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*Delivery via email (Jessica.Held@usdoj.gov)*

August 27, 2018

David Lucas, Refuge Manager  
Rocky Flats National Wildlife Refuge  
c/o Jessica Held, Esq.  
United States Department of Justice  
601 D Street, NW Room 3144  
Washington, D.C. 20004

**Re: Demand to Close Rocky Flats Refuge Trailheads Forthwith Pending Compliance with Requirement for History/Safety Signs**

Dear Mr. Lucas,

The purpose of this letter is to demand actions as to the U.S. Fish and Wildlife Service's ("FWS's") compliance with the Rocky Flats National Wildlife Refuge Step-Down Plan for Site History/Safety Signs (the "Signage Plan"). It has come to our attention that one of more of the Rocky Flats National Wildlife Refuge (the "Refuge") trails have been opened to the public, but that the signs required by your agency's Signage Plan, as described herein, have not been posted. FWS is thus in violation of its Signage Plan requirements.

As you should know, the Final CCP for the Refuge commits FWS to posting informative signs at Refuge trailheads with "information about the site's history, clean-up and access restrictions."<sup>1</sup> To implement this objective, FWS prepared the Signage Plan.<sup>2</sup> FWS solicited and received public comment on Refuge signage, and in fact revised drafts of the informational signage based on these comments.<sup>3</sup> After public input, FWS approved final language for the signs, which are to be posted "*prior* to the opening of...access points to [Refuge] visitors."<sup>4</sup> The approved, final language is approximately 350 words and contains sections including "What Happened Here?" and "Is there Residual Contamination?"<sup>5</sup>

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<sup>1</sup> Final Comprehensive Conservation Plan (April 2005) at 71.

<sup>2</sup> Rocky Flats National Wildlife Refuge Step-Down Plan for Site History/Safety Signs (January 2007).

<sup>3</sup> The Signage Public Response Letter, along with FWS's comments to the same, are available in three sets at <https://www.fws.gov/nwrs/threecolumn.aspx?id=2147530249> (last visited Aug. 23, 2018).

<sup>4</sup> Interpretive Signs About Site History, Cleanup and Access Restrictions, attached hereto as **Exhibit 2**, also available at <https://www.fws.gov/nwrs/threecolumn.aspx?id=2147530249> (last visited Aug. 23, 2018) (emphasis added).

<sup>5</sup> *Id.*

The photographs attached hereto as **Exhibit 1** were taken August 23 at the Woman Creek Loop Trail trailhead; this is a Refuge access point on the southern boundary of the Refuge. As evidenced by these photographs, that trail appears to be open to public use. Language regarding trail use is provided at the trailhead, but it omits the informational signage required by the Signage Plan at (at least) the Woman Creek Loop Trail. For instance, there is absolutely no signage related to the history of the site or residual contamination, let alone the very specific language that was vetted through public comment and ultimately finalized under the Signage Plan.

FWS's failure to comply the Signage Plan violates the Final CCP<sup>6</sup> and FWS's own policies regarding step-down management plans.<sup>7</sup> According to the Fish and Wildlife Service Manual, step-down management plans "provide the details (strategies and implementation schedules) *necessary* to meet goals and objectives identified in the CCP."<sup>8</sup> Step-down management plans, such as the Signage Plan, "describe the specific... implementation schedules...[the Service and its managers] are to follow..."<sup>9</sup> Moreover, "[t]he preparation of new step-down management plans or substantial changes to existing stepdown management plans typically will require further compliance with NEPA and other policies, and an opportunity for public review."<sup>10</sup> Thus, you are also in violation of NEPA by avoiding the agency's own policies regarding step-down management plans.

Your agency's failure to comply with the Signage Plan and NEPA demonstrates your continuing inattention to legal requirements regarding the Refuge, and a carelessness that does the public a grave disservice. In light of this legal violation, all Refuge trailheads should be closed forthwith pending compliance with the Signage Plan.

If you wish to discuss this matter further, please contact us.

Sincerely,



Randall M. Weiner

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<sup>6</sup> See, e.g., Final CCP (April 2005) at 119 ("A step-down management plan provides specific guidance for the Service to follow to achieve objectives or implement management strategies related to specific management topics such as habitat, fire and public use.").

<sup>7</sup> Refuge Planning Policy Pursuant to the National Wildlife Refuge System Administration Act as Amended by the National Wildlife Refuge System Improvement Act of 1997 (65 Fed. Reg. 102). Although these regulations appear in the Fish and Wildlife Service Manual, as FWS states in its comments to these regulations, "publishing in the Service Manual rather than the CFR does not affect the strength of any rules that are in the chapters nor does it exempt us from procedural requirements." 65 Fed. Reg. 102 at 33902.

<sup>8</sup> 65 Fed. Reg. 102 at 33908 (emphasis added).

<sup>9</sup> *Id.* at 33919.

<sup>10</sup> *Id.*

Encl.