



December 3, 2013

USDA Forest Service
Attn: Judicial and Administrative Reviews
EMC, RPC-6
1601 N. Kent St.
Arlington, VA 2220

RE: Appeal to San Juan NF RMP

Dear Sirs;

Please accept this correspondence and attachments as the notice of appeal and appeal of the above Organizations with regard to the USFS portions of the San Juan/Tres Rios (SJ/TR) Final Environmental Impact Statement ("FEIS") and Resource Management Plan ("RMP"). It is the Organizations position that the analysis of many issues is arbitrary and capricious as a matter of law and fails to provide the hard look at issues mandated by NEPA. Often the analysis of impacts and reviews of management standards are made in violation of numerous other statutes and regulations.

The SJ/TR FEIS and RMP assert that economic contributions are based on and consistent with USFS VNVUM analysis and specifically cites to recently released NVUM research on economic contributions of recreation. Any allegation of consistency of findings is facially arbitrary and capricious and must be reversed, as the SJ/TR conclusions on recreational economics are anything but consistent with the NVUM economic conclusions as evidenced by the fact the SJ/TR asserts to be providing analysis consistent with high spending forests. This is directly contradicted by the conclusions regarding the spending profiles of user groups that are reached in the SJ/TR FEIS as these conclusions are often numerous factors less than the spending

profiles that are identified for user groups for a low average spending forest. For several user groups, the average spend for that group is completely outside the conclusions for the range of spending for the same group. The FEIS analysis also fails to provide any analysis of how the changing management standards will impact funding to state agencies, whose funding streams have been directly tied to management issues addressed in the FEIS and RMP. An example of such a secondary impact would be that a lack of access for hunting has been specifically identified as the single largest issue that can be addressed in land management to maintain hunting funding for wildlife management.

The Organizations are vigorously opposed to the manner in which NVUM analysis is alleged to be relied on for some issues and completely overlooked for other management issues. The NVUM analysis overwhelmingly concludes that current management is effectively providing a high quality recreational experience to users of the planning area. These conclusions are simply never addressed nor does the FEIS or RMP provide any analysis on how the high levels of proposed management changes will impact the already high level of customer satisfaction. The Organizations believe that an 83% increase in areas where motorized usage is unsuitable will directly impact the quality of most users experiences to possibly improve the alleged negative experience that is currently provided to less than 2% of visitors.

In addition to arbitrary and capricious analysis of economic issues, the current management of numerous locations in the SJ/TR planning area are not accurately reflected in the FEIS/RMP. These are areas with long histories of motorized usage that remain open to such legal usage at this time. The FEIS/RMP also proposed to make landscape level determinations regarding the suitability/unsuitability of areas for motorized usage. While these determinations appear to be limited to USFS lands the future of this standard for possible application on BLM lands is unclear. As such the errors in the development of this standard are addressed here and the Organizations are not comfortable in assuming that BLM areas currently limited to existing or designated routes currently will not be designated as unsuitable at some point in the future.

Several factors appear to have been relied on in the determinations of area suitability that arbitrarily and capriciously conflict with both agency analysis and USFS regulations such as the Colorado Roadless Rule. How most of these factors are integrated into the final suitability determinations simply are not addressed. Habitat areas are excluded from future suitability despite USFWS analysis made as part of the Endangered Species Act review process that motorized usage of these areas for numerous species is not an issue. Roadless areas are managed under a single standard of review that conflicts with the newly released Colorado Roadless Rule and fails to analyze how areas motorized usage would be a protected characteristic of a roadless area and then found to be unsuitable for motorized usage in two review process that occurred at functionally the same time in the same area.

Prior to addressing the specific appeal points, a brief 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 in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations.

The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to insure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands.

Colorado Snowmobile Association ("CSA") was founded in 1970 to unite winter motorized recreationists across the state to enjoy their passion. CSA currently has 2,500 members. CSA has become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling by working with Federal and state land management agencies and local, state and federal legislators. For purposes of this appeal, Colorado Off-Highway Vehicle Coalition, the Trail Preservation Alliance and Colorado Snowmobile Association will be referred to as "the Organizations" in this appeal.

It is the Organizations position that the FEIS and RMP must be remanded to the Field Office for further analysis of the issues more specifically addressed in this appeal. The analysis of these issues and associated balance of uses that will result from meaningful analysis and a hard look at accurate information must then be provided to the public for an additional comment period. It is the Organizations position that an RMP for this area that is based on accurate economic information and accurate application of management standards will look significantly different that the current management standards sought to be applied.

1. Implications to the appeal process from the renewal of the Service First Agreement are not addressed.

Prior to addressing the specifics of the Organization's appeal, the Organizations must address the scope of the appeal and a serious concern for treatment of the appeals that may be submitted by the general public. This concern involves the changing status of the Service First agreement and the changes to the agency responsible for on the ground management of certain activities at specific locations on the SJ/TR. This type of ambiguity has become very important in the appeal process as agency deadlines and criteria for submission of appeals are

significantly different. Most of the public simply will not be aware of this as all previous actions have been taken under a uniform process as if the public was dealing with a single agency.

Approximately two years ago, the Service First agreement between BLM and USFS expired. Over the last two years significant efforts have been directed towards unwinding the joint management of the planning area under the Service First principals as the service first agreement was not going to be renewed. Often this resulted in management of specific activities being changed from one agency to the other in areas despite long histories of management of that area by an agency. The Organizations often only became aware of this change in management when a meeting was attended and a new agency was attending the meeting.

This confusion has now been further expanded by the fact that Service First Agreement was recently renewed and made permanent during the appeal portion of this planning process. This change was not well publicized, even to Organizations that were aware of the expiration of the original agreement. The general public will simply have no idea the impacts that the changes may have on their appeals. At this time, the Organizations are not aware of how management of particular areas is going to be resolved. Will these areas be returned to the agency having the historical management under Service First or will management be maintained by the agency having formal jurisdiction over the particular area? We simply cannot answer this question.

The Organizations believe an example of the impacts of the rather fluid state of the Service First agreement that was recently encountered will clarify our concerns and this situation involves the management of winter motorized recreation on the Molas Pass area. Historically all management of winter recreation in the area, including grooming permits and management of permittees was handled by the Forest Service. The Organizations only became of BLM jurisdiction when correspondence was sent to members last year evidencing a desire to not renew grooming permits in the Molas Pass area. As a result of this situation, the Organizations are including many issues in the BLM appeal that have been traditionally USFS tools, such as the Roadless Rule. The Organizations feel preserving our concerns for resolution is the highest priority of the appeal.

Most users simply do not have this level of contact between agency personnel to be aware of these type of changes. The Organizations are certain that as a result of the fluid nature of the Service First agreement, appeals of valid concerns regarding the FEIS and RMP made in good faith will be sent to the wrong agency. The changes in the Service First process and how this will impact appeals sent in good faith to the incorrect agency should have been addressed in the FEIS and appeal process and simply has not been. While the Organizations are sympathetic to the situation the agencies are now in, the Organizations also believe provisions must be made

to address valid appeals that are incorrectly submitted to the wrong agency based on previous management of the areas subject to the appeal. The Organizations are deeply troubled that there are no provisions for the treatment of appeals that are incorrectly submitted to the wrong agency.

2a. Standard of review.

The Organizations believe a brief summary of the standard of review that are applied by Courts reviewing agency NEPA analysis is relevant to this discussion, as the courts have consistently directly applied the NEPA regulations to EIS review. As a general review standard, Courts have applied an arbitrary and capricious standard of review for agency actions under NEPA. This standard is reflected as follows:

"...it required only that the agency take a "hard look" at the environmental consequences before taking a major action. *See, Kleppe v. Sierra Club*, 427 U. S. 390, 427 U. S. 410, n. 21 (1976). The role of the courts is simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions, and that its decision is not arbitrary or capricious. *See generally, Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 401 U. S. 415-417 (1971)."¹

The CEQ regulations note that a detailed statement is a significant tool to be relied upon in the public comment process. These regulations clearly state this relationship as:

"NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." ²

The Organizations vigorously assert that a hard look has not been taken on numerous issues, such the Colorado Roadless Rule, possible secondary impacts from decisions to State agencies and suitability analysis as both of these standards fail to accurately apply relevant standards and sometimes directly conflict with previous conclusions of other agency who are primarily charged with the management of the issue.

¹ See, *Baltimore G& E Co v. NRDC*; 462 US 87 (1983) at pg 98.

² See, 40 CFR 1500.1(b)

2b. The standard of review for economic analysis is a de novo standard as the Courts have consistently substituted their judgment regarding the accuracy of economic analysis.

While the general standard of review for agency actions is an arbitrary and capricious standard of review, Courts have consistently held agencies to a much tighter level of review of economic analysis in the NEPA process as the court makes their own conclusions regarding the accuracy of review without deference to agency findings. Relevant court rulings addressing economic analysis have concluded:

"an EIS serves two functions. First, it ensures that agencies take a hard look at the environmental effects of proposed projects. Second, it ensures that relevant information regarding proposed projects is available to members of the public so that they may play a role in the decision making process. Robertson, 490 U.S. at 349, 109 S.Ct. at 1845. For an EIS to serve these functions, it is essential that the EIS not be based on misleading economic assumptions."³

The Court then discussed the significance of economic analysis in planning as follows:

"Misleading economic assumptions can defeat the first function of an EIS by impairing the agency's consideration of the adverse environmental effects of a proposed project. See, *South La. Env'tl. Council, Inc. v. Sand*, 629 F.2d 1005, 1011-12 (5th Cir.1980). NEPA requires agencies to balance a project's economic benefits against its adverse environmental effects. *Calvert Cliffs' Coordinating Comm. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1113 (D.C.Cir.1971). The use of inflated economic benefits in this balancing process may result in approval of a project that otherwise would not have been approved because of its adverse environmental effects. Similarly, misleading economic assumptions can also defeat the second function of an EIS by skewing the public's evaluation of a project."⁴

The level of accuracy of the hard look at economic analysis applied by the Court in the Hughes River decision is significant as the Hughes River Court invalidated an EIS based on an error in economic contribution calculations of approximately 32%.⁵ As more specifically addressed later in this appeal, the Organizations vigorously assert the error in economic calculations in the SJ/TR planning is easily more than twice the 32% the Hughes River Court found sufficient to

³ Hughes River Watershed Conservancy v. Glickman; (4th Circ 1996) 81 F3d 437 at pg 442; 42 ERC 1594, 26 Env'tl. L. Rep 21276.

⁴ See, Hughes River Supra note 2 at pg .

⁵ See, Hughes River, Supra note 2 at pg

overturn the EIS in that matter. In several categories of spending the FEIS asserts spending amounts of less than 10-20% of the total found in the research that was alleged to be the source of this information. It is the Organizations position that failing to accurately establish current spending of users precludes any meaningful comparison of how management changes will impact these economic benefits.

2c. Standards required for application of best available science in the NEPA process.

The Organizations believe a brief discussion of the agency standards for analysis of issues in the NEPA and land management process are very relevant to a review of the decision making process under an arbitrary and capricious standard of the hard look required by NEPA. The basic mandate to include documented economic and scientific analysis early in public lands planning process is provided by the Federal Lands Planning and Management Act ("FLPMA). FLPMA specifies the various criteria that must be incorporated at specific times in the development of a land use plan as follows:

"(c) In the development and revision of land use plans, the Secretary shall–

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;..."⁶

The basic mandate of FLPMA regarding the critical need for documented economic analysis is more specifically and extensively addressed in Appendix D of the BLM's Land Use Planning Handbook. **The Organizations must note that economic concerns are the only factor that is addressed in every step of the planning process laid out in the BLM planning handbook.**

The development of forest plans is further governed by the Multiple Use Sustained Yield Act that provides as follows:

***Multiple use* - the "management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people"⁷**

The MUSYA further mandates that a transportation network be provided to allow for usage of public lands to best meet the needs of the American people. Given the explosion of usage of the SJ/TR planning area, the Organizations do not believe this statutory requirement can be achieved when there is an 83% increase in areas found unsuitable for motorized access.

⁶ See, 43 U.S.C. §1712

⁷ See, 16 USC §531(a).

These concerns are summarized in the NEPA regulations which clearly provide the reason for the need for high quality information to be provided in the NEPA process. NEPA regulations provide as follows:

"(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. ***The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.***"⁸

The Organizations vigorously assert that high quality information on numerous issues has simply never been provided in the FEIS and RMP, as the Organizations are forced to theoretically address numerous issues despite the asserted priority and importance of the issues in the planning process. The lack of high quality information has materially impaired the Organizations ability to meaningfully and completely comment on a variety of issues.

It is well established that NEPA regulations require an EIS to provide all information under the following standards:

"... It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment..... Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses...."⁹

Federal statutes require that best available science be taken into account in all federal planning. The statutes also require planners to discuss how the best available science was taken into account, and how the science relied upon was interpreted and applied to the issues addressed in the plan. Best available science is specifically defined for planning purposes as:

"§ 219.11 Role of science in planning. (a) The Responsible Official must take into account the best available science. For purposes of this subpart, taking into account the best available science means the Responsible Official must:

(1) Document how the best available science was taken into account in the planning process within the context of the issues being considered;

⁸ 43 CFR 1500.1(b)

⁹ 40 CFR 1500.1

- (2) Evaluate and disclose substantial uncertainties in that science;
 - (3) Evaluate and disclose substantial risks associated with plan components based on that science; and
 - (4) Document that the science was appropriately interpreted and applied.
- (b) To meet the requirements of paragraph (a) of this section, the Responsible Official may use independent peer review, a science advisory board, or other review methods to evaluate the consideration of science in the planning process.”¹⁰

The Organizations frequently cannot find any basis for the decisions that are more specifically addressed in the subsequent portions of this appeal meaning there can be no argument that the analysis is sufficient for purposes of the above standards. As there is no analysis, the decisions are arbitrary and capricious per se.

On several issues there are critical portions of the FEIS analysis that simply are not provided, such as failure to provide the division of recreational spending across the four NVUM categories and many other issues. These issues are compounded by the fact that there have been significant revisions of the FEIS and RMP, including the economic analysis of recreational usage, much of which was never provided to the public for comment. As a result issues that clearly would have been resolved in the comment process, the public is now forced to appeal the decision to make the public comment on the per se incorrect conclusions that have been reached.

3a. Economic impacts from management changes proposed in an RMP is a task to be addressed in every phases of planning.

To insure economic contributions of public lands to local communities and western states, relevant federal statutes and planning documents implementing these statutes explicitly require economics to be addressed in **every** stage of the planning process to satisfy the hard look requirements of NEPA. The Organizations believe these mandates simply has not been complied with in the TR/SJ process and will result in long term increases in user conflicts and degradation of assets and economic contributions. The Organizations vigorously assert that the hard look of NEPA analysis is not satisfied by citing to NVUM analysis as the source of the comparative recreational spending, when the conclusions regarding average spending reached in the SJ/TR conclusions often fall outside the range of spending identified for a particular user

¹⁰ See, 36 CFR §219.11.

group in the NVUM analysis alleged to be relied on. This is anything but the hard look mandated by NEPA.

In the SJ/TR FEIS, the planning area is asserted to be a comparatively high spending area compared to the national averages found in the NVUM process. This assertion directly conflicts with the data that is derived in the SJ/TR plan as the NVUM data provides a national average for those utilizing developed camping opportunities at \$171 to \$183 per day. The SJ/TR plan determines this spending is \$46.11, making any assertion of consistency in conclusions lack factual and legal basis. These issues are discussed in more detail in subsequent portions of this appeal and are not limited to a single user category. However it must be noted that user group specific information was only provided in the FEIS and not at previous stages of planning, and as a result no public comment or input on these totals has been received.

No discussion of the methodology used for the analysis process is provided which directly impairs the ability of the Organizations ability to meaningfully discuss the errors in analysis that have lead to conclusions that lack factual and legal basis. Often SJ/TR conclusions regarding average spending of recreational groups are outside the range of spending of all users identified in the NVUM analysis.

3b. Comparative spending profiles were not included in the DEIS and as such were not subjected to the public review process which has lead to the inclusion of erroneous conclusions.

Prior to addressing the specific merits of the appeal, the Organizations must note that no public comment period has been provided on two of the major appeal points. The conclusions of the SJ/TR FEIS regarding recreational spending profiles, which directly conflict with the alleged source of the information were not provided in the DEIS As such public comment was not received during the comment process. Under the Section of the Economic analysis there is an undesignated section entitled "changes since the draft environmental Impact Statement and supplement"¹¹.

"Recreation use and spending profiles were updated, but they remain constant across alternatives."¹²

In addition to a revision of recreational spending profiles, the Organizations will also note there have been significant revisions to the Colorado Roadless Rule since the release of the DEIS. It is unclear how these changes impacted analysis of roadless areas under BLM management and

¹¹ FEIS at pg 579

¹² FEIS at pg 580.

these changes were clearly not incorporated into the analysis of Colorado Roadless areas in the USFS lands to be managed under the DEIS. The Colorado Roadless Rule provides for the management of all roadless areas under two standards but the SJ/TR plan applies only one and does so without explanation.

Given the facial inconsistency of the SJ/TR conclusions and the NVUM conclusions asserted to be relied on, the Organizations believe these errors could have been resolved with an additional comment period. Forcing issues of this magnitude to be addressed in an appeal is patently unfair as most of the public simply do not have the time or resources to prepare an appeal of a Resource Plan. This corrupts the spirit and specific mandate of the NEPA process.

3c. Failure to accurately address economics in the planning process will lead to significant management issues with the implementation of the RMP.

The Organizations are very concerned that the faulty economic analysis prepared in the FEIS and RMP have led to an allocation of resources in a manner that simply does not reflect user demands and will rapidly become unsustainable when the RMP provisions are implemented. The Organizations are not alone in their concerns regarding impacts of management decisions based on inaccurate economic analysis. The Western Governors' Association released its *Get Out West* report in conjunction with its economic impact study of recreation on public lands in the Western United States which specifically identified that proper valuation is a significant management concern as follows:

"Several managers stated that one of the biggest challenges they face is "the undervaluation of outdoor recreation" relative to other land uses."¹³

The *Get Out West* report from the Western Governors' Association also highlighted how critical proper valuation of recreation is to the development of good management plans based on multiple use principals. The *Get Out West* report specifically found:

"Good planning not only results in better recreation opportunities, it also helps address and avoid major management challenges – such as limited funding, changing recreation types, user conflicts, and degradation of the assets. Managers with the most successfully managed recreation assets emphasized that they planned early and often. They assessed their opportunities and constraints, prioritized their assets, and defined visions."¹⁴

¹³ Western Governors Association; *Get out West Report; Managing the Regions Recreational Assets*; June 2012 at pg 3.

¹⁴ *Get Out West Report* at pg 5.

The Organizations believe our concerns regarding the SJ/TR plans and those expressed in the Western Governor's *Get Out West* report virtually mirror each other. This concern must be addressed in order to avoid increases to many other management issues that were sought to be minimized with the creation of the DRMP. There can simply be no factual argument made that recreation has not been significantly undervalued in the SJ/TR both in terms of spending as a whole and comparison across user groups.

3d. USFS NVUM analysis has long been recognized as best available science on comparative recreational spending.

The USFS began compiling National Visitor Use Monitoring information("NVUM") data as the result of Executive Order #12,862 issued by President Clinton in 1993 which addressed setting customer service standards for **ALL** Federal agencies. The on-going importance of the issues originally addressed in EO #12,862 was recently reaffirmed with the issuance of EO #13,571 on April 27, 2011 by President Barack Obama. Over the 20 year lifespan of the NVUM process, there has been significant peer review of the analysis process and conclusions. The Organizations have found these conclusions to be rather conservative for motorized usage, but these concerns are very minimal here, as the SJ/TR conclusions are significantly below any conclusions reached in the NVUM analysis. NVUM conclusions have now been recognized as best available science on the recreational spending of users.

The USFS NVUM process provides a wide range of information regarding users and economic information which is divided into 4 national categories for each user group. These categories are local day use; non-local day usage; local overnight use; and non-local overnight usage.¹⁵ Each group is provided a low, average and high spending amount. The national averages in each category are then adjusted to incorporate comparative local costs for using particular areas of the county, as costs of living and recreation vary significantly throughout the county. These multipliers for local costs are summarized as a below average, average and above average spending area. These localized categories are then multiplied by the visitation to a particular area in each category of user to allow for flexibility of the analysis process and develop site specific total spending conclusions.

Often categories are simply omitted from analysis, such as non-local day trips in the average recreational spending amount, despite the identification of this group as the source of 56% of

¹⁵ See; White and Styne; *Spending Profiles of National Forest Visitors, NVUM Round 2 Update* ; March 2010 at pg 6. Hereinafter referred to as Styne and White March 2010. A copy of this report is attached to this appeal as Exhibit "1". The Organizations are deeply troubled that the March 2010 portions of the Styne and White research are not even cited in the FEIS, despite the exceptional relevance of this research.

visits to the SJ/TR. The SJ/TR FEIS fails to provide any average spending amounts for the particular user categories used in the NVUM process or the comparative utilization of the SJ/TR area by the four user group categories. The SJ/TR only provides a single average for each group and does not break out day usage or trip length. The failure to provide this information, which should have been developed for the application of the NVUM process has directly prejudiced the Organizations ability to meaningfully discuss errors in conclusions. The Organizations believe the failure to provide this information is a violation of NEPA as a high quality detailed statement of the analysis of the issue under the hard look standard has not been provided.

3c. There are many phases of the NVUM process, most of which have not been relied on in the planning process despite asserts to contrary.

At numerous points in the SJ/TR plan and FEIS assertions are made that economic calculations and management decisions are made in reliance on the NVUM analysis for the planning process. The NVUM research is research the Organizations are very familiar with, given the expansive amount of forest specific information on a wide range of uses and issues that the NVUM process provides. The Organizations are deeply concerned that despite numerous assertions of consistency with this information in the plans, most of the NVUM materials are not relied on in the SJ/TR plan.

While the specific concerns with the usage and incorporation of NVUM analysis is identified later in the appeal, the arbitrary usage of portions of NVUM analysis must be identified. The SJ/TR RMP and FEIS assert that all NVUM research is available in one report. This is simply incorrect as the NVUM process provides forest specific reports addressing a wide range of uses, resources and user satisfactions. In addition to these forest specific reports, NVUM process provides two specific reports on recreational spending. These reports address user specific information and then more general average recreational spending profiles. After reviewing the RMP and FEIS, the average recreational spending report is not identified and as more specifically identified later, the user group spending report is reflected in a manner that is simply woefully inaccurate.

4a. The FEIS asserts an average recreational spending of \$30, which directly conflicts with NVUM estimates of this value at \$59.65 for the planning area.

The Organizations believe a brief summary of relevant court ruling on the quality and accuracy of economic analysis in an EIS is very relevant to establish the context of our concerns as the Courts have consistently applied the high standard of a hard look that allows public comment to insure conclusions are not misleading.¹⁶ Calculations of the average recreational spending

¹⁶ Hughes River Watershed Conservancy v. Glickman; (4th Circ 1996) 81 f3d 437 at pg 442; 42 ERC 1594, 26 Env'tl. L. Rep 21276

amount is also arbitrary and capricious and fails to satisfy the hard look requirements of NEPA. Average recreational spending appears to exclude non-local day trips from analysis, and this exclusion has specifically resulted in estimates for all recreational spending directly conflicting with best available science and failing to satisfy the hard look requirements of NEPA.

Additionally relevant court decisions and NEPA mandates solidly place the burden of proving the basis for decisions on the agency. Given the significant amount of critical analysis and information that is not provided in the FEIS for economic issues, which has forced the Organizations to undertake significant theoretical review of issues, the Organizations vigorously assert this agency burden has not been met in the review of economic issues. As a result the FEIS must be remanded for further analysis and issues rebalanced once accurate and defensible analysis has been provided.

Prior to addressing the erroneous conclusions of the average recreational spending, the Organizations believe it is important to compare the average recreational spend of the SJ/TR analysis with the NVUM analysis. The FEIS notes that the SJ/TR is a higher than national average spending area, specifically stating:

"Each national forest is classified as a high-, average-, or low-spending area by comparing local spending with national averages. **Spending on the SJNF is classified as a high-spending area. NVUM spending patterns were also applied to recreation visitors on BLM lands.**"¹⁷

The consistency of analysis between the FEIS and NVUM research starts and ends with the position that the SJ/TR is a high spending forest. As the SJ/TR has been identified the planning area as a "higher than average" spending area, the average recreational spending amounts should correlate at some level to the higher than average spending information found in the NVUM works. They simply do not.

Table 3.29.7 of the FEIS provides the following summary of the conclusions regarding average recreational spending that are alleged to be based on the works of Drs. Styne and White, which in relevant part provides:

¹⁷ FEIS at pg 597

Table 3.29.7: Direct Economic Activity Used in Economic Impact Analysis

Activity	Units	Direct Economic Activity (\$)
Tourism/Recreation spending¹		
Downhill skiing		
Non-local day	Party-trip	\$69
Non-local overnight	Party-trip	\$893
All other recreation		
Local day trip	Party-trip	\$30
Non-local overnight (on public lands)	Party-trip	\$352
Non-local overnight (off public lands)	Party-trip	\$782

¹ White and Stynes (2010).

² National Agricultural Statistics Service (2011).

³ U.S. Energy Information Administration (2011).

⁴ Thrash and Powers (2007).

⁵ Duvall (2012).

⁶ Morgan and Keegan (2011).

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The Organizations are vigorously opposed to any assertion of consistency between the SJ/TR conclusions provided in Table 3.29.7 and the conclusions on recreational spending for high averages forests reached by Drs. Styne and White. The FEIS fails to provide any analysis of spending for recreational users in the non-local day trip category and as a result, the conclusions of the FEIS are utterly irreconcilable and arbitrary and capricious as a matter of law, as the Stynes and White research provides the following analysis of high spending forests:

¹⁸ See, FEIS at pg 595. Many other categories of spending are included in this table but are not included here as they are not related to recreational activities.

Table 13. High spending profiles by trip type segment and spending category, \$ per party per day/night^a

Spending categories	Non-local segments			Local segments			Non-primary	All-visits ^b
	Day	OVN-NF	OVN	Day	OVN-NF	OVN		
Motel	0.00	24.07	53.71	0.00	4.00	7.07	55.73	31.62
Camping	0.00	9.07	4.12	0.00	14.67	1.20	2.86	3.95
Restaurant	28.34	13.21	36.77	7.63	8.54	9.29	39.45	24.65
Groceries	5.92	16.99	17.31	4.65	38.85	8.85	14.58	13.83
Gas & oil	28.26	21.10	18.67	11.48	25.01	8.15	18.30	17.90
Other transp.	0.21	0.18	0.72	0.78	0.00	0.42	1.83	0.87
Entry fees	5.19	1.66	4.09	2.47	2.41	0.50	3.81	3.11
Recreation & entertainment	6.86	2.80	12.09	1.03	0.88	1.16	10.04	6.48
Sporting goods	1.89	4.37	4.21	1.42	8.85	1.16	2.62	3.20
Souvenirs and other expenses	<u>11.64</u>	<u>3.62</u>	<u>12.41</u>	<u>1.54</u>	<u>3.46</u>	<u>2.75</u>	<u>12.57</u>	<u>7.84</u>
Total	88.31	97.06	164.12	30.99	106.67	40.54	161.80	113.47
N (unweighted)	151	327	576	785	86	34	817	2,776

^a Outliers are excluded and exposure weights are applied in estimating spending averages. All figures expressed in 2007 dollars. These averages exclude visitors who claimed their primary activity was downhill skiing. When completing analyses involving skiers refer to subsequent tables on average skier spending.

^b The all visit averages are computed as a weighted average of the columns using the national trip segment shares as weights.

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The local average daily recreational spend (\$30) that is reflected in Table 3.29.7 of the FEIS simply cannot be reconciled with table 13 of the Styne and White research which clearly finds the lowest average spend is \$31 and non-local day trips spend on average \$88.31.

While the FEIS fails to provide any additional information to support the \$30 per day conclusion, NVUM analysis does provide sufficient information for a reasonable estimate to be made. This is exactly the type of information that must be provided in an FEIS to satisfy the NEPA hard look, and simply has been excluded from the SJ/TR analysis. NVUM analysis for the SJ/TR planning area identifies that 56% of visits to the planning area result from non-local day trips making this spending profile critical to any analysis.²⁰ No explanation has been provided for why the non-local day trip category has simply been dropped from the FEIS analysis. **As there is an almost even division of day trips between local and non-local, the average for this category should be \$59.65 rather than the \$30 that is asserted in the FEIS.**²¹

¹⁹ Styne and White March 2010 at page 15.

²⁰ See, NVUM Visitor Use Report - San Juan NF Round 2 - USDA Forest Service Region 2 June 20, 2012 at pg 16. A copy of this report has been attached to this appeal as Exhibit "2".

²¹ \$30.99+ \$88.31 /2= \$59.65

The Organizations vigorously assert that certain user groups would be heavily impacted by the exclusion of the non-local day trip spending profile. One such user group would be the snowmobile community, which frequently travels long distances in a single day to follow significant snow storms. The day after a significant storm are the most highly prized days for a snowmobiler due to the large amounts of fresh powder that is available. While recreational usage would continue after the fresh powder is lost, these days are the most highly sought after. Many snowmobilers simply live in areas where there is never enough snow to ride making a long ride as part of a day trip a normal user profile.

Clearly, the non-local day trip spend category would increase the spending of day users significantly higher than the \$30 that is identified in the SJ/TR plan. It is the Organizations position day users should be valued at approximately \$59.65, based on the information in the NVUM analysis. The Organizations believe such any assertion of consistency with an average spending profile is per se incorrect, arbitrary and capricious and must be reversed to allow for accurate economic analysis and a rebalancing of proposed use to accurately reflect economic contributions with opportunities provided. The Organizations vigorously assert any assertion of higher than average spending amounts reflected in the SJ/TR totals is exactly the type of assertion that courts will find reversible as this assertion directly misleads the public on the accuracy of economic analysis in the RMP and FEIS.

4b(i). The SJ/TR conclusions on user group specific spending directly conflicts with NVUM research which the SJ/TR conclusions are alleged to be based on.

The Organizations have serious concerns regarding the accuracy of the SJ/TR average recreational spending analysis as certain categories of local user groups are completely dropped from the analysis. These concerns are expanded exponentially when the spending of specific user groups are identified in the SJ/TR plan. Several user groups are valued at less than 20% of the Stynes and White analysis and often the SJ/TR average spending falls well outside the total range of spending for the category identified by the Dr Stynes and White. The SJ/TR FEIS clearly asserts the basis for its economic analysis as follows:

"Data from the NVUM project for the SJNF (2011) are used to estimate recreational use on the SJNF. BLM estimates were provided by the TRFO..... Spending on the SJNF best matched higher than average spending rates. It is assumed that spending by BLM visitors was similar to those visiting the SJNF." ²²

²² See, Tres Rios FEIS at pg 594.

The FEIS notes the research of Drs. Stynes and White, that has been produced in association with each round of the NVUM process, has been relied on to break down the average spend of each user group into the four categories previously identified.²³ As a result of these assertions, analysis and conclusions reached in the FEIS and the work of Dr Stynes and White done in conjunction with the NVUM process should be roughly consistent. This is simply incorrect and a facial violation of NEPA as there is no analysis of these differences.

The SJ/TR FEIS provides the following table of conclusions for spending profiles of various user groups that are asserted to be consistent with a high average spend:

Table 3.29.8: Economic Benefits and Financial Revenue Values

Activity	Unit	Economic Benefit (\$)	Agency Financial Value (\$)
Recreation			
Downhill skiing	Visit	\$208.18	N/A
Cross-country skiing	Visit	\$208.18	N/A
Snowmobiling	Visit	\$127.23	N/A
Hunting	Visit	\$76.71	N/A
Fishing	Visit	\$98.17	N/A
Viewing scenery/wildlife	Visit	\$54.41	N/A
OHV use	Visit	\$86.34	N/A
Driving	Visit	\$78.56	N/A
Hiking/Biking	Visit	\$108.19	N/A
Developed camping	Visit	\$46.11	N/A
Primitive camp/backpacking	Visit	\$48.30	N/A
Other recreation	Visit	\$49.46	N/A

²⁴

The works of Drs. Styne and White performed in conjunction with NVUM research and directly cited as authority for the SJ/TR conclusions provide the following conclusions in their research on comparative user group spending:

²³ See, FEIS Table 3.29.7: Direct Economic Activity Used in Economic Impact Analysis note #1 at pg 595.

²⁴ See; Tres Rios FEIS at pg 596.

Table 3. Visitor spending for high, average, and low spending areas by activity, \$ per party per trip (\$2007)

Activity	Non-Local Day Trips			Non-Local Overnight Trips ^a			Local Day Trips			Local Overnight Trips ^a		
	Low	Avg	High	Low	Avg	High	Low	Avg	High	Low	Avg	High
Downhill skiing	\$126	\$130	\$181	\$468	\$798	\$893	\$68	\$64	\$69	\$359	\$386	\$489
Cross-country skiing	\$87	\$97	\$135	\$315	\$537	\$951	\$26	\$27	\$31	\$242	\$259	\$329
Snowmobile	\$116	\$129	\$180	\$377	\$642	\$1,139	\$72	\$74	\$74	\$289	\$311	\$394
Hunting	\$79	\$88	\$122	\$253	\$368	\$652	\$41	\$51	\$51	\$230	\$248	\$314
Fishing	\$52	\$55	\$77	\$214	\$331	\$548	\$36	\$38	\$38	\$154	\$161	\$205
Nature-related	\$56	\$65	\$90	\$269	\$473	\$826	\$36	\$37	\$42	\$182	\$195	\$247
OHV-use	\$98	\$109	\$151	\$219	\$277	\$491	\$63	\$58	\$58	\$125	\$134	\$170
Driving	\$42	\$54	\$75	\$338	\$576	\$1,021	\$28	\$32	\$30	\$259	\$278	\$353
Developed camping	n/a	n/a	n/a	\$183	\$206	\$300	n/a	n/a	n/a	\$178	\$171	\$217
Prim. camping/bpack	n/a	n/a	n/a	\$108	\$134	\$196	n/a	n/a	n/a	\$121	\$120	\$153
Hiking/biking	\$53	\$50	\$64	\$228	\$473	\$765	\$20	\$21	\$18	\$126	\$150	\$190
Other	\$60	\$72	\$100	\$216	\$330	\$569	\$36	\$40	\$32	\$170	\$187	\$237
Total	\$58	\$65	\$90	\$214	\$366	\$648	\$34	\$34	\$29	\$165	\$177	\$224
Ratio to average	0.90		1.39	0.59		1.77	0.98		0.84	0.93		1.27

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It should also be noted that the Stynes and White work provided a itemized per trip breakdown of most spending user group categories identified above to allow for more meaningful analysis and application of this information. These itemized per trip per group breakdowns add further credibility to the Stynes and White works and further evidence the arbitrary nature of the conclusions reached in the SJ/TR plan. The SJ/TR simply fails to provide any type of information that could be deemed comparable to this aspect of the NVUM analysis. The Organizations vigorously assert that the non-local day trip spending category was simply omitted from the calculation of the average recreational spending and the supporting information provided in the FEIS for the specific user group analysis does not provide sufficient information to determine if this group was omitted from specific user group analysis or not in violation of the NEPA hard look requirements and relevant court decisions.

The Organizations have identified significant concerns when SJ/TR conclusions are compared to NVUM averages. Preparation of this additional analysis provides compelling data regarding the inconsistency of SJ/TR conclusions with NVUM high averages. As previously noted the SJ/TR FEIS does not provide sufficient information to provide exact comparisons for each factor but NVUM research indicates that visitation to the San Juan/Tres Rios planning area is 56% from outside the planning region.²⁶ The NVUM analysis also concludes there is an even split

²⁵ See; White and Stynes; *Updated Spending Profiles for National Forest Recreation Visitors by Activity*; Nov 2010 at pg 6. Hereinafter referred to as Stynes and White November 2010. A copy of this report has been attached as Exhibit "3".

²⁶ See, Visitor Use Report, San Juan NF USDA Forest Service Region 2 National Visitor Use Monitoring Data Collected FY 2006; Last updated: 20 June 2012 at pg 15. Note: The third round of NVUM analysis for the San Juan NF does not include visitation information at this time.

between the day vs. overnight usage.²⁷ Given the almost even split of local/non-local visitation and day/overnight stays, there is a significant degree of accuracy that can be obtained by totaling each Stynes and White user spending category for a high spending forest and dividing by four. The Organizations do not believe any factor that would not addressed in such an analysis is sufficient to resolve the stunning inconsistencies in conclusions of this additional analysis.

<u>Activity</u>	<u>SJ/TR conclusions on economic activity(\$)</u>	<u>NVUM high spending average</u>	<u>% of NVUM totals that SJ/TR reflects</u>
Downhill skiing	\$208.18	\$408.00	51%
Cross-Country skiing	\$208.18	\$361.50	57%
Snowmobile	\$127.23	\$446.75	28%
Hunting	\$76.71	\$284.75	26%
Fishing	\$98.17	\$217.00	45%
Nature Related	\$54.41	\$301.25	18%
OHV	\$86.34	\$217.50	39%
Driving	\$78.56	\$369.75	21%
Developed Camping*	\$48.30	\$258.50	18%
Primitive Camping*	\$46.11	\$174.50	26%
Hiking/Biking	\$108.19	\$259.25	41%

*- for purposes of this category non-overnight users are not included as by definition all camping stays are overnight.

The Organizations would be remiss in pointing out there is a significant difference between every category of high average spending for users, which precludes any assertion of similar analysis methodology between the NVUM process and the SJ/TR process. The proportions of spending that are found range from a low of 18% and a high of 57% of NVUM conclusions and do not represent a couple of user groups that poor data and analysis was used for. NVUM conclusions place most high average user group spending categories at 2-4 times the value amounts determined in the SJ/TR analysis. This level of conflicts in allegedly similar process are facially inconsistent with any assertion of the SJ/TR being a high spending forest compared to the national averages in the NVUM analysis.

The Organizations must stress the insufficient nature of this user group specific information as the breakdown of day vs. overnight visitation and local vs. non-local visitation is not provided in the SJ/TR analysis, which directly impacts the Organizations ability to address this issue in the appeal. It is the Organizations position this type of basic information must be clearly stated in any hard look sufficient for NEPA purposes. Given the SJ/TR planning area has been identified

²⁷ *Id* at pg 26.

as a high spending forest, each category of user should have an average spend **consistent** with the high average amounts that are provided in the above chart. Incorporation of this position into the subsequent analysis further expands the identified issues when comparing conclusions. Clearly these conclusions are not consistent directly evidence arbitrary and capricious conclusions that fail to satisfy the NEPA hard look requirements.

4b(ii). Comparisons of various user groups directly evidence the arbitrary nature of SJ/TR analysis .

The Organizations vigorously assert that arbitrary nature of the SJ/TR conclusions and failure to apply best available science and analysis methodology is readily apparent when general comparisons regarding of the conclusions of the SJ/TR research and NVUM research are compared. More specifically:

1. **Every category of spending(time and distance) analyzed by Stynes and White places the spending of downhill skiing and snowmobiling at similar spending levels. Stynes and White found the average spending of cross country skiers significantly lower than downhill skiing and snowmobiling. In contrast the SJ/TR calculations value downhill and cross country skiing exactly the same and assert that snowmobile user spends almost 40% less than the expenditures of downhill and cross country skiers. These conclusions are arbitrary, capricious and fail to rely on best available science.**
2. In applying these spending profiles the Stynes and White work specifically compared the spending profiles of cross-country skiers and snowmobilers. This breakout provides the following information:

Table 18—Total spending resulting from additional visitation to snow facility

	NL Day	NL OVN	L Day	L OVN	Non- primary	Sum
Snowmobiling						
Party visits	1,920	2,250	6,521	207	1,222	
Average spending	\$129	\$642	\$74	\$311	\$0	
Total spending (\$1,000s)	248	1,444	482	64	0	2,238
Cross-country skiing						
Party visits	583	1,280	7,158	154	700	
Average spending (\$ per party visit)	\$97	\$537	\$27	\$259	\$0	
Total spending (\$1,000s)	56	687	193	40	0	976
Snow facility sum (\$1,000s)						
	304	2,131	675	104	0	3,214

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This directly conflicts with SJ/TR conclusions that average cross-country skiers spend almost twice that of an average snowmobiler. Clearly the SJ/TR conclusions on these spending groups are arbitrary, capricious and fail to rely on best available science and do not rely on NVUM analysis.

3. Comparison of the SJ/TR conclusions to the day use cross-country skier spending amount results in a number that is lacking factual and legal basis as NVUM data indicates approximately 50% of visitor days are out of the area. **NVUM analysis concludes day use cross country skiers spend \$27 per day while the SJ/TR conclusions assert an average 8 times larger than this category. It is the Organizations position these conclusions simply cannot be reconciled.**

4. OHV users are found to spend similar or higher average amounts in every category of NVUM research when compared to hiker/bikers users. By comparison SJ/TR analysis concludes that the hiking/biking community on average spends 25% more than the average OHV user. This conclusion of the SJ/TR analysis cannot be support by the authority asserted, best available science and violates numerous standards of NEPA.

5. Analysis of developed camping conclusions reached in the SJ/TR analysis also directly conflicts with NVUM analysis. SJ/TR analysis concludes the average

²⁸ See, Stynes and White November 2010 at pg 25.

spending for a developed camping user is \$ 46.11 while NVUM analysis estimates this higher than average user group spending ranges from \$217 for local usage to \$300 per day. SJ/TR conclusions assert an average spending amount less than 20% of the lowest spending group found in the NVUM analysis. **There is simply no way to reconcile this average spend as the SJ/TR conclusions are completely outside the range of findings of the NVUM analysis**

4c. Economic contribution analysis provided in the FEIS is internally conflicting.

The Organizations vigorously assert the complete failure of the two tables that are provided in the FEIS to provide similar conclusions regarding recreational spending is direct evidence of the arbitrary and capricious nature of the determinations that are provided. While the Organizations have significant concerns regarding the accuracy of all these analysis, the Organizations believe the basic inconsistency of the internal analysis directly evidences the arbitrary and capricious manner the entire issue was handled with, which directly relates to conclusions that lack a basis in logic and fact and are directly conflicting with best available science on the issue.

Table 3.29.7 of the FEIS asserts an average recreational spend of \$30 per day. This average spending amount simply cannot be reconciled with the user group specific spending averages that are provided in Table 3.29.8 of the FEIS. An average of Table 3.29.8 of the FEIS provides an average total of \$99.15 per day and specifically states no user group specific average provided in Table 3.29.8 is less than \$46.11 per day, thus removing any validity of the \$30 per day average previously provided in Table 3.29.7.

4d. SJ/TR economic conclusions conflict with State and user group analysis as well as NVUM analysis.

As noted above, the Organizations believe the conclusions regarding economic analysis are directly in conflict with the NVUM data the conclusions are alleged to be based upon. In addition to these conflicts in value, the Organizations are opposed to these conclusions as they conflict with a wide range of analysis that has been performed by the States of Colorado, Wyoming and numerous user groups. The SJ/TR averages asserted for certain recreational activities sometimes falls outside the range of spending that has been achieved in this research.

CPW Hunting	\$106-216 ²⁹	SJ/TR Hunting	\$75
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²⁹ See, CPW; *The Economic Impacts of Hunting, Fishing and Wildlife Watching in Colorado* September 2008 at section III, pg 11. A copy of this report is available here <http://wildlife.state.co.us/SiteCollectionDocuments/DOW/About/Reports/08DOWEconomicImpactReport.pdf>

COHVCO OHV	\$125-1,225 ³⁰	SJ/TR OHV	\$86.34
Wyoming State Parks		SJ/TR	
Snowmobile usage	\$98.29- 159 ³¹	Snowmobile	\$127

It should also be noted that motorized and non-motorized users carry often carry very similar gear in the backcountry in terms of jackets, packs etc and as a result spending profiles for basic gear should be very similar. Where differences occur is with the purchase of motorized equipment, which can often exceed \$12,000 per unit and operation of the unit. COHVCO analysis indicates that the average motorized user spends between \$19 and 40 per day in gasoline. These expenditures would account for the significant differences that the NVUM analysis concludes is present between non-motorized and motorized users even if costs of equipment are not accounted for in the spending profiles.³²

4e. Small changes in average spending have major impacts to recreational spending when expanded to the landscape level.

The Organizations believe it is important to understand the impacts that the relatively small changes in the per day user spending amounts can have on total spending. The potential impacts to management decisions that results from inaccurate calculations of the average economic spending of user groups is extensively discussed by Drs. White and Stynes regarding the development of a parking lot as part of a site specific analysis.³³ When these impacts specifically outlined in this example are expanded to allocation of resources on a landscape level plan, the negative implications and possibility of bad management decisions being made expands to a facially unacceptable level and would immediately create arbitrary and capricious decisions.

SJ/TR estimates 1.9 million recreational visitors to the planning area every year.³⁴ Simply comparing the impacts of the \$30 average found by the SJ/TR FEIS to the \$31 identified for local day users in the Stynes and White research which would generate approximately \$1.9 million in spending for local communities. These differences become far more significant when the average spending amount of the NVUM analysis of \$59.65 is applied to 1.9 million visitor days.

³⁰ COHVCO, *Economic Contribution of OHV Recreation in Colorado*, August 2013 at pg A-3. A copy of this report has been included with this appeal for your reference as Exhibit "4".

³¹ Wyoming State Parks Snowmobile spending report attached with this appeal. It should be noted the daily spending totals do not include the purchase of equipment used for snowmobile recreation. A copy of this work has been included with this appeal as Exhibit "5". Must be noted these amounts do not include equipment purchases which average \$3367.28 per year

³² COHVCO, *Economic Contribution of OHV Recreation in Colorado*, August 2013 at pg A-3.

³³ See, Stynes and White 2010 at pgs 22-28.

³⁴ See, FEIS at pg 113.

This yields a total recreational spending amount in excess of \$113 million dollars. Clearly almost double the annual recreational spending in the planning area would impact the management decisions that are being made. Drs Stynes and White would agree with that position. Failure to accurately address these types of issues is arbitrary and capricious and fails to satisfy the hard look required by NEPA.

4e(ii). NVUM analysis provides concrete examples of the long term impacts from failing to accurately analyze economic contributions.

When a complete review of the works of Dr Stynes and White is conducted, this analysis provides an in depth analysis of how comparative spending analysis will guide site specific development of recreational resources over the life of a RMP.³⁵ This guidance and analysis is provided in the NVUM analysis regarding the development of a parking lot ("parking lot example"). This parking lot example provides an in depth discussion of how the application of accurate information is critical to the planning process. Given that the parking lot example is a significant portion of the November 2010 works of Dr Stynes and White, the Organizations have to question how the November 2010 analysis was even meaningfully reviewed in the development of the SJ/TR analysis.

It should be noted the site specific example provides a concrete act pattern how the improper spending analysis of the SJ/TR plan will negatively impact future planning, and given the errors in the comparative spending in the SJ/TR analysis between cross-country skiers and snowmobilers will magnify over the life of the plan. Again, the Organizations believe this example provides a concrete example of why the Organizations are so concerned regarding comparative spending. When the implications of the erroneous economic information identified in the site specific example provided by Dr. Stynes and White are expanded to address errors in a forest level plan, the implications are truly scary, are clearly arbitrary and capricious and fail to satisfy the hard look required by NEPA.

4f. Major studies have indicated serious concern for secondary spending benefits from recreational usage of public lands.

The conclusions of the FEIS analysis directly conflict with best available science regarding user group spending. The FEIS further compounds the impacts of management changes as it fails to account for secondary impacts to recreational users and spending that will result from management changes being made based on the erroneous economic analysis. The Organizations believe the large scale determinations of motorized suitability fails to be based on accurate recreational spending of users and directly evidences an application of Stynes and Whites parking lot example on a landscape level. These large scale suitability determinations

³⁵ See, Stynes and White November 2010 at pg 22-28.

also fail to incorporate conclusions of other significant research into other user groups as well, who will be directly impacted by these management changes. These uses will be impacted by suitability decisions that have been made in the FEIS and RMP.

Recently, the National Shooting Sports Foundation in partnership with the USFWS and 20 different state wildlife agencies performed a national review of the issues that are impacting the hunting community and declining hunter participation rates in the US and what agencies can do to maintain hunter involvement in the wildlife management process. This research directly addressed many of the secondary economic impacts that will be impacted by the management decisions made in the FEIS and RMP. The NSSF research specifically concluded:

"Difficulty with access to lands for hunting has become not just a point of frustration, but a very real barrier to recruiting and retaining sportsmen. **Indeed, access is the *most* important factor associated with hunting participation that is not a time-related or demographic factor—in other words, the most important factor over which agencies and organizations can have an important influence....**"³⁶

The importance of hunting usage and access for funding of wildlife management activities is overwhelming. This funding impact is summarized as follows:

"Hunters are avid conservationists who donate more money to wildlife conservation, per capita, than do non-hunters or the general population as a whole in the United States (Responsive Management/NSSF, 2008a). Hunting license fees and the excise taxes paid on sporting goods and ammunition fund state fish and wildlife agency activities and provide Federal Aid monies.... In fact, sportsmen, as a collective group, remain the single most important funding source for wildlife conservation efforts. Consequently, decreased interest and participation in hunting activities may have the unintended effect of reduced funding for important wildlife and habitat conservation efforts."³⁷

The importance of motorized access to the retention of hunters is immediately evident when the means of access for hunting activity are identified. Hunters overwhelmingly use motorized tools for accessing hunting areas as cars and trucks are used by 70% of hunters, and ATVs are used by 16% of hunters. By comparison, only 50% of hunters identified walking as their access

³⁶ See, National Shooting Sports Foundation; 2011; Issues relate to hunting access in the United States: Final Report; Accessed December 4, 2013; <http://www.nssf.org/PDF/research/HuntingAccessReport2011.pdf> at pg 7. (hereinafter referred to as "NSSF report")

³⁷ See, NSSF Report at pg 3-4.

method of choice.³⁸ The significance of closures on public lands is also specifically identified in this research, which identified that 56% of hunters specifically cited restrictions on motorized access and 54% identified closures of public lands by government agencies as significant issues for hunters.³⁹

The funding streams secondarily impacted by hunters and suitability decisions are specifically of concern as hunting participation has been declining significantly over the recent few years and removing factors that were contributing to the declining participation was the basis of the entire NSSF report. This report specifically concluded that a lack of access to hunting opportunity was the largest addressable issue for land managers to address and improve hunter retention. An 83% increase in areas found unsuitable for motorized access will not improve access for hunters, and will over the long term reduce funding available for wildlife management.

The NSSF report also concludes that hunting access on public lands is a critical component of public lands planning as rates of urbanization of private lands are exceptionally high, which the report specifically notes as follows:

"In fact, research indicates that between 1982 and 1997, there was a 34% increase in the amount of land devoted to urban uses in the United States, primarily due to the conversion (i.e., development) of croplands and forests into urban/suburban and industrial land uses (Alig, Kline, & Lichtenstein, 2004). As a result of anticipated urban expansion and population growth, researchers project that developed land areas will increase by 79% in the next 25 years,"⁴⁰

Given the explosion of development of private lands, closures on public lands will simply never be able to offset development on private lands that might be adjacent to those lands. In addition to the recreational opportunities that are directly provided as a result of access routes, public access for hunting is integral to herd health, noted as follows:

"Thus, although the availability of hunting lands is certainly important to hunter recruitment and retention, research also suggests that access for hunting is an important component in effective game management on these lands; that is, lack of access for hunting not only contributes to hunter cessation, but it also impacts wildlife managers' capacity to manage wildlife"⁴¹

³⁸ See, NSSF report at pg 56.

³⁹ See, NSSF report at pg 113.

⁴⁰ See, NSSF report at pg 9.

⁴¹ See, NSSF report at pg 11.

The Organizations would note that this conclusion specifically conflicts with any decision to reduce suitability of habitat areas for motorized access.

Given the specific conclusions that are provided by these state wildlife agencies and USFWS that motorized access is a significant contributor to herd animal health and many hunters specifically identified closures and restrictions as major reasons that they stop using areas, the Organizations would note that excluding motorized access to benefit wildlife this position would not be supported by best available science. The Organizations would also note that secondary economic impacts to State Wildlife agencies that would result from management changes, such as declines in the hunting participation rates, are simply never mentioned in the FEIS.

4(g) Blanket determinations of the unsuitability of areas for motorized usage will impair funding possible streams from partners in the future.

The Organizations vigorously assert that the implications of blanket designations of suitability/unsuitability for motorized use is arbitrary and capricious when current management of the area has proven exceptionally effective. In addition to failing to address current management effectiveness, the Organizations assert that the failure to review possible implications to funding opportunities from partners is arbitrary and capricious. While the RMP provides an extensive summary of the funding shortfalls of the agency for the maintenance of routes⁴², the RMP and FEIS fail to address possible implications to future funding sources from management changes. It is the Organizations belief these impacts could be severe and must be addressed.

The Colorado Parks and Wildlife Trails Program is one of the single largest partners for funding of maintenance of multiple use routes in the state of Colorado. The Organizations are not aware of any other partners that have provided this level of funding or commitment of resources for the protection of their recreational activities in the planning area. Over the life of this grant program over \$2,000,000 has directly awarded for projects and teams in the SJ/TR planning area. It is somewhat frustrating to the Organizations that the strength of the partnership was not weighed more heavily in the analysis of the suitable/unsuitable standard.

While there have been a large number of valuable grants awarded, these grants are awarded on a competitive basis and a designation that the area is unsuitable for motorized usage will impair the ability of the grant to score high enough to be funded. The committee awarding

⁴² See, Resource Management Plan at pg 95.

these grants is highly interested in the long term success of grants in maintaining access for multiple use.

As part of each application, the application is reviewed to insure the route to be maintained is legal. An unsuitability designation, even if it can be resolved, will not streamline the grant process and application as the RMP provisions addressing this usage will have to be included with every grant application. Every grant application will need to be discussed and be the basis of significant opposition based on the suitability of the area. Development of a "limited suitability" type standard would resolve these concerns and should have been reviewed.

**4h. Secondary economic impacts will not be limited to the hunting community
as dispersed trails are multiple use resources.**

The Organizations believe that a brief discussion of what an OHV recreational user is will clarify why multiple use trails are of such concern when addressing economic impacts. Forest Service research indicates that families are the largest group of OHV users. This research found that almost 50% of users were over 30 years of age and highly educated. 11.4% of OHV users are 51 years of age or older.⁴³ Women were a large portion of those participating in OHV recreational activities.⁴⁴ This research indicates that OHV recreationalists are frequently a broad spectrum outdoor enthusiasts, meaning they may be using their OHV for recreation one weekend but the next weekend they will be walking for pleasure (88.9%), using a developing camping facility (44.7%), using a Wilderness or primitive area (58.1%) fishing (44.6%) or hunting (28.4%).⁴⁵

As noted by the Forest Service research, motorized access to public lands is a key component of any recreational activity. This is completely consistent with the Organizations experiences for all recreational activities as most users do not have access to non-motorized means of game retrieval or do not have sufficient time to hike long distances to gain access to their favorite fishing hole or dispersed camping site. The wide range of recreation utilizing the dispersed trail network again weighs heavily in favor of caution of maintaining recreational access to areas that are to be designated Grouse habitat.

⁴³ Cordell et al; USFS Research Station; *Off-Highway Vehicle Recreation in the United States and its Regions and States: A National Report from the National Survey on Recreation and the Environment (NSRE)* February, 2008; pg 56.

⁴⁴ *Id* at pg 56.

⁴⁵ *Id* at pg 41-43.

5a(i). Analysis of the significant impacts of suitability designations are often conflicting in the FEIS.

The Organizations believe the 83% increase in the amount of areas that are designated as unsuitable for motorized recreation represents a significant change in management. As the RMP specifically notes below this decision will impact the management of almost 500,000 acres of land.

Table 2.4.5: Motorized Travel Suitability and Recreation Land Allocations by Alternative

Motorized Suitability and Recreation	Alternative A (No Action)	Alternative B (Preferred)	Alternative C	Alternative D
SJNF Motorized Travel over Ground (acres)				
USFS not suitable	482,019	928,054	1,133,752	755,538
USFS suitable areas	896,400	632,500	448,992	759,602
USFS suitable opportunity areas	486,413	304,278	282,088	349,692
Total	1,864,832	1,864,832	1,864,832	1,864,832
Motorized Travel over Snow (acres)				
USFS not suitable areas	980,860	1,072,520	1,277,808	1,008,741
USFS suitable areas	883,972	792,312	587,024	856,091
Total	1,864,832	1,864,832	1,864,832	1,864,832
TRFO Motorized Travel Year-round				
BLM closed	70,602	73,823	104,523	59,758
BLM limited	69,254	429,782	399,104	443,846
BLM open	363,771	23	0	23
Total	503,627	503,628	503,627	503,627

If this decision was undertaken outside the RMP/FEIS process as a stand alone management decision, it would be the basis of volumes of work and analysis as this will have a significant impact to recreational routes on the SJ/TR. For reasons that are not clear, almost no analysis is provided to explain the basis of these changes in the RMP/FEIS, although specific standards are applied to existing routes in unsuitable areas, such as follows:

"Existing unmanaged routes within closed area on BLM lands or unsuitable areas on NFS lands would not be considered for incorporation into the transportation system and would be prioritized for decommissioning. The existing road and trail networks in suitable areas on NFS lands generally meet current and anticipated future transportation needs, so unmanaged routes in these areas generally would be prioritized for decommissioning."⁴⁶

Often conflicting analysis of routes in unsuitable areas is often provided in the FEIS as well, further impairing the ability of the public to understand what is being proposed and provide any type of meaningful analysis. The FEIS appears to start with the following management standards:

⁴⁶ FEIS at pg 382.

"The LRMP decision identifies **areas** where motorized use is either suitable or not suitable (in USFS terms) and areas that are either open, closed, or limited (in BLM terms). This LRMP/FEIS does not make site-specific, route-by-route designations, such as identifying specific roads or trails that would be open or closed; those decisions are made during travel management planning."⁴⁷

Unfortunately the clarity of the above position is not carried through the FEIS and directly contradicting analysis is provided which Specific routes have already been identified for closures:

Table 3.13.8: Estimated Change Due to Travel Management Suitability and OHV Area Designations

Route Type	Approximate Change in Mileage by Alternative			
	A	B	C	D
Road	0	-3	-54	-4
Motorized trail	0	-23	-175	0
Notes and Assumptions: Road and motorized trail miles were calculated using the geographic information systems (GIS) data current as of July 12, 2012. Road and trail mile reductions were calculated from the existing mileage of roads and motorized trails currently designated for public use that are situated within areas identified as unsuitable for motorized travel that correspond to each of the alternatives.				

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At no point does the FEIS identify the 229 miles of roads and trails that would have been lost if Alternative C was adopted. At no point in the FEIS is there any discussion of what site specific issues were present on these routes to warrant the closures of these routes or why the circumstances on these routes were so compelling as to warrant a waiver of the general standard in the RMP and FEIS that no routes were being closed. Again the Organizations assert this is arbitrary and capricious as a matter of law.

The Organizations are deeply concerned that after 20 years of developing travel plans for these unsuitable areas, there simply will not be any routes in these areas, despite the on-going seasonal suitability of the areas for usage. The Organizations believe these concerns could be mitigated and the significant economic benefits that flow to local communities as a result of the trail network now sought to be made unsuitable could be minimized with the adoption of a third standard such as "limited suitability". The Organizations believe management under only two standards will compound this issue beyond its currently unacceptable levels. The Organizations are vigorously opposed to the wide range of management standards that are proposed to be included in the "unsuitable" category. This type of broad management is

⁴⁷ See, FEIS at pg 29.

⁴⁸ See, FEIS at pg 396

obviously arbitrary and capricious as specific standards for management are not addressed in the FEIS.

5a(ii). Suitability analysis fails to account for secondary impacts of planning.

The Organizations assert the application of only two standards of suitability in the analysis of multiple use recreation in the SJ/TR is arbitrary and capricious and a direct result of the poor quality economic analysis that has been done. These standards would be "suitable" and "non-suitable". It has been the Organizations experience that recreational management is anything but a black and white issue and often management standards for recreation are most effective in the gray areas. These gray areas simply are not provided for with only two management standards. The Organizations believe that the inclusion of wide areas that are currently suitable for over ground recreation in the unsuitable category will have long term negative implications to recreational access as these plans are expected to be in place for 20 or more years. It is the Organizations position that applying only two standards to motorized usage is a direct result of the undervaluation of recreational spending and the long term management implications of having only two standards clearly has not been analyzed based on accurate information.

While the LRMP and FEIS do define unsuitable standards as including seasonal restrictions on routes, it has been the Organizations experience that even the best planning documents often are not completely reviewed by those opposed to public access to public lands. The Organizations believe much analysis of existing routes will start and finish with the application of the common meaning of "unsuitable" and immediately weigh against maintaining routes in unsuitable areas, despite the long term and effective management of these routes in a sustainable manner.

The Organizations experience with the Hidden Gems Wilderness proposal is a perfect example of these types of presentations, as current management was never accurately summarized. These inaccurate summaries, especially of the Roadless Rule are highly frustrating and are why the Organizations fought for the specific inclusion of motorized usage as a protected characteristic in the new Colorado Roadless Rule. Clearly a designated Wilderness area is unsuitable for motorized routes and should be classified as unsuitable. However, many other issues, such as habitat, are included as "unsuitable" that clearly have suitability at certain times of the year and reflect a different management issue than the statutory prohibition of usage found in the Wilderness Act.

5a(iii). Suitability designations fail to account for highly effective nature of current management of numerous localized factors.

The application of blanket landscape level standards for suitability fails to account for current management and its effective resolution of numerous on the ground issues in trail

development. The Organizations are aware of numerous routes that have been moved from creek beds, an area that may not be suitable for the route, to ridges and other less sensitive areas and then crossed the creek with a bridge designed to mitigate any possible negative impacts to the environment from the use of the trail. An extensive summary of such management that has been undertaken on the SJ/TR planning area is submitted with this appeal and must be addressed in suitability analysis. The FEIS and RMP would now make the routes and areas unsuitable.

The Organizations are aware that both the Delores and Columbine Ranger Districts is currently deploying good management crews funded by grants from the Colorado Parks and Wildlife Trails program in order to address site specific issues that may render an area temporarily unsuitable. After resolution of any site specific, trails are built in a manner to provide that not only the route but the entire area is suitable for multiple usage of the area. The Organizations have attached a recent summary report received by CPW Trails Program outlining the numerous site specific issues that have been effectively resolved with the Delores good management crew and the OHV grants and identifying that hundreds of miles of routes have been maintained and improved over the last three years by this crew alone.⁴⁹ These grants are specifically funded from the \$25.25 every OHV user pays to register their vehicles under Colorado law.

The Organizations have to wonder how much of these efforts have been directed to areas the FEIS and RMP seeks to blanket designate as unsuitable for motorized usage. The Organizations believe the blanket application of unsuitability standards for motorized travel has arbitrarily excluded any review of the effectiveness of current management of these areas making them suitable.

5b. SJ/TR suitability standards include many standards the Forest Service has already determined do not apply at the landscape level.

The Organizations believe a brief discussion of a national issue that directly relates to many of the landscape level standards relied on for suitability analysis in the SJ/TR RMP is necessary prior to addressing many of the flaws and more specific factors regarding the landscape level suitability standard. This national issue involved the application of many standards that are alleged to be properly relied on for suitability analysis as best management practices for trails nationally. In this matter, the USFS national position specifically concluded that water quality and wildlife issues are local issues that are not appropriate for landscape level planning, which is specifically supported by best available science on this issue. The application of best available science to these issues is more specifically addressed in subsequent portions of this appeal. The

⁴⁹ A copy of the Delores Trail report is attached as Exhibit "6".

issues involved in the resolution of this national issue are woven into the SJ/TR landscape planning process and fail to address that landscape level planning simply is not the proper tool to address localized issues.

This national issue involves the issuance of the Forest Service Manual entitled "*A Comprehensive Framework for Off-Highway Vehicle Trail Management* " in July 2011("Trail Manual"). Appendix D of this manual provided national level best management practices for the creation of sustainable OHV trails and attempted to incorporate many of the standards that are now sought to be implemented under the suitability analysis of the SJ/TR plan. This Appendix was directly inserted from works of the Wildlands CPR Organization, which is an extreme anti-OHV organization. A copy of this Appendix and related correspondence is attached to this appeal as Exhibit "7" as the Trails Manual was immediately pulled from circulation in response to the concerns about local issues being expanded to landscape level standards for the development of trails.

While the SJ/TR speaks of suitability and the Trails Manual speaks to sustainability, the Organizations can find no functional difference in the two standards on the ground. Appendix D of the Trails Manual asserted that trails were not sustainable when they were in wildlife habitat,⁵⁰ riparian areas⁵¹, crossed creeks⁵², were in areas of possible user conflict⁵³, roadless areas⁵⁴, may impair the usage of an area by non-motorized users⁵⁵ or exceeds route density higher than 1 mile/square mile.⁵⁶ The Organizations would be remiss in not pointing out that the proposed standards in the Trail Manual for sustainability of routes are a mirror image of the standards that are relied on for the development of suitability standards in the SJ/TR plan.

In the correspondence from Sec. Vilsack addressing the immediate revocation of the Trail Manual as a specific result of the best management practices proposed in Appendix D, water quality issues are specifically noted as a local issue and not subject to landscape level standards. The correspondence notes specifically:

"Forest Service administrative units may also identify site specific BMPs during environmental analysis to address erosion, runoff, and drainage for roads and

⁵⁰ See, Trails Manual Appendix D at pg 157.

⁵¹ See, Trails Manual Appendix D at pg 156.

⁵² See, Trails Manual Appendix D at pg 156.

⁵³ See, Trails Manual Appendix D at pg 157.

⁵⁴ See, Trails Manual Appendix D at pg 157.

⁵⁵ See, Trails Manual Appendix D at pg 157.

⁵⁶ See, Trails Manual Appendix D at pg 159.

trails. These specific BMP's are applied when the management activities are implemented."

The Organizations would note that the SJ/TR RMP repeatedly states that no routes will be closed as a result of the suitability designations, and that all routes would be addressed in subsequent site specific NEPA analysis. If water standards are identified as an issue that should be addressed in site specific analysis and not with landscape level standards, the Organizations vigorously assert that these standards are arbitrary regardless of the level of landscape plan they are proposed to be included in.

The Organizations are vigorously opposed to many of the landscape level suitability standards in the SJ/TR RMP and FEIS, as the USFS has already concluded that these standards are only properly placed in site specific analysis and are not the basis of landscape level plans. The Organizations are also vigorously oppose to planning on these standards are anything but multiple use standards but rather reflect OHV management standards that would be imposed by one of the most anti-OHV organizations in the country. This application of management standards for suitability that are a carbon copy of standards that the Forest Service has already stated would not be relied on for sustainability is patently unfair, arbitrary and capricious and illegal.

5c. Best available science has repeatedly found that landscape level application of wildlife standards are a social issue.

The application of landscape level wildlife standards is an issue that has been extensively researched. The conclusions of this research specifically support the conclusions that were provided in response to the Trails Manual discussed above, as the conclusions of this research have consistently found that wildlife issues are a local issue. The application of landscape level wildlife standards has been extensively studied by the National Park Service in addressing winter usage of Yellowstone Park. These analyses are completely relevant to any analysis of suitability on the SJ/TR. If there were an disproportionate impact to elk and deer, the ongoing research in Yellowstone Park would have noted this impact. The Yellowstone Park research analyses have repeatedly found:

“Based on these population-level results, we suggest that the debate regarding effects of human winter recreation on wildlife in Yellowstone is largely a social issue as opposed to a wildlife management issue. Effects of winter disturbances on ungulates from motorized and non-motorized uses more likely accrue at the individual animal level (e.g., temporary displacements and acute increases in

heart rate or energy expenditures) than at the population scale. A general tolerance of wildlife to human activities is suggested because of the association between locations of large wintering ungulate herds and winter recreation. Habituation to human activities likely reduces the chance for chronic stress or abandonment of critical wintering habitats that could have significant effects at the population level, especially when these activities are relatively predictable.”⁵⁷

The biologists who performed the research in Yellowstone immediately concluded that landscape level concerns regarding wildlife management are based more on socially based user conflicts than on scientifically based findings regarding a negative impact to any species.

The Organizations believe deer and elk winter range is a perfect example of an area where the application of landscape level standards is arbitrary and fails to include economic impacts of the decision. For the several months of the winter deer and elk are using winter range, the Organizations agree the area is unsuitable. Designating the entire winter range area as unsuitable throughout the year fails to address the multiple use of the area for the rest of the year, when deer and elk are not in the area. The economic impacts of excluding recreational usage from these areas throughout the year could be large and impacts are compounded when no benefit from the closures is accruing to the species. As previously identified in this appeal, the economic analysis of recreational activity in the SJ/TR is arbitrary and capricious.

The issues and impacts from year round closure of winter ranges must be accounted for in suitability standards, as the failures of these type of management standards is a well known issue in Colorado already. Lynx management in Colorado has been plagued by these type of unintended economic issues from closures, and significant efforts are now directed at unwinding these issues, as science has now concluded no benefits are flowing to the lynx as a result of the closures that have directly impacted many local economies. These type of unintended economic impacts must be addressed and simply have not been with the application of only two standards in the RMP.

The Organizations are vigorously opposed to such broad and unscientific analysis of any landscape level issue in the planning process as often true threats to the species and habitat quality are completely overlooked. Best available science which has concluded that off leash

⁵⁷ US Park Service; White and Davis; *Wildlife response to motorized recreation in the Yellowstone Park; 2005 annual report*; at pg 15.

dogs create the largest response from wildlife,⁵⁸ followed by non-motorized user of habitat areas. For reasons that are unclear, these impacts are simply excluded from analysis in the FEIS, which states:

"Non-motorized trails and those roads that are closed to all motorized use and/or are in storage are not used for route density calculations."⁵⁹

If landscape level closures are adopted for factors that may be impacting winter range quality, the same policies must be applied to all usages that impact the species and the quality of habitat. The SJ/TR RMP and FEIS entirely fails to address these non-motorized and off leash dog threats to wildlife habitat in its management standards, despite the fact these localized issues are identified as the factor that most directly obtains a response from wildlife. The exclusion of certain factors that have been identified as a significant concern to wildlife habitat from management, while choosing to manage lower level threats is arbitrary and capricious per se.

6a. The determination that habitat areas are unsuitable for motorized recreation is a violation of the Multiple Use Sustained Yield Act.

The arbitrary, capricious and illegal nature of the motorized suitability standards in the SJ/TR RMP is directly evidenced when the statutory mandates of USFS forest planning are compared with the purpose and intent of the Endangered Species Act. Forest plans are created under the multiple use mandate of the Multiple Use Sustained Yield Act ("MUSYA") that lands be used in a combination that best meets the public need, while the management of endangered species must comply with the statutory mandate of the Endangered Species Act ("ESA") to insure the survival of the species. Given the clear statements of intent in the laws and conflicting nature of the objectives, the Organizations simply can never envision a situation where multiple use standards would be more restrictive than management standards under the ESA. This would be a violation of the MUSYA. This is exactly the position that the SJ/TR RMP and FEIS assert for management of the planning of activity. This is arbitrary and capricious per se and a violation of the MUSYA.

The MUSYA authorizes and directs the Secretary of Agriculture to develop and administer the renewable resources of timber, range, water, recreation and wildlife on the national forests for multiple use and sustained yield of the products and services. MUSYA defines the terms "multiple use" and "sustained yield" as follows:

⁵⁸ See, CHAPTER 8 DOMESTIC DOGS IN WILDLIFE HABITATS EFFECTS OF RECREATION ON ROCKY MOUNTAIN WILDLIFE *A Review for Montana*; MONTANA CHAPTER OF THE WILDLIFE SOCIETY; Carolyn A. Sime – Wildlife Biologist, Montana Fish, Wildlife and Parks, Kalispell September 1999.

⁵⁹ See, RMP at pg 103.

"Multiple use - the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people"⁶⁰

"Sustained yield - the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land."⁶¹

MUSYA also specifically identifies the need for a transportation network on public lands to allow for the use of these lands for the best interests of the public. This mandate is clearly states as:

"The Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services."⁶²

By comparison, the Endangered Species Act has a much more specific mission with a far more specific standard to be complied with. The purpose of the ESA is clearly stated as:

"b) Purposes The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section."⁶³

Every determination of the USFWS must provide for the best interests and survival of the species, and given this standard there is little extra benefit to be achieved beyond USFWS

⁶⁰ See, 16 USC §531(a).

⁶¹ See, 16 USC §531(b).

⁶² See, 16 USC §532

⁶³ See, 16 USC §1531(b).

determinations on habitat. However even under the specific mandate of the ESA requires economics be taken into account when designating habitat. The ESA provides as follows:

"The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned."⁶⁴

As economic impacts resulting from management restrictions in designation of habitat areas for endangered species must be addressed under the ESA, there is a significant body of work addressing the issues of suitability of habitat areas for motorized recreational usage.⁶⁵ It should be noted that landscape level rules for any activity are rarely used by the USFWS in their decisions as the USFWS has litigated and lost numerous court battles where broad scale management standards were to be applied. Everyone remembers the California snowy owl issue. Rather than adopt landscape level habitat standards for particular usage, the USFWS consistently has chosen to establish the dates of a seasonal closure and specific distances that might need to be closed for the proposed habitat area in the listing decision. Often a few feet of boundary around an area is the only difference between alternatives in a FWS habitat designation decision, as directly evidenced by the hotly debated standards for closure of areas around actively occupied Sage Grouse Leks. A few feet makes a significant difference in impacts. Clearly development of management standards on a foot by foot basis for an endangered species directly conflicts with the landscape level determinations of habitat suitability being made in the SJ/TR RMP.

Given the significant difference in the purpose and intent of federal land planning under MUSYA and the standards of the ESA, the Organizations vigorously assert to imposition of standards that are more restrictive than ESA standards for multiple use is a per se violation of the MUSYA. In this situation, the Forest Plan has failed to manage in a manner that provides for the best interests of the public. There can be no argument regarding the supremacy of an ESA decision on management in comparison to other federal planning requirements. The ESA always wins. Here the ESA mandates standards that are less restrictive than those applied in the RMP, which is a violation of federal law as the best interests of the public are not being met under the more restrictive landscape level standards.

⁶⁴ See, 16 USC §1533(b).

⁶⁵ See, 16 USC 1533(b)(2).

6b. The BA prepared for the SJ/TR RMP frequently identifies the less restrictive standards for transportation and recreation than the USFWS has developed for particular species.

The Organizations are vigorously opposed to the starting point of the analysis in the SJ/TR plan that all habitat areas are negatively impacted by motorized usage. The arbitrary and capricious nature of this starting position is directly evidenced by the conflict of this standard with the Biological Assessment standards specifically identified in the BA created for the RMP.⁶⁶ Given the large amount of overlap of factors to be balanced in the designation of habitat for endangered species and the factors that must be balanced in the SJ/TR RMP, the Organizations simply cannot understand how there was less restrictive standards cited in the BA in comparison to the RMP and FEIS.

The arbitrary and capricious application of "unsuitable" standards to all habitat areas will also bring these suitability standards into direct conflict with listing decisions for endangered species that are made by the USFWS. As the FEIS and RMP fail to provide any basis or meaningful analysis of why an area has been found suitable or unsuitable for motorized recreation, the Organizations are forced to address specific decisions regarding habitat and management of many of the common species found on the SJ/TR.

Many of the particular standards and dates for endangered species and species of conservation concern are specifically addressed in the Biological Assessment that has been published with the FEIS and RMP. It is the Organizations position that these specific standards have been specifically undertaken to minimize economic impacts from the listings. The large scale determinations of suitability based on habitat run directly contrary to these prior determinations and any decision not to address these specific standards in the suitability is per se arbitrary and capricious. As the specific standards of the BA were not addressed in the development of the RMP and FEIS, the Organizations will appeal each of the species individually in the hope of identifying the basis for the decision and how the decision has balanced the additional possible habitat protection with management standards that public lands be managed for the best interests of the public.

7a. The proposed blanket unsuitability of all wolverine habitat areas for motorized recreation directly conflicts with determination of the USFWS.

The Organizations have been deeply involved in the stakeholder meetings with CPW, USFWS and numerous other stakeholders regarding the management of the Wolverine in Colorado and decisions regarding a CPW move forward with a possible reintroduction of this species. It

⁶⁶ See, RMP and FEIS Appendix J- Biological Assessment for the Final San Juan National Forest Land and Resource Management Plan.

should be noted that the Organizations were the only group in these stakeholder meetings to support the reintroduction of the wolverine, and this support was heavily based on the development of clear and specific management standards for the motorized recreational usage of the habitat areas. The Organizations are deeply troubled by the blanket unsuitability of all habitat areas for motorized usage, as this is exactly the situation that was sought to be avoided with the listing and stakeholder meetings. Implementation of unsuitability decisions in the SJ/TR RMP will make the Organizations reconsider our ongoing support for any reintroduction of the Wolverine as closures to habitat areas were avoided in the listing process but were implemented as unsuitable without a specific discussion or analysis in the RMP. That is a VERY scary precedent.

These stakeholder meetings have covered multiple years and have centered around establishing effective management for the Wolverine prior to its release. These determinations were critical in avoiding the management uncertainty that plagued the lynx and resulted in extensive unintended economic impacts to local communities. These management standards were developed for the overall benefit of the species and are not limited to public lands. As much of habitat in the planning area is under private ownership, private support for the management decisions was critical to improving the survival of the species. These type of factors simply are not addressed in a RMP but must not be arbitrarily overlooked in the application of overly broad management standards.

The unintended economic impacts of the lynx reintroduction were so significant that the Colorado Legislature now requires specific statutory approval for the reintroduction of any species in Colorado.⁶⁷ This legislation must still be obtained prior to the reintroduction of the Wolverine and avoiding opposition resulting from overly broad standards was a serious concern in obtaining this legislation. A blanket closure of all wolverine habitat to motorized usage would insure one thing, the legislation would never be obtained and the wolverine would never be reintroduced in Colorado. This would not advance the survival of the Wolverine as models indicate that Colorado habitat will be some of the most resilient to the impacts of climate change, which is the primary threat to the Wolverine survival.

The Organizations do not believe that any credible argument can be made that these types of species management issues were analyzed in the SJ/TR decision that found all habitat unsuitable for motorized routes. The Organizations are not able to find any analysis of the benefits or costs of implementing management standards for the management of the wolverine that are more strict than those specifically created by the USFWS and addressing numerous issues that are simply outside the scope of any forest plan or how this standards would impact legislative needs in Colorado for the Wolverine. These are exceptionally

⁶⁷ See, Colorado Revised Statutes §33-2-105.5(2).

significant issues that the USFWS has addressed in their listing decision that simply have never even been thought of in the SJ/TR planning process. These impacts and decisions must be addressed in the SJ/TR plan.

The recent listing decision for the wolverine provides a concrete example of where a designation of habitat area as unsuitable for motorized use in a forest plan would directly conflict with the management required by the USFWS. The recent listing decision notes that the modeled habitat for the wolverine a significant portion of the SJ/TR planning area. The following map reflects the boundary of modeled wolverine habitat in the planning area as follows:



While the USFWS has modeled the planning area as habitat, the USFWS has also clearly spoken in their listing decisions to a variety of specific management standards that have been summarized as "there should be no changes to forest management as the result of an area being designated as habitat".⁶⁹ This makes sense when the primary threat to the Wolverine is identified in the listing decision as global climate change. The USFWS has also taken further steps to insure that changes to forest plans are not incorrectly made by placing a ESA §10j experimental population designation on the Wolverine in Colorado⁷⁰ and an ESA §4d designation on the Wolverine outside Colorado.⁷¹

⁶⁸ <http://www.fws.gov/mountain-prairie/species/mammals/wolverine/02012013ModeledWolverineHabitatMap%20.jpg.pdf>

⁶⁹ USFWS summary fact sheet available here

<http://www.fws.gov/idaho/Wolverine/WolverineProposed4dRule031113.pdf>

⁷⁰ See, Federal Register / Vol. 78, No. 23 / Monday, February 4, 2013 / Proposed Rules at pg 7890

⁷¹ <http://www.fws.gov/idaho/Wolverine/WolverineProposed4dRule031113.pdf>

While these FWS position have been accurately reflected in both the FEIS⁷² and §7 consultation documents prepared by the FWS⁷³ regarding the wolverine management standards, the application of the determination that all habitat areas are unsuitable for motorized use will bring these two standards into direct conflict with USFWS standards and result in a violation of the ESA. This will also negate years of work undertaken by the stakeholders in this issue. There is simply no analysis provided to support the standard of the SJ/TR plan.

7b(i). Lynx management will be directly impaired by landscape level closures of habitat as the USFS has already determined this management is not economically viable.

The management of the lynx and the wolverine have been closely tied to each other in Colorado since the CPW began the reintroduction process in the late 1990's. Much of the original management of the lynx was highly theoretical⁷⁴ and many overly cautious management standards were later found to have generated no benefit to the lynx. This is an issue that has greatly impacted the management of any species that CPW seeks to reintroduce in Colorado, and as previously noted directly resulted in legislation requiring CPW to obtain specific approval before the reintroduction of any species in Colorado.

While the SJ/TR does apply the SRLA moving forward, the SRLA does specifically note that Forest Service roads and trails do not result in a benefit or loss to the quality of lynx habitat.⁷⁵ The SRLA's new management position was a significant departure from earlier management standards for lynx habitat that were far more broad in scope and found to be unnecessary by best available science on the issue. Given that management standards similar to the landscape level unsuitable habitat analysis that is now proposed in the SJ/TR plan have already been found to be unnecessary and not supported by best available science for the lynx, any return to such a standard can be nothing more than an arbitrary and capricious standard. The USFS and USFWS have already concluded that the economic impacts of such a decision outweigh the benefits and are not warranted. There is simply no analysis in the SJ/TR plan to support the management change and as such is arbitrary, capricious and a violation of NEPA.

⁷² See, FEIS at pg 117.

⁷³ See, FEIS Volume III Appendix J - Biological Assessment for the San Juan National Forest

⁷⁴ Leonard Ruggerio, Keith Aubry, Steven Buskirk, Gary Koehler, Charles Krebs, Kevin McKelvey & John Squires, *Ecology and Conservation of Lynx in the United States* (2000) at pg 463.

⁷⁵ See, SRLA at pg 16.

7b(ii). The designation of lynx habitat as unsuitable for motorized recreation will negatively impact ongoing lynx research.

The decision to designate all lynx habitat as unsuitable for motorized use also again fails to address the secondary economic impacts of the decision, especially in regard to continued management and research for the benefit of the lynx. The Organizations will admit the relationship between lynx managers and the Organizations has been somewhat troubled at times. However, Rocky Mountain Researcher Station researchers and the Organizations have recently come together to facilitate accurate research of lynx response to recreational usage of habitat by both motorized and non-motorized users.

Colorado Snowmobile Assoc sought to donate the use of a snowmobile for the researchers when budget issues for the research arose. While this donation proved to be unsuccessful, the Organizations are aware that the local knowledge and guidance that had resulted from this partnership has been valuable to researchers. In addition to this knowledge, local snowmobile clubs have assisted in removing broken down or stuck equipment of researchers in the backcountry by taking their snowcats to the broken or stuck equipment. Without these recovery services, the Organizations believe it is entirely possible that the equipment would have remained in the backcountry until the spring snowmelt. This situation would have proven to be a significant barrier to on going research.

This research has involved the radio collaring of lynx in areas of high recreational usage and then providing gps units to recreational users of the area to track their usage. This research has provided preliminary findings that are cutting edge nationally and providing real time information regarding the **lack** of response of lynx to recreational usage of all types. Many motorized users are proud of the fact that they have been able to participate in these research efforts, but these partnerships are not immune from the impacts of arbitrary decisions like the SJ/TR RMP making all habitat immediately unsuitable for motorized usage.

The Organizations will note that arbitrary and capricious decisions to make all habitat areas unsuitable to motorized usage will not assist with partnerships between recreational users and agency researchers. The Organizations doubt this level of analysis of issues such as this was performed prior to making all habitat unsuitable for motorized usage.

7c. Blanket findings of unsuitability of boreal toad habitat for motorized usage is arbitrary and capricious and conflicts with USFWS listing decisions.

Review of the listing decisions and habitat management decisions with regard to the Boreal Toad is another species with a long history of analysis, almost all of which finds the designation of these habitat areas arbitrary and capricious as the primary threat to the species simply has no relationship to motorized usage. The primary threat to the Boreal Toad is a fungus that is

transferred by birds and predation. as the Fish & Wildlife Service clearly identifies in its listing decision as follows:

“A globally occurring disease of amphibians that is commonly known as chytrid fungus is believed to be the major factor in the decline of the southern Rocky mountain population of the boreal toad.” ⁷⁶

As specifically noted in the Fish & Wildlife Service’s Boreal Toad recovery plan:

“Most habitat alterations from timber harvest, grazing, recreation, and water development would likely not be beneficial to long-term enhancement of boreal toad habitats. However, none of these activities have been shown to be primary causative agents for the population decline in the southern Rocky Mountains.” ⁷⁷

Any concerns regarding the need for large habitat closures for the boreal toad have been found to be unwarranted in subsequent research into possible recreational impacts on the toad, as the recommended remedy for recreational impact was education of users of toad habitat. ⁷⁸ In fact numerous monitoring stations for the Toad are located in areas of heavy recreational activity, but no disproportionate impact has been noted.

As noted in the SJ/TR RMP BA, the only mitigation of usage for boreal toad habitat needed is seasonal closure of 100 ft around an active breeding site. ⁷⁹ Given the specific conclusions in the BA that 100ft of seasonal closure around breeding sites is sufficient to mitigate any impacts and reliance on Boreal Toad habitat for suitability would be arbitrary and capricious as these type of closures have been found unwarranted by the USFWS.

The Organizations will note that the USFWS has specifically concluded education of users and seasonal closure of 100ft around active breeding areas is effective management of habitat for the boreal toad. Any expansions of the temporary limited scale closures to the scales proposed in the RMP is arbitrary and capricious and not based on best available science and is not supported by any analysis in the RMP or FEIS.

⁷⁶ <http://www.fws.gov/mountain-prairie/species/amphibians/borealtoad/> ; See also *Conservation Plan and Agreement for the management and recovery of the Southern Rocky Mountain Population of the Boreal Toad*, US FWS 2001 @ pg 3.

⁷⁷ See, Boreal Toad Recovery Plan 2001 @ pg 12.

⁷⁸ Report on the Status and Conservation of the Boreal Toad *Bufo Boreas Boreas* in the Southern Rocky Mountains; Annually produced 2001-2006 .

⁷⁹ Volume III Appendix J - Biological Assessment for the San Juan National Forest Final Land and Resource Management Plan J-99

7d. USFWS Sage Grouse management decisions have determined closure of all habitat to motorized usage is not viable and would effectively improve habitat.

The CPW has recently concluded that Sage Grouse populations in Colorado have held steady over the last several years and are at or above target populations.⁸⁰ The USFWS has also concluded that the primary threat to the Sage Grouse is urbanization of habitat and high speed arterial roads. Recreational usage of habitat areas has been found to be a minimal threat to the Sage Grouse.⁸¹ As part of the USFWS listing process, landscape level closures of habitat areas was explored and specifically declined as closures of recreational access alone is insufficient to address habitat degradation. The status decision specifically and clearly states these conclusions as follows:

"Based on modeling results demonstrating the effects of roads on Gunnison sage-grouse (Aldridge *et al.* 2011, entire—discussed in detail in Factor A), implementation of even the most restrictive travel management alternatives proposed by the BLM and USFS will still result in further degradation and fragmentation of Gunnison sage-grouse habitat in the Gunnison Basin."⁸²

In addition to the minimal threat to habitat from recreational usage of habitat areas, recent listing decisions have also concluded that a designated trail system is a significant benefit to the Sage Grouse. The 2010 USFWS listing decision discussed changes to designated trails on USFS lands as follows:

"As part of the USFS Travel Management planning effort, both the Humboldt-Toiyabe National Forest and the Inyo National Forest are revising road designations in their jurisdictions. The Humboldt-Toiyabe National Forest released its Draft Environmental Impact Statement in July, 2009. The Inyo National Forest completed and released its Final Environmental Impact Statement and Record of Decision in August 2009 for Motorized Travel Management. The ROD calls for the permanent prohibition on cross country travel off designated authorized roads."⁸³

⁸⁰ See, COLORADO DIVISION OF PARKS AND WILDLIFE REPORT WESTERN ASSOCIATION OF FISH AND WILDLIFE AGENCIES December 2012 at pg 1. A copy of this report is available here: <http://wildlife.state.co.us/SiteCollectionDocuments/DOW/About/Reports/WAFWAColoradoRptDecember2012fullversion.pdf>

⁸¹ Endangered and Threatened Wildlife and Plants; *Endangered Status for Gunnison Sage-Grouse*; 78 Fed. Reg. 2486 (Jan. 11, 2013) at pg 2533.

⁸² Status proposal at pg 2526.

⁸³ *12-month findings for petition to list the Greater Sage Grouse (Centrocercus urophasianus) as threatened or endangered*. Fed Reg. (March 5, 2010) at pg 92.

Research indicates that seasonal closures for the protection of leks is a highly effective tool for mitigating any possible impacts of recreation on actively used grouse leks, which the status decision specifically notes as follows:

"The BLM and Gunnison County have 38 closure points to minimize impacts to Gunnison sage-grouse within the Basin from March 15 to May 15 each year (BLM 2009, p. 40). **While road closures may be violated in a small number of situations, road closures are having a beneficial effect on Gunnison sage-grouse through avoidance or minimization of impacts during the breeding season.**"⁸⁴

Given the specificity of this conclusion that landscape level habitat closures will not improve habitat by the USFWS, the Organizations vigorously assert that there can be no finding of sufficiency in this management in the SJ/TR RMP. Any conclusion would be arbitrary and capricious and the nature of this position is compounded by the complete lack of analysis of the management standard in the SJ/TR RMP.

As previously noted for the wolverine listing and management of deer and elk, management of private lands play a critical role in the management of Sage Grouse. Blanket closures of habitat areas are a management tool that significant resources have been directed towards analyzing and been found to be unnecessary given the minimal benefits and significant negative economic impacts that could result from the decision. The USFWS has also concluded that such closures would greatly impair support of private landowners for the Sage Grouse. The Organizations believe the USFWS conclusions that the economic costs of this management standard outweigh the benefits again supports the Organizations position that recreation has been seriously undervalued in the SJ/TR plan. Arbitrarily finding all Grouse habitat unsuitable for motorized is arbitrary and capricious per se as the USFWS has already reviewed this standard and found it completely unnecessary.

7e. Current management of deer and elk habitat has been very effective and weighs heavily against finding these areas unsuitable for motorized usage.

The management of deer and elk priority winter habitat and calving grounds on the SJ/TR has a long history of effective management of these areas with seasonal closures. This is reflected by the fact that every elk and deer management plan created by the CPW clearly states that deer and elk herds are at or above the target populations for the planning area.⁸⁵ Some herds are

⁸⁴ Status proposal at pg 2532 .

⁸⁵ See, CPW HERMOSA ELK HERD MANAGEMENT PLAN DATA ANALYSIS UNIT E-30; July 2010 at pg 3; and *see also* San Juan Basin Elk Herd E-31 Data Analysis Unit Plan; November 2006 at pg 3; and *see also* San Juan Deer Management Plan Data Analysis Unit D-30; August 2001 at pg 3; and *see also* HERMOSA MULE DEER HERD MANAGEMENT PLAN DATA ANALYSIS UNIT D-52; July 2010 at pg 4.

50% above their target populations even with CPW providing little limitation on hunting licenses.⁸⁶

CPW herd management plans specifically identify the primary issues impacting elk in the SJ/TR planning area are competition with livestock and high levels of private lands in the planning areas.⁸⁷ Primary threats to deer populations are predation, disease, agricultural activity and development of private lands.⁸⁸ The Organizations can see no relationship between impacts to herd populations from predation and disease and the existence of motorized routes in the public lands portions of the habitat area as development of winter range on private lands is identified as the primary management concern.

The Organizations are also vigorously opposed to the designation of large areas of elk and deer habitat as unsuitable for motorized recreation on USFS lands as the usage of seasonal closures continued on BLM lands.⁸⁹ No basis for why a single standard is not applied is provided and no explanation of how the area is unsuitable on USFS lands but requires only a seasonal closure on BLM lands is provided.

As previously noted the clearly effective previous management of these habitat areas is simply not addressed in with the blanket application of an unsuitable for motorized usage standard. This management simply has no relationship to the clearly identified threats and management issues for the deer and elk herds in the planning area. Contrary to any assertion of improving habitat many hunters find motorized access to hunting areas a key component for a quality hunting experience as they do not have teams of horses to remove animals with. This was previously discussed in the appeal. Given the effectiveness of previous management of habitat areas with seasonal closures, any assertion that the area is unsuitable for motorized usage is arbitrary and capricious.

7f. Cutthroat trout management will be significantly impaired by designations of habitat as unsuitable as this decision has no relationship to the primary threats to the species.

The Organizations have to believe that a credible argument could be made that designating all cutthroat trout habitat as unsuitable were developed solely to create conflict between users and the agencies. Cutthroat trout management is clearly an area where previous management activities by agencies left significant room for improvement. This room for improvement as resulted in a high degree of public sensitivity to this issue. This poor management history sets

⁸⁶ San Juan Basin Elk Herd E-31 Data Analysis Unit Plan; November 2006 at pg 3.

⁸⁷ See, CPW HERMOSA ELK HERD MANAGEMENT PLAN DATA ANALYSIS UNIT E-30; July 2010 at pg 3; and *see also* San Juan Basin Elk Herd E-31 Data Analysis Unit Plan; November 2006 at pg 3.

⁸⁸ See, CPW San Juan Deer Management Plan Data Analysis Unit D-30; August 2001 at pg 7; *see also* HERMOSA MULE DEER HERD MANAGEMENT PLAN DATA ANALYSIS UNIT D-52; July 2010 at pg 12.

⁸⁹ See, RMP at pg 102.

the proper tone for the public perception of application of RMP standards on this issue and understanding the negative implications such a designation would have on relationship between users and the agency in the future.

The Organizations believe a brief summary of the management history of cutthroat trout will help to understand why management of this species is such a sensitive issue for the public and the ongoing need to avoid inaccurate management of the species in the future. The cutthroat trout is a species where USFWS decisions specifically addressing cutthroat trout management are simply never addressed in the development of the suitability standard. The specter of arbitrary management decisions immediately becomes a concern as researchers have uniformly concluded the primary threat to the species to be:

"At the time of Recovery Plan development, the main reasons cited for the subspecies' decline were hybridization, competition with nonnative salmonids, and overharvest (USFWS 1998)."⁹⁰

The hybridization of the cutthroat was the result of management activities that occurred at an unprecedented level in Colorado. The scale of previous management activity does provide a significant amount of context to the levels of frustration. Research has concluded:

"Between 1885 and 1953 there were 41,014 documented fish stocking events in Colorado by state or federal agencies. The vast majority of these involved brook trout (*Salvelinus fontinalis*), rainbow trout (*Oncorhynchus mykiss*) and cutthroat trout (*O. clarkii*) (Fig. 3, supporting information). Remarkably, over 750 million fish of these three species were stocked from hatcheries into streams and lakes in Colorado over this period of time. Introductions of brook trout and rainbow trout probably had devastating effects on native cutthroat trout populations because brook trout are superior competitors and rainbow trout hybridize with cutthroat trout (Young & Harig 2001)."⁹¹

The June 2006 Conservation Strategy and Agreement between USFWS and the US Forest Service provides 7 objectives and 11 strategies for the management of Colorado Cutthroat trout, all of which seek to address the impacts of stocking 750 million threats to the cutthroat trout.⁹²

⁹⁰ See, US Fish and Wildlife Service; *Greenback Cutthroat Trout; 5 year summary and evaluation*; May 2009 at pg 4. See also pg 39. This document is hereinafter referred to as the "trout 5 year summary and review" in this appeal.

⁹¹ Metcalf et al; *Historical stocking data and 19th century DNA reveal human-induced changes to native diversity and distribution of cutthroat*; *Molecular Ecology* (2012) 21, 5194–5207.

⁹² CRCT Conservation Team. 2006. Conservation agreement for Colorado River cutthroat trout (*Oncorhynchus clarkii pleuriticus*) in the States of Colorado, Utah, and Wyoming. Colorado Division of Wildlife, Fort Collins. at pg 3-4.

It should be noted that the 2006 Conservation Strategy does provide a rather lengthy discussion of habitat issues involved in the management of the trout.⁹³ This discussion immediately centers around removal of non-native fish in contaminated waterways used by the cutthroat to avoid predation, hybridization and effects of superior competition of non-native fish. None of these standards are cited here due to their length and lack of relevance to the suitability standard. The 2006 Conservation Agreement does not even arguably imply any travel management issues, as all habitat discussions are all related to preserving cutthroat trout from non-native species. If there were trail related habitat issues, the Organizations have to believe they would have been discussed in this section. The lack of discussion on this issue is a clear indication of the truly low levels of concern that surround routes adjacent to water bodies.

The 2006 Conservation Agreement provides a general management standard for recreational usage of habitat areas as follows:

"by implementing conservation measures to avoid streamside habitat degradation while approving new grazing, logging, and road and trail construction proposals; by moving existing roads and trails away from streamside habitats and rehabilitating disturbed riparian habitats; **All of these positive activities are ongoing throughout the subspecies' range and are implemented based on agency priorities and funding levels on an annual basis.**"⁹⁴

Given the unprecedented level of impact from previous stocking of 750 million threats to the Colorado cutthroat trout in Colorado waterways, the Organizations believe the low level of any threat from a trail possibly adjacent to the waterway would be readily apparent. Given the scale and type of threat from the 750 million threats to the cutthroat trout, the Organizations believe designating any area in the state as unsuitable for motorized would result in no benefit to the cutthroat trout.

In May 2009, the USFWS released its first 5 year review of the greenback cutthroat trout endangered species listing status and evaluation. Under federal law, this 5 year review is specifically required to update management of any species. Relevant portions of the Code of Federal Regulations requires:

⁹³ See 2006 CRCT Conservation Strategy at pg 9.

⁹⁴ See, 5 year trout summary and review at pg 35.

"424.21 - Periodic review. At least once every 5 years, the Secretary shall conduct a review of each listed species to determine whether it should be delisted or reclassified. Each such determination shall be made in accordance with 424.11, 424.16, and 424.17 of this part, as appropriate." ⁹⁵

The 2009 listing decision provided a wealth of relevant information regarding the threats and issues possibly impacting the cutthroat trout as a result of the reintroduction of 750 million threats to the cutthroat trout into its habitat. The listing decision provides a discussion of the impact these 750 million threats had on the cutthroat that could only be described as compelling. The 2009 listing decision provided a limited discussion regarding the three factors for effective trout habitat scope and types of habitat issues that are faced by the Cutthroat trout that simply are not related to the primary threat to the species. This report clearly states:

"Since completion of the 1998 Recovery Plan, extensive study has been devoted to determining how habitat quality and translocation success are related. Harig and Fausch (2002) developed a model, based on a comparative field study, which predicted that cold summer water temperature, narrow stream width, and lack of deep pools limited translocation success of the greenback. Young and Guenther-Gloss (2004) evaluated the model developed by Harig and Fausch (2002), and found a positive correlation between the three model components and greenback abundance."⁹⁶

Landscape factors such as water temperature, water depth and stream width are not factors that would be impacted by a landscape level standard in an RMP, as factors like this would be highly geographically related. It should be noted that CPW has effectively reintroduced cutthroat trout in a large number of lakes in the state. The listing decision does identify trails usage as a low level threat to the cutthroat trout as follows:

"Low level threats include the ongoing negative effects of past mining operations on water quality; the impacts of grazing, logging, and road and trail construction and use on riparian habitat and streambanks, causing increased erosion, sediment deposition, and in turn elevated water temperatures and higher turbidity; and the co-occurrence of nonnative salmonids with greenback populations." ⁹⁷

⁹⁵ 50 CFR §424.21

⁹⁶ See, 5 year trout summary and review at pg 11.

⁹⁷ See, 5 year trout summary and review at pg 34

The 5 year listing decision specifically states land managers have a significant amount of latitude in addressing these low level threats to the trout. The listing decision recommended management of this issue as follows:

"Regulatory and land management agencies have the ability to improve habitat conditions and eliminate or minimize these threats by.... by implementing conservation measures to avoid streamside habitat degradation while approving new grazing, logging, and road and trail construction proposals; by moving existing roads and trails away from streamside habitats and rehabilitating disturbed riparian habitats;..... All of these positive activities are ongoing throughout the subspecies' range and are implemented based on agency priorities and funding levels on an annual basis."⁹⁸

The 5 year review concludes by recommending the following management of low level threats as follows:

"Management Actions 4.9 The regulatory and land management agencies involved with greenback recovery should continue their efforts to improve habitat conditions, to establish new populations as appropriate, and minimize the negative effects of ongoing and proposed actions on the subspecies."⁹⁹

Clearly the implications of the 2009 listing decision have not been addressed with the large scale findings of Cutthroat Trout habitat as unsuitable for motorized usage. Landscape level planning closures clearly and directly conflicts with the 2009 listing decision from the FWS and 2006 Conservation Strategy and Agreement.

Given the rather troubling history surrounding the management of the cutthroat and the failure of the RMP to accurately address management guidelines and the troubled and visible nature of previous management, the organizations vigorously assert the blanket finding of unsuitability has not been meaningfully analyzed. The arbitrary and capricious imposition of closures for motorized recreational usage will not impact water temperature, stream width or other factors to any level comparable to the reintroduction of 750 million direct threats to the cutthroat trout. However, these arbitrary closures will further erode public support for the management of the cutthroat trout which has a troubled management history to begin with. The arbitrary and capricious nature of this decision is further compounded by the fact that current

⁹⁸ See, 5 year trout summary and review at pg 34-35.

⁹⁹ See, 5 year trout summary and review at pg 37.

management of trail crossings at streams has proven highly effective as specifically addressed in the Delores Ranger district good management summary provided with this appeal.

8a. Best available science concludes water quality issues are not related to roads and trails in the SJ/TR planning area.

The Organizations believe that protection of aquatic resources is an important issue in the federal land planning process but this is another criteria where a localized usage or issue that may impact water quality has been arbitrarily expanded to a landscape level issue. As a result of the arbitrary expansion of this local issue to a landscape level issue, management is proposed for an issue and usage that simply does not impact water quality at the landscape level. This is an issue the Forest Service has specifically concluded is properly addressed at the local level of planning rather than at the landscape level and as previously noted current management has been effectively addressing while maintaining motorized recreational usage of the area.

The various waterways in the SJ/TR planning area have been the basis of extensive credible scientific research to address water quality issues by numerous federal agencies, including US Bureau of Land Management, US Geological Service and the Bureau of Reclamation and educational institutions. Much of this research and analysis is based on data collection that started on these bodies of water in the early 1990's and none of this research identifies road or trail issues as a factor contributing to poor water quality. Rather this research uniformly concludes that dissolved minerals from abandoned mines is the single greatest contributor to poor water quality. As a results of this site specific best available science on water quality issues in the planning area repeatedly concludes mines are the greatest threats to water quality, any assertion that localized impact to water quality from a poorly designed trail is arbitrary and capricious.

The Organizations would like to specifically address the conclusions of some of the research into water quality issues that has occurred on the SJ/TR planning area. Given the importance and relevance of this research into water quality, a copy of each report is attached to this appeal as Exhibit "8". The Bureau of Reclamation issued an updated FEIS appendix relative to changes in scope and intent of the LaPlata Animas water project that has impacted every watershed in the planning area as part of their ongoing monitoring of this project.¹⁰⁰ This Appendix specifically identifies each river in the region and the respective concerns with water

¹⁰⁰ See, FEIS Technical Appendix 3 Water Quality Analysis at pg 3-2.

quality.¹⁰¹ None of these issues even mention trail or road usage as a concern impacting any of the rivers in the area despite extensive discussions of concerns on each body of water.

In 2003, the BLM and USGS prepared an additional landscape level analysis of water quality issues in the Upper Animas River Watershed. The intent of this study was clearly stated as follows:

"Water-quality profiling allows land managers and scientists to assess priority areas to be targeted for characterization and(or) remediation by quantifying the timing and magnitude of contaminant occurrence."¹⁰²

The Organizations will note the issues in the watershed were summarized as follows:

"The upper Animas River Basin (the Animas Basin) (fig. 1) is a mineralized region of the San Juan Mountains in southwestern Colorado where gold, silver, and other base metals were mined from the late 1800's to 1992. As a result of historical mining activities, many streams in the Animas Basin have high concentrations of dissolved metals, which have caused a reduction or elimination of fish and invertebrate communities (Besser and Leib, 1999)."¹⁰³

Given that this report was specifically prepared to assist land managers resolve water quality issues in the planning region, the Organizations believe adopting management standards that do not address these priority threats is arbitrary and capricious as a matter of law and fact. There is simply no mention of a possible impact to water quality from roads and trails in the planning areas and the Organizations believe this silence speaks volumes as to the low priority of this issue for water quality.

In 2010, the New Mexico Water Quality Bureau analyzed the Animas River between San Juan River and Ute Tribe Boundary and found the three largest issues with water quality were bacteria(e coli), temperature and dissolved phosphorus.¹⁰⁴ The threat of fire has been specifically identified by the USFS and all front range water districts as the single greatest threat

¹⁰¹ See, FEIS technical appendix at pg 3-9.

¹⁰² See, Lieb et al BLM & Bureau of Reclamation; Using Water-Quality Profiles to Characterize Seasonal Water Quality and Loading in the Upper Animas River Basin, Southwestern Colorado Water Resources Investigation report 02-4230 at pg 1.

¹⁰³ See, Lieb et al at Pg 1.

¹⁰⁴ Full Report available here. <http://www.nmenv.state.nm.us/swqb/SanJuan/Animas/index.html>

to watershed quality.¹⁰⁵ There recently was a multiday seminar in Durango specifically seeking to address how fire and the mountain pine beetle are negatively impacting water quality in the Durango area.¹⁰⁶ The Organizations vigorously assert closures of areas to motorized access will never address the mountain pine beetle/spruce beetle issue or high levels of E-Coli bacteria in water bodies in the planning area.

The Organizations vigorously assert that the expansion of areas found unsuitable for motorized recreational usage by 83% simply cannot be based on water quality issues as best available science has specifically concluded poor water quality in the planning area has nothing to do with roads and trails. The remediation of mines is frequently a large task requiring heavy mechanized equipment to undertake. Closure of large areas to motorized usage would negatively impact any attempt to mitigate the true issues that are impacting water quality in the planning area.

8b. USFS water quality management guidelines are not followed in the RMP and FEIS.

The arbitrary and capricious nature of limiting motorized recreational usage to the SJ/TR under the guise of improving water quality is further evidenced by the lack of support for such a position in the regional management standards that have been created for water health and watersheds by the USFS.¹⁰⁷ This development of this research and related management standards was an extensive undertaking by the USFS and was done in partnership with all seven Front Range water districts. While this research did identify many concerns for water quality, none of them are related to recreational usage of public lands. None of these guidelines are addressed in the FEIS or RMP, even though the planning area is impacted by similar levels of pine and spruce beetle killed trees as the Front Range has been.

Given the importance and weight one would think should be attributed to a USFS regional watershed health guideline in the creation of a forest level plan, the Organizations believe a discussion of the scope and conclusions of this process is warranted. Given the significance of these standards, a copy of these standards has been included with this appeal as Exhibit "9". These conclusions directly evidence the arbitrary and capricious nature of an assertion that roads and trails are impacting watershed health. These guidelines and research specifically state:

¹⁰⁵ See, PROTECTING FRONT RANGE FOREST WATERSHEDS FROM HIGH-SEVERITY WILDFIRES AN ASSESSMENT BY THE PINCHOT INSTITUTE FOR CONSERVATION FUNDED BY THE FRONT RANGE FUELS TREATMENT PARTNERSHIP; at pg 2.

¹⁰⁶ <http://www.colorado.edu/events/workshops/beetle-water-Durango.html>

¹⁰⁷ A copy of this report and guidelines is attached as Exhibit "9".

"Findings indicate that the accumulation of forest fuels, along with increasingly flammable forest conditions, place Front Range watersheds at risk of high-severity wildfires that could impact the ability of water providers to supply water for the foreseeable future. Wildfires are not only a threat to water supplies but, as noted earlier, the sediment transport and organic debris flows that often follow wildfires can be even more problematic. If watersheds are not protected through mitigation projects such as fuelbreaks, then sediment and organic debris can destroy reservoirs as a functional part of the water supply system..... The risk of high-severity wildfire to critical Front Range watersheds, which could impact the quality and quantity of water going to Front Range communities and other users, is unprecedented. The Buffalo Creek and Hayman fires serve as reminders that such high-severity wildfires can adversely affect and seriously impact the Front Range economy." ¹⁰⁸

These conclusions have been confirmed through additional research in Colorado which specifically concluded:

"Nitrate concentration increased after a beetle attack in surface waters for the Bavarian Forest National park in Germany (Huber et al., 2004; Huber, 2005). It is uncertain if the nitrate increase was due to lack of processing of atmospheric inputs or disruption of the nutrient cycle. The highest concentrations were measured five years after the dieback, but concentration increases were detectable up to 17 years later (Huber, 2005)." ¹⁰⁹

The USFS research is further supported by USGS research on water quality issues which has further identified that large stands of beetle kill trees do increase dissolved nitrates in the landscape watershed. These conclusions specifically state:

"Nitrate concentrations increased over time concurrently as the percent watershed area increased(Figure 6). Similar responses have been observed in forested watersheds infected with the defoliating gypsy moth. The nitrate concentration increases are probable related to increased soil nitrification, due to increased soil moisture, increased soil temperature, increased food source (litterfall), and decreased vegetation uptake. A water quality response was also

¹⁰⁸ See, LeMaster et al; Pinchot Institute for Conservation; Protecting front range watersheds from high severity wildfires; executive summary at pg 3.

¹⁰⁹ See, Sednick et al; Effects of Pine Beetle Infestations on water yield and water quality at the watershed scale in Northern Colorado; USGS 2007 at pg 4.

measured in stream temperature, especially when the riparian forest was killed. Additional water quality parameters did not change."¹¹⁰

While this study does not address recreational usage of beetle kill areas, it specifically addresses timber harvesting impacts, which the Organizations are aware are very similar to trails and roads. The USGS research specifically concluded:

"Water quality changes following timber harvesting are considered negligible at the watershed level (MacDonald and Stednick, 2003; Stednick and Troendle, 2004)."¹¹¹

Given that dissolved nitrates are an issue uniformly identified in best available science on water quality in the planning area, the Organizations have to assert the arbitrary and capricious nature of a position that restricting motorized access will improve water quality. As forestry actions are highly effective in mitigating beetle kill issues and improving water quality, and motorized access is a key component of forestry, best available science would indicate expanded motorized access would improve water quality rather than negatively impact it.

8c. Impacts of roads and trails are specifically identified as highly variable thus precluding application of landscape level management standards.

The proper application of these numerous criteria are outlined in the USFS manual on Roads Analysis, which is hundreds of pages in length.¹¹² The USFS roads analysis provides a specific appendix discussing how the application of various factors will impact the conclusions on road density.¹¹³ The Road density manual starts with the following limitation:

"Limitations

Road density may not be appropriate for some analyses because it does not reflect the character of individual roads. In some watersheds, the aquatic effects from a single problem road will be greater than in an area with high road density. This macro is very sensitive to the size of moving window selected. The roads coverage must extend beyond the boundary, if the road density along the perimeter is to be accurate."¹¹⁴

¹¹⁰ See, Stednick et al at pg 4.

¹¹¹ See, Stednick et al at pg 4.

¹¹² See, *USFS Roads Analysis: Informing Decisions About Managing the National Forest Transportation System*, Washington Office FS-643 August 1999.

¹¹³ *Id*, Road Density Manual Appendix 2; *Road Density as an Indicator of Road Hazard* at pg 165.

¹¹⁴ See, Road Density Manual at pg 166.

None of these factors are addressed in the RMP or FEIS. The Organizations have also not been provided any analysis of how areas that are above the desired density have been treated in the creation of the suitability areas for multiple usage. This is a NEPA violation.

8d. Cutthroat trout are directly impacted poor water quality from forest fires for centuries.

As noted above, water quality is directly impacted by wildfires and large amounts of dead trees in a watershed. Many of the same wildfire threats and management issues apply with equal, if not greater, force to listed cutthroat trout. Forest fires have been identified as a major threat to habitat for the Colorado Cutthroat trout, both during the fire itself and from the condition of riparian area after a fire. The Forest Service species conservation report specifically states:

“Lack of connectivity to other populations renders them vulnerable in the short term to extirpation from natural disturbances such as fire, post-fire debris torrents, or floods....”¹¹⁵

The Conservation Report also noted the significant impact that woody matter has on the cutthroat trout habitat. The Conservation Report notes the impact of fire and insect infestation are both major impacts on woody matters stating:

“large wood (also known as coarse woody debris) plays a dominant role in many montane streams where greenback cutthroat trout persist. Deposition of large wood affects sediment scour and deposition, energy dissipation, and channel form (Montgomery et al. 2003), and creates pools, stores spawning gravels, affords overhead cover, and provides refuge during high flows..... Inputs of large wood are controlled by a variety of processes. Mass mortality of riparian stands from fire, insect damage, or wind is important sources.”¹¹⁶

Fire is specifically identified as a disturbance that results in trout habitat being unsuitable for centuries, stating:

“In particular, disturbances that dramatically alter channels or riparian zones—debris torrents...and severe fires—will change the discharge-sediment transport regime, re-set forest succession and large wood dynamics, and

¹¹⁵ Dr Michael Young; *Greenback Cutthroat Trout; A technical Conservation Assessment; February 6, 2009* at pg 3.

¹¹⁶ Young @ pg 20.

redistribute suitable and unsuitable habitat in a basin, sometimes for decades or centuries..."¹¹⁷

As previously noted the USFWS has specifically noted the limited impact on cutthroat trout that roads and trails have but these conclusions have not been addressed in the FEIS or RMP. In addition to over allocating impacts to cutthroat trout from trails the RMP fails to address the poor water quality that may result and impact the cutthroat trout from dead trees in a watershed and wildfire that may result. This management is simply arbitrary and capricious.

9a. The clear mandate of Federal law for development of the no action alternative are repeatedly violated in the suitability designations.

As previously outlined the Organizations are deeply concerned at the failure of the suitability for motorized usage to be impacted by USFWS decisions for the management of numerous endangered species. The Organizations concerns regarding the arbitrary and capricious nature of the suitability standard are not limited to the management of habitat areas. The Organizations vigorously assert the failure to accurately address current management and usage of several areas in both the suitability analysis and land management standards is arbitrary and capricious. The Organizations will note that these management changes may only impact small geographic areas but these are highly valued areas for motorized usage that remain open and have been the basis of numerous hearings and heavy opposition to any discussion about possible closure of the area in the future.

The Organizations are deeply concerned that management of several areas was inaccurately reflected in the DEIS or the current management standards were changed in the FEIS without explanation. Each of these changes moved an area with a long history of permitted motorized access and usage to an area that is now unsuitable and listed as currently closed under current management. No NEPA analysis or other public process has been cited to support these changes between the FEIS and DEIS.

FLPMA specifically identifies the treatment of current management in the planning process as follows:

- "(c) In the development and revision of land use plans, the Secretary shall–
 - (1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;....
 - (5) consider **present** and potential uses of the public lands;"¹¹⁸

¹¹⁷ Young @ pg 21.

No detailed statement of high quality information regarding how boundaries were established or why areas that have effectively managed motorized routes with seasonal closures often for a long period of time are suddenly determined to be unsuitable for motorized usage. The Organizations believe this position directly evidences the fact that current management of these areas was not accurately incorporated in the analysis.

Federal Law specifically identifies that current levels of resource usage are to be the base line for development of the no action alternative of the EIS.

"At the direction of the Field Manager, in collaboration with any cooperating agencies, BLM will consider all reasonable resource management alternatives and develop several complete alternatives for detailed study. Nonetheless, the decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM. **The alternatives developed shall reflect the variety of issues and guidance applicable to the resource uses.** In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, all reasonable variations shall be treated as subalternatives. **One alternative shall be for no action, which means continuation of present level or systems of resource use.**"¹¹⁹

The Organizations are vigorously opposed to any closures that result from the arbitrary summary of current management standards. Many of these management standards specifically permit the ongoing usage, making the designation of these areas under Alternative A of the FEIS as closed arbitrary and capricious per se.

9b(i). Current management of the Molas Pass area not accurately reflected in the suitability analysis in Alternative A for winter motorized usage.

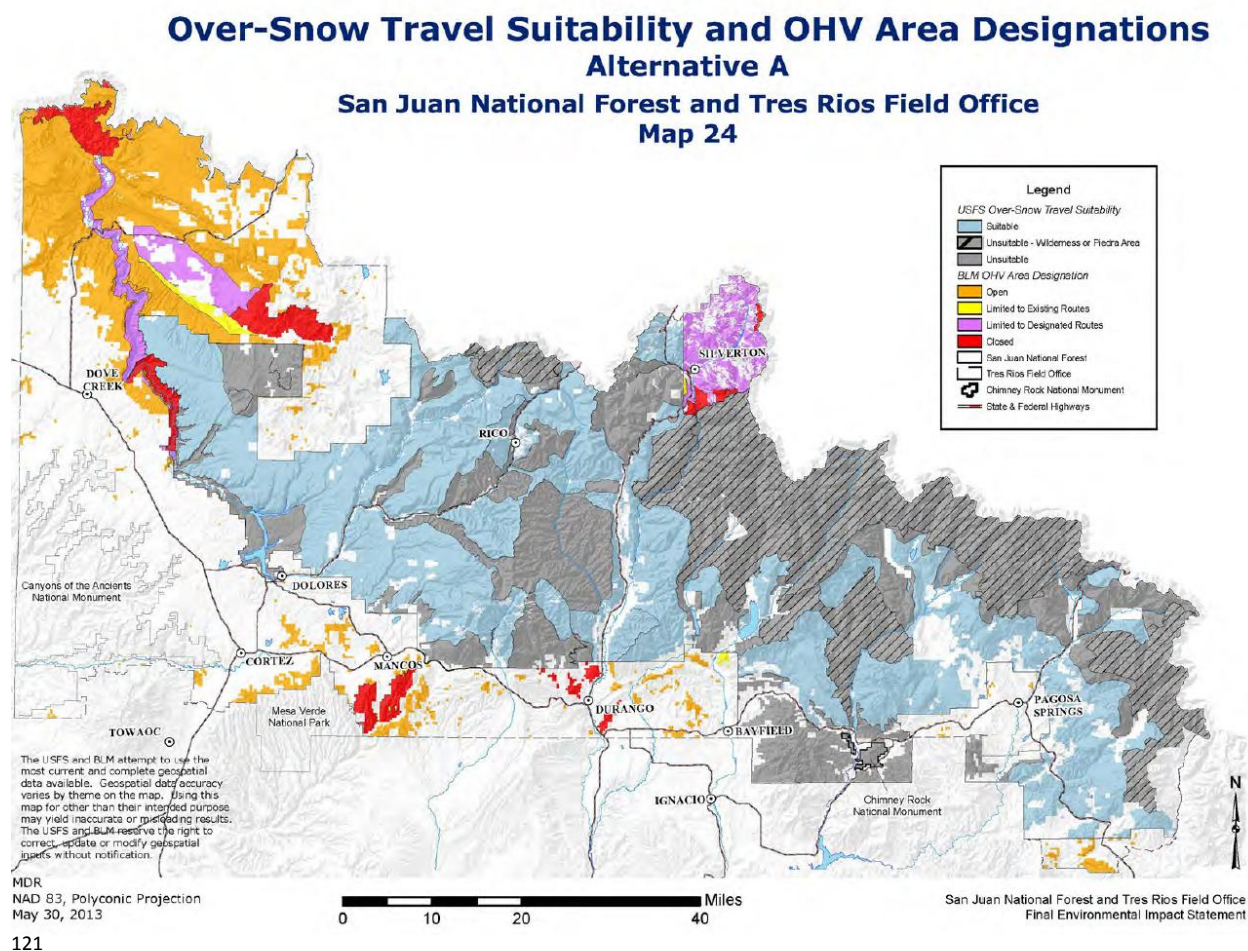
The Organizations are deeply troubled regarding the arbitrary changes to current usage and management of winter over the snow recreation on the Molas Pass area. Contrary to the Alternative A map that is provided with the FEIS this areas is not currently closed to winter multiple usage recreation. The management of the Molas Pass area for winter recreation has recently been hotly debated in the SJ/TR area and been an area where the changes in management of the area as the result of Service First Agreements expiration and renewal have been very apparent. The Organizations will note that while the geographic area of Molas Pass is small, it is highly valued by winter motorized users and local communities who heavily benefit from the motorized usage.

¹¹⁸ See, 43 USC §1711.

¹¹⁹ See, 43 CFR §1610-4.5

As part of these recent discussions between users, permittees, local government representatives and both BLM and USFS officials regarding the ongoing usage of the Molas Pass area for winter motorized recreation, the Field Office manager has provided correspondence to local winter users specifically identifying the Molas Pass area as open for motorized usage in the 2012/13 winter season and that the area would remain open to motorized usage during the 2013/14 winter season as well.¹²⁰ Given these statements, the Organizations believe the current management that is represented in the FEIS is incorrect, fails to satisfy NEPA and must be withdrawn and corrected.

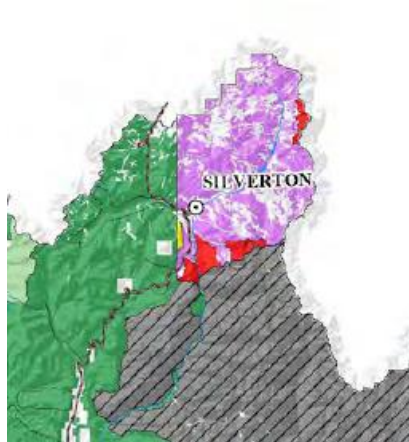
Current management of the Molas Pass area in FEIS issued for SJ/TR plan for winter recreation suitability identifies this area as closed. The summary FEIS map is as follows:



Current management of the Molas pass area in the FEIS is more specifically identified as:

¹²⁰ A copy of this correspondence is attached to this appeal as Exhibit 10.

¹²¹ See, FEIS Appendix V Maps - Final; Map 24 at pg 29.

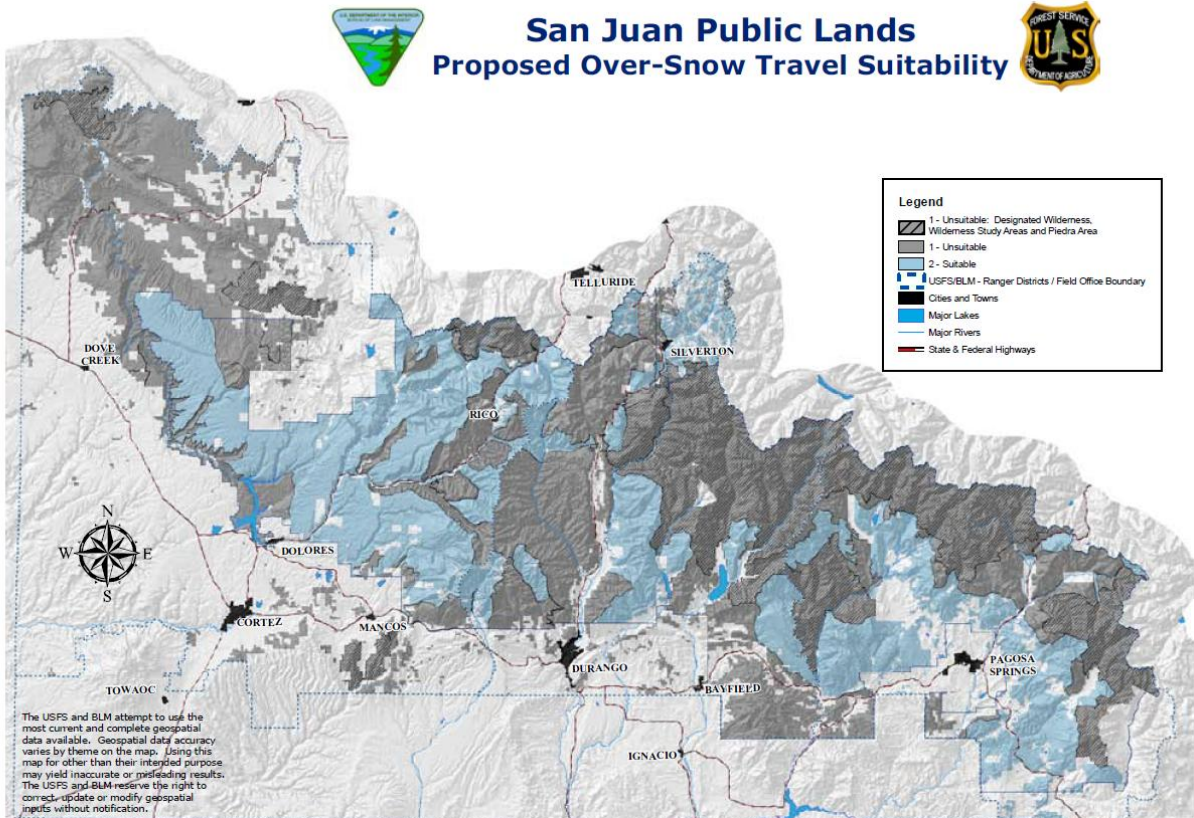


The Organizations believe the current management correspondence and its conflict with the current management map in the FEIS make the decision arbitrary and capricious per se. As noted in the West Needles Contiguous Study area report addressed in subsequent portions of the appeal, and at numerous locations in the existing RMP and revisions, there is an exceptionally long history of motorized usage of the Molas Pass area. The Organizations will note that no analysis is provided to support the change in current management or impacts to the planning area from closing the area to winter motorized usage.

9b(ii). Identification of management of the Molas Pass area has been arbitrary changed between the DEIS and FEIS issuance.

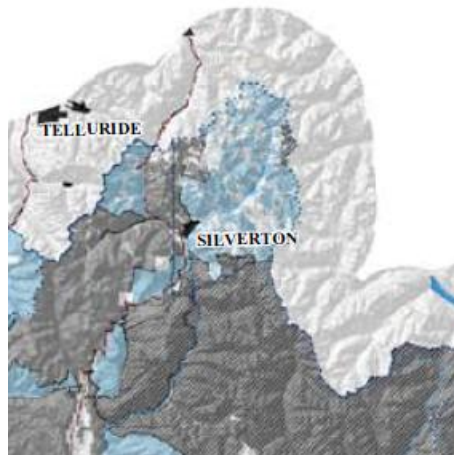
A review of the DEIS reveals that the Molas Pass area was identified as suitable for over the snow recreation, which was based on the historical usage of the area for motorized recreation well before any authority was provided for the agency to inventory motorized usage of a WSA. The DEIS provided the following map of winter recreation and it must be noted that the Molas Pass area was specifically identified as open in this map:

Figure 12 - Proposed Over-Snow Travel Suitability



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The DEIS map specifically identifies the Molas Pass area as specifically clarified below:



¹²² See, DRMP and DEIS Volume 2 Strategy and Suitability At pg 142.

The Organizations have to note that the West Needles/Molas Lake area was found suitable for over the snow recreational usage in the draft RMP and EIS that were released previously as noted in the map above. The motorized usage of this area was further identified as a usage that would be permitted to continue in the Roadless review of the West Needles area discussed more completely in other portions of this appeal. The Organizations find the change in current management standards between the DEIS and FEIS arbitrary and capricious per se.

The Organizations are not aware of any NEPA process or other public process that has undertaken by USFS or BLM to explore alteration of the management of the Molas Pass area between release of the DEIS and FEIS. Rather all public process has been commenced by San Juan County, as the San Juan County commissioners held a public hearing to protect motorized access to the Molas Pass area after grooming of the area and permittees were informed that the Molas Pass area would be closed to motorized usage in the future. At this hearing, no one was in favor of any change in motorized usage of the area. The Field Office managers correspondence regarding continuing current usage of the area was made in direct response to the San Juan County Commissioners meeting.

In addition to the general mandates of FLPMA and NEPA, the need for a public process commenced by the agency is specifically mandated for changes in management of agency identified Wilderness Study Areas are required by §603(a) of FLPMA and §3(d) of the Wilderness Act. It is the Organizations position that these public process have never occurred and this change in current management is illegal and the current decisions and associated documents must be reversed and remanded for public process in compliance with the above statutes. Impacts from any change in management of the Molas Pass area simply have not been analyzed.

9c. WSA areas are managed without regard to grandfathered usages in violation of FLPMA and BLM guidelines.

The Organizations are deeply troubled by the lack of accuracy in maps provided with the RMP motorized usage of the Molas Pass area. The Organizations have been heavily involved with the usage of the Molas Pass area for motorized recreation and this involvement has ranged from numerous meetings with BLM representatives to public hearings held by San Juan County to address the possible loss of the Molas Pass area for winter motorized recreation. This meeting was attended by hundreds of residents of Silverton and numerous surrounding communities and testimony was received from both the San Juan Citizens Alliance and Wilderness Society that they would not support the closure of the area to motorized given the historical usage of the area.

The Molas Pass area has a long history of motorized usage and winter motorized recreation is specifically identified in the inventory of the area that was prepared after the passage of FLPMA.¹²³ While winter users refer to the area as Molas Pass, the area was managed and inventoried under the name the West Needles Contiguous WSA. This inventory specifically identified the northern 1264 acres of the West Needles as unsuitable for designation as Wilderness given the inability of the area to be managed for motorized given the proximity of town properties and historical usage.¹²⁴

The Organizations will note that a grandfathered usage and related inventory of suitability of an area for Wilderness designation is the standard relied on in the FEIS for the management of a WSA. The FEIS provides the following definition of a WSA:

"wilderness study area (WSA): A designation made through the land use planning process of a roadless area found to have wilderness characteristics as described in Section 2(c) of the Wilderness Act of 1964."¹²⁵

The FEIS definition that allows grandfathered usage of WSA areas is consistent with both §603 of FLPMA and BLM management guidelines for WSA. §603(c) of FLPMA specifically provides

"(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness..."

Given the use of the area as a winter motorized area, it has always been the agency position that impairment of possible Wilderness designation from usage of the area was minimal as every spring the snow melted. After snowmelt the area showed no impacts from usage for winter motorized recreation.

Given the identification of the Molas Pass area as having significant levels of motorized recreation prior to the passage of FLPMA, and no public process has been undertaken to change the area has continued as a grandfathered usage of the area. Such a usage is explicitly protected under FLPMA and specifically allowed under both BLM manuals for the management of grandfathered usages of a Wilderness Study Area.

¹²³ See, West Needles Wilderness Study Area; Animas Ranger District San Juan National Forest and San Juan Resource Area Bureau of Land Management San Juan and La Plata Counties; May 1982 at pg. III-4. A copy of this report is attached to this appeal as Exhibit 11.

¹²⁴ Id @ pg IV-10.

¹²⁵ FEIS at pg 719.

9d. BLM guidelines specifically address the management of motorized recreation in WSA areas.

In addition to the above federal statutes that are violated by the management changes in the Molas Pass area, both BLM guidelines specifically address the management of motorized recreation in WSA. Manual 6330 was recently released to provide permanent standards for the management of WSA. Pursuant to the new manual, open areas are managed as follows:

"b. Motorized/Mechanical Transport.

i. Recreational use of motor vehicles or mechanical transport (see Glossary) may only be allowed when such use is consistent with all applicable laws and meets the non-impairment standard. The following are examples of motorized or mechanized transport uses that are not likely to impair an area's suitability and therefore may be allowed in a WSA:

A. within "open" areas designated prior to the passage of FLPMA (October 21, 1976), unless the area was subsequently limited or closed in a Land Use Plan decision"¹²⁶

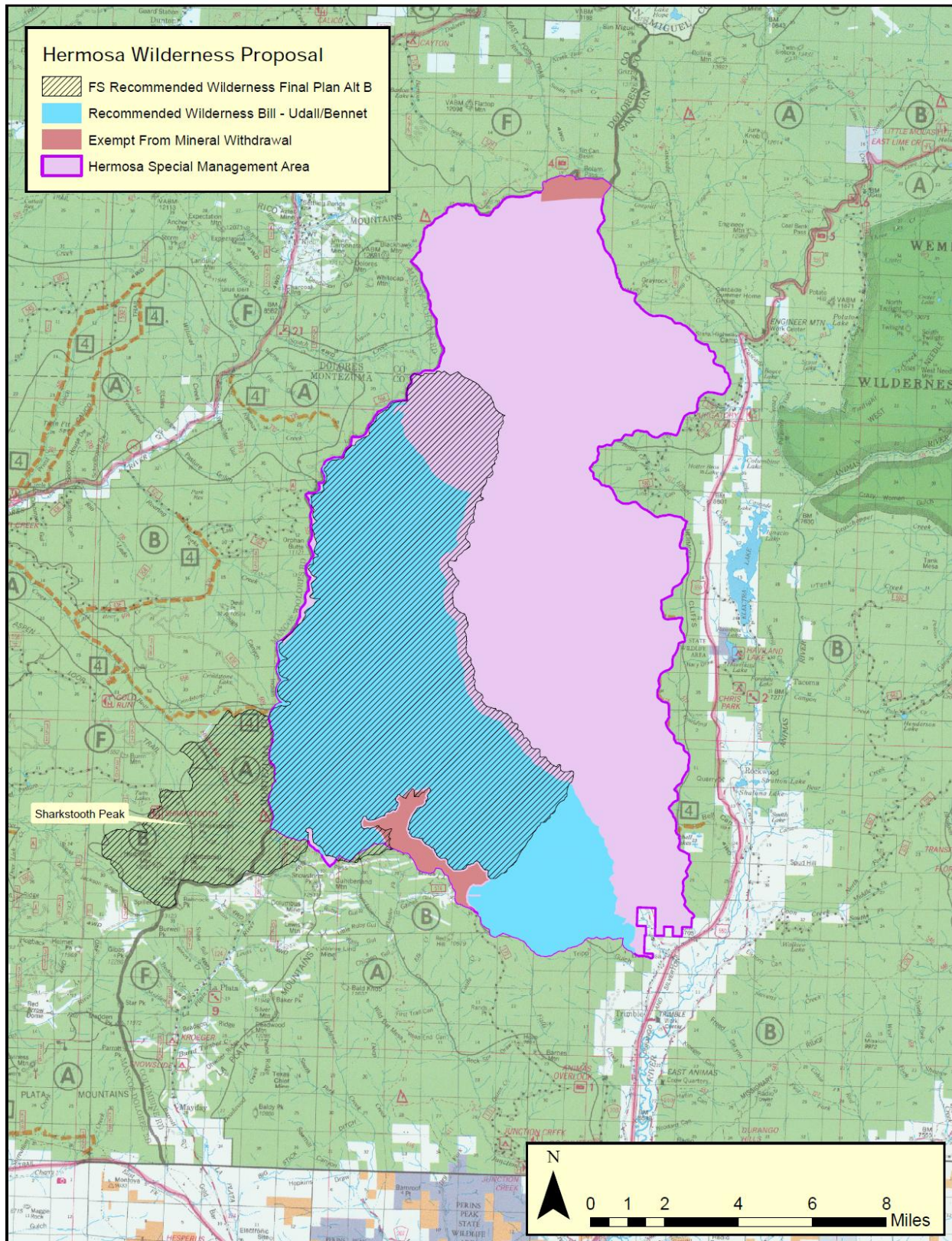
The Organizations will note that BLM Manual 8550, which was superseded by 6330 well prior to the release of the FEIS, and is erroneously relied on in the FEIS as controlling the management also provided similar management of open areas.¹²⁷ Again as the area has historically been used for winter motorized recreation, any evidence of impair immediately melts in the spring returning the area to a natural state.

9e. Current management is not accurately reflected in the Sharkstooth portion of winter management in Alternative A.

As previously noted in the appeal, Winter management motorized recreation of the Molas Pass area is not accurately reflected in the Alternative A suitability map. In addition to Molas Pass area, current management of the Sharkstooth area adjacent to the West Mancos River is also not accurately reflected under the current management alternatives for winter recreation. For purposes of the appeal, the Organizations are referring to the crosshatched area in the lower left of the map below as the Sharkstooth area:

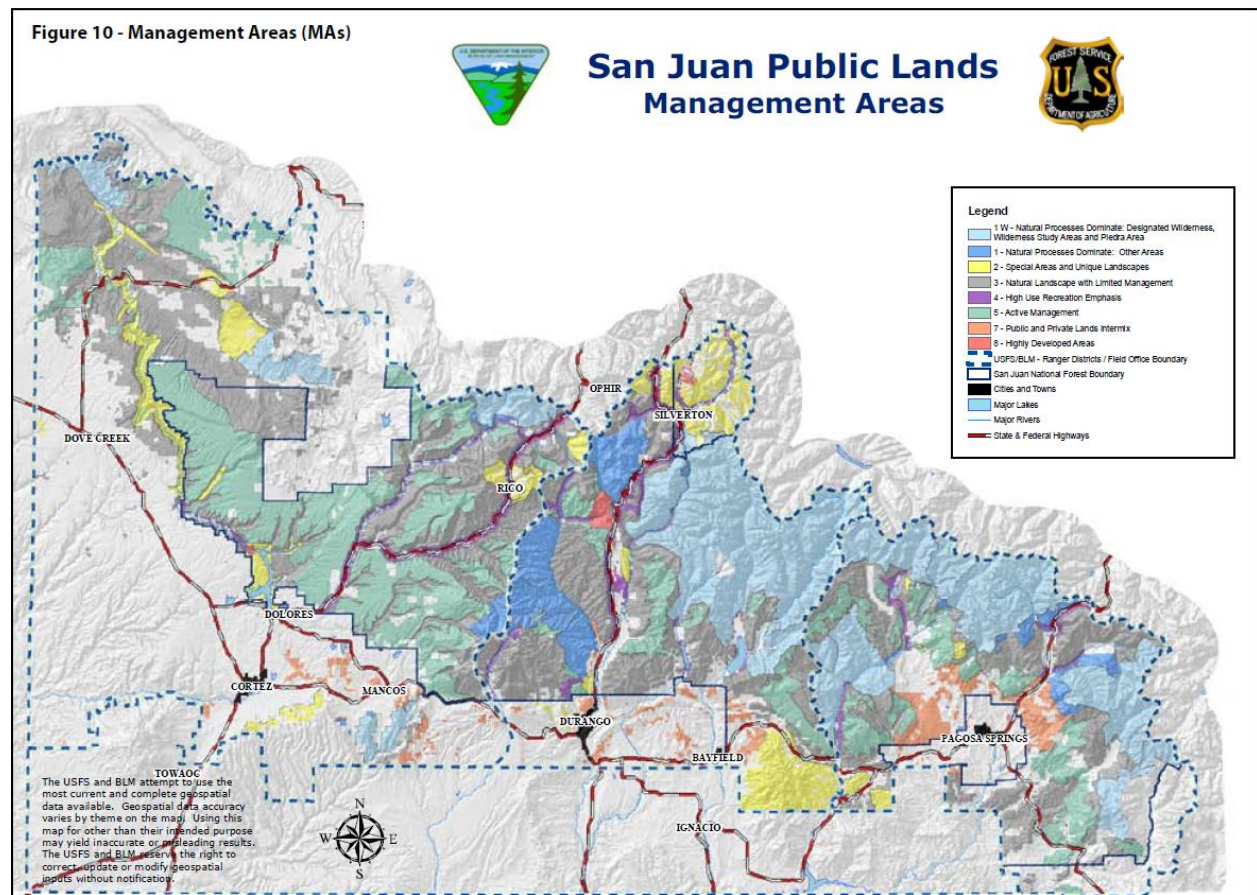
¹²⁶ See, BLM Manual 6330.6(b) at pg 1-27.

¹²⁷ See, BLM Manual 8550. (H) at pg 45



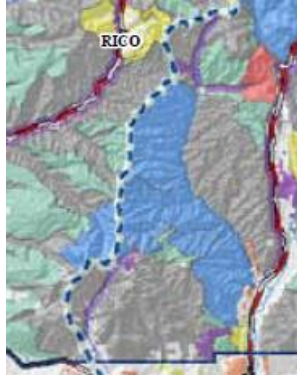
This is an area where the errors in the summary of current management was addressed in the DEIS comments from CSA and was the basis of several meetings with agency personnel to address this oversight after the release of the DEIS. These meetings occurred in both FS offices and on site in the Sharkstooth peak area. These meetings concluded with the fact that there was no intent to limit snowmobile usage of the Sharkstooth area in the new RMP and that these oversights would be corrected in the FEIS as usage was legal in the area. It appears those oversights were never corrected.

The concerns regarding snowmobile usage of the Sharkstooth Peak area are based on historical usage of the area under previous management. As specifically noted in the DEIS the management of the Sharkstooth area was managed under a standard that specifically allowed winter motorized usage.



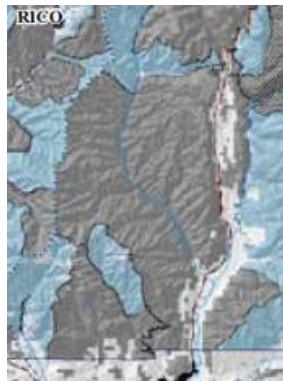
In relevant part this management is reflected as follows:

¹²⁸ DEIS at pg 133.



Pursuant to current management standards provided in the DEIS, the Sharkstooth area is managed under a MA3 standard which specifically allows snowmobile usage of the area.¹²⁹ This is significantly different than management of areas generally west of the Sharkstooth area that are currently managed under an MA1 standard that prohibits motorized usage. This is a significant difference in management that has never been accurately reflected in any version of these documents despite meetings with District officials and continued usage of the areas. This is simply arbitrary and capricious and highly frustrating.

For reasons that are not clear, current management of this area for snowmobile usage does not transfer to the Alternative A map for winter suitability provided in the FEIS, despite the clear differences in management standards for motorized usage of the area.



¹²⁹ DEIS at pg 135.

As a result, the Organizations are vigorously opposed to any management changes as the baseline for management has not been accurately reflected and as a result no changes in management have been analyzed. Any changes further fail to address that current management of MA3 areas specifically allows winter motorized usage, and these current management standards have never been accurately address in any version of the RMP or EIS.

10a. Providing a "quality recreational experience" is identified as a goal of the motorized suitability analysis but this term is never defined and no analysis of recreational supply factors has been provided.

The analysis of motorized suitability includes many factors that simply are not sufficiently analyzed in the FEIS and RMP and often only briefly addresses concepts in a single line or paragraph that are matters of significant debate and analysis. The FEIS and RMP entirely fails to address that current management has a long history of providing the high quality recreational experience. This is not a new issue that can only be obtained with the significant changes to management that are now proposed. The Organizations do not believe such a cursory review of major issues and current management is a hard look at the issue and is arbitrary and capricious per se.

The RMP provides the following summary of the quality recreational factor that was included in the analysis of motorized suitability but the analysis methodology is simply never explained or discussed in the documents. The RMP specifically states:

"Providing a quality outdoor recreation experience for both motorized and non-motorized recreation was a primary goal in determining suitable and unsuitable areas for motorized travel."¹³⁰

The Organizations commend planners for tackling such a lofty goal in a landscape level plan but are troubled on how this standard has been achieved with the boundaries of the suitability areas, as the term "quality recreational experience" is not even defined in any of the planning documents. It is the Organizations position that relevant terms in the analysis process must be at least defined, as terms such as this frequently are highly personal and flexible depending on the audience that is reviewing the decisions. The Organizations vigorously assert that the primary goals of any planning process should be defined and the failure to define these basic analysis factors is arbitrary and capricious per se.

¹³⁰ See, RMP at pg 98.

The critical need to define what a "quality recreational experience" is encompasses many factors that simply are never even mentioned in the FEIS or ROD. The Organizations will address three of the common factors that are addressed in a definition of a quality recreational experience. These are supply of and demand for analysis of opportunities currently in the planning area and user conflicts in the planning area and the effectiveness of current management in satisfying this demand. Supply and Demand analysis requires a detailed analysis of several large user groups utilizing the planning area, such as the developed camping groups, which have been previously addressed in this appeal. A quality recreational experience for a developed camping user would require basic facilities such as showers, water and electrical hookups, a proximity to other recreational opportunities and easy access to their camping facilities. For a dispersed winter recreational user, the primary resource needed would be plowed parking areas that have access to significant snowfall areas, and possibly a bathroom facility with the parking area. None of these user group specific factors necessary to provide a quality recreational experience to user groups have been addressed at any point in the FEIS or RMP. These are highly variable needs for specific user groups and the Organizations are astounded that a quality recreational experience is alleged to be sought but no discussion has been provided regarding what that experience may look like. This analysis is critical.

The supply of recreational opportunities also requires some analysis of the supply of resources that are needed for the user groups to achieve the desired outcome. For trails users, this supply analysis frequently involves a summary of the basic number of miles of trails and for recreational boaters the number of launch facilities on a body of water. This type of analysis is heavily impacted by the mode of recreational travel involved, as non-motorized users frequently only require 2-3 miles of routes for a quality recreational day use experience while the motorized or mechanized users require a mileage of routes larger by a factor of 10 to achieve the same quality outdoor experience for their chosen sport. No other alternative resolution tools, such as education of users regarding existing underutilized opportunities, are addressed as possible ways to resolve this asserted limited supply of non-motorized/quiet use opportunities. This oversight is of critical concern as management decisions suffering from this fault frequently increase user conflict.

This type of supply allocation needs to address secondary activities that are involved in the pursuit of the primary recreational experience. Motorized access is frequently a secondary activity of opportunity for most recreational users of the SJ/TR. Frequently those seeking a hunting or hiking opportunity are utilizing a large amount of motorized routes in the area prior to reaching the trailhead, undeveloped campsite or other facility needed to be used to obtain the recreational opportunity in the planning area.

The RMP analysis simply starts with the management position that designations of areas as unsuitable is necessary to provide a quality non-motorized experience as this mechanism is directly adopted in the ROD as the primary tool for addressing what appears to be a finding of limited supply of opportunity as follows:

"In response to the public comments we received, my decision strikes a balance by identifying 50.2 percent of the San Juan NF as suitable (including *opportunity* areas) for motorized use and 49.8 percent as unsuitable for motorized use."¹³¹

As noted in the FEIS, this is an 83% increase in the amount of areas designated as unsuitable for motorized usage in comparison to current management standards.¹³² The Organizations believe it is significant to note that NVUM research identifies that 5 of the 5 top uses identified for developed sites on the SJ/TR planning area directly relate to motorized access to the site.¹³³ Clearly these usage numbers do not support a division of usage evenly along the two categories.

Providing a quality recreational experience also requires a review of levels of utilization of current opportunities prior to deciding an expanded supply is necessary. This type of a review does not support the 83% expansion of non-motorized opportunity areas. The NVUM analysis for the San Juan national forest reveals that only 69 visits (4.6%) of the 1,484 total visits reviewed involved a Wilderness visit despite over 420,000 acres of the planning area being designated as Wilderness.¹³⁴ It is the Organizations position that proper management of this issue would include education of the users demanding this type of experience that there is a massive supply of this opportunity in the planning area that is not being utilized rather than the new designation of significant areas of the SJ/TR as unsuitable for motorized usage in order to expand an opportunity for recreation that is not being fully utilized currently.

The Organizations vigorously assert the RMP and FEIS has entirely failed to provide the hard look required by NEPA to support the allocation of opportunities that are being provided in the RMP and FEIS. The Organizations vigorously assert that a hard look at this issue by the agency would result in an allocation of usage far more similar to current management.

¹³¹ See, Record of Decision; Final Environmental Impact Statement for the San Juan National Forest Land and Resource Management Plan; September 2013 at pg 12.

¹³² FEIS at pg 389.

¹³³ *Id* at pg 21.

¹³⁴ See, USFS Visitor Use Report, San Juan National Forest; data collected FY 2006 last updated June 20, 2012 at pg 8.

11b. NVUM analysis of the planning area indicates that current management is already providing a high quality recreational experience to users.

The Organizations vigorously assert that any basis for reducing motorized suitability by 83% over current management is arbitrary and capricious as a matter of law and fact and is not supported by Forest Service site specific research into user satisfaction on the San Juan National Forest. The Organizations concerns regarding arbitrary and capricious management steps being taken to provide a quality recreational experience compounds the failures in economic analysis previously identified as a major concern with user conflicts by the Western Governors Association.

The FEIS and RMP simply starts with the position that current management does not provide quality recreational opportunities. Best available science on this issue completely disagrees with this position as a basis for management and failing to properly establish a baseline for changes will result in decisions that completely lack reality for on the ground application, and are arbitrary and capricious. Failing to establish this accurate baseline for management may result in management changes resulting in a decline of the currently high levels of quality recreational opportunities being provided. Clearly maintaining the high levels of quality recreation on the SJ/TR planning area should be the highest priority and any management changes must be analyzed to insure the continued providing of this high quality opportunity.

The arbitrary nature of proposed changes is exhibited by the fact that the effectiveness of current management in providing a quality recreational experience is simply never addressed as required by FLPMA, MUSYA and other federal regulations. FLPMA specifically addressed current usage of lands under planning as follows:

"(c) In the development and revision of land use plans, the Secretary shall—
(5) consider present and potential uses of the public lands;"¹³⁵

Federal regulations specifically identify that current levels of resource usage are to be the base line for development of the no action alternative of the EIS, which is a key component of determining the necessity for and scope of management changes that are necessary. These regulations specifically provide:

"At the direction of the Field Manager, in collaboration with any cooperating agencies, BLM will consider all reasonable resource management alternatives and develop several complete alternatives for detailed study. Nonetheless, the

¹³⁵ See, 43 USC §1712a.

decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM. **The alternatives developed shall reflect the variety of issues and guidance applicable to the resource uses.** In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, all reasonable variations shall be treated as subalternatives. **One alternative shall be for no action, which means continuation of present level or systems of resource use.**"¹³⁶

NVUM research is clearly recognized as best available science on the issues it addresses, such as satisfaction of users with current management standards and allocations of resources. NVUM analysis must be relied on in federal planning. Given that user satisfaction is specifically analyzed in the NVUM report for the San Juan National Forest, the Organizations have to question why this research was not addressed in the planning process. While numerous references are made to the NVUM research in the Plan, many of the assertions do not correctly apply or reflect the conclusions of NVUM research, such as the spending profiles previously addressed in the appeal. Many other factors addressed in NVUM research are simply never addressed, and very commonly it appears these omissions are made when NVUM analysis conflicts with the direction of management decisions being made. User satisfaction is an issue where the NVUM analysis simply is never addressed in the RMP or FEIS.

The Organizations strenuously assert that decisions to make major changes to land usage restrictions in the plan must address the many of the high levels of satisfaction that is found on the San Juan currently. Clearly maintaining these high levels of customer service is the priority. Any management decisions to address user conflict concerns alleged in public comment must also include a discussion of the high levels of satisfaction currently provided and how management changes will reduce user conflict while maintaining current levels of satisfaction. The Organizations must state their high levels of frustration at this management position as comments have now been relied on over good science. If the NVUM research is insufficient to rebut a few unsupported claims in comments, the Organizations have to question why the information is being compiled. The Organizations submit the management changes proposed simply cannot do this and result in a failure of NEPA standards and decision making that is arbitrary and capricious as a matter of law as a hard look has not been taken at the issues.

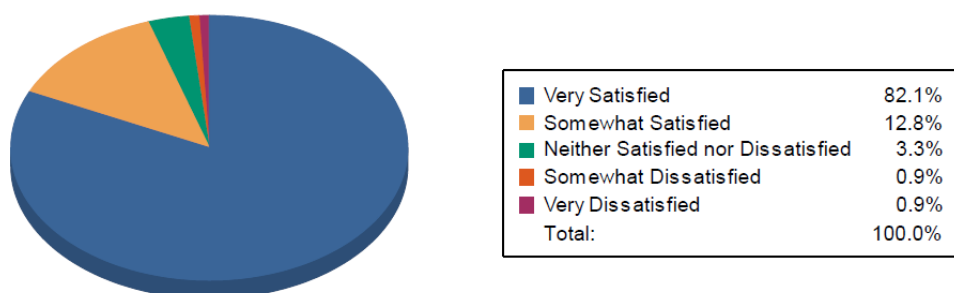
NVUM data has been collected pursuant to multiple Executive Orders in order to provide a quality customer experience to users. This data includes Round 2 data collected between 2005-2009¹³⁷ and Round 3 data that is being collected from 2009-2014¹³⁸. While only the

¹³⁶ See, 43 CFR §1610-4.5

¹³⁷ http://apps.fs.usda.gov/nrm/nvum/results/ReportCache/Rnd2_A02013_Master_Report.pdf

conclusions of Round 3 analysis of user satisfaction are cited in this appeal, Round 2 conclusions are highly consistent with Round 3 information cited. Round 3 of NVUM analysis on the San Juan NF clearly concludes that 95% of users are extremely satisfied or somewhat satisfied with their recreational experience. These conclusions are summarized as follows:

Figure 5. Percent of National Forest Visits by Overall Satisfaction Rating



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Forest Service NVUM research on the San Juan addresses almost 10 years of user research and has overwhelmingly concluded that 95% of users are extremely satisfied or somewhat satisfied with their recreational experience. Only 1.8% of visitors displayed some degree of dissatisfaction with current opportunities. These are conclusions that the Organizations would expect land managers to be shouting from the rooftops in the planning process rather than simply ignoring. The Organizations believe there is a very good reason for the silence of the RMP and FEIS on this issue, which is any assertion that an 83% change in any usage standard to satisfy 1.8% of users is proper simply lacks factual or legal basis. The Organizations vigorously assert such an increase is clearly arbitrary and capricious as a matter of law and fact and such changes are made to satisfy a vocal minority of users asserting some level of user conflict rather than a true management concern or issue.

These exceptionally high levels of satisfaction with current management are carried through the NVUM analysis of many specific aspects of current management. The San Juan National Forest NVUM data also indicates that 80% of users were satisfied with current opportunities on roads and trails and 80% of those surveyed specifically identified roads as a highly valuable resources for their recreational experiences on the forest.

¹³⁸ http://apps.fs.usda.gov/nrm/nvum/results/ReportCache/Rnd3_A02013_Master_Report.pdf

¹³⁹ See, San Juan NVUM Round 3 report; June 20, 2012 at pg 30.

Figure 7a. Satisfaction with Forest-wide Road Conditions & Signage Adequacy

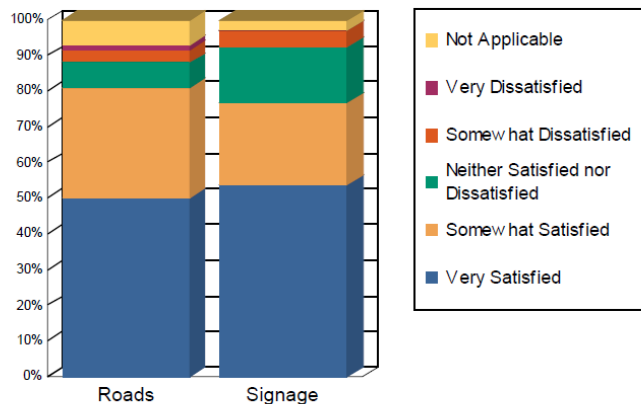
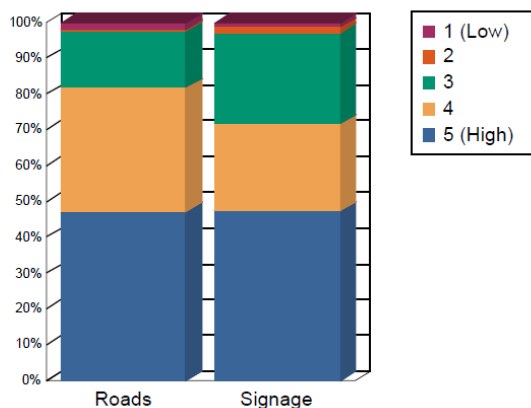


Figure 7b. Importance of Forest-wide Road Conditions & Signage Adequacy

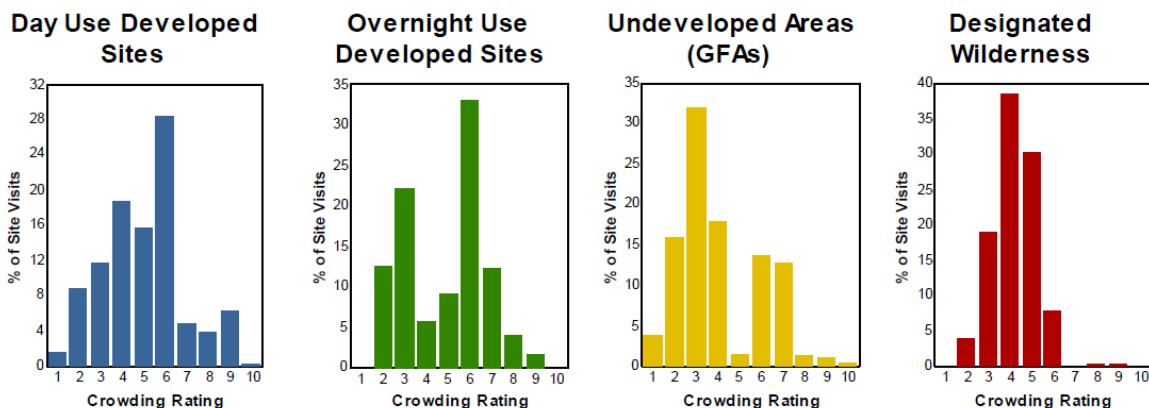


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The Organizations vigorously assert that when 95% of users find current management is providing a quality recreational experience, any assertions of user conflict are best summarized as minimal and are not the proper basis for an 83% increase in unsuitable for motorized designations. the arbitrary nature of such reductions in motorized suitability is further compounded by the fact 80% of users find motorized usage to be a critical component of their recreational experience, which weighs heavily against user conflict type claims being used to close areas, especially with the large percentages of Wilderness areas that are easily accessible in the Planning area. Again the Organizations vigorously assert that any user conflict argument is the result of a vocal minority of users and does not reflect the experience of the overwhelming portion of users of the Forest.

¹⁴⁰ See, San Juan NF NVUM analysis Round 3 report; June 20, 2012 at pg 34.

The Organizations believe that an 83% reduction in motorized suitability is even more arbitrary when additional conclusions of NVUM research regarding crowding of resources is brought into the discussion. Overcrowding of any recreational usage is frequently the basis of user conflict for those seeking to use that opportunity, and it does not have to happen between competing uses of the site. Users have specifically and overwhelmingly stated that crowding is a larger issue at developed motorized sites than undeveloped areas. Designated Wilderness areas have the lowest levels of crowding related complaints of all categories surveyed.



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The Organizations vigorously assert that if user satisfaction and minimizing user conflicts is truly being addressed in the FEIS and ROD, the Plan would be addressing how to expand increased levels of access for multiple use recreation into new areas of the Forest as the user groups that are most likely to experience crowding and conflict with other users are the multiple users of the forest. This issue at least warrants analysis and discussion in the FEIS and RMP as to why such a management policy was not pursued.

The Organizations submit that any management decisions made based on on unsupported claims of user conflict made in comments is not relying on best available science, which overwhelmingly concludes current management is highly effective in providing a quality recreational experience. The Organizations vigorously assert the 83% increase in unsuitable designations is arbitrary and capricious in light of the highly effective manner current management provides a high quality recreational experience and that the most crowded sites in the planning area are multiple use sites. Pursuing an 83% increase in areas found unsuitable for multiple use will result in significant increases in conflict over the life of the plan rather than resolve any current conflict.

¹⁴¹ See, San Juan NF NVUM analysis Round 3 report; June 20, 2012 at pg 35.

10c. Quality recreational experiences fails to identify user conflicts prior to determinations that travel management closures can resolve the underlying conflict.

User conflict is another issue that often is significantly involved in a quality recreational experience, and analysis of this issue is critical to insure that an accurate basis for the conflict has been determined and that the proper management tools are being applied to remedy the basis of the conflict. User conflict is often a very localized event and expansion of this local management issue to a landscape level issue fails to address the true nature of the conflict. The desire to address user conflicts in the suitability analysis is clearly stated in the ROD as follows:

"A primary focus of this issue is reducing motorized and non-motorized user conflicts. Motorized and non-motorized recreationists alike do not want their respective opportunities to diminish over time, but they also recognize that without constraints, uses become imbalanced and user conflict escalates. We heard through public comment that more than anything, users wanted equitable opportunity to pursue motorized and non-motorized recreation." ¹⁴²

The RMP analysis simply starts with the management position that trail/area closures will reduce user conflicts, and this mechanism is directly adopted in the ROD as the primary tool for addressing this issue as follows:

"In response to the public comments we received, my decision strikes a balance by identifying 50.2 percent of the San Juan NF as suitable (including *opportunity* areas) for motorized use and 49.8 percent as unsuitable for motorized use." ¹⁴³

As noted in the FEIS, this is an 83% increase in the amount of areas designated as unsuitable in comparison to current management standards.¹⁴⁴ No other alternative resolution tools are addressed as possible ways to resolve user conflicts, despite education of users being the primary tool for addressing socially based user conflicts, which represents the largest category of user conflict. This oversight is of critical concern as management decisions suffering from this fault frequently increase user conflict.

The Organizations are very concerned regarding the basis that have been relied on for the basis of management decisions to address user conflict. The unsubstantiated concerns possibly raised in public comment are completely insufficient for management decisions given the

¹⁴² Record of Decision; Final Environmental Impact Statement for the San Juan National Forest Land and Resource Management Plan; September 2013 at pg 12.

¹⁴³ See, Record of Decision; Final Environmental Impact Statement for the San Juan National Forest Land and Resource Management Plan; September 2013 at pg 12.

¹⁴⁴ FEIS at pg 389.

conclusions of NVUM analysis that current management on the San Juan National Forest is effectively providing a quality recreational experience. The 83% increase in areas found unsuitable for motorized usage starts with a position that is completely arbitrary and conflicts with best available science analysis that user conflicts only occur between motorized and non-motorized users. User conflicts often exist outside motorized recreation, such as between skiers and snowboarders, heli-skiers and back country skiers, hunters and non-hunters, hunters and other hunters, hikers and bikers, runners and dog walkers on urban trails, and hikers and farmers. Despite the ongoing nature of these conflicts, motorized recreation on public lands is the only area for which closure has been asserted to be properly be the first method for remedying perceived conflicts. This position is completely arbitrary as user conflict, especially personal user conflicts often exist between users in the same general category and often occur regardless of the method of transport used to get to the area.

The RMP simply decides closures are the primary tool to address conflict, which research has concluded is ineffective in dealing with user conflicts and may actually increase levels of conflict. The social sciences specifically require an additional level of review to determine the basis for user conflict must occur prior to any determination that travel management can actually resolve the conflict. This additional analysis was not outlined in the RMP's analysis, and will result in travel management closures becoming the primary tool used to resolve a problem it simply cannot fix. This is simply unacceptable to the Organizations as research indicates that education of users is the most effective tool for addressing socially based user conflict, which is the largest type of user conflict. Adopting closures to address socially based user conflict can directly result in increased levels of conflict.

The Organizations believe that analysis of how best available science supports the management decisions and direction of the RMP, as mandated by federal statutes and BLM guidelines, constitutes a critical part of the planning process. This analysis will allow the public to understand the basis of alleged user conflicts and why travel management has been chosen to remedy the concern. Relevant social science has clearly found this analysis to be a critical tool in determining the proper methodology for managing and truly resolving user conflicts. The Organizations also believe that when socially based user conflict is properly addressed in the Proposal, the need for travel management closures will be significantly reduced.

The Organizations believe that after a brief summary of research into user conflict, the difference in the RMP management to provide a quality outdoor recreational experience and best available science on the issue will be clear. Researchers have specifically identified that properly determining the basis for or type of user conflict is critical to determining the proper method for managing this conflict. Scientific analysis defines the division of conflicts as follows:

“For interpersonal conflict to occur, the physical presence or behavior of an individual or a group of recreationists must interfere with the goals of another individual or group....Social values conflict, on the other hand, can occur between groups who do not share the same norms (Ruddell&Gramann, 1994) and/or values (Saremba& Gill, 1991), independent of the physical presence or actual contact between the groups.....When the conflict stems from interpersonal conflict, zoning incompatible users into different locations of the resource is an effective strategy. When the source of conflict is differences in values, however, zoning is not likely to be very effective. In the Mt. Evans study (Vaske et al., 1995), for example, physically separating hunters from nonhunters did not resolve the conflict in social values expressed by the nonhunting group. Just knowing that people hunt in the area resulted in the perception of conflict. For these types of situations, efforts designed to educate and inform the different visiting publics about the reasons underlying management actions may be more effective in reducing conflict.” ¹⁴⁵

Other researchers have distinguished types of user conflicts based on a goals interference distinction, described as follows:

“The travel management planning process did not directly assess the prevalence of on-site conflict between non-motorized groups accessing and using the yurts and adjacent motorized users.....The common definition of recreation conflict for an individual assumes that people recreate in order to achieve certain goals, and defines conflict as “goal interference attributed to another's behavior” (Jacob & Schreyer, 1980, p. 369). Therefore, conflict as goal interference is not an objective state, but is an individual's appraisal of past and future social contacts that influences either direct or indirect conflict. It is important to note that the absence of recreational goal attainment alone is insufficient to denote the presence of conflict. The perceived source of this goal interference must be identified as other individuals.”¹⁴⁶

It is significant to note that Mr. Norling's study, cited above, was specifically created to determine why travel management closures had not resolved user conflicts for winter users of a group of yurts on the Wasache-Cache National forest. As noted in Mr. Norling's study, the travel management decisions addressing in the areas surrounding the yurts failed to distinguish

¹⁴⁵ Carothers, P., Vaske, J. J., & Donnelly, M. P. (2001). *Social values versus interpersonal conflict among hikers and mountain biker*; Journal of Leisure Sciences, 23(1) at pg 58.

¹⁴⁶ Norling et al; Conflict attributed to snowmobiles in a sample of backcountry, non-motorized yurt users in the Wasatch –Cache National Forest; Utah State University; 2009 at pg 3.

why the conflict was occurring and this failure prevented the land managers from effectively resolving the conflict.

The Organizations believe that understanding why the travel management plan was unable to resolve socially based user conflicts on the Wasache-Cache National Forest is critical in the SJ/TR planning area. Properly understanding the issue to be resolved will ensure that the same errors that occurred on the Wasache-Cache are not implemented again to address problems they simply cannot resolve. The Organizations believe that the SJ/TR must learn from this failure and move forward with effective management rather than fall victim to the same mistakes again. Unfortunately, the SJ/TR suitability plan appears to be falling victim to the same issues as the Wasache-Cache rather than learning from them, since closures are immediately relied upon to address what the Organizations have to believe are a significant amount of socially based user conflicts.

At no point in the RMP or FEIS is there any mention of programs or resources to be developed that might be available to address socially based user conflicts. While the Organizations are aware that such a discussion is technically outside the RMP, the Organizations believe that if a distinction between the different bases for user conflicts had been made in the planning process, this distinction would have warranted a brief discussion of methods for resolution of socially based conflicts through educational programs. The lack of an educational component in planning as a tool to be utilized in conjunction with travel management issues and trail closures, leads the Organizations to conclude that there was a finding at some point in the planning process to the effect that all user conflicts are personal in nature. This type of finding would be highly inconsistent with both the Organizations experiences with this issue and the related science.

The Organizations believe the proposed management, and associated high levels of area and route closures that would result over the life of the RMP , will result in increased user conflicts as recreational opportunities in the area will be lost and not replaced to address an issue that the closure simply cannot remedy. As noted above, personal user conflicts only account for a small portion of total user conflicts. While these personal conflicts would be resolved, the overwhelming portion of user conflict results from a lack of social acceptance by certain users and these conflicts would only be resolved with education. The Organizations believe the distinct between personal and social user conflict must be addressed in the RMP and the levels of closures reviewed to insure that the levels of closures are not going to result in increased user conflicts and fail to provide the quality recreational opportunity sought to be provided in the RMP.

11a. Suitability of areas for motorized usage applies the Colorado Roadless Rule illegally and no basis for the illegal application is provided.

The Organizations have been vigorously involved in the development of the Colorado Roadless Rule ("CRR") over the last several years and have been supportive of the Proposal as it seeks to provide a dispersed recreational experience for all users. While the CRR addresses characteristics of areas rather than management standards for the areas, the Organizations believe suitability for motorized usage as asserted is also a characteristic of the area rather than a management standard. Given the SJ/TR planning process has extended several years longer than the CRR planning process and encompassed the CRR process completely, the Organizations believe there should be a high level of consistency between the conclusions of these processes. This is simply not the case as almost all areas that were recently found suitable for the preservation and protection of motorized recreation in the CRR have now been found to be unsuitable for motorized usage in the SJ/TR planning. The SJ/TR determinations are made without application of the Upper Tier concept of the CRR, which identifies areas that may not be suitable for motorized use and many other activities.

The Organizations are unable to determine the scope of the erroneous application of the CRR on BLM areas. While BLM lands were outside the scope of the CRR, under Service First frequently USFS personnel were reviewing BLM areas, making a proper application of jurisdictional and rulemaking distinctions critical to this analysis process.

At no point in the FEIS, roadless area appendix to the FEIS or the RMP is this distinction between a Colorado Roadless Area (CRA) and an Colorado Upper Tier Roadless area ("Upper Tier") even mentioned, despite this distinction being a huge component of the new Colorado Roadless Rule. It appears that for reasons that are never reviewed the unilateral decision was made that all CRR areas would be managed as Upper Tier areas. This decision is a facial violation of NEPA requirements of a detailed statement of high quality information regarding the basis for a decision, it is also a violation of the Colorado Roadless rule as one of the identifying characteristics to be protected under the Colorado Roadless Rule has been completely excluded from these areas.

In addition to failing to comply with NEPA, the change in management standards for roadless areas directly contradicts the conclusions after the largest public lands management input the state of Colorado has ever received. This input included over 300,000 comments from the public.¹⁴⁷ The organizations are very concerned that the failure to accurately address the Colorado Roadless Rule in the first major resource plan issued by the USFS in Colorado will have massive negative repercussions for management of public lands in Colorado for a long time in

¹⁴⁷ See, USFS; Rulemaking for Colorado Roadless Areas Volume I Executive Summary; May 2012 at pg 5.

the future as characteristics that were sought to be protected in the new rule simply are not addressed in the management provisions in the RMP and FEIS. These changes also ignore specific provisions of the Colorado Roadless rule that specifically require additional public input should the boundaries of either Upper Tier or CRA are changed.

The purpose and need for the CRR is reflected in its mission statement as follows:

"The Department, Forest Service, and the State of Colorado agree there is a need to establish management direction for the conservation of roadless area values and characteristics in Colorado."¹⁴⁸

Colorado Roadless areas characteristics are defined under the CRR as follows:

*"Roadless Area Characteristics: Resources or features that are often present in and characterize Colorado Roadless Areas, including: ... (5) Primitive, semi-primitive nonmotorized and semi-primitive motorized classes of dispersed recreation;..."*¹⁴⁹

As dispersed motorized use of a Colorado Roadless area is a characteristic that was sought to be conserved with the Colorado Roadless Rules, the Organizations are vigorously opposed to the large scale closure of roadless areas to this use, after most of the planning area was recently found suitable for such use. Rather than rely on previous versions of the Roadless Rule that protected motorized access as a multiple usage of the area, Colorado proactively identified motorized usage as a characteristic to be protected. The importance of maintaining dispersed motorized recreation is clearly evidenced in the CRR and the public process undertaken for its development.

The recently released CRR provided a significant change in comparison to the national roadless rule, mainly the CRR provided two different management standards for roadless areas instead of the single previous standard that had been applied. The CRR introduced the concept of Upper Tier Roadless areas with the more traditional CRA areas. Upper Tier Colorado Roadless areas are defined in the CRR as follows:

*"Colorado Roadless Areas Upper Tier Acres: A subset of Colorado Roadless Areas identified in a set of maps maintained at the national headquarters office of the Forest Service which have limited exceptions to provide a high level of protection for these areas."*¹⁵⁰

¹⁴⁸ **Federal Register** /Vol. 77, No. 128 /Tuesday, July 3, 2012 /Rules and Regulations at pg **39577**.

¹⁴⁹ See, 36 CFR §294.41; emphasis added.

¹⁵⁰ See, 36 CFR §294.21

The FEIS and RMP specifically apply the newly adopted CRR as provided in the definition of this term, which is reflected as follows:

"Colorado Roadless Rule: The culmination of a National Environmental Policy Act process involving all U.S. Forest Service inventoried roadless areas within the state of Colorado. The resulting Colorado Roadless Rule prescribes new management criteria for these areas and changed the boundaries of some roadless area units.¹⁵¹

While the FEIS and RMP claim to directly apply the CRR, at no point in either document is the principal of Upper Tier even addressed or is there any explanation of how the analysis of the CRR process has been integrated into the development of the suitability standards that are applied in the SJ/TR planning process. The Organizations vigorously assert that it is arbitrary and capricious per se to simply ignore portions of FS regulations when such a regulation does not support the management direction that is proposed in a planning document.

The FEIS further clarifies the relationship between the CRR and current management as follows:

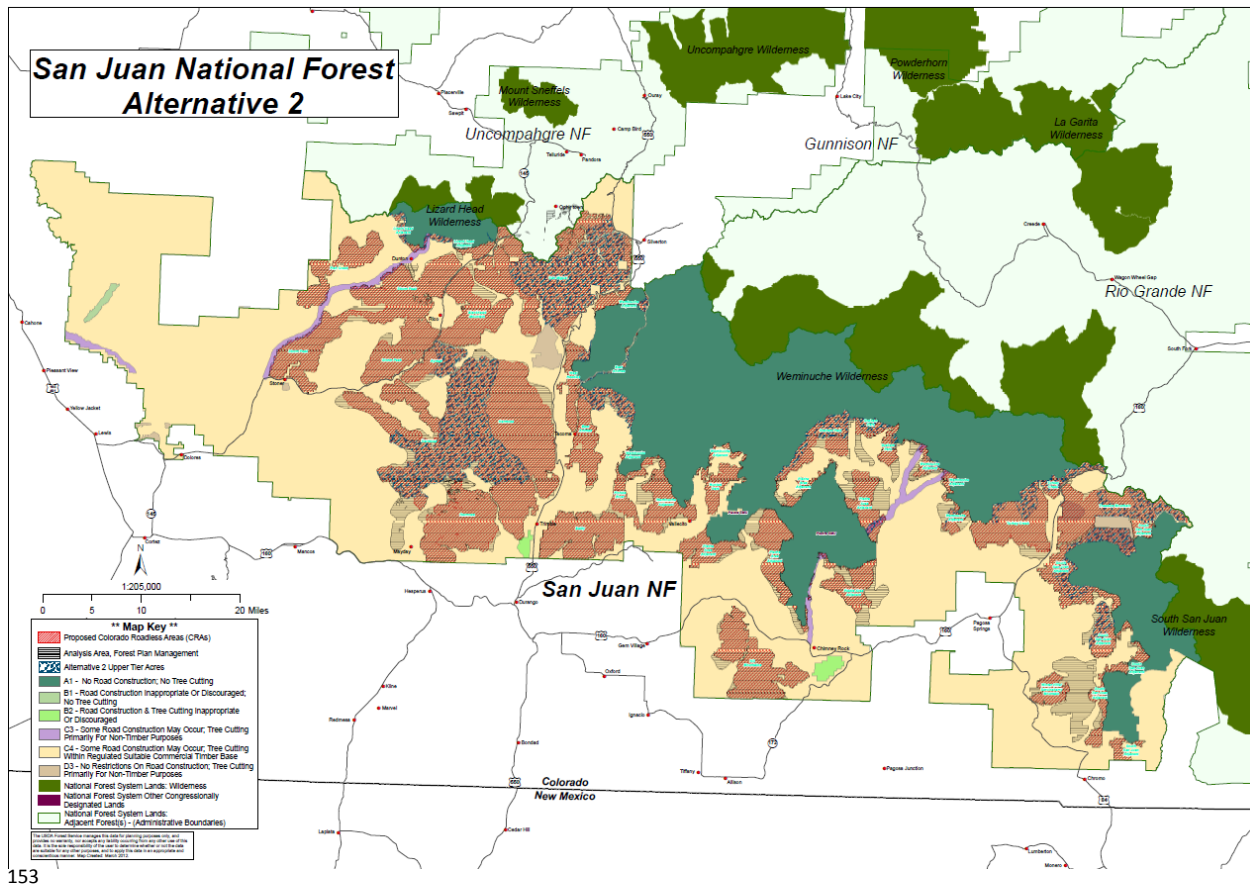
"CRAs are governed by the Colorado Roadless Rule and may have additional restrictions beyond the general suitability identified by MAs. When guidance in a forest plan is more restrictive than direction described in the Colorado Roadless Rule, actions must be consistent with the more restrictive direction."¹⁵²

As a general principal the Organizations agree with this position. However, when a management standard for the protected characteristic of a CRR area is applied in a manner that conflicts with the CRR analysis, the Organizations assert the basis for such a determination must be addressed given the proximity in time between the two planning processes. It is significant to note that at no point in the Colorado Roadless Rule is there any provisions providing the agency the authority to change upper tier boundaries in the Resource planning process without analysis. NEPA further mandates meaningful analysis of changes given the fact that management decisions are now directly impacting a protected characteristic under the CRR.

Pursuant to the Final Colorado Roadless Rule, the distinctions between Colorado Roadless Areas and Upper Tier Roadless areas is reflected in the following map:

¹⁵¹ See, FEIS at pg 692.

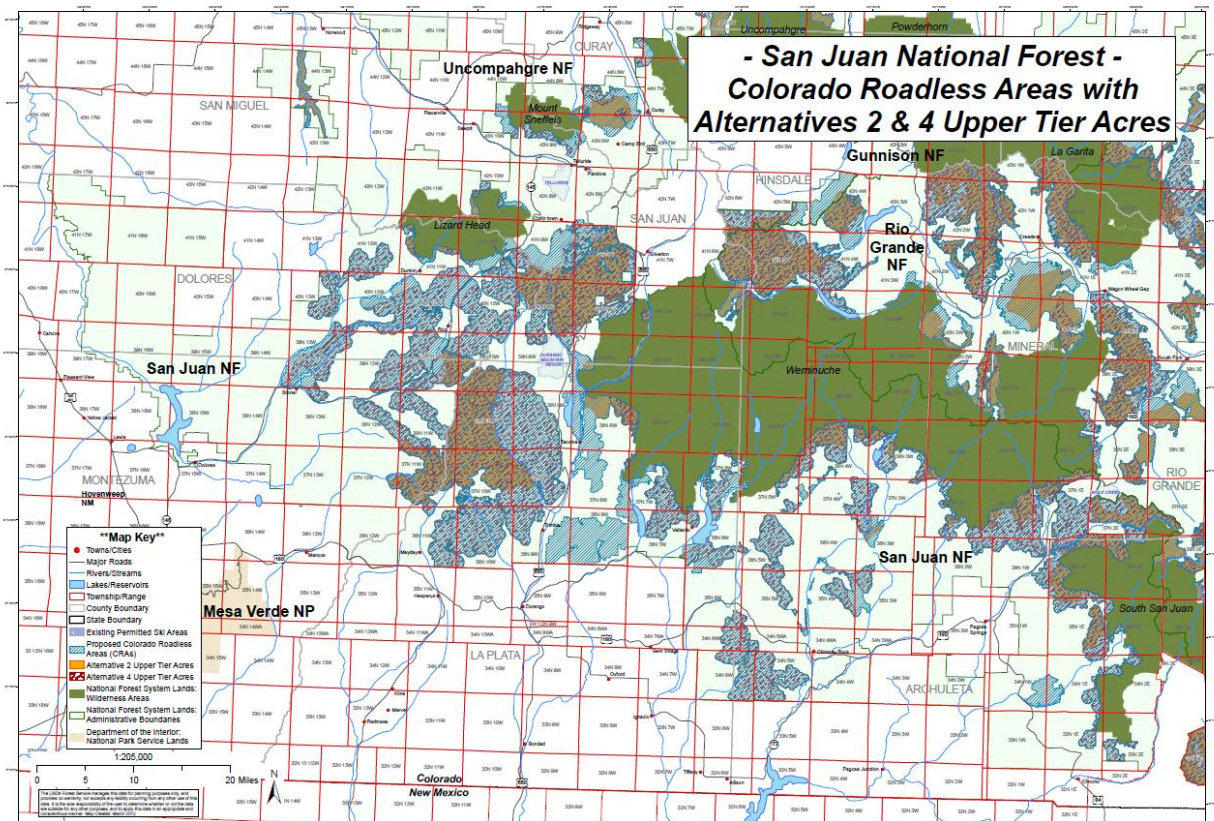
¹⁵² See, RMP at pg 183



It should be noted that only 25% of the areas identified in Colorado as CRA were found eligible for classification as Upper Tier areas.¹⁵⁴ Significant portions of the SJ/TR planning area were reviewed for possible designation under the upper tier standard as proposed under Alternative 4 of the CRR proposal and specifically found not to meet the criteria for the higher levels of protection and lower levels of associated development. These areas are reflected below:

¹⁵³ http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5366307.pdf

¹⁵⁴ Federal Register /Vol. 77, No. 128 /Tuesday, July 3, 2012 /Rules and Regulations at pg 39591.

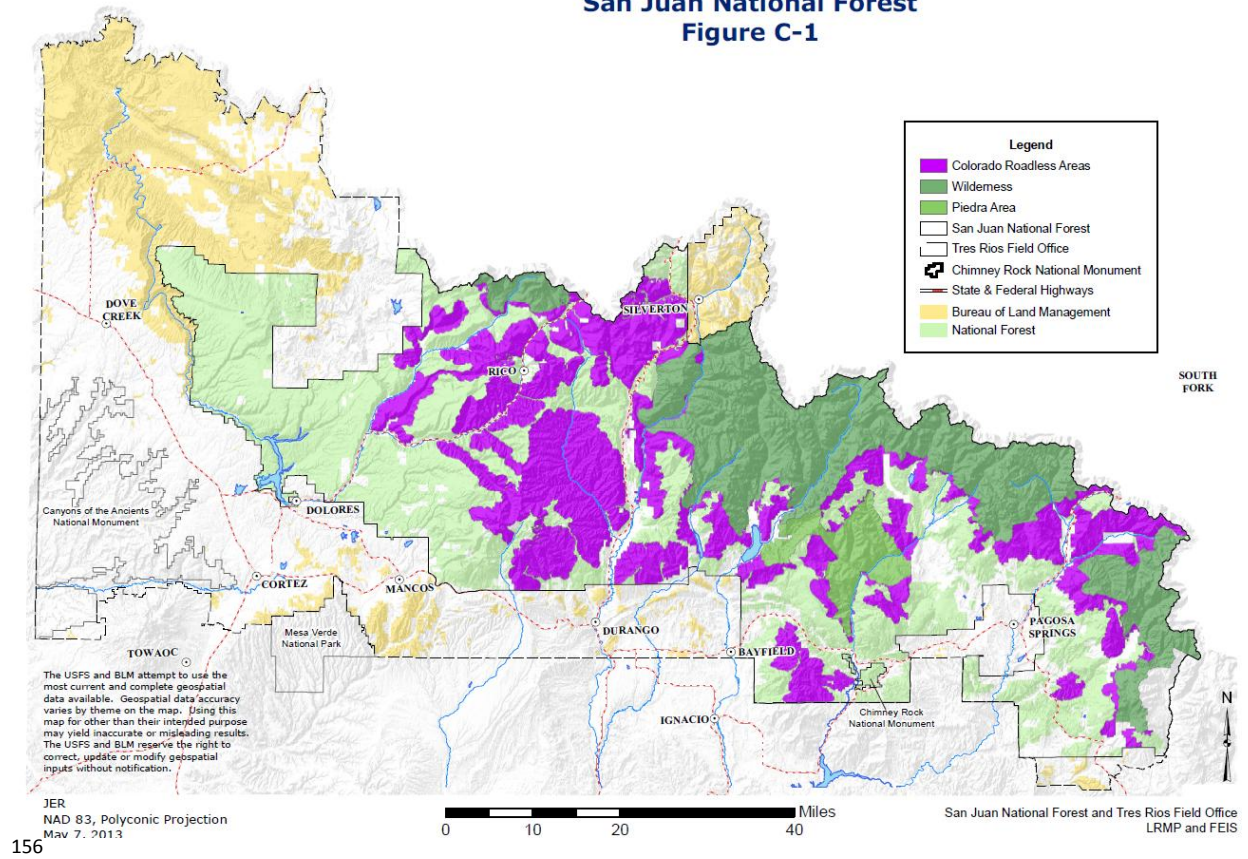


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By comparison, the San Juan/Tres Rios plan seeks to manage all roadless areas under a single management standard, the boundaries of which are reflected as follows:

¹⁵⁵ http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5366311.pdf

Colorado Roadless Areas San Juan National Forest Figure C-1

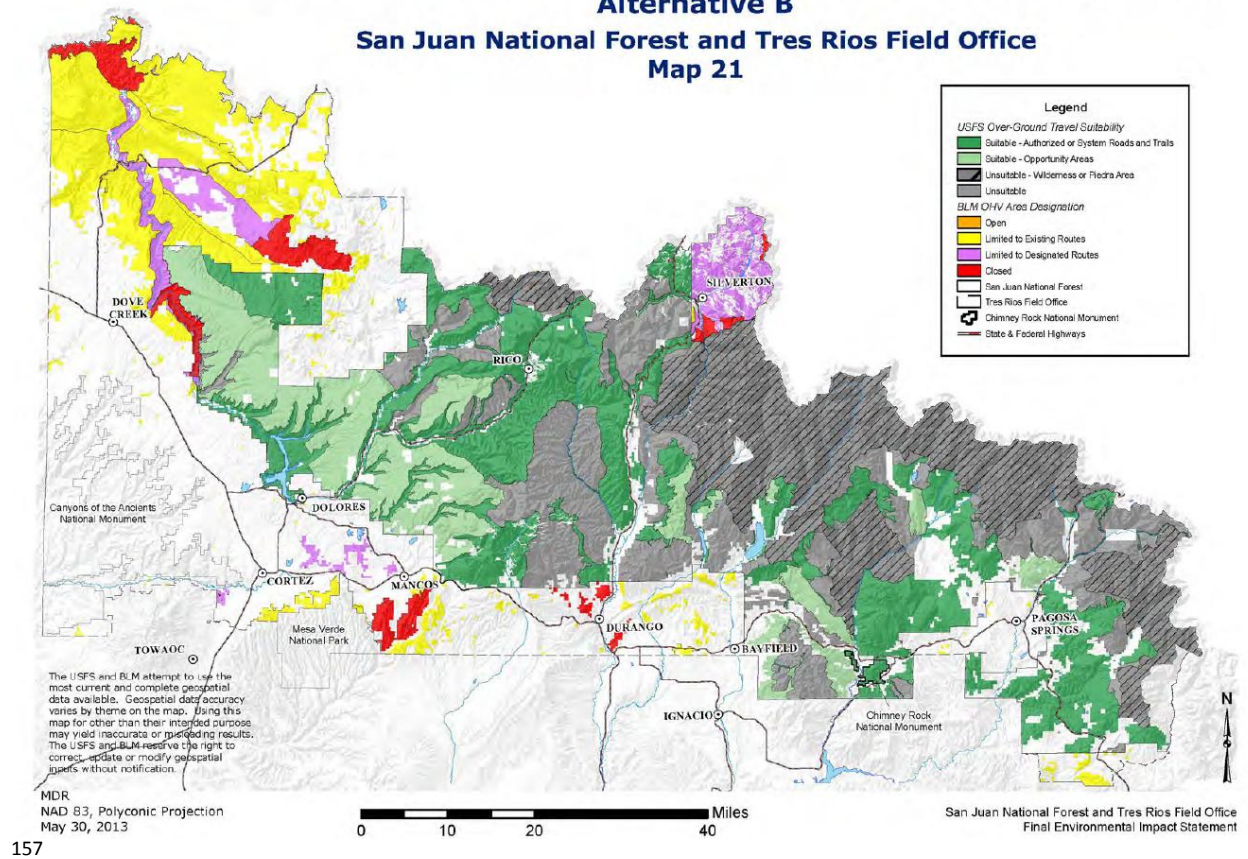


The strong correlation between the boundaries of the erroneously applied Roadless Area boundary and unsuitability standard is overwhelming when the Roadless Area map in the SJ/TR process and the suitability maps are compared:

¹⁵⁶ See, FEIS Appendix C at pg c-9.

Over-Ground Travel Suitability and OHV Area Designations Alternative B

San Juan National Forest and Tres Rios Field Office Map 21



At no point in the SJ/TR planning process is the existence of the Upper Tier concept even addressed or is the fact that significantly smaller areas were found suitable for Upper Tier designation in the CRR process than are reflected in the SJ/TR plan even addressed despite the analysis of these areas occurring at the same time. The significant impact that results to motorized suitability boundaries as a result of the erroneous application of the CRR cannot be overlooked. Given the massive areas that are managed to exclude a protected characteristic of the CRR, these changes must be meaningfully analyzed and the failure to provide this analysis is per se arbitrary and capricious. The failure to provide this analysis has materially and directly impacted the Organizations ability to meaningfully discuss faults in analysis in this appeal.

¹⁵⁷ See, FEIS Appendix V at pg 29.

11b. Modification of upper tier boundaries had been done without public input as specifically prohibited in the CRR.

The development of the CRR was an extensive process that occurred at the same time as the SJ/TR planning process. Often the development of the CRR was highly charged and conflicted. As a result of the nature of the proceedings the CRR specifically provided for an additional protection regarding the alteration of boundaries of areas that were going to be designated. These standards would be in addition to the standard analysis of management changes required by NEPA. It is the Organizations position that the arbitrary failure to address the concept of Upper Tier in the FEIS or RMP is a per se change in boundary areas and has been undertaken in an arbitrary and capricious manner. Clearly if a hard look at the upper tier standard had been undertaken it would have been addressed in the RMP or FEIS.

The CRR provides the following additional public input process for the changes in any boundary areas as follows:

"The Colorado Roadless Rule provides for future adjustments to be made to CRA boundaries, subject to a public review and comment period, and applicable NEPA or other requirements. In addition, the rule provides for administrative corrections (defined as adjustments to remedy clerical and mapping errors) to upper tier boundaries, subject to a public review and comment period."¹⁵⁸

The Organizations are not aware of any public process that has been undertaken between the release of the CRR and the release of the final version of the San Juan/Tres Rios plan. As all public comment on these plans was closed several years prior to the introduction of the theory of upper tier areas, any assertion of public comment on the changes lacks factual and legal basis. As the principal of upper tier management appears to have been expanded to manage all CRA as upper tier and totally exclude motorized, this is a violation of the Colorado Roadless Rule. On the converse, the exclusion of the upper tier areas from management analysis is also a violation of the CRA as no public comment or analysis has been undertaken to analyze the removal of the standard.

13. Conclusion.

It is the Organizations position that the analysis of many issues is arbitrary and capricious as a matter of law and fails to provide the hard look at issues mandated by NEPA. Often these analysis and management standards are made in violation of numerous other statutes and regulations. The SJ/TR FEIS and RMP assert that economic contributions are based on and

¹⁵⁸ Federal Register / Vol. 77, No. 128 / Tuesday, July 3, 2012 / Rules and Regulations at pg 39576.

consistent with USFS VNVUM analysis and specifically cites to recently released NVUM research.

This position is facially arbitrary and capricious and must be reversed as the SJ/TR conclusions of \$30 per day as an average recreational spend are anything but consistent with the NVUM conclusions of an average user spend of \$59.65. The \$30 per day asserted to be the average also conflicts with SJ/TR conclusions of user group specific spending, which concludes the lowest spending user group spends \$31 per day. There can be no argument that an average recreational spend of \$30 per day can be supported with data that says the lowest spend is \$31.

The arbitrary nature of these conclusions is compounded by the fact that user group specific SJ/TR analysis ranges from 18% to 57% of the totals that are provided in NVUM analysis. For several user groups, the SJ/TR average spend for that group is completely outside the conclusions for the NVUM range of spending for the group. This issue is exemplified by the developed camping group which SJ/TR concludes spends \$46.11 per day when the NVUM range of spending for this group is from \$217 to \$300 per day. These conclusions are irreconcilable and arbitrary and capricious as a matter of law and fact.

In addition to arbitrary and capricious analysis of economic issues, the current management of numerous locations in the SJ/TR planning area are not accurately reflected in the FEIS/RMP. These are areas with long histories of motorized usage that remain open to such legal usage at this time. As the baseline of management is not accurately reflected in the FEIS/RMP and assertion that the change in management was meaningfully analyzed is arbitrary and capricious as the FEIS analysis asserts there is no change in the management of these areas and such analysis fails to satisfy the hard look requirements of NEPA.

The FEIS and RMP arbitrarily excludes any discussion of the highly effective nature of current management. The NVUM process has provided extensive peer reviewed research on this issue, and despite assertions of the SJ/TR incorporating this research in the RMP at no point is the effectiveness of current management even addressed. Current management is highly effective and analysis must be provided as to how the highly effective nature of current management will not be impaired by the significant new changes proposed in the RMP.

Several factors appear to have been relied on in the determinations of area suitability that arbitrarily and capriciously conflict with both agency analysis and USFS regulations such as the Colorado Roadless Rule and numerous specific decisions from the USFWS on endangered species. How most of these factors are integrated into the final suitability determinations simply are not addressed. Habitat areas are excluded from future suitability despite USFWS analysis made as part of the Endangered Species Act review process that motorized usage of these areas for numerous species is not an issue. Roadless areas are managed under a single

standard of review that conflicts with the newly released Colorado Roadless Rule and fails to analyze how areas motorized usage would be a protected characteristic of a roadless area and then found to be unsuitable for motorized usage in two review process that occurred at functionally the same time in the same area.

It is the Organizations position that the FEIS and RMP must be remanded to the Field Office for further analysis of the issues more specifically addressed in this appeal. The analysis of these issues and associated balance of uses that will result from meaningful analysis and a hard look at accurate information must then be provided to the public for an additional comment period. It is the Organizations position that an RMP for this area that is based on accurate economic information and accurate application of management standards will look significantly different that the current management standards sought to be applied.

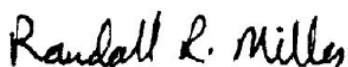
Please feel free to contact Scott Jones at 518-281-5810 or by mail at 508 Ashford Drive, Longmont, CO 80504 for copies of any documentation that is relied on in this appeal or if you should wish to discuss any of the concerns raised further.

Respectfully Submitted,

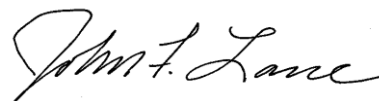


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Enclosures