statement April 4, 1989 for the reason of public safety and to minimize winter recreational use conflicts.

National Forest System Road 322A (FSR 322A) is currently closed under Order Number 04-01, issued May 24, 2004 under Forest Service Handbook 1909.15 Environmental Policy and Procedures Handbook, Category 31.1b, Section 1, "Orders issued pursuant to CFR 261 – Prohibitions to provide short-term resource protection or to protect public health and safety" A Decision Memo was signed on April 28, 2004.

These roads are further closed and/or restricted in accordance with the 2005 National Travel Management Rule as shown or not shown in the 2009 Motor Vehicle Use Map, Pike National Forest Pikes Peak Ranger District, as explained in our letter of December 17, 2008.

These authorities allow us to close these routes to best manage the National Forest lands.

Sincerely,

Brent Botts

/s/ Brent Botts
BRENT BOTTS
District Ranger