



March 9, 2020

Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
Attn: Docket No. CEQ-2019-0003

Re: Comments on CEQ/NEP procedures revision (CEQ-2019-0003)

Dear Chairwoman Neumayr:

The above Organizations welcome the opportunity to voice support for the revisions to the CEQ NEPA procedures guidance ("The Proposal"), which the Organizations believe would be a major step forward in the effective and efficient management of many challenges. Many of the current regulations and concepts are simply out of date. The Organizations were thrilled to have participated in the public meeting on this issue that was held February 11, 2020 in Denver, Colorado. In this meeting, those opposed to the Proposal brought a circus like atmosphere and tears based solely on social opposition to most projects and very little substantive input on how to improve the NEPA process. Rather than discuss substantive concerns or reforms much of the opposition simply sought to continue to use NEPA as a barrier to management. Those supporting the Proposal brought substantive reform recommendations based on experiences with the NEPA process and its burdensome requirements. The Organizations wish to continue the substantive discussions around how to efficiently and effectively manage and protect resources with these comments.

1. Who we are.

Prior to addressing the specific concerns, our Organizations have regarding the NEPA process to date and streamlining of the process moving forward, we believe a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization of approximately 250,000 registered OHV users in Colorado seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations. The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to ensure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands. Colorado Snowmobile Association ("CSA") was founded in 1970 to unite the more than 30,000 winter motorized recreationists across the state to enjoy their passion. CSA has also become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling through work with Federal and state land management agencies and local, state and federal legislators telling the truth about our sport. The Idaho Recreation Council ("IRC") is a recognized, statewide, collaboration of Idaho recreation enthusiasts and others that will identify and work together on recreation issues in cooperation with land managers, legislators and the public to ensure a positive future for responsible outdoor recreation access for everyone, now and into the future. For purposes of this correspondence TPA, COHVCO, CSA, and IRC will be referred to as "The Organizations". The Organizations have actively participated in NEPA projects ranging from localized efforts to maintain or reroute portions of trails to large regional or national efforts, such as: The Desert Renewable Energy Efforts in California; Sage Grouse management efforts in the Rocky Mountains; recent revisions of the new USFS planning rule; development and revocation of the BLM 2.0 Planning Rule; and development of the USFS winter travel rule.

The Organizations have also partnered with the USFS/BLM/other federal managers and state level parks and recreation programs (generally referred to as “land managers” for purposes of these comments) for decades in addressing trail related maintenance issues of all sizes through the voluntary registration fees for OHVs and OSVs that have been adopted in the several states and often this maintenance involves some level of NEPA. These registration programs started around grooming of winter trails for OSV recreation in the 1970’s and remain the only source of funding for winter grooming of routes generally on USFS lands. Seeing the success of these programs the OHV community soon adopted similar voluntary registration programs in the 1980s. These are some of the longest, largest and strongest partnerships in place with land managers. As an example, the Colorado Parks and Wildlife motorized program provides between \$5 and \$6 million in direct funding to projects that results in almost 50 maintenance crews for summer and winter trails and extensive project specific funding. The California OHMVR program easily provides five times this amount of funding to the land manager offices in California. The State of Idaho program also provides land managers more than \$1 for every resident of the state to support trail maintenance. Each of these State level partnerships is leveraged with countless volunteer hours and support, in a huge range of roles from volunteer labor on projects, to engineers volunteering time to design bridges and heavy equipment businesses working for the cost of fuel from the programs and many of the programs funded would simply cease to exist without this volunteer support. This volunteer support which multiplies the impact of this funding to have an impact on the ground of spending several times more money that comes from these programs. This intangible benefit is a critical component of the success of these programs and protecting this intangible would be a major benefit of NEPA reform.

These programs are often becoming the **only** funding that is available for recreational maintenance efforts on many districts and as a result these programs are being asked to do more and more work with a somewhat consistent funding stream. As a result, the efficiency of efforts becoming a larger and larger priority every day in order to continue to provide basic access to all users. The Organizations believe that the Proposal would be a step towards achieving this efficiency and strengthening the partnerships as the close relationship of these partners has resulted in a sensitivity to the less efficient portions of the NEPA process. Too often any projects

involving motorized access are subjected to unusually high levels of NEPA analysis by overly cautious land managers. While the Organizations understand the reason for this management barrier, this barrier is highly frustrating and inefficient, even when funding for these projects is available.

2. Executive Summary.

The Organizations vigorously support the proposal as the NEPA process is one of the largest barriers faced by the motorized recreational community seeking opportunities on public lands. As we have noted previously the motorized community has one of the longest and strongest partnerships with USFS and BLM, which provides a wide range of direct funding for improvements to recreational facilities and opportunities and the subsequent maintenance of those facilities on public lands. While these comments are not exhaustive comments as such would simply be too long, we do want to highlight a few specific provisions of interest. The Organizations would also like to raise two additional concepts that would significantly reduce NEPA costs without further amendment of NEPA regulations.

The Organizations submit that a more complete understanding of what is driving NEPA analysis at the landscape level is needed and right now specific information on this issue is sparse. A more complete understanding of why NEPA is being conducted could significantly assist in reducing costs. It has been our experience that significant portions of NEPA analysis, especially larger projects, are being driven by litigation settlements. Often land managers are perceiving a cost savings from reducing litigation costs by settling claims with an agreement to conduct NEPA analysis on the issue. We are aware of almost a dozen forest level projects that are undertaking NEPA for this reason and this NEPA has proven to be some of the longest and costliest NEPA we have been involved with. We are unsure of how common this situation is, but it could be very extensive and understanding more completely why NEPA is being undertaken would help reduce costs and delays, especially if attempts to reduce litigation costs are increasing subsequent NEPA costs to levels that exceed original litigation costs. This information could also identify NEPA drivers that simply cannot be discussed at this time.

NEPA updates are badly needed but cannot occur in isolation of other overlapping regulatory requirements that drive the burdensome costs and burdens of the NEPA process. A major issue negatively impacting NEPA efficiency and driving costs is the horribly outdated nature of the Executive Orders governing the use of off-highway motor vehicles on public lands (EO 11644 and 11989). While the concepts mandated in these EO, such as minimization of impacts, may have been relevant in 1972 when the original Executive Orders were issued, these concepts are entirely redundant of subsequent statutory planning requirements and have been completed in the 50 years since the issuance of these orders. In addition to these standards being entirely redundant in many cases, the EO are also highly subjective in their standards, making this relationship a hotbed of litigation against the agency. Issuance of updated EO reducing the confusion of basic concepts could result in similar levels of cost savings as could be achieved with full implementation of the Proposal. The relationship of the TMR EO, FLPMA and other factors is simply staggeringly complex and highly subjective to ever be made an efficient and effective management model. Reform of these EO would make NEPA more efficient and avoid extensive analysis of minor impacts such as the use of electric bicycles on public lands. The Organizations would struggle to develop a management model that was less efficient than the current relationship between FLPMA, the EO and NEPA and this simply cannot be overlooked.

The delays and increased costs of NEPA analysis are often providing a significant barrier to the economic existence of many small communities who are now relying on recreational activity on public lands for their survival. The recent conclusions of the Department of Commerce analysis found that recreational activity contributed more than \$371 billion to the economy (or more than 2% of the US economy) and contributed hundreds of thousands of good paying jobs to communities throughout the country. The Dept of Commerce found that motorized recreation, the usages that are most often the most delayed in NEPA analysis, contributed more than 50% of this economic contribution. Delays in NEPA analysis of even a day result in significant negative impacts to local economies that simply will never be recovered as recreation days that are lost due to access issues cannot be provided for again in the future. The economic contributions from

a Labor Day, 4th of July Weekend or Memorial Day weekend to local communities relying on multiple use recreation to survive simply cannot be replaced. Time has simply moved on.

3. Creation of a NEPA origin tracking process would provide critically needed information.

Prior to addressing our substantive concerns and experiences around the NEPA process, the Organizations would submit that a more complete understanding of what is driving the NEPA process would be useful information in discussions around NEPA reform. It has been the Organizations experience that a growing portion of large NEPA based projects on public lands is the result of settlement of lawsuits, despite the reasonable level of success that land managers have in defending claims in court. This would be exemplified by the development of the new USFS winter travel rule, all winter travel planning in the five California Forests, the Pike/San Isabel litigation in Colorado and far too many more projects to identify. In our participation in NEPA subsequent to the settlement, many land managers simply appear to accept the conclusion NEPA analysis must be done at some point as they are going to lose court challenges and that avoiding litigation will somehow reduce costs. The Organizations are not sure this is accurate, as large scale NEPA analysis can easily consume millions of dollars in direct costs and years of employee time in the preparation of this document. This level of costs can rapidly outweigh any litigation cost savings that might have been achieved in the short run.

The Organizations submit that development of a tracking system similar to the process that is now in place to track the allocation of litigation funding being recovered under the Equal Access to Justice Act could provide a significant amount of valuable information. The costs associated with this type of tracking could be minimal as this information could be obtained by simply adding a tracking field to this process to allow the tracking of NEPA related costs that result from these lawsuits. Right now, the Organizations can speak to general beliefs of many land managers that the belief that NEPA is destined to happen after litigation drives significant amounts of NEPA costs and this issue is a cost that is rapidly expanding. Creating a tracking process for these costs would allow for a much more detailed review of NEPA costs and inefficiencies moving forward.

4a. Executive Orders 11644 & 11989 mandating travel management processes on public lands are a major barrier to effective and efficient NEPA and are simply out of date.

Historically one of the largest barriers to cost effective and efficient NEPA analysis of recreational uses of public lands has been the Presidential Executive Orders mandating the travel management process. While not specifically consistent within the scope of the Proposal, the management inefficiencies and delays directly align with the intent of §1507.3(c) of the Proposal, which seeks to avoid agency actions that require NEPA review of projects that are not major federal actions. Conceptually NEPA, Federal Lands Policy and Management Act (“FLPMA”) and the Travel Management EO are intertwined to such a level as attempting to address either in isolation would render that effort almost meaningless on the ground. The original Executive Order creating the Travel Management concept was issued by President Richard Nixon in 1972 (EO 11644) and was only substantively updated by President Carter in 1977(EO 11989) (hereinafter referred to as “the EO”). These EO required land managers for identify areas as open, closed or restricted for the use of motorized off-highway vehicles and minimize impacts from usage of these vehicles in a manner consistent with multiple use planning. Land managers have updated internal requirements around Travel Management but even most recent of those was 2005.

The parallels of the travel management concept and NEPA, each now being almost 50 years ago speaks volumes to the need for periodic review of regulations to ensure basic relevance of these orders and processes to issues on the ground. The cumulative impacts of the EO exponentially increased when NEPA regulations and subsequent Congressional actions are combined on a single issue or project. Historically the confluence of three major efforts, NEPA, the EO and FLPMA has been one of the largest barriers to effective efficient land management involving questions around multiple use access. This relationship is simply staggeringly complex and highly subjective at best. Addressing NEPA in isolation of these other factors would avoid a significant barrier to streamlining of entire process on the ground moving forward as the relationship of these three issues is primed to become a major management issue as land managers embark on a second round of FLPMA planning.

4b. Artificial elevation of TM as management priority negatively impacts management effectiveness and efficiency

Prior to addressing the specific challenges from the relationship of the EO, FLPMA and NEPA the Organizations submit an unintended impact of the EO must be recognized. When competing management challenges are compared in an arm's length manner, it is clear that the EO has resulted in the artificial elevation of travel management concepts to priority levels that simply cannot be justified based on possible impacts when compared to management priorities for other issues. This has resulted in the allocation of scarce management resources that simply is not warranted and this recognition is critical as land managers are consistently addressing an almost infinite list of changes to public lands with a limited source of funding. The EO consistently add numerous artificial concepts in the general management process and routinely causes projects that are not major federal actions, such as building a few miles of trail that is 36 inches wide on federal land, to be subjected to years of NEPA simply because the route may be used by a motorized off highway vehicle. Maintenance analysis can take decades instead of occurring on an ongoing basis.

The negative environmental impacts from the artificial elevation of the travel management concept would be exemplified by conducting of extensive NEPA planning to address trails on a forest or ranger district where tree mortality has exceeded 90%. This is comically inefficient management as there can be no rational argument that planning for roads and trails should be a higher priority in this situation. Despite the lack of rational basis for the elevation of travel management often pressure is applied to move forward with minimization of impacts from roads and trails by those who are totally opposed to this usage. In addition to the hot bed of litigation against the agencies due to the highly subjective nature of the EO standards, the lack of clarity between these standards results in decisions taken to address issues impacting being delayed for years in the NEPA process. Rather than moving forward with funding that might be available almost immediately, federal land managers are forced to enter into lengthy NEPA planning efforts in order to explain the decision being made.

A second example of the negative impacts to efficiency and costs from artificial elevation of travel management issues as a result of these executive orders would be the significant conflicts that are surrounding the use of electric bicycles (E-bikes) on public lands. The Organizations are aware of the significant amounts of time and resources being devoted to this issue by land managers, in an effort to provide flexibility in management to allow electric bicycles on more trails. Satisfaction of the EO standards is a major barrier to the reasonable resolution of this issue as e-bikes are by definition a motorized off-highway vehicle under the EO. This immediately triggers large amounts of NEPA analysis for this question. With the significant threats facing land management, such as poor forest health and catastrophic wildfire, there can be no reasonable argument that e-bike management is of sufficient level to warrant allocation of significant resources to this issue. Despite rational thoughts to the contrary, this issue appears to be another example of the confluence of NEPA, the EO and FLPMA resulting in huge amounts of analysis of a minor management issue.

4c. The EO, NEPA and FLPMA are intertwined for purposes of management efficiency

In isolation the mere age and highly subjective nature of many of the standards in the EO is a nominal issue but the age becomes more problematic when subsequent Congressional actions regarding management of public lands is integrated into the planning process. While NEPA predates the EO, the scope of NEPA significantly expanded in 1976 with the passage of FLPMA which has guided the management of public lands since its enactment. FLPMA required the coordinated planning of goals and objectives for particular areas on public lands, including the density or intensity of development allowed in particular planning designations. FLPMA analysis consistency identifies the use or prohibition of motor vehicles and the intensity of usages allowed in particular areas and applies the basic open, closed, restricted concepts of TMR at a far more detailed level. As a result of the FLPMA planning process, the EO are almost entirely redundant with FLPMA requirements but are often viewed by land managers in isolation for NEPA purposes. The EO introduced the “minimization criteria” before forest planning under FLPMA was really even a concept and the relationship of NEPA, the EO and FLPMA was often of minimal concern in the first round of planning documents adopted by land managers in the 1980’s. The concern

for this relationship has expanded as NEPA analysis expanded in scope and detail of analysis. The age and overlap of the EO with first round forest plans have become a hot bed for litigation challenging the end result of any NEPA process. Often the redundancy of the EO and FLPMA and highly subjective nature of standards make full documentation under NEPA a long and drawn out process that has minimal impacts or benefits on the ground. Minimization criteria in the EO would be one example of the redundancy that has resulted from these orders not being updated to reflect actions by Congress subsequent to the issuance of these orders, such as FLPMA.

Since completing the first round of forest level plans, the significant inefficiencies result from the diversity of paths taken by land managers in complying with these requirements as two general models for addressing minimization issues were utilized. Some planning areas addressed the EO minimization at the landscape level and developed landscape level plans as part of their first round of FLPMA planning with NEPA at the landscape. Other forests addressed the EO minimization with site specific NEPA planning efforts on an “as needed” basis. The subsequent effectiveness of both models is impacted by the high levels of employee turnover within federal agencies and often poor retention of planning records and evolution of NEPA analysis. While one would hope that historical efforts to reconcile these separate standards would have resolved minimization issues, that simply is not accurate as most forests are now starting to move forward with the development of a second round of landscape level plans under FLPMA. This means that minimization/FLPMA conflicts will again come to the forefront in terms of inefficiency and increased costs in NEPA.

The Organizations believe two examples of the improper application of the EO will clarify both the complete inefficiency of this model and the basic inequity to users. The Sawtooth NF in Idaho completed its forest plan revision, with extensive NEPA analysis in 2012 and identified the Northern portion of the Fairfield Ranger District as a future expansion area for snowmobile usage. Historically, this area had been elk winter range but the planners had concluded the elk no longer used the area for a variety of reasons unrelated to recreational activity. Local planners moved forward with localized planning finalized in 2018. After NEPA analysis and minimization discussions were completed at the local level, and all issues addressed in the Forest Plan were reviewed again, the expansion area of the Northern Fairfield RD actually **lost** snowmobile

opportunities in the sit specific efforts. Not only is this type of management simply inefficient it came to a result that was simply unjust and alienated many users of the area.

When managers who chose to move forward with localized planning are not able to document minimization of these plans at the forest level further NEPA analysis of the relationship between these three components again is undertaken. This would be exemplified on the recent litigation surrounding the Pike/San Isabel (“PSI”) National Forest in Colorado. The PSI was sued in 2010 and that litigation was settled in 2016 due to the fact managers could not document the organization of their site-specific travel planning process and how these highly subjective standards were satisfied long ago. As a result, a forest level travel plan was to be developed and the minimization criteria have become a major hurdle in that process, which alone raises concern on the conflict due to the fact that the PSI Forest Plan was completed almost a decade after the issuance of the Executive Orders and passage of FLPMA. There can be no rational argument made that the forest plan did not comply with these requirements, but since managers are not able to justify the decisions made more than 3 decades ago, planning is again brought to the forefront.

The PSI litigation and subsequent settlement provides for another opportunity for redundant and burdensome planning requirements as the PSI is planning to update their Forest Plan immediately after the issuance of the Forest level travel decision. As part of the development of the second Forest Plan, the minimization criteria must again be addressed due to forest management goals objectives changing. Essentially the PSI will have to comply with the minimization criteria in the Executive Orders, create a forest plan and re-minimize under the new forest plan criteria. This is the pinnacle of redundant and ineffective governmental process as decades of planning efforts, millions in resources which will improve not a single acre of land on the forest or the growing maintenance backlog of facilities on the forest. The process is simply too complex and highly subjective in its process which results in horrible inefficiencies.

4d. The overlap of the EO and planning will continue to be a major barrier until resolved.

The inefficiency experienced in the first round of forest planning from the overlap of the EO and FLPMA concepts is primed to again consume vast resources and continue to barricade the

efficient and effective management of public lands. The continued conflict between these standards will again come to the forefront as many field offices and forests now moving to update forest level planning document under FLPMA. With these efforts, there is now significant pressure being applied for managers to start from scratch on minimization questions, even when there is a solid paper trail in place to explain the process to date on the forest. PSI will have just finished landscape travel plan per settlement and then moving into forest plan revision under round 2 of FLPMA.

The Organizations submit that this horribly inefficient model for management and NEPA analysis will continue to be an issue until the conflict and highly subjective nature of standards are resolved in some manner. The Organizations submit that updating the EO to reflect the current management situation would be a major step in resolving the conflict and making NEPA far more effective and efficient on the ground.

4e. The EO and OSV travel.

The relationship of the EO, FLPMA planning and minimization has taken such a diverse path that it would require a small book to explain this relationship with any detail. However, this is another example of how the EO age, subjectivity and redundancy are resulting in a horribly inefficient utilization of resources and delaying improvement of conditions on the ground. This example is provided in the recent elevation of the entire winter travel management process for over the snow vehicles (“OSV”) travel mandated by court decision against the USFS in Idaho against the winter travel rule generally. This has resulted in years of rulemaking for the new rule and volumes of associated NEPA analysis for the rule and now has moved to each forest reviewing their winter travel plans. This will take many more years of NEPA analysis and effort to resolve an issue most thought was settled.

In addition to the challenge against the winter travel rule generally, federal court challenges to winter travel decisions in 5 forests in California were brought and settled as well. This California settlement occurred despite the successful litigation of similar claims to the federal court claims by California State Parks under the California SEQRA process. Simply the length of time involved in the federal court challenge and settlement against the 5 forests in California is staggering. The

only thing more staggering is the amount of resources and time that has been directed to the NEPA efforts subsequent to the settlement of these issues. Claims were filed against the USFS were originally filed in 2011, settled in 2017 with an agreement that a complete forest level NEPA analysis would be performed on each forest. Not a single forest has completed a travel plan and related NEPA at this time and realistically it could be years before any winter travel NEPA process was completed. This would be another example of where the EO could be refined and updated in order to obtain significant new efficiency in the NEPA process and avoid subsequent Court challenges moving forward. Benefits would be almost immediate.

Prior to recent federal court actions, winter travel management has already occurred on overwhelming portion of forests with snow and again the planning model to achieve prior OSV minimization and planning was highly divergent on forests throughout the country. Some forests never got snow; others only received snow on a small portion of the forest while others received significant snow across the forest making this variation a sound management policy. While there was not a national policy or other national action, the diversity of planning made a lot of sense on the ground due to the highly variable nature of weather and snowfall. Many forests effectively engaged a diverse range of interests and concerns in the development of snowmobile plans for areas and these areas have been effectively managed for many decades. The successful and effective management of OSV issues is again an issue as much of this planning occurred several decades ago and most decision makers have retired and documentation has been lost. The conflict and confusion of existing planning under FLPMA and the Executive Orders is again coming to the forefront. The process is simply too complex and subjective.

The conflict between the EO, FLPMA and the age of forest plans has resulted in widespread litigation of existing snowmobile planning, as demonstrated by: recent litigation against several forests in California around their winter grooming programs; the challenge to the entire winter planning process brought in Idaho courts; and subsequent challenges to forests that have moved forward under the terms of the settlement agreements. Now planners are being forced to return to an issue most offices thought were settled and defend decisions that have been effectively managing issues for decades as a result of litigation being brought. The conflict and confusion between the Executive Orders and forest planning requirements has resulted in land managers

poorly defending winter travel decisions. Winter travel is an issue that was resolved under FLPMA planning without objection from those now challenging these decisions many decades later, but must be re-reviewed to ensure impacts have been minimized as required under Executive Orders. Conflict between FLPMA planning and the Executive Orders is again raised as a major planning concern by those seeking to restrict usage and public access to infrastructure.¹

The Organizations encounter the conflict and confusion that results from the conflict between the outdated Executive Orders and existing FLPMA planning which has complied with NEPA on an almost daily basis. This conflict and confusion slow the effective engagement of partners to improve recreational infrastructure on public lands and reduces economic benefits to local communities, both of which were clearly identified in President Trump's EO 13807. Again, this type of ongoing litigation and fighting and resulting NEPA can only be resolved with the updating of the EO. The process is simply too complex and subjective to be efficient or responsive to actual management issues on the ground.

5. A “cooling off” period after conclusion of site specific NEPA under §1500.3(b) would avoid overlapping statutory review processes and bad faith behavior in the NEPA process.

The Organizations vigorously support the intent of proposed revision of §1500.3(b) is to reinforce that parties may not advance claims in overlapping statutory review processes based on issues they did not raise during the public comment period of a NEPA process.² For the Organizations this direction is similar to the proposed revisions to §1501.7. Prior to addressing the challenges, the Organizations have experienced with this relationship, the Organizations must note that the availability of multiple avenues to remedy some interests in the NEPA process and single avenue of NEPA for the remedy of other claims is patently unfair. While certain interests can always fall back to emergency ESA listings to challenge NEPA determinations the reverse remedy is not available. Parties cannot emergency petition the USFWS to delist a species that has negatively impacted or delayed a NEPA process as delisting a species is functionally impossible. NEPA is the

¹ This conflict is again exemplified by the following guidance documents from those opposing multiple usage: <https://winterwildlands.org/wp-content/uploads/2015/06/BMP-Final.pdf>

² See, Proposal at pg. 40

only avenue to address major concerns for certain interests, such as economic impacts to interests. There is no alternative to NEPA for these concerns and these issues most generally are being advanced by those groups seeking to utilize a resource or develop an opportunity. The Department of Commerce simply does not provide any remedy to address the inaccurate assessment of economic contributions in a NEPA analysis. This is another situation where the relationship of NEPA analysis and other review process results in significant delay in a final decision and significant increases in costs from the process for only certain groups or interests.

Generally, our experiences in the NEPA process have been significantly impacted by the relationship of the NEPA process and the Endangered Species Act. While almost every party to a NEPA process approach this in a good faith manner, this good faith effort is not uniformly the standard. Rather than meaningfully participating in the NEPA process, these groups are not involved at all in the NEPA process or fail to provide information that they believe to be critical to the species of possible concern that happens to only be present in the area that is under site specific NEPA analysis. When the NEPA process is nearing completion, these groups frequently submit “emergency” petitions to the US Fish and Wildlife Service seeking protection of a species that only inhabits that NEPA analysis area. The Organizations must note the conflicting nature of the position being taken by those submitting the “emergency” petition, as any assertion of an emergency would logically drive these interests to the most immediate process able to address the issue, which one would think would be involvement in the NEPA process. While this makes logical sense, it is simply not the case on the ground. Even though NEPA has been completed, parties to the NEPA action must now wait until USFWS has completed review of the emergency ESA petition. At best this can be a significant delay in the project and at worst a positive finding on the ESA petition could cause the entire NEPA process to be started over.

This is a tactic most commonly seen on smaller scale NEPA analysis, such as site-specific plans rather than a tactic used at the landscape. Most commonly emergency petitions to USFWS are used by those opposed to a NEPA analysis to slow or stop site specific NEPA. In addition to failing to meaningfully involve in the NEPA to address “emergency” concerns, often the emergency

petitions are based on concerns have been previously declined by the USFWS. This simply is approaching the NEPA analysis and the emergency provisions of the ESA in bad faith and consistently results in significant delays and increased expenses to those involved in the NEPA process. The Organizations submit that the section 7 review in NEPA is provided for a reason and that reason would clearly include the possibility of a species worthy of ESA protection being in the analysis area. If groups choose not to meaningfully participate in the Section 7 process, they should not be then allowed to claim an emergency basis for a possible species listing.

The Organizations submit that some type of mandatory cooling off period after the completion of a NEPA analysis for emergency petitions to USFWS for the same planning area should be instituted to avoid this type of situation. Groups should not be allowed to approach a NEPA process in bad faith and then benefit from their bad faith approach to the subsequent emergency USFWS process. A cooling off period would prohibit this type of behavior and allow all other parties to the NEPA action, who participated in good faith, to reap the benefits of their good faith participation in the NEPA process and provide basic equity to interests that have no other avenue to remedy a concern than the NEPA process.

6. Economic analysis is a critical component of the NEPA analysis and must be meaningfully discussed on any major project under §1502.10.

The delays and increased costs of NEPA analysis are often providing a significant barrier to the economic existence of many small communities who are now relying on recreational activity on public lands for their basic survival. With the importance of public lands to the basic economic survival of many small communities, the importance of an accurate and meaningful economic analysis of all projects cannot be overstated. The Organizations are concerned that any effort to streamline NEPA with a reduction of economic analysis would exacerbate the historical impacts that have resulted from inaccurate analysis of projects or the failure to completely analyze the cumulative impact to communities from layers of burden slowly being added over time. The Organizations believe that any NEPA analysis should be targeting how to reverse the long-term

trend on the analysis of this factor rather than increasing risk of negative impacts to communities from poor analysis of this issue.

Allowing a reduced level of economic analysis in NEPA would also fail to recognize that there have recently become available extensive new resources for the analysis of economic impacts to communities from recreation in a very rapid manner, such as the Dept. of Commerce research and new data being compiled by the BLM with much higher levels of detail. This information has taken years of effort and significant funding to develop and the Organizations submit that we would like to see that information used rather than overlooked in an attempt to create efficiency. The availability of this information should allow NEPA to both become efficient and accurate as credible data is now accessible on this issue, rather than having to be developed on a case by case basis.

The recent conclusions of the Department of Commerce analysis found that recreational activity contributed more than \$371 billion to the United States economy (or more than 2% of the US economy) and contributed hundreds of thousands of good paying jobs to communities throughout the country. The Dept. of Commerce found that motorized recreation, the usages that are most often the most delayed in NEPA analysis, accounted for more than 50% of this economic contribution. Delays in NEPA analysis of even a day result in significant negative impacts to local economies that simply will never be recovered as recreation days that are lost due to access issues cannot be provided for again in the future. There is only one Labor Day weekend, one July 4th weekend and one Memorial Day every year and if these opportunities are missed due to project delays, these economic contributions cannot be recovered later. Time has simply moved on.

The Organizations are very concerned about any removal or reduction of the requirements for economic analysis around the impacts from projects that are the basis of NEPA analysis. Previously, the failures of accurate economic analysis in the past to significant closures of resources for a wide range of activities. Often these closures or restrictions are the result of

inaccurate economic analysis of the proposals possible impacts or the failure to accurately understand the cumulative impacts of multiple layers of restrictions and regulation. The failures of economic analysis are exemplified by recent planning efforts that found recreational users traveling more than 50 miles to recreate on several field offices would only spend \$10 per day. Such an assertion is comical given this cost is insufficient to purchase gas to travel to the location and back and failed to take into account any spending that occurred on the planning area after arriving. All comparative analysis estimated the average users spent \$100 and \$200 per day to recreate in these areas. This is a good example of why further discussion of data and resources available is critically necessary, as this type of analysis would allow major closures that simply are not accurately reflected.

The Organizations are also concerned about the assertions in the Proposal that NEPA actions might not have an economic impact. Our concerns about this position are minimal when projects are being pursued under a CE, but become more significant with higher levels of analysis. If there is a conclusion that there are no economic impacts from a NEPA proposal under an EA or EIS, the Organizations submit that how this conclusion was reached **must** be discussed in great detail as this is an indication that there has been a failure of analysis of the project rather than actual lack of economic impacts from the project.

It has been our experience that any NEPA analysis that asserts there are no economic impacts from a project at best fails to understand the “no action” alternative. Too often the benefits of improvements from the “no action” alternative is overlooked, and this can be a major component of creating public support and addressing possible impacts as a project moves forward. The Organizations submit that recognition of the negative impacts from a “no action” alternative is rarely addressed, including economic impacts and often in these situations continuing to provide opportunities at historic levels can be a major benefit.

The Organizations would support determination that if there is a true lack of economic impacts from any project this is an indicator that less NEPA analysis of a project is needed rather than a

reason to streamline NEPA. The Organizations would submit that if there are basic questions around the scope of economic impacts from any project, this is a serious indication that the project is being subjected to too high a level of NEPA analysis. The Organizations simply are unable to envision any situation where a truly significant federal action would not have some type of positive or negative economic impacts to the local communities. This must not be overlooked and this position is compounded by the availability of new high-quality information on this issue.

7. The Organizations support amendment of §1501.1 to allow for more meaningful utilization of basic statutory authorities.

There cannot be any logical assertion that NEPA requirements should be unrelated to the Congressional grants of authority for any agency. These grants of authority to the BLM and USFS result in the expertise in the management of benefits and impacts from projects and that simply is not recognized in the NEPA process. While maintaining trails or other recreational opportunities is well within the USFS or BLM expertise, this is not recognized and the land managers are treated the same for these reviews as the Social Security administration or other agency that has no background in these projects. This simply makes little sense and the Organizations would welcome additional clarity in this regulation to allow for the basic activities of land managers such as the maintenance and operation of resources on public lands. This would clarify that land managers have some inherent authority from their original grants of authority from Congress creating the agency. Clearly in the delegation of authority to land managers in the basic authority to operate, Congress provided some agency specific authority and too often the basic operations on public lands, such as maintenance of resources are drawn into NEPA analysis by overly cautious managers.

While the Organizations are not submitting that there should be a total exclusion of maintenance from NEPA, the Organizations do believe that significant efficiency can be achieved through additional clarity that maintenance is within the basic authority of land managers. Not only would this regulatory clarity streamline analysis, it would aid land managers in addressing one of

the largest challenges that are facing the USFS and BLM in terms of providing high quality recreational opportunities. brushing trails under grooming permit and after travel management with local snowmobile club due to perceived need for NEPA.

8. Significant additional guidance must be provided around the use of regulatory uncertainty provisions of §1502.22.

The Organizations have participated in all sizes of NEPA actions with the USFS and BLM on a huge range of issues but the Organizations are not able to identify a single NEPA action where §1502.22 has been discussed in an alternative or applied in the final decision. The Organizations are also not able to locate any regulations with USFS or BLM applying this CEQ regulation to USFS or BLM NEPA process. The Organizations vigorously assert that this makes little sense as there are a wide range of issues where this provision would be highly relevant in avoiding delays in completion of the NEPA process, and also reducing the costs associated with the NEPA process. The NEPA process has been consistently slowed by these types of questions, even when basic issues are well understood or the NEPA effort is simply updating existing management that has been successful.

Those opposing the project will assert that new science must be developed to allow for greater understanding or confirmation of previous conclusions despite the success of previous management. Often the asserted levels of new analysis are seeking to analyze impacts to levels that are simply unnecessary on the ground. While the Organizations remain vigorously committed to the application of best available science in all planning efforts, the delays and costs associated with the desire to have new and highly specific science for all decisions are significant and should not be overlooked. Often the data requests by those opposing projects is of such detail as to be completely unnecessary to the realistic analysis of the project.

The limited awareness of these provisions also expands costs and delays in the NEPA process as many of those opposed to motorized often use the lack of scientific certainty around an issue as

an opportunity to create “citizen science” and this citizen science become a basis for further basis to restrict access to public lands. Often this results in citizen science efforts being commenced and results in low-quality non-peer reviewed citizen science is provided land managers based on an asserted desire to address this uncertainty. While this appears to be commendable, the end result in significant delay and significant cost in the NEPA process as the users of public lands are forced to address the lack of peer review and scientific process around the citizen science rather than developing NEPA analysis and effective management of public lands. This only results in delay and increased cost. Expanded authority to declare this type of information uncertain and unnecessary would remove this type of delay from the NEPA process.

The Organizations believe that an example of a significant issue currently under NEPA analysis throughout the western United States will greatly help understanding of the value of expanding the awareness and application of the provisions of §1502.22. This example has to do with the implementation of the USFS Winter Travel Management Rule that was revised in 2012 as the result of litigation. Other challenges with the Travel Management process are discussed elsewhere in the comments but in this portion of our comments, the Organizations would like to discuss the science based challenges that have been encountered at the forest level as we have actively participated in the NEPA process developing winter travel management on the Tahoe NF, Tahoe Basin Management Unit, Stanislaus NF, Eldorado NF, Lassen NF and Plumas NF in the Pacific region. The Organizations have also actively participated in the development of forest management plans for the Rio Grande, GMUG and Ashley National Forests in the Rocky Mtn and Intermountain Region.

Throughout these efforts, the behavior of snow under a variety of conditions has been an issue of primary importance to those opposing OSV usage and all too often has started from the analysis position that this type of scientific analysis has never been undertaken. This position is comically inaccurate as winter travel management has been occurring on these forests for approaching 50 years without resource impacts. While there is 50 years of effective management the scientific understanding of the reasoning for the lack of impacts has been limited when

judged by today's standards of scientific analysis. Factors that have contributed to the limited nature of scientific understanding have included the limited scientific capability at the time the original NEPA analysis occurred and that the behavior of snow is heavily impacted by weather both at the time the snow falls and at all times afterward. Any large-scale landscape analysis of snow compaction and behavior of snow in response to recreational activity on the snow would prove to be hugely expensive due to the large number of variables in terms of weather and topography. Again, being able to declare this level of detailed information unnecessary or highly uncertain resolves this alleged conflict and allows land managers to continue managing in the manner that has been successful for approaching 50 years.

In response to these assertions that scientific research into snow compaction has not occurred, the Organizations have submitted extensive analysis regarding the behavior of snow under a wide range of forces and measures of possible impacts. This includes: extensive analysis from the Army Corp of Engineers regarding the landing of large cargo planes, C-130 and larger, on snow runways in arctic and Antarctic areas; extensive information on the measurement of force through snow by the avalanche prevention community; and the decades of research from the Canadian Government regarding the development and maintenance of ice roads throughout northern Canada that are traversed by trucks weighing over 120,000 lbs. While the information has undergone extensive peer review, too often the perception is that this information is of limited value since it did not occur on the Forest or Ranger District undertaking the planning. While all snow is different at some level, the primary compaction factors of wind, gravity and the sun are reasonably consistent throughout the world and understanding of this difference is probably not necessary for planning and analysis of snow at possibly dozens of locations throughout a Ranger District is unnecessary and cost prohibitive.

While this example is difficult to summarize in comments due to the complexity of the issue and variety of factors, this is an issue where the application of the concepts of limiting the NEPA analysis in situations where information is incomplete or unavailable would be highly relevant to providing a cost effective and efficient NEPA process. Too often concerns raised asserting specific

snow analysis on a landscape scale have been used as a surrogate for that parties basic opposition to multiple use concepts and immediately overlook the fact that many of these planning areas updating NEPA have already undertaken NEPA analysis of these issues and this NEPA analysis has proven to be highly effective in mitigating any possible resource impacts.

Unfortunately, these types of situation are far too common as we have seen similar concerns about the possible displacement of sand in sand dune environments and the use of OHVs in the NEPA analysis for the Desert Renewable Energy Conservation Project encompassing millions of acres of public lands in Southern California. The Organizations vigorously assert that increased awareness of the existence and scope of these provisions in the NEPA analysis for a wide range of activities on public lands would greatly reduce the costs and delays that are frequently associated with these planning efforts.

9. Awareness of scientific quality requirements in §1502.24 appears to be declining.

The Organizations are aware there is a significant amount of overlap between the concerns being addressed in §1502.22 and §1502.24 and as a result our comments will not be replicated here. The clear statement of the fact that scientific analysis does not need to be undertaken as part of NEPA analysis in §1502.24 is highly valuable and this clarity must be conveyed to the land management agencies for wider application of this concept.

With too much consistency, the Organizations are starting to encounter with alarming frequency when scientific analysis is included in the NEPA process and that issue involves the development of “citizen science”. As we mentioned previously, the desire to move NEPA quickly and expand volunteer involvement has allowed “citizen science” to be moved into the NEPA process, sometimes a little too quickly and with an overemphasis of site-specific research. The Organizations do not oppose the use of third party or outside agency research but this analysis must be developed with the application of the scientific process and subjected to peer review. The fact that analysis has occurred within the area that is subject to the NEPA analysis does not

serve as a replacement for these foundational characteristics of “best available science”. This citizen science often starts from positions of analysis that are either legally or scientifically superseded and again results in delays and added costs in trying to reconcile this citizen science with best available science.

An example of how quickly these citizen science efforts can get off course is recent citizen science efforts around the lynx in Colorado and the development of an updated forest management plan. This citizen science started from a compelling presentation of the Southern Rockies Lynx amendment and range maps developed in association with this effort. The basic lack of credibility in this effort is exemplified by the fact the Southern Rockies Lynx Amendment has been overruled by the 2013 Lynx Conservation Assessment and strategy and “experts” in this process failed to even raise this issue. The public was then presented with a situation that the lynx range maps previously created were not habitat maps for management, and this position has repeatedly and vigorously stated by the USFWS. While the need to move faster and more efficiently is badly needed, this need cannot be used as a replacement for quality scientific efforts. We are very concerned that by the time this citizen science is corrected to align with best available science the effort will have become VERY costly. As a result, we urge caution about amending any regulations to permit reductions in the quality of planning documents.

10. Definition of a “Controversy” must be narrowed in §1508.27(b)(4)

The Organizations are intimately familiar with the impacts of perceived “controversy” on the NEPA process and the significant expansion of time and resources that can result in the application of NEPA. It has been our experience that any project that we undertake or is undertaken by a land manager involves motorized recreation access, the controversy that results are immediate. It has been our experience that this “controversy” is often related to social opposition to the concept of multiple uses and the fact that motor vehicles are being used in general rather than a specific issue or concern with a project. Too often NEPA is used as barrier to project rather than an analysis of costs and benefits of the project. While this is frustrating,

the Organizations are not seeking to stop that discussion but the Organizations do believe that this is an issue where improved CEQ guidance could have a great deal of impact in reducing the negative impacts from this social opposition. NEPA was never intended to be a separate protection process for a groups interest but rather is detailed statement of high-quality information regarding the impacts and benefits of a project.

While the concept of “controversy” is addressed in 40 CFR 1508.27(b)(4), the Proposal provides for “no action” on this concept as there is a statement that controversy only supposed to be scientific controversy. While we appreciate this limitation, it has been our experience that the “controversy” concept is not limited to just scientific issues but is often applied to controversy about issues that are well outside the scope of any NEPA planning and analysis. The Organizations would ask that additional clarity be provided to allow for great understanding of the desire to limit controversy to just scientific questions and avoid some groups desire to use NEPA as a separate hurdle for multiple use.

11. The Organizations vigorously support expanded scoping and public participation proposed in the revised §1501.9

Expansion of public process around the NEPA process is an area where the Organizations believe significant improvements in the efficiency of NEPA and reductions of costs in the NEPA process can be achieved with an improved NEPA decision being generated as well. We are able to provide two examples of this situation are available from our experiences in NEPA and forest planning. While we are aware that expanding the time provided for NEPA is a proposal that would be counter intuitive to increasing the efficiency and effectiveness of the NEPA process. In Colorado, the GMUG NF released its draft alternative created as part of its forest plan revision to the public before it commenced its formal scoping efforts in NEPA.

The Organizations found that this effort was highly effective in triggering highly effective discussions between the public and land managers on a wide range of issues. This early

discussion we hope will allow for a more efficient analysis once formal NEPA analysis commences and allow for a final NEPA determination that has larger support for the decision and a decision that has a much lower level of contest and objection to the decision. The only issue we have encountered with this pre-nepa public review of the forest plan is many in the public were somewhat familiar with the NEPA process and a major concern was the fact that the pre-nepa public review would not provide them standing in the subsequent planning efforts. This was an effort to educate the public and we believe this is a concern that can be resolved moving forward.

The Arapahoe/Roosevelt recently completed a complete revision of its recreational shooting restrictions that started with a similar pre-nepa public review. Despite the inherently controversial nature of shooting sports restrictions, this process allowed for a more meaningful engagement of the public which was evidenced by the fact that only one objection was filed in relation to the plan and this was easily resolved. This type of a result is simply unheard of.

12. Hard page limits provided in §1502.7 reduce plan complexity and improve public engagement in the NEPA process.

The Organizations have been skeptical of new proposals that are asserting hard page limits for EA and EIS statements, as this type of standard could force planners to move information into appendix to the planning documents rather than providing this information in the plan itself. We were concerned this would not make the end result of the NEPA process easier for the public and interested parties to engage in. The Organizations have engaged in large NEPA planning efforts since these page limit requirements were developed, and this resulted in appendix being slightly larger in size, but this has not been the case.

These page limits combined with new planning rules within the agency have resulted in significantly less complex planning documents overall. On the Rio Grande NF in Colorado, the forest management plan was reduced from almost 30 land management categories to less than 10, which provided for a forest plan that was simply far easier for the public to understand and

participate in the development of. Simply reducing the complexity of NEPA planning documents in terms of numbers of categories increases public support and understanding and allows for the creation of a resource management plan that remains factually relevant for a longer portion of the life of the RMP.

13. Additional examples of specific projects within the categories provides significant clarity and consistency in management.

The Organizations are aware that significant opportunities for a leaner and more efficient NEPA process are available and has been pursued by many federal agencies. Our experience is that often the NEPA process results in small maintenance type projects are receiving overly extensive analysis as the result of the ambiguity in many of the guidance documents available. Many land managers simply don't possess the expertise in addressing many of the technical aspects of the NEPA process in terms of what can and cannot be done under lower levels of NEPA. As a result, the USFS expanded their guidance with more examples of specific projects that can be done with particular levels of NEPA analysis in their EADM process that was recently completed. The Organizations believe that many of these categories address various commonly encountered challenges in performing basic maintenance of routes by our members.

Our preliminary feedback on the effectiveness of these examples in altering on the ground efficiency has been positive. With the examples, projects are more able to be compared to specific standards and those people interested in the projects can more meaningfully discuss why a specific project is requiring more analysis than the guidance examples. The greater clarity and consistency in the application of the NEPA process will also result in significantly more consistent analysis of projects that cross multiple districts. It is unfortunate to admit that after a cross boundary event, such as a fire or flood, we have encountered one Ranger District where trail restoration is seen as an issue that can be done under a CE and an adjacent management unit requires an EA for similar levels of maintenance. This type of decision making appears at best arbitrary to the public and sends a message that the partnerships being developed between land managers and our Organizations are simply valued more on some districts than others. While we know this is not accurate, the perception is definitely there under these types of situations.

14. Streamlining NEPA will improve partnerships.

The Organizations would also like to recognize one of the major intangible benefits of the Proposal, mainly that a more effective NEPA process will improve partnerships and volunteer efforts between local organizations and land managers. In addition to the funding that is provided through the registration programs, volunteers are a huge component of effectively implementing funded projects on the ground for land managers. One of the major barriers to using these volunteers has been the need to complete NEPA analysis on the project. It has been our experience that volunteers want to perform a meaningful project from which they can obtain tangible benefits to their recreational activity at the end of the project. A more streamlined NEPA process will allow this to happen more quickly and successful projects often allow clubs to obtain additional volunteers in the future.

15. Conclusion.

The Organizations vigorously support the proposal as the NEPA process is one of the largest barriers faced by the motorized recreational community seeking opportunities on public lands. As we have noted previously the motorized community has one of the longest and strongest partnerships with USFS and BLM, which provides a wide range of direct funding for improvements to recreational facilities and opportunities and the subsequent maintenance of those facilities on public lands. While these are not exhaustive comments as such would simply be too long, we do want to highlight a few specific provisions of interest. The Organizations would also like to raise two additional concepts that would significantly reduce NEPA costs without further amendment of NEPA regulations.

The Organizations submit that a more complete understanding of what is driving NEPA analysis at the landscape level is needed and right now specific information on this issue is sparse. While there is a lack of information on this issue currently, a more complete understanding of why NEPA is being conducted could significantly assist in reducing costs. It has been our experience that significant portions of NEPA analysis, especially larger projects, are being driven by litigation

settlement. Often land managers are seeing a cost savings from reducing litigation costs by settling claims with an agreement to conduct NEPA analysis on the issue. We are aware of almost a dozen forest level projects that are undertaking NEPA for this reason and this NEPA has proven to be some of the longest and costliest NEPA we have been involved with. We are unsure of how common this situation is, but it could be very extensive and understanding why NEPA is being undertaken would help reduce costs and delays, especially if attempts to reduce litigation costs are increasing subsequent NEPA costs to levels that exceed original litigation costs.

NEPA updates are badly needed but cannot occur in isolation of other overlapping regulatory requirements that drive the burdensome costs and burdens of the NEPA process. A major issue negatively impacting NEPA efficiency and driving costs is the horribly outdated nature of the Executive Orders governing the use of off-highway motor vehicles on public lands (EO 11644 and 11989). While the concepts, such as minimization of impacts, may have been relevant in 1972 when the original Executive Orders were issued, these concepts are entirely redundant of subsequent statutory planning requirements and have been completed in the 50 years since the issuance of these orders. Issuance of updated EO reducing the confusion of basic concepts could result in similar levels of cost savings as could be achieved with full implementation of the Proposal.

The delays and increased costs of NEPA analysis are often providing a significant barrier to the economic existence of many small communities who are now relying on recreational activity on public lands for their survival. The recent conclusions of the Department of Commerce analysis found that recreational activity contributed more than \$371 billion to the economy (or more than 2% of the US economy) and contributed hundreds of thousands of good paying jobs to communities throughout the country. The Dept of Commerce found that motorized recreation, the usages that are most often the most delayed in NEPA analysis, contributed more than 50% of this economic contribution. Delays in NEPA analysis of even a day result in significant negative impacts to local economies that simply will never be recovered as recreation days that are lost due to access issues cannot be provided for again in the future. Time has simply moved on.

If you have questions please feel free to contact either Scott Jones, Esq. at 508 Ashford Drive, Longmont, CO 80504. His phone is (518)281-5810 and his email is scott.jones46@yahoo.com .

Respectfully Submitted,

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