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July 15, 2016

Submitted via email to dkill@fs.fed.us

Debbie Kill, NEPA Coordinator
Mancos/Dolores Ranger District
San Juan National Forest
29211 Highway 184
Dolores, CO 81323

**RE: Comments to Draft Environmental Impact Statement
Rico-West Dolores Roads and Trails (Travel Management) Project**

Dear Ms. Kill:

Please accept the following comments to the Draft Environmental Impact Statement ("DEIS") for the Rico-West Dolores Roads and Trails (Travel Management) Project (the "project"). These comments are submitted on behalf of our clients the Trails Preservation Alliance ("TPA"), Colorado Off Highway Vehicle Coalition ("COHVCO"), and the BlueRibbon Coalition ("BRC"). We appreciate this opportunity to continue our involvement in the public planning effort in the Forest and the Rico-West Dolores area ("RWD").

These comments are separate and independent from any additional comments submitted by the above-named organizations, their partners, or any of their collective members. The agency should evaluate and respond to all such comments. Please direct any questions or correspondence regarding these comments to Paul Turcke via the above-listed contact information or to pat@msbtlaw.com.

We reiterate and incorporate by reference herein our comments to the Proposed Action for the Project dated January 30, 2015. The observations in those comments remain applicable, perhaps with even greater force as the project evolves. Again, we will refer frequently in these comments to declarations submitted by various Forest Service employees in Backcountry

Hunters and Anglers, Colorado Chapter v. U.S. Forest Service, Case No. 11-CV-3139 (D. Colo.) and Nos. 13-1216 & 14-1137 (10th Cir.) (the “CBHA litigation”). Those documents are part of the public record, and we will therefore cite to them but will not enclose additional copies herewith. Please let us know if you would prefer that we provide copies. The agency appropriately, and successfully, rebutted virtually every factual premise asserted in the CBHA litigation by “quiet recreation” advocates. It would constitute an unjustified and arbitrary reversal of course for the agency to now, through the project, capitulate to those interests and rely on virtually the same undocumented list of demands as a justification for reducing motorized recreation opportunities.

A. The Agency Should Adopt a Modified Alternative C.

We are not satisfied with any of the DEIS alternatives, but believe that a workable solution could be achieved based upon Alternative C. Our clients and their partners have carefully studied the DEIS, maps, project files and other materials. We support and incorporate by reference herein the “ALTERNATIVE C (modified)” version as stated in the San Juan Trail Riders (“SJTR”) comments to the DEIS.

The agency can appropriately select the Alternative C (modified) proposal. We note that the DEIS does not identify a preferred alternative, and encourages “comment on the individual aspects of each alternative.” DEIS Executive Summary at 1. Responses to public comments on an EIS “may include ‘[d]evelop[ing] and evaluat[ing] alternatives not previously given serious consideration by the agency’ and ‘[s]upplement[ing], improve[ing], or modify[ing] its analyses.’” *Oregon Natural Desert Ass’n v. BLM*, 531 F.3d 1114, 1120 (9th Cir. 2) (quoting 40 CFR 1503.4(a) (bracketing in *ONDA*)). The elements in the SJTR Alternative C (modified) are drawn from and within the range of alternatives A through E in the DEIS.

We wish to particularly address the proposed designation of the Morrison Trail number 610. Our clients have apparently been advised by Forest Service employees that the Morrison Trail traverses private property and that the current owner of this property and/or nearby properties has expressed strong opposition to motorized access along the Morrison Trail. This position is presumably heartfelt and predictable, but oblivious to the unique chain of title. The United States holds “an easement and right-of-way in gross to reconstruct, repair and maintain a stock driveway and trail, consisting of a st[r]ip of land Thirty (30) feet in width, as now existing and in use” over and across the land in question. Right-of Way Deed dated May 17, 1948 (underlining in original). We do not contend that the express easement necessarily requires continuation of long-occurring motorcycle use along the Morrison Trail right-of-way. Rather, the agency’s apparent refusal to consider continuation of such motorcycle access is contrary to law, arbitrary, and short of statutory right. In other words, an agency position that the express easement must be limited to use as a stock driveway or that the express easement somehow precludes motorized access is incorrect, and would form an insufficient basis for the failure to even consider motorcycle use along Morrison Trail in the project. Alternatively, there are options for re-routing the motorcycle access previously occurring along Morrison Trail that should receive meaningful consideration within the range of alternatives. The historical or relocated Morrison Trail provides important and sustainable connection to Haycamp Mesa, and

has been an important component of the integrated single-track network in and around the Project area.

Alternative C (modified) as outlined by SJTR represents the best available option for concluding the project.

B. No Issues Presented Rationally Justify Restrictions of Motorized Use.

The DEIS purpose and need identifies several specific issues that the Forest Service considers “the most pressing concerns” to be addressed through the project. DEIS Executive Summary at 1; DEIS 1.10 at 20-22. Some of the issues can only justify maintaining, if not expanding, current motorized access. See, e.g., DEIS at 20 (loss or reduction of motorized recreation opportunities; economic impacts from reduced visitation by motorized recreationists). We will not address these issues, other than to note they represent valid concerns about the impacts of some alternatives on the human environment. We will instead focus on each of the issues that preservationist interests might invoke as a basis for motorized access restrictions. In each case, the anti-access concerns are incorrect, impractical, and contradicted by the DEIS and/or sworn Forest Service testimony.

1. Environmental Impacts.

A variety of “environmental impacts” are described among the key issues, specifically including possible impacts to elk habitat effectiveness, riparian areas, barriers to sensitive species fish passage, sedimentation in sensitive fish species habitat, and vegetation issues such sensitive plant species habitat in alpine areas or to high elevation fens. DEIS at 21. None of these issues justify further reductions of motorized use along designated trails.

a. Elk Habitat Effectiveness.

Alleged adverse impacts to elk cannot form a rational basis for further restrictions on recreational trail access in the project area.

The DEIS itself makes clear that recreational OHV riding and particularly motorcycle use of single-track trails cannot be intelligently tied to elk management concerns. Modifying the management balance of motorized use in the RWD solely addresses elk habitat issues, which are of only secondary importance to the larger influences of “human population and growth and land development.” DEIS at 112. Even using the identified habitat metrics, there are trivial differences between the alternatives. See, DEIS Table 3-25 (p. 113) (showing range of “security area” by alternative, varying from 106,557 to 139,029 acres, or a range of 41 to 54 percent of total habitat). While there is a lot of cryptic discussion about the impacts of motorized routes on elk populations and behavior, the core concept is that roads/trails facilitate human access, human presence can disturb elk, and “[t]his association between human encroachment and elk disturbance is played out in its extreme during the hunting season.” DEIS at 116. Put differently, elk care a lot less about a road or a motorcycle riding along a road than they do

humans trying to kill them with rifles. If greater concentrations of humans wielding rifles are found along roads, it is hardly remarkable that elk will tend to be cautious of such areas.

These are fascinating topics which play out in some detail in many discussions between land/wildlife managers and the public around the West, but they are of little more than academic importance in the RWD. There are a lot of elk in RWD, and available indicators suggest that we should be trying to harvest more of them. The relevant analysis unit contained a herd in 1987 estimated to number 14,500 “and was probably rapidly growing.” DEIS at 112-113. Starting in 1989 cow harvest “was increased dramatically in an attempt to stop the herd growth, and stayed relatively high through 1994.” DEIS at 113. This cow harvest was “relaxed” which “allowed the herd to rapidly grow again.” *Id.* State wildlife managers indicate “the herd has continued to increase and may now exceed 19,000.” *Id.*

These statements all echo the sworn testimony District Wildlife Biologist Ivan Messinger, as conveyed in his declaration dated April 23, 2012 in the CBHA litigation (D. Ct. Dkt. 34-7). That testimony addresses the sufficiency of security areas (§ 6), the fact that human disturbance is not solely attributable to motorized travel (§ 7), and variously discounts the concerns about elk and other wildlife concerns raised by anti-access interests.

At the end of the analysis, elk management and habitat effectiveness issues are simply a non-issue in relation to recreational use of motorized trails in the RWD. The DEIS properly states “habitat effective[ness] for elk is maintained across all alternatives.” DEIS at 117 (emphasis added). Elk habitat effectiveness cannot form a defensible basis for reduction of existing motorized access.

b. Riparian Areas at Fish and Willow Creeks.

The agency expresses additional concern that “riparian areas at the headwaters of Fish Creek and Willow Creek may be impacted by illegal cross-country ATV or UTV driving.” DEIS at 21. However, there is little meaningful analysis of the current level of illegal activity, or its projected future occurrence under specific alternatives. The DEIS explains that the action alternatives generally create reductions in historical access, including decommissioning of some ML1 roads. As a result, the net impact to riparian and watershed resources is a beneficial impact. DEIS at 80-81.

There is no demonstrated occurrence, or even risk, of illegal cross-country riding. The mere prospect of illegal cross-country use cannot form a defensible rationale for eliminating vehicle travel on designated routes in these areas.

c. Sensitive Species Fish Passage or Sedimentation.

The list of environmental impacts includes “potential barriers to sensitive species fish passage” and “sedimentation from roads or trails may occur in sensitive fish species habitat in four creeks.” DEIS at 21.

The DEIS does not provide a basis for reductions based on the identified fisheries/sedimentation issues. There is no basis to rely on sensitive fish species for any aspect of this decision, for “[n]one of these four [SJNF] species is known to occur within the project area or has the potential to be affected by this project.” DEIS at 82. There is some discussion of MIS including various native and introduced trout species. These are should similarly non-factors in this decision – “All action alternatives would lead to some decrease in road miles and this would benefit watershed health to some degree.” DEIS at 83. Despite this recognition, the DEIS has some questionable statements, such as the undocumented assertion that sediment production would require mitigation for increased trail use from motorcycles. DEIS at 83. As will be demonstrated below, the nature of use on a trail is a trivial factor in sediment production, compared to much larger factors such as trail location, design features, and site factors like soil type, slope, aspect, vegetation cover, and other features. Further, there is no finding regarding use types or levels, or a defensible assertion that any type of use will increase under any alternative.

Again, the testimony of Forest Service employees in the CBHA litigation soundly rejects any argument that fish habitat or sedimentation concerns can justify restrictions on long-occurring vehicle travel. For one thing, it is difficult to separate natural background sediment levels in streams from that resulting from trails, especially in Bear Creek. CBHA Declaration of Jonina Vanderbilt (Doc. No. 34-6). While there may be a handful of places where trail crossings can introduce sediment, “these impacts are more a function of trail design, location and maintenance than a function of one type of trail user on the trail.”

Anti-access special interests proclaim a litany of OHV-caused sedimentation issues, which have been methodically rebutted by the agency itself. Recent closures on the Calico Trail have re-invigorated these cries for closure, but Ms. Vanderbilt previously explained the actual situation on that site and concluded that “[i]f motorcycle use were removed from this section of the Calico Trail, the same entrenchment, braiding and water drainage problems would occur. These problems occur due to improper trail design and the use of the trail by all types of users.” *Id.* at ¶ 7. This is not a reason to revamp a decades-long trail network but “is an example of a standard trail reconstruction practice that is used to address localized resource damage.” *Id.*

The qualified specialist during the CBHA litigation similarly explained why fisheries issues are a non-issue for RWD motorized travel management. Importantly, “[t]he populations of cutthroat trout occurring in Ryman Creek and Bear Creek are not considered conservation populations and have no special status that would warrant added protection under the ESA, any current Conservation Agreement, or the SJNF Forest Plan.” David Gerhardt Declaration (Doc. No. 34-8. In other words, there are not “sensitive species” fisheries issues implicated by this Project. To the extent that anti-access advocates raise fisheries impact claims, they have been emphatically rejected by qualified specialists:

Mr. Sykes Declaration states that “I believe silt damage from ORVs impacts trout reproduction within Bear Creek.” (Sykes Decl. ¶ 16). I do not believe this statement to be true, and my observations do not support Mr. Sykes' claim. While trails that cross live streams can act as sediments conduits and facilitate sediment

delivery to the stream, the effects of sediment inputs resulting from trail crossings are typically localized. Unless such crossings are frequent throughout the drainage, it is unlikely these localized effects would influence fish reproduction or population densities as a whole. It should also be remembered that the trails at issue here would exist with or without ORV use and would continue to act as sediment conduits, regardless of the type of uses applied. Also, it has been my experience that trout populations on the SJNF are rarely limited by a shortage of adequate spawning habitat. Trout populations in general require very little spawning habitat to provide sufficient reproduction and recruitment into subsequent age classes that will support healthy adult populations. The quantity and quality of spawning gravels observed in streams throughout the SJNF typically exceed the requirements to fully support healthy trout populations. With rare exception, the biological limiting factors for our streams are things other than excessive sedimentation levels that would restrict trout reproduction and ultimately reduce population densities of adult fish.

Id. at ¶ 5. There are no fisheries issues that can intelligently dictate the extent to which the Forest Service reduces the long-standing motorized route network through the RWD travel management process.

d. Vegetation.

The potential issues include a handful of vegetation concerns, including potential spread of weeds along new trails, sensitive plant species impacts in alpine areas, and impacts to high elevation fens due to “the physical location of certain roads and trails (regardless of use).” DEIS at 21.

Again, the agency’s prior sworn testimony precludes the use of this rationale to restrict historical vehicle travel. In the CBHA litigation Cara MacMillan testified that trails have long existed, braiding is minimal, and that habitat is abundant and intact outside the limited trail tread. Any impacts, however minimal, will persist even in the absence of motorized use. CBHA Declaration of Cara MacMillan (Doc. No. 34-9). Regarding sensitive species, Ms. MacMillan explained the only species of concern is “a Forest Service, Region 2 Sensitive Plant named Colorado tansy-aster (*Macarantnera coloradoensis*) which grows adjacent to the Calico Trail near Storm Peak. I have observed this plant three times over the past several years and have found it to be thriving, with no adverse impacts related to trail use of any type (horse, hike, bike or motorcycle.” She further explained that “recovery of tundra vegetation within the trail tread could only occur by removing the trails from alpine tundra altogether. This would require removal of foot travel, horse travel, and mountain bikers in addition to removal of motorcycle use.” *Id.*

Alpine vegetation issues cannot form a rational basis for restricting decades-long vehicle use to the RWD area. The impacts are minimal and they are attributable to trail occurrence and related ongoing human presence, not motorized use.

e. Maintenance Feasibility.

The DEIS further expresses “concern that the system of roads and trails proposed cannot be adequately maintained which would lead to resource impacts.” DEIS at 21. The listed challenges include wetland impacts or drainage issues, easily erodible soils, and longer than desired maintenance intervals on native surface roads.” *Id.*

The Forest Service has again explained why maintenance concerns cannot rationally justify restrictions that single out motorized travel. Agency specialists have explained:

It is arbitrary to draw the conclusion that the trail damage comes from motorcycle use given the fact that many of the maintenance problems presented by Mr. Marion occur on Forest Service trails regardless of the type of use those trails receive and some trails would erode because of their location and environmental factors even if no one used the trail. Many factors contribute to trail problems and in my professional opinion, even if motorcycle use was removed from these trails there would little difference in the physical maintenance required on these trails.

CBHA Declaration of Christopher Bouton (Doc. No. 34-4). Starting with the CBHA litigation anti-access advocates have drummed the same list of site-specific maintenance issues, but these “cannot be attributed directly to motorcycle use but rather are the result of a combination of various environmental factors and historical uses, compounded by the need for general trail maintenance.” *Id.* at ¶ 8. Maintenance is a component of proper trail management, not an indictment of motorcycle or any use. In the RWD regular maintenance is “done to respond and facilitate motorized and non-motorized uses. This annual maintenance includes the removal of tree deadfall (known as blowdowns); the cleaning or reconstruction of drainage features (such as waterbars, rolling dips, ditches, culverts, etc.); and the signing of trails. Such actions are needed on a recurring basis on motorized, non-motorized, and wilderness trails.” CBHA Declaration of Penelope K. Wu (Doc. No. 34-5) at ¶ 5. For example, agency personnel have noted similar maintenance issues on the Cross Mountain, Sharktooth and Rio Lado trails, which receive no motorized use. Bouton Decl. (Doc. No. 34-4) at ¶ 9.

Consistent with these general observations, agency personnel have specifically and repeatedly rebutted the maintenance concerns on RWD trails that nonmotorized advocates claim should justify motorized use restrictions. Where anti-access declarants have offered facts, they are regularly overstate their case, or are simply wrong. See, e.g., Wu Decl. (Doc. No. 34-5) at ¶ 14 (Mr. Marion claims “cupping” of trail 2 feet below surrounding soil, actually measured at 1 foot; trail allegedly 10 feet wide was measured to be 3 feet). More importantly, the conditions on the RWD trails attributed by anti-access advocates to motorcycle use are really caused by other factors, such as trail location/design or natural features. *Id.*

The discussion in the DEIS echoes these observations. See, generally, DEIS at 187-194. Again, it is not necessarily the type of use but “the amount of trail use, the soils in which the trail is located, trail grades, and alignment [which] are the primary factors in determining how much

routine maintenance a particular trail needs.” DEIS at 189. All of the action alternatives are projected to require less maintenance than the No Action Alternative A, i.e., the status quo.

The RWD trails that will continue to receive motorized use under any conceivable outcome to this project have existed in a sustainable status for decades. Having cogently rebutted anti-access cries about impossible maintenance requirements, the agency should not now change face and claim that maintenance needs justify motorized use restrictions.

2. Lack of Semiprimitive Nonmotorized Recreation Trail Experiences.

The project is apparently driven in some part by the concern that “nonmotorized recreation experiences were not fully considered in the proposed action” including access to the project area in the absence of vehicle sound and/or a zero probability of encounters with members of the public accessing the public National Forest System on vehicles. DEIS at 21. To state these concerns for a project in the San Juan Forest and State of Colorado should reveal their stupidity.

There are abundant opportunities for semiprimitive nonmotorized recreation trail experiences, both in and beyond the project area. It is perfectly legitimate for some users to prefer an exclusively nonmotorized experience. Thousands of them do so every day in Colorado, by gaining basic knowledge about management guidance and tailoring their chosen activity/experience to a suitable site. What is not legitimate is for one class of users to force their desired, and exclusive, form of recreation on the entire population at every site. One cannot reasonably enjoy the amenities of a town, a finished residential home, or a world class “mountain” resort while demanding the Forest Service create a personal wilderness immediately beyond the property boundary. The RWD is little different than the rest of the National Forest System or other human culture, where a few instances of conflict occur within the majority of courteous encounters. See, CBHA Declaration of Penelope K. Wu at ¶ 7. The agency should continue to educate and inform visitors about the nature of the area, management guidance, and proper trail behavior, and decline the predictable cries of a selfish few seeking to exclude others.

The DEIS demonstrates the substantial, and growing, nonmotorized recreation “zones” that exist in and around the project area. Under every action alternative the balance will shift from semiprimitive motorized toward semiprimitive nonmotorized ROS settings. DEIS at 153 (Table 3-35). Some might claim this still reflects a skewed balance toward motorized settings, but this argument would ignore the proximity to the Lizard Head Wilderness and over 40,000 acres of an area free from motorized (or mechanized) transport. See, DEIS at 152 (map). While some may seek to expand primitive and nonmotorized zoning in our National Forest System, such an effort is misplaced in focusing on the multiple-use lands that typify this project area.

Regardless of how shared use versus exclusively nonmotorized recreation allocation should be drawn, the fact is that motorized opportunities continue to decline. Motorized use advocates have exercised patience and restraint through choices like supporting the SJTR Alternative C (modified) proposal. The agency should not reward ignorant or selfish efforts to

further skew the imbalance, but make appropriate management choices recognizing the multiple use status of the project area.

3. Economic Impacts to Local Communities.

The issue of economic impacts to local communities as presented in the DEIS should militate in favor of maintaining historical recreational access, if not expanding it. DEIS at 173-174. The specific concern presented is whether restrictions on current access will limit visitor traffic to the Town of Rico. These are legitimate concerns, particularly when many local business owners note that motorized recreationists are an essential component of their customer base. It may well be that the economic development associated with Dunton Hot Springs could benefit from exclusively nonmotorized access, but this is hardly a legitimate factor to apply in deciding how to manage public lands for the benefit of public recreationists. The Forest Service should not be allocating public recreation opportunities for the benefit of a handful of property owners or special use permittees. Relatedly, trumped up concerns about reduced hunting revenue due to continuing motorized access are ludicrous. There is an ample reserve of resident and non-resident hunters in the pool seeking elk tags in the project area. If anyone is seeking a remote wilderness elk hunt along the RWD trails they have not done an acceptable amount of homework and/or lack the motivation or skills required to match their targeted experience.

Proper evaluation of local economic issues calls for continuation of historical access, not further restrictions.

4. Impacts to Livestock Operations.

The DEIS contains a discussion about possible impacts to livestock herding and motorized travel. DEIS at 132. In candor, in reviewing dozens, if not hundreds, of travel management project files we cannot recall this being identified as a concern, let alone a basis for reducing public access.

C. The Agency Lacks a Defensible Record of Social Conflict.

The list of weak or otherwise unheard of “environmental” justifications for change lead us to conclude that the project’s restrictions boil down to an exercise in social engineering. Again, we implore the agency to rethink whether it should rely on this rationale to alter long existing uses.

There are few, if any, instances where disgruntled “quiet recreation” advocates have successfully used “social conflict” to overturn an agency’s allocation of motorized/nonmotorized recreation opportunity. Courts have regularly rejected preservationist attacks based on “user conflict.” *WildEarth Guardians v. Montana Snowmobile Ass’n*, 790 F.3d 920, 928-929 (9th Cir. 2015) (finding USFS violated NEPA but acknowledging “the Forest Service aimed to balance recreational uses” and affirming the chosen balance); *Biodiversity Conservation Alliance v. U.S. Forest Service*, 765 F.3d 1264, 1275 (10th Cir. 2014); *Hells Canyon Alliance v. U.S. Forest Service*, 227 F.3d 1170, 1178-1179 (9th Cir. 2000); *Wild Wilderness v. Allen*, 12 F.Supp.3d 1309,

1330 (D. Or. 2014); *Pryors Coalition v. Weldon*, 803 F.Supp.2d 1184 (D.Mont. 2011, *aff'd*, 551 Fed.Appx. 426 (9th Cir. 2014); *Riverhawks v. Zepeda*, 228 F.Supp.2d 1173, 1184 (D. Or. 2002) (“it is the agency’s role—not the court’s—to balance competing recreational uses”).

There are cases which have focused on the motorized/nonmotorized balance forged by the agency, ie where special interests from either or both camps have challenged the “science” or other rationale behind the agency’s decision. Specifically, the above-cited *Wild Wilderness*, *Riverhawks* and *Hells Canyon Alliance* cases all involved agency decisions, including restrictions of motorized access, that were based on analysis of “conflict” and other aspects of visitor experience. However, each of those decisions relied on meaningful analysis, including social psychological studies in the specific project area. See, e.g., *Hells Canyon Alliance*, 227 F.3d at 1184 (finding that “attack on scientific underpinnings of the FEIS raises reasonable questions” but ultimately concluding the “true quarrel is with the sufficiency of the methodology used”). In contrast, nothing resembling these analytical tools is presented in the DEIS, and the project’s “best available science” boils down to a general literature review, undocumented discussions with “staff” from state/county personnel, and “expert opinions” of ID Team members. DEIS at 58. Unlike Hells Canyon Alliance, the Forest Service does not have “methodology” for analyzing conflict, other than to ubiquitously say that it exists. The DEIS does not remotely approach the quantum of evidence outlined in the caselaw, and cannot form a plausible rationale for significant restrictions of motorized access.

Again, a finding in the project favoring increased allocation to nonmotorized recreation will contradict sworn testimony in the CBHA litigation. Agency personnel have properly noted that the agency makes a legitimate effort to educate and inform users, and that the majority of trail users understand the management scheme and have courteous encounters with other trail users. See, CBHA Declaration of Mark W. Stiles (Doc. No. 34-2) at ¶ 24; CBHA Declaration of Penelope K. Wu (Doc. No. 34-5) at ¶ 7. While certain visitors like Bob Marion have testified they dislike motor vehicle noise, “[t]his affect is in the 'ear of the listener' in terms of tolerance or acceptance of vehicle noise. Noise can be short term as a motorcycle passes through a particular area. Noise is acceptable in an area managed for multiple uses including motorcycles and is typical of other motorized trails on the San Juan National Forest. I have heard people's comments expressing concern for noise, and also reports of people enjoying their experience regardless of the motor noise.” *Id.* at ¶ 8. If the agency wants to start splitting fine hairs on individual user preferences, then it should acknowledge that motorized encounters can actually be preferable for some users. See, CBHA Declaration of Christopher Bouton (Doc. No. 34-4) at ¶ 14 (“While on horseback I prefer to encounter a motorcycle on the trail, as opposed to other trail users such as mountain bikers or backpackers, because the sound of a motorcycle gives the horse rider and the horse advance warning, and this extra time allows the horse rider to take appropriate precautions”).

Nonmotorized special interests present a predictable, but weak, case here for social conflict as a rationale for restricting motorized use. The agency would be wise to avoid disrupting the decades-established balance of recreational opportunity based on alleged social conflict.

D. The Agency Should Decline to Reward the Deceptive Campaign of Notable Special Interests.

We must unfortunately address the recent public relations campaign spearheaded by Attorney Steve Johnson and apparently funded/driven by Dunton Hot Springs Resort. This effort appears to have coincided and/or intensified with the extension of the public comment deadline. In particular, there has been a coordinated release of mass mailings, editorials and appearances in other local media. NEPA is not a voting process and the agency should carefully consider whether it wants to condone this type of behavior. These concerns should be particularly acute here where the core tenets of the campaign are so blatantly incorrect.

The basic themes of the recent public relations campaign include elk management concerns, trail maintenance/closures to address solely motorized uses, improper “opening” of RWD trails to motorcycle use by surreptitious signing leading to dramatic increases in motorized use, all of which have marred the pristine setting, typified by the Bear Creek drainage, where the Dunton property is coincidentally located.

These themes are not intelligently debatable, as the agency itself has demonstrated. As noted above, elk are thriving in the RWD and are beyond management objectives. Maintenance issues, including the recent Calico Trail temporary closure, are not caused by motorized use but by other general and site-specific factors, which occur regularly on nonmotorized trails. CBHA Declaration of Penelope K. Wu (Doc. No. 34-5) at ¶ 5; CBHA Declaration of Christopher Bouton (Doc. No. 34-4) at ¶ 9. The “trails in question have been used by motorcycles in their current location for decades” and have been formally recognized by the agency for motorcycle use since at least 1971. CBHA Declaration of Deborah Kill (Doc. No. 34-3) at ¶¶ 5, 8. The confusion about signing was previously addressed, and apparently arose from efforts in the early 2000’s to improve trail signage and “does not mean that new decisions were made on these trails. Rather, these maintenance actions are consistent with trail decisions made over 30 years ago.” CBHA Wu Decl. (Doc. No. 34-5) at ¶ 4. Against claims of exploding use, “I rarely see motorcycle use while on the 14 trails, and have not noticed a discernible increase in use from 2004 when I began working on the trails here.” CBHA Bouton Decl. (Doc. No. 34-4) at ¶ 11. Finally, the Bear Creek watershed is not a pristine Wilderness, but has a colorful history of multiple use:

During the 1960s-70s high elevation spruce clearcuts and associated road construction occurred within the watershed. The area has not recovered vegetatively from this activity and roads and skid trails through wetlands still cause hydrologic modification. Sheep and cattle grazing occurred historically within the watershed although currently there is no permitted grazing. During the late 1800s/early 1900s hardrock mining took place in the headwaters and the scars are visible to this day. Despite these issues, under the current trail management system, the Bear Creek stream corridor, however, is still intact and provides excellent water quality, riparian vegetation and aquatic habitat.

CBHA Declaration of Jonina Vanderbilt (Doc. No. 34-6) at ¶ 9.

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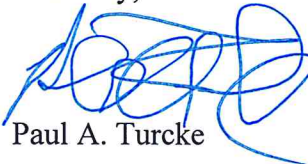
Everyone is entitled to an opinion, but the same level of tolerance should not accompany rebroadcast of the same falsehoods. Aside from the CBHA litigation, the anti-access special interests have had full access to the agency files since at least 2010 based on Mr. Marion's "extensive" Freedom of Information Act request. CBHA Stiles Decl. (Doc. No. 34-2) at ¶ 15. The Forest Service should not encourage this transparent effort to stuff a NEPA ballot box. Fortunately, the conspicuous but publicly rebutted elements of the media campaign should be easily identified. To the extent the agency receives comments fostered by this effort, they should be emphatically rejected.

CONCLUSION

Motorized use advocates have exercised notable wisdom and restraint in supporting Alternative C (modified). The agency should carefully consider whether it wants to condone this approach or the inflexible and self-serving demands of other special interests. The RWD is "not broke" and Alternative C (modified) risks going too far to fix it.

We look forward to continuing in the planning process and achieving an effective outcome for balancing recreational use in the RWD.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul A. Turcke", with a stylized, cursive script.

Paul A. Turcke