



San Juan Plan Revision
P.O. Box 162909
Sacramento, CA 95816-2909

7 April 2008

Gentlemen:

Re: "Proposed" Hermosa Wilderness in the San Juan National Forest

Please remove this proposal from any of the alternatives in the Final Plan.

Please refer to Title 36, part 219, as of 1982, which are the regulations that the USFS is using to formulate the San Juan National Forest land use plan revision and which the San Juan staff cites as the authority for this recommendation.

Specifically, please refer to section 219.17, Evaluation of Roadless Areas. We realize that this is a regulation generated by the Forest Service, for the Forest Service. It is not a law. It also has not existed in Title 36 since the year 2000.

The opening phrase of the 1982 version of 219.17, "unless otherwise provided by law," seems to us to be a caveat: that is, the Forest Service is not authorized by statute to recommend Wilderness areas. The two primary laws that "otherwise provide" for FS management of lands under its jurisdiction, and are directly aimed at FS planning, are the NFMA and the FLPMA. NFMA is silent on wilderness-like areas or roadless areas. Silence is not the same as a mandate. In fact, NFMA calls out a number of specific duties that direct the FS to take an active management role to ensure continuing forest health. This would be precluded if the area is set aside as Wilderness. Even stronger, FLPMA does not assign any agency the authority to recommend areas for Wilderness or prescribe Wilderness management to any area, and in fact it expressly limits the authority of an agency to set-aside acreage without Congressional approval (Sec.102(4) & Sec.202(1)(2).

As further confirmation that this set-aside is not lawful, in the Wilderness Act Section 4 (a) (1) "nothing in this act shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4 1897." This set-aside would interfere because of the close proximity of existing designated Wilderness.

The task of selecting and recommending areas for consideration in the Wilderness Preservation System seems to derive from the San Juan Forest staff's belief that it has a "private right to act" in these matters. The continuous expansion of the WPS by repeated re-inventories of the same lands is not specifically supported by the language in the Wilderness Act nor in the FLPMA nor in NFMA. It is supported only by the 1982 FS regulations. These are not law, and they are in transition due to extensive litigation.

What is the evidence that this has been happening? One clearly documented example is reported on page C22 of the DRMP. The “Ryman Roadless Area” was re-inventoried in 2006. Not coincidentally, *“The RARE II process identified 9,030 acres which were not recommended for wilderness because of numerous unimproved four-wheeled routes and range improvements. The 1983 Forest Plan placed approximately 82 percent of the area in the semi-primitive nonmotorized recreation management prescription and the remaining to semi-primitive motorized recreation and livestock-grazing. As of the 1992 Plan amendment, there had been modification of the character of 1,040 acres through subsequent management practices. The 2006 increased the roadless acres to 8,665 through better GIS mapping procedures.”* (emphasis added) (from page C-22 in the DEIS Vol 3). The very slight change in the character of the land clearly indicates that the SJNF never released the non-designated land to other uses.

This management pattern is repeated in the San Miguel (81% not released by the FS) Graham Park (93% not released) and four others in which such a tiny amount of acreage has been altered since the RARE II inventories that it is not credible to claim the areas were ever released to multiple use.

As clearly described above, Forest management prescriptions beginning with the last round of land use plan revisions the 1980’s have created areas that are now essentially “unroaded.” By deciding, in increments, that little or no activity will be allowed on these lands, (page C23—“Livestock operations: No active grazing allotments” TPA commenter—that means there are allotments, but the USFS is not allowing them to be used) or by placing them into more primitive management prescriptions (Page C-22 *The 1983 Forest Plan placed approximately 82 percent of the area in the semi-primitive nonmotorized recreation management prescription*), the USFS staff specialists have been managing lands that did not qualify 30 years ago so that they do eventually develop Wilderness characteristics. After 25 years, these lands can be inserted into the current land use plan revision as “roadless,” or as “possessing Wilderness characteristics.” According to Appendix C, the 2008 DRMP now has 18 official USFS “roadless areas.”

The Hermosa proposal is an example of exactly that pattern. It was inventoried roadless—not a WSA and not a Wilderness. The designations were completed and the Hermosa area did not make the cut. But, during the course of many years, agency staff adjusts the management prescriptions in the Hermosa area to enable conditions that will eventually make it suitable as Wilderness. And now, the San Juan NF has arrived at the culmination of the un-development of the Hermosa area. They have taken it upon themselves to recommend this roadless area for Wilderness consideration in their draft plan—citing the 1982 version of 219.17 as their authority to do so.¹

¹ The Clinton Roadless Directive did not give the FS the authority to recommend Wilderness designation for roadless areas or to add any acreage to the roadless or WSA inventories.

Furthermore, it does not appear that that the San Juan NF proposal is in compliance with 219.17.

Referring to the FS Title 36 regulation itself, we remind the FS that:

“1) During analysis of the management situation, the following areas shall be subject to evaluation:

(ii) The values foregone and effects on management of adjacent lands as a consequence of wilderness designation;”

In the San Juan NF DEIS analysis, there is no discussion or analysis in compliance with subpart (ii).

The DEIS is silent on the effects to the adjacent lands. The DEIS writers appear to believe that Wilderness is the highest and best use of any land, and the consequences of displacing the present activities, and the subsequent concentration of multiple-use management in the adjacent areas, is of no interest in this analysis.

(iv) Proximity to other designated wilderness and relative contribution to the National Wilderness Preservation System;

Not even considering the close proximity of the South San Juan, Uncompaghre, Mt. Sneffels, and La Garita Wildernesses in the adjacent National Forests, the San Juan National Forest already has two Congressionally designated Wildernesses, Lizard-Head and Weminuche. The western boundary of the Weminuche is only twenty miles from the southeastern boundary of the Lizard head Wilderness. The proposed recommendation, Hermosa, lies between.

This is not and never was the intent of Congress at any stage of the Wilderness inventories during the last 25 years and it is not and never was the intent of Congress when the Wilderness Act was debated and voted upon.

This “wilderness” recommendations in this DEIS is an abuse of administrative discretion. Why? Because the Forest Service’s propensity to create its own authority, using the NEPA process to legitimize itself, is completely disconnected from the actual authority delegated to the agency by Congress. The Forest Service has intentionally drawn public attention to bear on this area in order to prompt a change that the San Juan Forest staff wants, but cannot do. In so doing, the Forest Service has created serious public controversy where we had none before.

We want the following two changes made to the 2008 DLRMP:



Please remove this proposal from any of the alternatives in the Final Plan

SJPLC staff will refrain from land management constraints that intend to, or tend to, create Wilderness characteristics, at the expense of access and multiple use.

Thank you for your attention to this matter.

Sincerely,

Don Riggle
Trails Preservation Alliance