

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No: _____

TRAILS PRESERVATION ALLIANCE,
SAN JUAN TRAIL RIDERS, PUBLIC
ACCESS PRESERVATION ASSOCIATION,

Plaintiffs,

v.

U.S. FOREST SERVICE; SAN JUAN NATIONAL
FOREST; KARA CHADWICK, Forest Supervisor;
DEREK PADILLA, Dolores District Ranger,

Defendants.

**PETITION FOR REVIEW OF AGENCY ACTION AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This action seeks declaratory and injunctive relief addressing the Rico West Dolores Roads and Trails (Travel Management) Project Final Record of Decision, Environmental Impact Statement and associated actions (the “Decision”) issued by the Dolores Ranger District, San Juan National Forest (the “Forest Service”). The Decision was issued on July 30, 2018.

2. The Decision reduces trails designated for single track motorized travel by roughly 30 percent. These reductions, unsupported by logic and contrary to law, will create substantial adverse impacts to the human environment and to Plaintiffs, their members, and other recreationists. These impacts include concentration of motorized travel on remaining routes, disruption of connectivity within the trail network, impacts to recreational and aesthetic interests,

increased risk to public safety, socioeconomic impacts and disruption of access, including to the town of Rico.

3. The trails closed by the Decision have received environmentally conscious and sustainable motorcycle travel for over 40 years. As part of the evolving and increasing scrutiny of recreation on Forest Service lands, the agency in 2009 entered an order that eliminated cross-country motorized vehicle travel in the Rico West Dolores area. Not satisfied with that development, Backcountry Hunters and Anglers, Colorado Chapter, represented by the University of Colorado Law School Clinic, filed a lawsuit, seeking to close the long-traveled trails in the Rico West Dolores area to motorcycle use. They moved for a preliminary injunction, which was denied, and wound the case through the Tenth Circuit of Appeals, which ruled, in a decision by then Judge Gorsuch, that Backcountry “may be a victim of its own success” and that the case be dismissed on jurisdictional grounds. *Backcountry Hunters and Anglers, Colorado Chapter v. U.S. Forest Service*, Case Nos. 13-1216 & 14-1137 (10th Cir.), Order and Judgment date May 27, 2015. Part of the basis for that ruling was that the Forest Service was working toward “a more permanent replacement policy” for the Rico West Dolores area. *Id.*

4. The Forest Service did undertake a process to institute this “more permanent” policy. This process culminated in the Decision. While the Forest Service was successful in defending the existing management scheme in the above-described litigation, it nevertheless determined in the “replacement policy” process to make significant changes. These changes coincided with many items on the “wish lists” of Backcountry and other interested parties such as special use permittees, seasonal “residents” and the world renown Dunton Hot Springs ecotourism resort, including closures near the Resort, in Bear Creek, around the town of Rico, and along Ryman Creek which provides an important connection to riders in the Telluride area.

5. Plaintiffs, and others, objected to the Draft Record of Decision in accordance with applicable regulations. The objectors and the Forest Service explored alternative scenarios, but in the end these discussions did not produce a resolution, and the Forest Service formalized the closures through the Decision.

6. Plaintiffs have little recourse but to seek judicial action to set aside and declare unlawful at least certain aspects of the Decision, and to determine the appropriate remedy, guidance and/or interim management direction for the Forest Service on remand.

7. This action arises under the National Environmental Policy Act, 42 U.S.C. § 4331, et seq. (“NEPA”); the National Forest Management Act, 16 U.S.C. § 1600 et seq. (“NFMA”); the Forest Service Travel Management Rule, 36 C.F.R. part 212; the Administrative Procedure Act, 5 U.S.C. § 551, et seq. (the “APA”), and any implementing regulations for these statutes.

JURISDICTION AND VENUE

8. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States. The conduct complained of creates an actual, justiciable controversy and is made reviewable under the APA.

9. Venue is proper in this Court under 28 U.S.C. § 1391(e) because a substantial number of the events or omissions giving rise to these claims occurred, or, a substantial part of the property that is the subject of these claims is situated, within the District of Colorado. The Dolores District is comprised of lands within Dolores and Montezuma Counties in Colorado.

PARTIES

10. Plaintiff Trails Preservation Alliance (“TPA”) is a Colorado nonprofit corporation. TPA is a volunteer organization created to be a viable partner to public land

managers, working with land management agencies such as the Forest Service and Bureau of Land Management to preserve the sport of trail riding and multi-use recreation. TPA acts as an advocate for the sport and takes the necessary action to ensure that land managers allocate access to a fair and equitable percentage of public lands for diverse multi-use recreational opportunities. TPA members have used, and hope in the future to use, motorized and nonmotorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access federal lands throughout the United States, including in the Rico West Dolores area of the San Juan National Forest.

11. Plaintiff San Juan Trail Riders (“SJTR”) is a Colorado nonprofit corporation with approximately 400 members. SJTR is based in Durango and its members are primarily from Colorado. SJTR’s goals and purposes include to provide an organized network for trail enthusiasts, to promote active participation in off-highway vehicle management, to maintain a focused dialogue with the San Juan National Forest, to educate land managers about “Tread Lightly” and other trail conservation practices, and to encourage cooperation and coordination between user groups and engaged interests. SJTR members have used and have concrete plans in the future to use motorized and non-motorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access federal lands throughout the United States, including Forest Service-managed lands in the Rico West Dolores area of the San Juan National Forest.

12. Plaintiff Public Access Preservation Association (“PAPA”) is a Colorado nonprofit corporation with approximately 300 participants. PAPA is based in Telluride and its members are primarily from Colorado. PAPA protects and promotes public land access, primarily through advocacy and on-the-ground support such as volunteering for trail projects, event support or similar activities as authorized by the Forest Service and other partners. PAPA

members regularly use Forest Service lands throughout the United States, including the Rico West Dolores area, for recreational and aesthetic purposes including off-highway vehicle, motorcycle, mountain bike, equestrian, or hiking travel on trails or primitive roads.

13. Defendant United States Forest Service is a federal agency within the United States Department of Agriculture. The Forest Service is charged with administering and overseeing United States National Forest System lands in accordance with applicable law.

14. Defendant San Juan National Forest is a subunit of the United States Forest Service within the agency's Rocky Mountain Region covering approximately 1.8 million acres of land in the southwest corner of Colorado. The Forest's main office is located in Durango.

15. Defendant Kara Chadwick is the Forest Supervisor for the San Juan National Forest. She is the supervisor for the Forest and is the ultimate authority for the procedures, actions and decisions of the Forest and is ultimately charged with ensuring the Forest complies with applicable law. She is sued solely in her official capacity.

16. Defendant Derek Padilla is the District Ranger for the Dolores Ranger District, which is a subunit of the San Juan National Forest and contains the entire Rico West Dolores Area. Mr. Padilla signed the Final Record of Decision and is responsible for interpreting and implementing the Decision's prescriptions on the Rico West Dolores area. He is sued solely in his official capacity.

LEGAL FRAMEWORK

17. The APA addresses and regulates the function of executive branch administrative agencies within our system of open government. Among such functions, the APA represents a waiver of sovereign immunity by the United States and outlines the circumstances in which "final agency action" may be subject to judicial review, as well as the standards of review to be

applied in such challenges. Since many statutes and regulations do not provide for a private right of action, the APA provides the jurisdictional basis for judicial review of administrative decisions by federal land management agencies applying statutes like NEPA and NFMA and regulations with force and effect of law to public lands in places like the Forest.

18. NFMA provides the statutory framework for management of the National Forest System. In NFMA and other statutes, “Congress has consistently acknowledged that the Forest Service must balance competing demands in managing National Forest System lands. Indeed, since Congress’ early regulation of the national forests, it has never been the case that “the national forests were...to be ‘set aside for non-use.’” *The Lands Council v. McNair*, 537 F.3d 981, 989 (9th Cir. 2008) (en banc) (citations omitted). Additional guidance, incorporated expressly within NFMA, is found in the Multiple-Use Sustained Yield Act (“MUSYA”), which provides that the various surface resources be managed “so that they are utilized in the combination that will best meet the needs of the American people” and to “achieve[] and maintain[] in perpetuity [] 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.” 16 U.S.C. § 531(a) (definition of “multiple use”) and (b) (definition of “sustained yield”); 16 U.S.C. § 1604(g) (incorporating MUSYA provisions in NFMA).

19. MUSYA further directs “that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” 16 U.S.C. § 528.

20. NFMA requires each Forest to prepare and revise a Land and Resource Management Plan (“Forest Plan”). 16 U.S.C. § 1604. A Forest Plan lays out broad guidelines to advance numerous goals and objectives, including to “insure consideration of the economic and

environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resource, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish....” *Id.* at (g)(3)(A). These plans contain desired conditions, objectives and guidance for project and activity decision making, but do not approve or execute projects and activities. The guidance in the Forest Plan is subject to change through plan amendment in site-specific or project-level planning, or through revision of the Forest Plan itself.

21. A Forest Plan is the governing land use plan for an individual National Forest. A Forest Plan is strategic in nature, and does not make commitments to selection or specifications of any particular project or daily activities. The Forest Plan also identifies standards and guidelines to govern specific activities subject to more detailed project-level or site-specific planning.

22. Project level planning occurs for a broad spectrum of projects and activities within the Forest Service system, including vegetation management and timber projects, mining plans of operation, ski area development and operations, special use management such as guiding and outfitting, and travel management. This more detailed site-specific planning includes analysis of on-the-ground management options and associated effects to the human environment for each specified option.

23. An example of project-level planning affecting Plaintiffs occurs in “travel planning” when the Forest implements the agency’s Travel Management Rule. See, “Travel Management; Designated Routes and Areas for Motor Vehicle Use.” 70 Fed.Reg. 68264-68291 (Nov. 9, 2005). The Travel Management Rule generally “requires designation of those roads, trails and areas that are open to motor vehicle use...and will prohibit the use of motor vehicles

off the designated system, as well as use of motor vehicles on routes and in areas that is not consistent with the designations.” *Id.* at 68264. The Decision reflects this type of project-level planning for the Rico West Dolores area.

24. NEPA represents “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. NEPA does not impose substantive requirements, but creates a series of “look before leaping” procedures which are designed to disclose and analyze potential effects of proposed federal actions. Central among these is the requirement to prepare a written environmental assessment or environmental impact statement (“EIS”) for public review and comment. The agency “shall ensure the professional integrity, including scientific integrity, of the discussions and analyses” in an EIS. 40 C.F.R. § 1502.24. NEPA’s protections of the “environment” refer to the “human environment” which “shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” 40 C.F.R. § 1508.14. Thus, the agency’s duty to analyze impacts does not end with impacts to the physical environment, because “[w]hen an [EIS] is prepared and economic or social and natural or physical environmental effects are interrelated, then the [EIS] will discuss all of these effects on the human environment.” *Id.* Among its numerous purposes, NEPA procedures are designed to foster informed agency decision making based upon meaningful public participation.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. The Project Area and Background.

25. The San Juan Forest includes about 1.8 million acres located in southwestern Colorado. The Rico West Dolores analysis area is located with the Forest’s Dolores Ranger District, and contains approximately 244,554 acres of National Forest system lands and 11,702

non-Forest Service lands (the “Area”).

26. The Area includes mesas, aspen stands, steep slopes of dense conifers, and snow-covered peaks. The area is bisected by Highway 145, which follows the Dolores River. The west side of the Area is bordered by private land and the Boggy-Glade travel management area, the north side includes a portion of the Lizard Head Wilderness, and the east side of the Area is the spine of the La Plata Mountains, and the Colorado Trail (a statewide non-motorized trail). Communities within and nearby the Area include Cortez, Dolores, Dove Creek, the Town of Rico, and Telluride.

27. The roads and trails in the Area developed along historic pathways originally created largely for mining or domestic livestock grazing. This network was expanded to include roads constructed to access timber sales in spruce, fir and aspen forest types.

28. Modern use of the Area has focused continuation of mining, livestock grazing, and timber, as well as in diverse forms of recreation. Like nearly all of western Colorado, the area includes popular big game hunting areas, with an assortment of seasons for different species and weapon types. Virtually all hunters rely on some form of motorized conveyance to gain access to their chosen hunting/camping area(s), if not as an aid to their hunting activity.

29. Motor vehicle travel on the National Forest System was long conducted on an “open unless designated closed” policy, which allowed for at least the legal possibility of cross-country travel. Despite this possibility, topography, vegetation and other factors caused vehicle riders to travel along the network of established roads and trails in the Area. These routes are depicted on various maps going back to the origins of the Forest.

30. More recently management of the San Juan National Forest was governed by the 1983 Forest Plan. Following that Plan, the Forest instituted various actions affecting travel

management, specifically including adoption of a 1994 Travel Management Map, and issuance of a 1999 Closure Order that restricted on-trail travel to those motorized uses permitted on the 1994 Map. These actions tended to formalize the historical use patterns and motorcycle travel limited to existing trails in the Area.

31. While travel occurred along routes in much of the Area, a trend toward more intensive travel management solidified with adoption of the agency-wide Forest Service Travel Management Rule on November 9, 2005. The Rule signified a shift to designation of roads, trails and areas for motorized vehicle travel. Outside the prescribed travel on these roads, trails, and area, motor vehicle travel would be prohibited.

32. Following adoption of the Travel Management Rule, the Forest undertook efforts to implement the Rule and adopt new travel management decisions. The Dolores Ranger District decided to complete three separate decisions to address each of it's identified "travel management landscapes," of which one was the Rico West Dolores Area.

33. A planning process occurred for the Area which included circulation of an Environmental Assessment under NEPA and issuance of a 2009 Decision Notice, which would have prohibited cross-country motorized travel and designated specific routes for motorized and non-motorized travel. Various parties appealed this Decision, and the reviewing officer recommended reversal, including on the grounds that a more rigorous Environmental Impact Statement should have been prepared. The Forest Supervisor in 2010 followed this recommendation, reversed the Decision and vacated the new trail designations, while issuing an interim order closing the Area to cross-country motorized travel.

34. One of the successful appellants to the aforementioned Decision, Backcountry Hunters and Anglers, Colorado Chapter, filed a lawsuit in 2011 asking the Court to declare the

2010 “decision” unlawful and/or issue an injunction prohibiting motorized use of 14 trails in the Rico West Dolores Area. See, Case No. 11-cv-3139-MSK-KLM (D. Colo.). An order on the merits was issued in that case on March 21, 2013, denying Petitioner’s claims and directing that judgment be entered in favor of the Forest Service. Backcountry Hunters and Anglers appealed their adverse judgment to the Tenth Circuit.

35. Following withdrawal of the 2009 Decision and during the pendency of the above-described lawsuit, the Forest decided to complete the long-pending revision of the San Juan Forest Plan. A Record of Decision for the Revised Forest Plan was published on September 13, 2013.

36. The Tenth Circuit ruled on the Backcountry appeal in an Order and Judgment signed by Judge Gorsuch on May 27, 2015, holding that Backcountry lacked standing, and remanding the matter to the district court with instructions to vacate the earlier judgment and dismiss the case for lack of jurisdiction. This Order acknowledged the effect of the 2010 “temporary” order and Forest Service intention to devise “a more permanent replacement policy” to govern motorized vehicle travel in the Area.

B. Chronology of the Travel Management Project.

37. The Rico West Dolores Travel Management Project represents the “more permanent replacement policy” to designate roads, trails and areas for motorized use in the Area. The Project was formally initiated in December 2014 with publication of a proposed action, which was subject to public comment until January 30, 2015. Plaintiffs submitted comments on the proposed action.

38. A Draft Environmental Impact Statement (“DEIS”) was released for public comment on May 6, 2016.

39. While evaluating comment on the DEIS, the Forest Service apparently determined that it would be helpful to clarify whether or how the agency would identify the “minimum road system” under 36 C.F.R. part 212, subpart A, for the Area. A Supplemental Draft Environmental Impact Statement (“SDEIS”) was published on July 7, 2017.

40. The DEIS and SDEIS outlined five (5) alternatives to be considered in detail. In general terms, Alternative A was the legally-required “no action” alternative intended to outline the pre-decisional existing condition. Alternative B was the “proposed action” which was described as the December 2014 proposed action “with refinements.” Alternative C would “reestablish motorcycle use on some, but not all, of the trails that would be closed to motorcycle use under Alternative B.” Alternative D would provide a motorcycle trail system similar to Alternative C but would reduce motorcycle riding and focus on a “semiprimitive nonmotorized recreation setting” in the Bear Creek drainage. Alternative E would be similar to Alternative D, but extend the “semiprimitive nonmotorized recreation setting” to North Calico Trail and connecting trails.

41. In terms of trail mileage for motorcycle use, the DEIS/SDEIS alternatives covered the following range:

Alternative	A	B	C	D	E
Miles Designated					
Open to Motorcycles	114	86	100	88	65

42. Another important component of the alternatives was seasonal timing restrictions, defining times during which trails would be open/closed to motorcycle travel. Under the “no action” Alternative A, there would be no timing restrictions. Under Alternative B, trails would be open for motorcycle travel from July 1 to September 8, and closed from September 9 to June 30. Under Alternatives C, D and E trails would be open for motorcycle travel from June 1 to

October 30, and closed from November 1 to May 30.

43. Approximately 1,100 letters, emails or phone logs were received in response to the DEIS and SDEIS. Plaintiffs submitted written comments.

44. A Draft Record of Decision (“Draft ROD”) and initial Final Environmental Impact Statement (“Initial FEIS”) were issued on November 14, 2017. The Draft ROD proposed adoption of Alternative B Modified. In broad terms, the Draft ROD proposed to identify a minimum road system, to create a new designation on 19 miles of trails in the Black Mesa area for motorized vehicles up to 62 inches in width, to designate 83 miles of trail for motorcycle use, and to impose seasonal restrictions whereby motorcycles would be allowed on designated trails from June 1 to October 30 and prohibited from November 1 to May 31.

45. Under applicable regulations, the Draft ROD was subject to a “predecisional administrative review” which allows specified forms of “objection” within 45 days.

46. Twenty (20) objections letters from 14 unique objectors were presented to the Draft ROD. These objections were considered by an Objection Reviewing Officer within the Forest Service Rocky Mountain Region office.

47. Extensive efforts were made in accordance with regulations allowing the Reviewing Officer to explore “resolution” of the objections, which included telephonic meetings on February 22, March 7 and March 16 of 2018, as well as the exchange of written proposals between some of the objectors and the Forest Service. A resolution was not reached.

48. Upon determining that a resolution to the objections would not be reached, the Reviewing Officer issued a formal written response to the objections dated April 4, 2018 (“Objection Response”).

49. The Objection Response constitutes the final administrative determination of the

Department of Agriculture. No further administrative review of the Decision from any other Forest Service or Department of Agriculture official is available.

50. Following the aforementioned Objection Response, the Dolores Ranger District issued a Final Record of Decision dated July 30, 2018 (“Final ROD”). The Final ROD tracked the Draft ROD, with two additional modifications. First, motorcycle use was prohibited on the entire East Fall Creek Trail, extending this closure to include a one-half mile section that had been proposed for continuing motorcycle use in the Draft ROD. Additionally, a dual designation for Forest Service Road 692A was added to allow for motorcycle use, contingent upon approval in a separate analysis of a new motorcycle trail named Spring Creek Extension that would connect to the end of Road 692A.

C. General Overview of Travel Plan Restrictions.

51. From Plaintiffs’ perspective, the Final ROD imposes a series of significant restrictions on motorcycle travel:

(a) motorcycle travel was prohibited on Winter, West Fall and East Fall Creek Trails, in the vicinity of the private Dunton Hot Springs Resort, which perhaps not coincidentally facilitates a non-motorized loop trail experience directly from the Resort property, in addition to the abundance of similar opportunity accessible by a short drive (or hike) to the Lizard Head Wilderness;

(b) Motorcycle travel was reduced by roughly 85 percent in the Bear Creek drainage as requested by special use interests and a few seasonal residents, leaving only a “pass through” connection between Grindstone and Gold Run Trails and along 1.72 miles near the middle of the Bear Creek Trail;

(c) Motorcycle trail connection to the Town of Rico was eliminated, through closure

of the Burnett Creek and Horse Creek Trails;

(d) Motorcycle travel was prohibited on Ryman Creek Trail, which was a desirable 5 mile trail segment providing important connectivity for riders in the Telluride area and to adjacent trail systems in the Hermosa area;

(e) Motorcycle travel was eliminated from the last remaining sections of the Spring Creek and Wildcat Trails;

(f) Motorcycle travel on designated trails can only occur from June 1 to October 30, and is prohibited from November 1 to May 31.

52. In broad terms, the Final ROD designates a total of 84 miles of trail for motorcycle use, down from 114 miles authorized for travel prior to the Decision. Aside from the arithmetic reduction of mileage, the changes greatly impact the connectivity, ability to ride loops, aesthetic experience, and safety for motorcycle riders in the Area.

**COUNT ONE: ARBITRARY AND CAPRICIOUS IMPOSITION
OF MOTORIZED TRAVEL RESTRICTIONS**

53. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

54. The APA allows an aggrieved party to seek review of final agency action, and empowers a reviewing court to “hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) unsupported by substantial evidence....” 5 U.S.C. § 706(2).

55. Relevant procedures and guidance pertaining to action like the Travel Management Project are further outlined in NEPA, NFMA, the Travel Management Rule, implementing regulations, and other applicable law.

56. The Final ROD and associated documents impose arbitrary, inconsistent or undocumented restrictions on motorized travel, which include, but are not necessarily limited to:

- (a) Closures to enhance elk habitat and/or hunter experience;
- (b) Closures to address watershed impacts or fisheries habitat;
- (c) Closures to improve wetlands habitat or fens;
- (d) Closures that are designed to, or have the plain effect of, imbuing private and/or specially permitted interests with unique benefit and economic advantage;
- (e) Seasonal restrictions on vehicle travel.

57. The Final ROD and associated documents impose additional closures based on misinterpretation of Forest Service obligations or short of statutory right, which include, but are not necessarily limited to, imposition of a nonexistent duty to procure access across private property and misinterpretation of and/or failure to defend real property interests of the public acquired through easements granting rights to the United States.

58. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

59. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

60. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

**COUNT TWO: LACK OF SITE-SPECIFIC ANALYSIS
TO SUPPORT TRAVEL RESTRICTIONS**

61. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

62. NFMA and its implementing regulations, including the Travel Management Rule, require the Forest Service to act in accordance with specified procedures and guiding principles in making management decisions affecting access to the National Forest System and the Area.

63. These procedures and guidance are further specified in the Travel Management Rule, and other applicable law which requires supportable findings on a variety of site-specific criteria in making road, trail and area designations.

64. Site-specific analysis is particularly important when changing long-established uses or interrelated activities as occur upon an area-wide transportation network. Imposing excessive or poorly-considered restrictions can have the effect of concentrating uses that threaten to exceed an area's carrying capacity, or otherwise create new impacts or new levels of impact in remaining open areas.

65. The Final ROD and Travel Plan impose arbitrary, inconsistent or undocumented restrictions on motorized travel, not supported by substantial evidence, or otherwise not in accordance with law.

66. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

67. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

68. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

**COUNT THREE: IMPROPER RELIANCE ON USER CONFLICT
TO JUSTIFY MOTORIZED TRAVEL RESTRICTIONS**

69. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

70. NEPA, NFMA and the Travel Management Rule outline various procedures and criteria that govern the designation of roads, trails, and areas for motorized vehicle travel in the National Forest System and the Area.

71. In particular, the aforementioned criteria include those laid out in 36 C.F.R. § 212.55, and require the “responsible official” to “consider effects on the following, with the objective of minimizing” various elements, including “[c]onflicts between motor vehicle use and existing or proposed recreational uses of National Forest System land or neighboring Federal lands.”

72. In acting upon these duties, Defendants improperly considered a vague or generalized sense of “user conflict” through which some Area visitor might have a preference for some abstract recreational opportunity.

73. Assuming “user conflict” can be a proper basis for motorized use designations, other subunits of the National Forest System have conducted scientific analysis of conflict, or otherwise attempted to analyze and address user conflict, in some fashion that would satisfy the APA standards and other legal requirements. Defendants did not attempt any such scientific analysis here.

74. Notwithstanding Defendants' deficient or nonexistent analysis, the Decision includes specific restrictions on motorized travel or exclusion of certain routes from motorized travel designations purportedly based on user conflict.

75. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

76. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

77. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT FOUR: IMPROPER RESTRICTION OF ACCESS TO RICO

78. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

79. The Town of Rico lies within the Area, and is an unincorporated "mountain town" that is home to a few year-round residents, a larger collection of seasonal occupants, and a handful of small retail businesses providing services that include gas, basic groceries, lodging, and restaurants.

80. Recreational visitors to the Area often visit the Town of Rico, out of curiosity, habit or necessity, depending on either planned or unplanned developments in their travels.

81. NEPA, NFMA and the Travel Management Rule outline various procedures and criteria that govern the designation of roads, trails, and areas for motorized vehicle travel in the National Forest System and the Area.

82. In particular, the aforementioned criteria include those laid out in 36 C.F.R. § 212.55, and require the “responsible official” to “consider effects on” various factors including public safety, provision of recreational opportunities, and access needs.

83. The applicable regulations further direct the responsible official consider “[c]onflicts among different classes of motor vehicle uses” and “[c]ompatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors” *Id.* at (b)(4) and (5). Specific criteria for designating roads require consideration of “[s]peed, volume, composition, and distribution of traffic on roads” and “[c]ompatibility of vehicle class with road geometry and road surfacing.” *Id.* at (c).

84. The Decision eliminates motorcycle trail connection to the Town of Rico.

85. Following the Decision, the only way to lawfully access the Town of Rico from the Area’s motorcycle trail network is to ride along one of several trails to Highway 145, and then ride at least five (5) miles along Highway 145 to Rico.

86. Highway 145 is a paved two lane highway, with a posted speed limit of at least 55 mph that is traveled by full size automobiles. It is not advisable, and in some instances could be unsafe and/or illegal, for off-road motorcycles to travel regularly or for meaningful distances along a route like Highway 145.

87. The Decision could actually cause redundant and unnecessary motorcycle travel within the Town of Rico, as riders attempt to travel the road system to the Burnett Creek trailhead, only to find that route is closed and be forced to backtrack through town and

eventually settle on the above-described egress from Rico via Highway 145.

88. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

89. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

90. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT FIVE: IMPROPER IDENTIFICATION OF A MINIMUM ROAD SYSTEM

91. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

92. On January 12, 2001, a Final Rule was published addressing identification of a "minimum road system" for units of the National Forest System. 66 Fed.Reg. 3206 (Jan. 12, 2001). The minimum road system regulations, codified at 36 C.F.R. part 212, subpart A, were not produced at the same time or in concert with the 2005 Travel Management Rule.

93. The Project did not originally include analysis of a minimum road system, but sometime after release of the DEIS the Forest Service apparently decided that consideration of a minimum road system was necessary and this component was added to the SDEIS.

94. As a result of this belated approach, or other oversight, the Forest Service misinterpreted applicable regulation and/or failed to properly include the public or follow

governing procedures in identifying a minimum road system.

95. The Final ROD and Decision identify a minimum road system.

96. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

97. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

98. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT SIX: FAILURE TO ADEQUATELY DISCLOSE AND ANALYZE ROAD DECOMMISSIONING ACTIONS

99. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

100. The Final ROD and Decision documents refer to "an implementation program that is progressive in nature, ranging from signing to recontouring, ripping, seeding, and placing physical barriers." FEIS at 15, 53. Specific routes are listed to receive some version of this treatment, which is often referred to as "decommissioning."

101. Under NEPA and applicable regulations, as well as internal Forest Service determinations, ground-disturbing decommissioning actions must undergo site-specific NEPA analysis.

102. The Final ROD and Project documents do not contain site-specific analysis for road/trail decommissioning.

103. Decommissioned routes, depending on the decommissioning techniques employed, can range from difficult to nearly impossible upon which to subsequently resume travel. Techniques such as “ripping,” “recontouring” and “reseeding” involve physically removing the road/trail prism and/or altering the landscape to modify erosion, promote revegetation, or prevent recreation of access along the prior route.

104. Routes that are decommissioned, including during the pendency of this action, would likely not be viable candidates for further analysis or reconsideration of their designation status.

105. Defendants’ actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

106. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants’ actions addressed in this claim for relief.

107. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT SEVEN: FAILURE TO ADEQUATELY RESPOND TO PUBLIC COMMENT

108. Plaintiffs hereby incorporate by reference each statement and allegation

previously made.

109. NEPA and applicable regulations require agencies to respond to public comments submitted on a DEIS and proposed action. In particular, “[a]n agency preparing a final [EIS] shall assess and consider comments...and shall respond by one or more of the means listed below, stating its response in the final statement.” 40 CFR § 1503.4(a). There are five “possible responses” described, all of which necessitate identification of both the particular comment, as well as the specified response. *Id.* at (1)-(5). The regulations further provide “[a]ll substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.” *Id.* at (b).

110. Defendants attempt at responding to comments here occurred in Appendix K to the FEIS. Appendix K does not comply with the above-cited regulations.

111. Defendants’ actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

112. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants’ actions addressed in this claim for relief.

113. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT EIGHT: ACTIONS INCONSISTENT WITH THE SAN JUAN FOREST PLAN

114. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

115. Under NFMA, Forest Service actions must be consistent with the governing Forest Plan. 16 U.S.C. § 1604(i).

116. The governing 2013 San Juan Forest Plan contains direction relevant to the Project. The Plan contemplates shared use of recreational trails “based on mutual courtesy and on a strong stewardship ethic that is primarily self-enforced and maintained by individuals and user groups.” FEIS at 183 (quoting Forest Plan desired condition). This directive “points toward collaboration between motorized, mechanized and nonmotorized user groups....” *Id.*

117. The Final ROD and Decision documents do not explain how elimination of one form of user is consistent with these concepts and directives.

118. The Forest Plan also contains specific direction for elk habitat and management. In general, a desired condition for all terrestrial wildlife states “[e]cosystems and habitat conditions for terrestrial wildlife species sensitive to human disturbance are maintained.” Forest Plan Desired Condition 2.3.9. Similarly, guidelines for ungulates state that “to provide for healthy ungulate populations capable of meeting state populations objectives, anthropomorphic activity and improvements across the planning area should be designed to maintain and continue to provide effective habitat components that support critical life functions.” Forest Plan Guideline 2.3.63; see also, Guideline 2.3.62 (projects or activities “should be designed and conducted in a manner that preserves and does not reduce habitat effectiveness”).

119. Rather than “maintain” or “continue to provide” or “not reduce” habitat, the Decision tries to enhance or exceed relevant metrics for elk management.

120. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

121. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

122. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT NINE: VIOLATION OF THE APA

123. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

124. Defendants' failure(s) described above to comply with NEPA, NFMA, regulations and the APA are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; short of statutory right; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

125. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

126. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal

interests arising from and associated with their use and enjoyment of the Area as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

REQUEST FOR RELIEF

Wherefore, having alleged the above-described violations of law, Plaintiffs respectfully request judgment in their favor on each and every claim alleged herein, and request that the Court rule, adjudge, and grant relief as follows:

1. Declare unlawful and set aside the Final ROD and/or Decision;
2. Remand the applicable matters inadequately addressed in the ROD and Decision for further analysis and action in accordance with applicable law;
3. Award the Plaintiffs their reasonable fees, costs, and expenses of litigation as allowed by the Equal Access to Justice Act, 28 U.S.C. § 241 *et seq.* and other applicable law or rule of court; and
4. Grant such further and additional relief as the Court deems just and proper.

Dated: September 14, 2018.

Respectfully submitted,

/s/ Paul A. Turcke
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