

**C. E. BROOKS & ASSOCIATES, P.C.**

303 EAST SEVENTEENTH AVENUE SUITE 650 DENVER, COLORADO 80203  
(303) 297-9100 fax: (303) 297-9101

DANIELLE R. HAGEN

July 15, 2016

VIA E-MAIL: [dkill@fs.fed.us](mailto:dkill@fs.fed.us); [dpadilla@fs.fed.us](mailto:dpadilla@fs.fed.us)

Attn: Debbie Kill  
NEPA Coordinator  
Attn: Derek Padilla  
Dolores District Ranger  
Dolores Public Lands Office  
29211 Hwy. 184  
Dolores, CO 81323

Re: Comments on the Rico-West Dolores Roads and Trails (Travel Management)  
Project Draft Environmental Impact Statement Submitted by the Rico Alpine  
Society

Dear Ms. Kill and Mr. Padilla,

This firm, on behalf of the Rico Alpine Society and its members, submits these comments on the Rico-West Dolores Roads and Trails (Travel Management) Project Draft Environmental Impact Statement (“TMP DEIS”). We appreciate the opportunity to review and comment on the TMP DEIS.

The Rico Alpine Society represents a multitude of user groups.<sup>1</sup> Members have enjoyed the recreational use of the roads, trails, and backcountry within the San Juan National Forest since the early 1960s. The members have a multiple use philosophy, advocating and taking part in recreational activities such as single track riding, four-wheeling, off-highway vehicle (OHV) riding, hiking, hunting, mountain biking, camping, and fishing. Therefore, the continued use and availability of the roads and trails within the Rico-West Dolores area for motorized and non-motorized use are essential to their activities and their interests are directly harmed by the proposed road and trail closures. The following comments identify the issues Rico Alpine Society members have with the current TMP DEIS.

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<sup>1</sup> The participating user groups from the Rico Alpine Society include: Timberline Trail Riders, Southwest Public Lands Coalition, Four Corners Trail Club, San Juan Trail Riders, Public Access Preservation Association (PAPA) Telluride, Trails Preservation Alliance, and Colorado Off Highway Vehicle Coalition (COHVCO).

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### 1. No Action Alternative Must be Based on the Current Management Situation

The Council on Environmental Quality (CEQ) regulations require the alternatives analysis in a environmental impact statement to “include the alternative of no action.” 40 C.F.R. §1502.14(d); *see* 42 U.S.C. §4332(2)(E) (alternatives must address unresolved conflicts). A no action alternative is described as “‘no change’ from current management direction or level of management intensity.” Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18026-01, 18027 (Mar. 23, 1981). “Accordingly, the regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act.” *Id.* The current level of activity, or the status quo, provides a benchmark for decisionmakers to compare the social, economic, and environmental impacts of the action alternatives. *Id.*; *Biodiversity Conservation Alliance v. U.S. Forest Serv.*, 765 F.3d 1264, 1269-70 (10th Cir. 2014); *Custer County Action Ass’n v. Garvey*, 256 F.3d 1024, 1040 (10th Cir. 2001).

The TMP DEIS states that the No Action Alternative “proposes to continue the current motor vehicle designations of roads and trails” and the “types of managed uses for trails would not change.” TMP DEIS at 25. The TMP DEIS defines the existing condition as providing for seven miles of trails opened to wheeled motor vehicles 50-inches or less, 114 miles of trail open to motorcycle use only, and 205.54 miles of National Forest System roads open to all motor vehicles. *Id.* at 14. The TMP DEIS directs readers to the current Motor Vehicle Use Map (MVUM) posted online, which is a map dated 2015. *Id.* Under the No Action Alternative, the maintenance levels would not change and there would also be no timing restrictions on motor vehicle use. *Id.* at 25. The No Action Alternative generally conforms to the 2015 MVUM, except that Trail Number 619 is only open to wheeled vehicles 50-inches or less from December 12<sup>th</sup> to August 14<sup>th</sup> and Trail Number 650 is non-motorized. *Compare* 2015 MVUM with TMP DEIS at Ex. A, OHV and Single Track Trails Alternative A.

The Rico Alpine Society opposes the use of the 2015 MVUM as the baseline for the No Action Alternative because it was not correctly adopted and does not accurately reflect the current land use plan direction and the current management prescription for the Rico-West Dolores area. The 2015 MVUM road and trail designations are based on those identified in the 2005 MVUM. However, there is no area designation in the 2015 MVUM. While the 2015 MVUM is based on the 2005 Travel Management: Designated Routes and Areas for Motor Vehicle Use Rule (70 Fed. Reg. 68264 (Nov. 9 2005) (“hereinafter 2005 Travel Rule”), it also incorporates the 2010 temporary cross-country travel closure order (Order No. SJ-2010-08 (June 16, 2010)), and the 2013 Final San Juan National Forest Land and Resource Management Plan (LRMP). Because none of these documents in fact replace the 2005 MVUM and its designations of roads, trails, and areas available for

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motorized travel in the Rico-West Dolores area, only the 2005 MVUM is the “current direction” or “no action” alternative.

### A. Rule Amendments and Temporary Closure Order Do Not Rescind the 2005 MVUM

The 2005 MVUM was completed in compliance with the first amendment to the travel management regulations: Administration of the Forest Development Transportation System; Prohibitions; Use of Motor Vehicles Off Forest Service Roads, 66 Fed. Reg. 3206-01 (Jan. 12, 2001) (hereinafter “2001 Travel Rule”). The effect of this final rule was to ensure that additions to the National Forest System network of roads were those deemed essential for resource management, that unneeded roads were decommissioned, and that roads that did not compromise healthy lands and waters and are needed for recreation, rural access, and the flow of goods and services are maintained and improved. *Id.* at 3206-3207. The 2001 Travel Rule requires the identification of a minimum road system that is needed for the National Forest System lands, based on a “science-based roads analysis.” *Id.* at 3217; 36 C.F.R. §212.5(b). The minimum system is that road system required “to meet resource and other management objectives adopted in the relevant land and resource management plan . . . to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning and maintenance.” *Id.* The 2005 Travel Rule did not amend this portion of the regulations and, therefore, the 2005 MVUM is still in compliance with the 2001 Travel Rule.

The 2005 Travel Rule amended the regulations governing administration of the forest transportation system and use of motor vehicles on National Forest System lands. It requires the Forest Service to use the planning process to designate roads, trails, and areas that are open to motor vehicle use and prohibits the use of motor vehicles outside the designated system. 70 Fed. Reg. 68264; 36 C.F.R. §§212.50, 261.13. The 2005 Travel Rule prescribes a decision process, not an outcome. It does not require National Forests or Ranger Districts to rescind any previous decisions that allowed, restricted, or prohibited motor vehicle use on roads, trails, or areas on National Forest System lands pursuant to other authorities such as land management plans and travel plans. 70 Fed. Reg. at 68268; 36 C.F.R. §212.50(b) (Prior decisions may be incorporated into designations made pursuant to the final rule). The prohibition on motor vehicle use outside the designated system goes into effect only after the unit or Ranger District has designated those roads, trails, and areas that are open to motor vehicle use. 70 Fed. Reg. at 68270, 68278. Until these designations are complete and a motor vehicle use map identifying the designations is published, the “*existing travel management policies, restrictions, and orders remain in effect.*” *Id.* (emphasis added). Therefore, the 2005 MVUM remained a valid roads and trails decision after the 2005 Travel Rule was promulgated as final and continues to control motor vehicle use in the Rico-West Dolores area.

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The Forest Service continues to incorrectly assert that the 2005 MVUM is not in compliance with the 2005 Travel Rule and that the 2005 Travel Rule directed the Forest Service to eliminate all cross country motorized travel. TMP DEIS at 48. *See also* Rico-West Dolores 2009 Environmental Assessment (2009 EA) at 19 (The No Action Alternative, based on the 2005 MVUM, “would continue to allow summer motorized cross-country travel across broad expanses of the analysis area . . . it clearly would not comply with the purpose and needs of this analysis nor with the intent of the Travel Rule under 36 CFR 212.”); Rico-West Dolores 2009 Decision Notice and Finding of No Significant Impact (2009 DN/FONSI) at 16 (The 2005 Travel Rule “generally prohibits motorized vehicles off designated routes and eliminates cross-country travel.”). However, the 2005 MVUM *does* comply with the 2005 Travel Rule regarding cross-country travel.

The 2005 Travel Rule was a mandate to designate roads, trails, and areas as open to motorized use, which the San Juan National Forest has been doing from 1971 to 2005. The term “areas” is defined as “[a] discrete, specifically delineated space that is smaller, and in most cases much smaller, than a Ranger District.” 36 C.F.R. §212.1. This definition expressly implies the availability of cross-country travel in designated portions of the National Forests, which is exactly what the 2005 MVUM map does by designating certain areas (labeled “F”) as open to cross-country travel. The 2005 Travel Rule does not prohibit all cross-country travel, but rather eliminates it for those areas outside of the designated roads, trails, and *areas*. *See* U.S. Forest Service News Release, *USDA Forest Service Releases Final Rule For Motorized Recreation In National Forests & Grasslands* (Nov. 2, 2005), available at <http://www.fs.fed.us/news/releases/usda-forest-service-releases-final-rule-motorized-recreation-national-forests>.

Under the 2005 Travel Rule, the Forest Service could also issue temporary and emergency closures based on a determination of considerable adverse effects.<sup>2</sup> 70 Fed. Reg. at 68270; 36 C.F.R. §261.50. On June 16, 2010, the Forest Supervisor for the San Juan National Forest issued a temporary order prohibiting the use of motorized vehicles off of National Forest System roads. Order No. SJ-2010-08. However, this temporary order expired on December 31, 2015. *Id.* This order never rescinded the 2005 MVUM, nor could it, because temporary orders are not adopted in conformance with the planning process as required under the 2005 Travel Rule. Therefore, the 2005 MVUM still controls motor vehicle use within the Rico-West Dolores area and should be designated as the No Action Alternative in the current DEIS. By failing to use the accurate no action baseline, the DEIS fails to fully disclose and analyze the impacts on recreation and access. This is an unresolved conflict not addressed by any of the alternatives considered in the DEIS.

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<sup>2</sup> The authority to issue temporary orders to close roads is not new. The rulemaking in 2001 and 2005 made no changes in the regulation, which was first promulgated in 1977, 42 Fed. Reg. 2957.

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### B. Land Use Plan Amendments Do Not Rescind the 2005 MVUM

The Forest Service also amended the San Juan National Forest LRMP in 2013. In the amendment, the Forest Service identified areas as unsuitable, suitable, or suitable opportunity for overground motorized travel. Final San Juan National Forest LRMP at 98, 106; San Juan National Forest Record of Decision (ROD) at 12. The LRMP recognized that a number of the areas within the San Juan National Forest had not undergone site-specific travel management planning and for these landscapes, the “travel suitability as depicted on Figure 2.13.1 primarily reflects current management.” Final San Juan National Forest LRMP at 98; *see* San Juan National Forest ROD at 12-13. For the Rico-West Dolores area, travel management planning had occurred in 2009 but was reversed by the Regional Forester, so the current management or No Action Alternative must still be the 2005 MVUM.

The LRMP and ROD also state that these suitability designations do not address specific road and trail designations because those decisions would be made during future travel management planning. Final San Juan National Forest LRMP at 96, 99-101; San Juan National Forest ROD at 12. The TMP DEIS confirms this by stating, “[t]his decision will identify a system of roads and trails designated for motor vehicle use . . . . The decision also includes whether or not to include motor vehicle areas (open to cross-country travel).” TMP DEIS at 18; *see also id.* at 15 (“Language in the new Forest Plan left the door open for site-specific project-level planning to clarify Forest Plan direction for the Rico-West Dolores area.”). The 2005 MVUM already includes areas as open to motorized use and represents the only legal baseline for analysis under this DEIS. The question to consider in this TMP DEIS is whether these areas should remain open or be closed to future motorized use.

The 2005 Travel Rule and the 2013 San Juan National Forest LRMP clearly recognize that travel management planning analysis is required before any prior road, trail, or area designations would be rescinded. Therefore, the 2005 MVUM and its designation of roads, trails, and areas that are open to motorized travel, is the current management situation in the Rico-West Dolores area and must be the No Action Alternative under TMP DEIS. *See* 46 Fed. Reg. at 18027 (no action alternative based on the current management direction). Otherwise the TMP DEIS fails to correctly disclose the significance of the changes being proposed and the impact this has on motorized users.

The 2009 EA for the Rico-West Dolores TMP also recognized that the No Action Alternative was the 2005 MVUM, but then erroneously eliminated it from consideration by the public. 2009 EA at 19 (“Alternative A (No Action), considered the 2005 San Juan National Forest Visitor Map as a baseline for designating the official transportation system. . . Since this alternative would continue to allow summer motorized cross-country travel across broad expanses of the analysis area . . . it clearly would not comply with the purpose and needs of this analysis nor with the intent of the

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Travel Rule under 36 CFR 212. Therefore, it was not considered a viable alternative and was eliminated from further analysis.”). The TMP DEIS also justified not using the 2005 MVUM map as the no action alternative because it did not conform to the purpose and need. TMP DEIS at 48-49. This is completely contrary to the actual direction of the 2005 Travel Rule, as previously discussed. NEPA also requires consideration of the no action, even if it does not meet the purpose and need of the proposed action. 42 U.S.C. 4332(2)(E); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988). See also *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768, 784 (9th Cir. 2006) (Alternatives requirement ensures the agency decisionmaker has before it all possible alternatives.)

This TMP DEIS is very similar to the *Bob Marshall Alliance* case, because the Forest Service justified not considering the no action alternative on the basis that it did not meet the purpose and need. In both, the no action alternative was necessary to address unresolved conflicts. The Forest Service in *Bob Marshall Alliance* failed to consider users who supported no oil and gas leasing. Here the Forest Service is ignoring a significant segment of the public users who enjoy and use the forest for motorized recreation. Because the no action alternative is a substantive NEPA obligation, the agency’s deliberate failure is fatal to the validity of the TMP DEIS.

The public has never had an opportunity to consider a No Action Alternative based on the 2005 MVUM in either the 2009 EA or this TMP DEIS. NEPA still requires it be part of the process to ensure satisfaction of NEPA’s twin objectives, informed decisionmaking and meaningful public involvement. *Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983). The TMP DEIS violates NEPA by omitting the true no action alternative.

### C. The CEQ Regulations and Case Law Support Defining the No Action Alternative Based on the 2005 MVUM

The TMP DEIS states that the 2005 MVUM was not carried forward as an alternative for detailed study because of the impact cross-country travel has on wildlife habitat and wetlands areas, and because it fails to meet the purpose and need of the proposed action. TMP DEIS at 48-49. The Forest Service’s rationale for not analyzing the 2005 MVUM as the No Action Alternative is contrary to the Council on Environmental Quality (CEQ) regulations and case law. It is also illogical. If the No Action Alternative already has no impact on wildlife habitat and wetlands, then there is no need to take any action to further protect habitat and wetlands.

Under the CEQ regulations, the No Action Alternative is based on the status quo or the current management direction. 46 Fed. Reg. at 18027. The regulations require the inclusion of the No Action Alternative (40 C.F.R. §1502.14(d)) and further emphasize its importance of providing a baseline or benchmark for decisionmakers to compare the environmental impacts of the action alternatives. 46 Fed. Reg. at 18027; *Biodiversity Conservation Alliance*, 765 F.3d at 1269-70 (Court

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held that considering the past motorcycle usage on a trail as part of its no action alternative complied with NEPA, as opposed to using the condition of the area prior to motorcycle use.); *Custer County Action Ass'n*, 256 F.3d at 1040 (“In requiring consideration of a no-action alternative, the [CEQ] intended that agencies compare the potential impacts of the proposed major federal action to the known impacts of maintaining the status quo.”). Therefore, the No Action Alternative is not only a possible alternative, but also a benchmark for comparing the impacts of all other proposed alternatives.

The TMP DEIS statement that this proposed No Action Alternative does not meet the purpose and need of the proposed action also misses the point on why this alternative must be considered. The purpose and need of the proposed action “is to manage over-ground wheeled motorized vehicle use in accordance with the requirements of the Travel Management Rule (36 CFR 212),” which “requires the Forest Service to designate a system of roads, trails, and areas for motorized use.” TMP DEIS at 17. However, as was discussed above, the 2005 Travel Rule provided that “existing travel management policies, restrictions, and orders remain in effect” until travel management planning occurs and a MVUM is published. 70 Fed. Reg. at 68270, 68278. Further, the No Action Alternative acts as a benchmark for comparing the impacts of all the other proposed alternatives and, therefore, must be considered even if the agency is under a legislative command to act. 46 Fed. Reg. at 18027; *see Tennessee Env'tl. Council v. Tennessee Valley Authority*, 32 F. Supp. 3d 876, 887 (E.D. Tenn. 2014) (Defendant’s use of the status quo of continuing operations of a plant without emission control, even though this would not comply with applicable environmental requirements, as the no action alternative comported with the CEQ requirements under NEPA.). Therefore, designating the 2005 MVUM as the No Action Alternative is required by NEPA and the CEQ regulations.

### **2. Failure to Inventory and Address All Existing Roads and Trails**

It appears that the TMP DEIS merged cross-country travel with “user-created” or “unauthorized” routes that are not designated as part of the National Forest transportation system. *See* TMP DEIS at 49, 94. Cross-country travel occurs when a motorized vehicle travels across the land without following a pre-existing road or trail. However, there are a number of roads and trails within the Rico-West Dolores area that exist on the ground but have not been designated as a Forest Service road or trail. *See* Final San Juan National Forest LRMP FEIS at 382 (estimating that there are more than 3,000 miles of unauthorized roads and trails within the planning area). This would include historic logging roads, mining roads, and roads created by public use over time. The TMP DEIS incorrectly assumes that all of these roads are unauthorized. Logging and mining roads are expressly authorized. Many other roads originally provided access to homesteads where people no longer live or were purchased by the United States. These are roads or trails that would be considered valid existing rights-of-way that predated the creation of the National Forest. *See S. Utah*

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*Wilderness Alliance v. Bureau of Land Mgmt.*, 425 F.3d 735, 762-66 (10th Cir. 2005); *Gold Hill Dev. Co., L.P. v. TSG Ski & Golf, LLC*, \_ P.3d \_, 2015 WL 9245456, at \*2 (Colo. 2015); *Bockstiegel v. Bd. of County Comm'rs of Lake County*, 97 P.3d 324, 328-31 (Colo. 2004). The Rico Alpine Society members do not wish to haphazardly travel cross-country, but instead request the Forest Service to consider these existing roads and trails under the No Action Alternative pursuant to the 2005 MVUM and as possible additions to the National Forest transportation system.

The TMP DEIS proposes to close all or portions of Bear Creek, Horse Creek, Burnett Creek, and Ryman Trails to motorized use. TMP DEIS at 27-29. However, all of the trails can be linked to old mining and logging roads and/or trails that existed prior to the establishment of the National Forest. The Town of Rico and the surrounding area was well known for its mining potential in the late 1800s and was first prospected in 1869. Charles M. Engel, *Rico, Colorado: A Century of Historic Adventures in Mining*, in NEW MEXICO GEOLOGICAL SOCIETY 19<sup>TH</sup> ANNUAL FALL FIELD CONFERENCE GUIDEBOOK 88, 88 (1968); Edwin T. McKnight, *Geology and Ore Deposits of the Rico District, Colorado* 4 (United States Government Printing Office, Washington 1974). The substantial mining efforts and gains occurred in this area after the panic of 1873, and by 1878 the prospectors in the Dolores River valley increased exponentially. Engel at 89. By the spring of 1879, a booming mining town was created with an estimated population of 1,200 people and the Town of Rico was officially established later that fall. *Id.* at 89-90. Between 1879 and the 1890s, the area showed steady growth with the discovery of some significant ore deposits in Horse Gulch, CHC Hill, and Newman Hill. *Id.* at 90-91. The mining activity continued into the 1900s with the construction of mills in the 1920s and 1930s, and the construction of a sulfuric acid plant in the 1950s. McKnight at 4-5.

The majority of the mineral production from this early time period came from the area east of Rico in the areas known as CHC Hill, Nigger Baby Hill, the valley of Silver Creek, and Newman Hill. McKnight at 4. However, there was also some mineralized ground and mining on the west side of Dolores River and Rico, including in the areas known as Iron Gulch and Horse Gulch. Engel at 88, 91. A number of roads and trails led to these mineral deposits and mines, denoted as prospects on the United States Geological Survey (USGS) Topography Maps. *See* Ex. 1, June 1899 USGS Topography Map of Rico, Colorado; Ex. 2, June 1899 USGS Topography Map of Rico, Colorado (reprinted in Sept. 1905); Ex. 3, August 1899 USGS Topography Map of Rico, Colorado.

In the 1899 USGS Topography Maps, Horse Creek and Burnett Creek Trails were identified as roads along almost the entire route and then as trails along the western portions. *See id.* These two trails would have provided access to the mining activity occurring in the Iron Gulch and Horse Gulch areas. *Id.*; *see* Engel at 88, 91. Burnett Creek and Ryman Trails were also identified as trails in the 1899 maps. Ex. 1, June 1899 USGS Topography Map of Rico, Colorado; Ex. 2, June 1899 USGS Topography Map of Rico, Colorado (reprinted in Sept. 1905); Ex. 3, August 1899 USGS



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Topography Map of Rico, Colorado.

The 1899 USGS Topography Maps also show the existence of other roads and/or trails that the Forest Service is failing to analyze in the TMP DEIS. For instance, Morrison Trail and Papoose Creek Trail are identified as trails and Silver Creek Trail is identified as a road on the 1899 maps. *See* Ex. 1, June 1899 USGS Topography Map of Rico, Colorado; Ex. 2, June 1899 USGS Topography Map of Rico, Colorado (reprinted in Sept. 1905); Ex. 3, August 1899 USGS Topography Map of Rico, Colorado. Silver Creek Trail would have provided the early mining prospectors access to Nigger Baby Hill and the valley of Silver Creek. *See id.*; McKnight at 4. This is just an example of those road and/or trails that have existed as valid existing rights-of-way since at least 1899 and that the TMP DEIS is failing to analyze for motorized use. Other trails that are currently proposed to remain open to motorcycle use are also identified on these early maps, including Eagle Peak, Priest Gulch, and East Fork Fall Creek Trails. Ex. 1, June 1899 USGS Topography Map of Rico, Colorado; Ex. 2, June 1899 USGS Topography Map of Rico, Colorado (reprinted in Sept. 1905); Ex. 3, August 1899 USGS Topography Map of Rico, Colorado

The San Juan National Forest LRMP FEIS states that the unauthorized routes in suitable opportunity areas on National Forest System lands may be considered for incorporation into the transportation system through the travel management planning process. Final San Juan National Forest LRMP FEIS at 382. The 2005 Travel Rule even recognized that “some user-created routes would make excellent additions to the system of designated routes and areas” and also recognizes valid existing rights-of-way. 70 Fed. Reg. at 68269, 68274, 68275, 68282; 36 C.F.R. §212.55(d)(1). However, the TMP DEIS does not provide any discussion about user-created routes or valid existing rights-of-way except in terms of their impacts to resources (TMP DEIS at 77, 90, 93-94, 95, 99) and the addition of about 1 mile of user-created routes to the National Forest transportation system under the action alternatives (*id.* at 39, 44, 199). Further discussion and consideration of the user-created or unauthorized routes will occur when the 2005 MVUM is designated as the No Action Alternative.

### **3. TMP DEIS Must Address Demand for Motorized Recreational Use**

Congress requires the Forest Service to manage the National Forest System lands for multiple use and sustained yield. 16 U.S.C. §529. In developing, maintaining, and revising plans for National Forest System lands, the plans must provide for multiple use and sustained yield in accordance with the Multiple-Use-Sustained-Yield Act of 1960. 16 U.S.C. §1604(e)(1); 36 C.F.R. §219.1(b)-©. This includes the “coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness.” 16 U.S.C. §1604(e)(1); 36 C.F.R. §219.10. The plan’s monitoring program must also address “[t]he status of visitor use, visitor satisfaction, and progress toward meeting recreation objectives.” 36 C.F.R. §219.12(a)(5)(v).

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The TMP DEIS discusses recreation impacts, but most of the information is based on field observation of the staff and not formal studies. TMP DEIS at 139. The TMP DEIS cites visitor data on the San Juan National Forest from 2011 with surveys that indicate four percent of the visitors are in the area for motorized use while 66 percent were in the area for non-motorized trail use. *Id.* at 172. However, before any roads or trails are closed to motorized use, this information must be updated to account for any increased demand of motorized recreation since 2011 in the Rico-West Dolores TMP area. There should also be further discussion on what roads and trails are most often used by the motorized users.

According to the Colorado Parks and Wildlife 2013 Outdoor Recreation Participation Public Survey Summary Report, around 20 percent of Colorado's population participates in motorized uses (16.9 percent participating in ATV riding and 5.6 percent participating in off-road motorcycling). *See* <https://cpw.state.co.us/Documents/Trails/SCORP/2013PublicSurveySummaryReport.pdf>. Outdoor motorized recreation has only continued to increase since 2013. The American Recreation Coalition reported good sales and activities for 2015 outdoor recreation, and stronger expectations for 2016. American Recreation Coalition, *Positive Outlook for Outdoor Recreation in 2016* (Oct. 29, 2015), available at <http://www.funoutdoors.com/files/10%20-%20Positive%20Outlook%20for%20Outdoor%20Recreation%20in%202016.pdf>. Included in this growth, is the use of on- and off-highway motorcycles and ATVs with almost 30 million Americans riding motorcycles and 35 million riding ATVs annually. *Id.* The above statistics contradict the TMP DEIS's estimate of four percent.

The TMP DEIS alternatives' impact on single track motorized use is put into perspective when you consider the number of miles and acres that are open for single track motorized use under the current No Action Alternative. There are 114 miles of trails, which equates to about 34.2 actual acres that are open to single track motorized users. *See* TMP DEIS at 27. This represents about 0.014% of the 244,550 acres within the Rico-West Dolores TMP area. All other action alternatives designate even fewer trails as open to single track motorized users. *See id.* Alternatively, hikers, horseback riders, hunters, bird watchers, backpackers, fishermen, and nearly every other user group other than mountain bikers have access to 100% of the Rico-West Dolores TMP area. No other user group is limited to the extent that single track motorized users are under the TMP DEIS, nor should they be. Rico Alpine Society request that the TMP DEIS alternatives be based on a shared and balanced multiple use philosophy.

#### **4. Seasonal Restrictions on Motorcycle and Other Motorized Uses**

The Rico Alpine Society appreciates the Forest Service identifying seasonal restrictions on motorcycle use as an issue to address within the TMP DEIS. The Rico Alpine Society supports alternatives that are weather driven and not date driven for the seasonal restrictions. Single track

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motorized users have historically begun riding as soon as the weather permits and will cease in the fall when the snows begin again. As the TMP DEIS states, “[o]ver-ground recreation use reduces substantially when deep snowfall closes the trails, usually by November.” TMP DEIS at 11. The Rico-West Dolores TMP area has been successfully managed this way for several decades. A longer riding season allows time for the motorcyclist to clear the trails and also allows them to enjoy the fall riding season. “These timing restrictions could have a negative impact on motorized users if the recent string of mild winters continues, since less snow would otherwise allow earlier access to trails, including south Calico Trail and arterial trails like the ones in Priest Gulch, on Stoner Mesa, and in the Groundhog-Willow Divide area. Heavier winters are self-regulating in that deep snows, especially in the higher Calico Trail system or Lone Cone area, prevent motorized users from accessing the trail system.” *Id.* at 145.

The Rico Alpine Society also opposes seasonal restrictions on motorcycle use on the basis of protecting elk habitat and reducing motor vehicle impacts to hunters. The 2009 Rico-West Travel Management Plan DN and FONSI was reversed and remanded for additional analysis. Specifically, the Appeal Officer reversed the decision as it related to seasonal closures because this was not presented for public comment and was arbitrary for instituting seasonal closures. The notable argument brought by those appealing the DN and FONSI on this basis was the lack of data showing that elk habitat and hunting was impacted by motorized uses. The TMP DEIS still suffers from the same flaws. The fact that the TMP DEIS repeats the same mistake as the EA does not cure the flaw.

The elk populations have consistently exceeded agency goals and there is no evidence that 50 plus years of single track motorized use has negatively impacted the elk populations. The TMP DEIS states that “[e]lk populations have grown in the past two or three decades, and currently exceed the Colorado Parks and Wildlife objectives.” TMP DEIS at 112. “Research has shown that elk seldom are alarmed at normal disturbance-type activities such as vehicular traffic, camping, fishing, or other recreational activities beyond a threshold distance of ½ mile.” *Id.* at 116. If elk are disturbed in the fall, it is more likely due to hunting. Therefore, the TMP DEIS does not support reducing the number of open routes and placing spring and fall timing restrictions on motorcycle use to protect elk habitat. The TMP DEIS states that the reductions and seasonal restrictions will help to increase elk security areas in the planning area, but then states “there are sufficient security areas with adequate cover and forage across *all alternatives.*” *Id.* at 117 (emphasis added). Also, even though motorcycle use would be limited in the fall, heavy use of the roads and OHV trails would continue to pressure wildlife. *Id.* If the Forest Service wants to increase the security areas, it would coordinate with Colorado Division of Wildlife to close areas within the National Forest to hunting.

As to the assertion that motorcycle use impacts hunters (*see* TMP DEIS Executive Summary), the TMP DEIS discussion contradicts this assertion. It recognizes that hunters use motorcycles on single track trails to access hunting areas, so any fall seasonal restrictions on

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motorcycle use would adversely impact those hunters. TMP DEIS at 145-146, 166. Some hunters complain about hearing a motorcycle when they are hunting, but the TMP DEIS notes that the number of motorcycle riders using the trails declines in the fall. *Id.* at 166-167. There have also been no documented cases of safety issues from one user group interacting with another user group. *Id.* at 203. Therefore, a reduction in motorized trails and seasonal restrictions is not required to lessen the impact on hunters.

The Rico-West Dolores trails have been successfully used by single track motorized users since the 1960s. There is no evidence that 50 plus years of single track motorized use has created any trails that did not already exist as a result of historic mining or mineral exploration, logging, cattle and sheep ranching, horseback riding, hiking, or any other historic use. All of the routes currently used by single track motorized users can be found on maps dating back 40 to 100 plus years.

### **5. Economic Impact to the Town of Rico**

The Rico Alpine Society appreciates the Forest Service identifying the economic impact to the Town of Rico if road and trail management changes as an issue to address within the TMP DEIS. The members strongly oppose closing the three nearest single track trails to the Town of Rico: Horse Creek, Burnett Creek, and Ryman Trails. These trails have a direct impact on the Town of Rico's local economy. When riding on these trails, motorcycle riders will generally stop in the Town of Rico for fuel and food. Motorcycle riders will be discouraged from going into the Town of Rico if they have to ride up from the Calico Trail or down from the East Fork Trail to gain access to Rico via Highway 145. *See* TMP DEIS at 179.

The Rico Alpine Society, therefore, supports the 2005 MVUM and valid and existing rights-of-way, which keep all three trails open and allows reasonable access to the Town of Rico from motorcycle users coming from the west (Burnett and Horse Creek) and southeast (Ryman). *See id.* at Ex. A - OHV and Single Track Trails Alternative A Map. The members do support the addition of the Rio Grande Southern Trail that allows motorcycle riders access to Highway 145 near the west side of the Town of Rico. *See id.* at 42-43, 160. However, the Rio Grande Southern Trail (or Galloping Goose) only makes sense if (1) riders do not have to ride four miles away from the Town of Rico on the Rio Grande Southern trail, turn around, and ride four miles back to Rico on Highway 145; and (2) the Rio Grande Southern Trail provides motorized access to the Ryman Trail.

### **6. Additional Comments on Specific Motorcycle Trails**

The Rico Alpine Society supports the continued motorcycle use of Bear Creek, East Fall, West Fall, Burnett, Horse Creek, Ryman, and Winter Trails pursuant to the 2005 MVUM. All of

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the action alternatives propose to close significant portions of these trails, if not all, from motorcycle use. In addition, the Rico Alpine Society would like to note that the TMP DEIS states that the Morrison Trail remaining open for motorcycle use will not be carried forward in any alternative (TMP DEIS at 50, 146), but then it states later on that Morrison Trail will remain open to motorcycle use under Alternative B (*id.* at 160). The Rico Alpine Society supports reopening this trail to motorcycle use as a valid and existing right-of-way. *See* Ex. 1, June 1899 USGS Topography Map of Rico, Colorado; Ex. 2, June 1899 USGS Topography Map of Rico, Colorado (reprinted in Sept. 1905). The Morrison Trail connects the Rico-West Dolores area with the Mancos-Cortez area, which also has a network of motorized trails. Gold Run Trail is the only trail that currently connects the two travel management areas. Morrison Trail is less technical than Gold Run Trail and appeals to a larger number of riders who want to ride the Mancos-Cortez trails but reside in the upper Dolores River valley, the Town of Rico, or the Telluride region.

Thank you for the opportunity to comment on the TMP DEIS.

Sincerely,

/s/ Danielle R. Hagen

Danielle R. Hagen

C.E. Brooks & Associates, P.C.