



July 12, 2011

Thomas Vilsack, Secretary of Agriculture
U.S. Department of Agriculture 1400 Independence Ave., S.W.
Washington, DC 20250

Emailed this date to:
Secretary's office (AgSec@usda.gov)
COCcomments@fsroadless.org

Dear Secretary Vilsack:

Please accept this correspondence as the joint comments of the Colorado Off-Highway Vehicle Coalition (“COHVCO”), Colorado Snowmobile Association (“CSA”) and the Trails Preservation Alliance (“TPA”). For purposes of this document, we will refer to all organizations as the Organizations. The Organizations thank you for the opportunity to voice our support for a modified version of Alternative 2 in proposed Colorado Roadless Area Rule (“CRA Rule”). The Organizations support for this alternative is contingent upon the removal of the principal of designated upper tier areas. The Organizations are strongly opposed to the principal of “upper tier” areas as such a designation does not fit the purpose or intent of the rulemaking, directly contradicts the desire for public support and clarity sought to be achieved by the Colorado petition and significantly restricts management opportunities for upper tier roadless areas. The arguments supporting the removal of the designation of upper tier are based upon the RDEIS and a heavy dose of scientific common sense.

COHVCO is a grassroots advocacy organization of approximately 2,500 members 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.

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 insure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands.

CSA was founded in 1970 to unite winter motorized recreationists across the state to enjoy their passion. CSA currently has 2,500 members. 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. While CSA is aware that roadless designations are normally not an issue for snowmobile usage, CSA is also very concerned that forest resources are properly managed and preserved for future generation's recreational usage and enjoyment.

The Organizations believe the Forest Service has done a good job of separating the proposed Colorado Roadless Rule from Travel Management Planning in the numerous public hearings that have occurred throughout the state to address public concerns regarding the proposal. As Forest Service representatives are aware, there is a significant amount of confusion and frustration from the overlap of these planning tools. The Organizations believe that the meetings bright line distinction regarding the differences in these management tools has helped the public understand these differences. The Organizations believe it is critical that the bright line standard separating these tools remains clear in the final rule to avoid any increase in frustration of the public regarding the Roadless Rule.

The expansion of designated roadless areas and upper tier roadless areas after submission of the Ritter 2008 Colorado Petition directly contradicts the clearly stated intent of the people of Colorado who stated:

“We believe it is critical that we get the proposed rule right, to avoid further wrangling. **It has been our on-going expectation that the Colorado Rule would have widespread support and acceptance without fighting over the process by which the rule has been approved. To achieve this goal, we must work with interested constituencies on potential final language recommendations.** This is a time consuming, but critical process to ensure broad support for Colorado's rule.”¹

Administratively restricting professional management tools and techniques provides an unnecessary political barrier where a full set of prescriptions could otherwise improve forest health, prevent catastrophic watershed and soil losses and restore vegetated

¹ Correspondence of Colorado Dept of Natural Resources Executive Director Harris Sherman to Mark Rey, Undersecretary of Natural Resources and Environment; December 4, 2008.

ecosystems. Roadless areas are an essential part of the spectrum of recreation opportunities along with a representative Wilderness Preservation System. However, restricting land and resource management techniques and tools, applied in professional ways to mitigate impacts, is unnecessary at this time of stressed forest conditions.

The upper tier principal was not included in the recommendation resulting from the extensive public hearings that provided the basis of the Colorado Petition in 2005. The Organizations representatives were active participants in these meetings and worked in good faith understanding that the end result would not be altered once it was achieved. These meetings involved a wide range of user groups including The Wilderness Society, Cattlemen, Trout Unlimited, State Parks, skiers and both state and local government officials. While it appears that a consensus position was reached, certain parties to the agreement chose not to honor the consensus position and have continued to attempt to alter the end result to suit their agenda. This is simply offensive and should have been addressed in the range of alternatives by offering an alternative based upon the Governor Ritter's 2008 Petition, the last definitive form of the Rule with statewide support.

The expansion of the upper tier principal in the roadless proposal directly undermines the extensive efforts of numerous public groups to reach a consensus position in the hearing process, and will clearly negatively influence these groups willingness to participate in such consensus building activities in the future. This is troubling as our members consistently hear statements from Forest Service representatives that addressing problems is helpful to them but building a consensus position on how to resolve these problems is far better for the Forest Service. In this case it appears a consensus was reached, and then not applied as certain parties felt the consensus did not suit their agenda.

In a troubling gesture, the department provides Alternative 4 with over 2.6 million acres of upper tier for no apparent reason. Rather than move toward the original consensus position, Alternative 4 expands the restrictions, the basis of which directly contradicts the intent and purpose of the rulemaking. The Organizations believe that the FS lacks authority to more than double the area designation provided in the State Petition, as the entire rulemaking is driven by the State Petition. The Organizations believe that these changes will result in a significant increase in the confusion and frustration of the public when addressing the Roadless Rule and it is just this type of frustration and confusion that Colorado sought to reduce with their state petition.

The range of alternatives provided does not satisfy NEPA requirements

The range of alternatives provided in the DEIS is inadequate to satisfy NEPA, as there is no viable alternative that allows for roadless designations without an upper tier area. The result of this omission is the DEIS fails to meaningfully solicit comments regarding the consensus position that was the basis of the original Colorado Petition or the possibility of a roadless rule without an upper tier principal. Throughout the DEIS, every time specific comments or issues are addressed the provisions of the DEIS are structured to obtain comments with the 257,000 acre upper tier as the starting point. At no point is the possibility of a Roadless Rule proposal without upper tier areas even meaningfully discussed. As a result of the lack of meaningful discussions of an alternative without

upper tier, comments will inherently directed towards adopting an upper tier area. This is simply wrong.

As noted by numerous experts, the rational decision-making process of the National Environmental Policy Act (NEPA) is compromised when agencies consider only a limited range of alternatives to their proposed projects.² When reviewing ranges of alternatives provided in a NEPA analysis the courts have consistently held:

"The alternative section is 'the heart of the environmental impact statement,' 40 C.F.R. 1502.14; hence, '[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate.'" ³

When determining if an EIS has provided a satisfactory range of alternatives, the standard of comparison is to the purpose of the rulemaking and EIS. The courts have consistently held:

"[E]nsure that federal agencies have sufficiently detailed information to decide whether to proceed with an action in light of potential environmental consequences, and [to] provide the public with information on the environmental impact of a proposed action and encourage public participation in the development of that information." ⁴

While there is a proposed alternative that is based on the 2001 Roadless Rule which would not include an upper tier designation, it should be noted that this alternative is based on a version of the roadless rule that has been enjoined by Court Order. The Brimmer Court found the 2001 Roadless Rule was prepared in clear violation of NEPA requirements. This decision clearly states:

"The Wilderness Act's purpose is to prescribe the procedure for designation of wilderness areas and to divest the Department of Agriculture of such authority. In this case the Forest Service's designation of 58.5 million acres as "roadless areas" was a thinly veiled attempt to designate "wilderness areas" in violation of the clear and unambiguous process established by the Wilderness Act for such designation" ⁵

None of the errors/omissions found by Judge Brimmer's decision enjoining the 2001 Roadless Rule are corrected in the version of the 2001 rule that is now proposed to be adopted as an alternative in the Colorado proposal. The Organizations do not see how such an alternative could possibly be viable legally. The Organizations believe that

² James Allen; *Does not provide a range of alternatives to satisfy NEPA.....NEPA Alternatives Analysis: The Evolving Exclusion of Remote and Speculative Alternatives*; 2005 25 J. Land Resources & Env'tl. L. 287.

³ *Citizens for a Better Henderson v. Hodel*, 768 F. 2d 1051, 1057 (9th Cir. 1985).

⁴ *Kunzman*, 817 F. 2d at 492; *see also Citizens for a Better Henderson*, 768 F. 2d at 1056.

⁵ *Wyoming v. Department of Ag*; Case 2:07-cv-00017-CAB @ 101.

should this alternative be adopted, it would immediately be struck down in Court and add to the frustration and confusion that surrounds the Roadless Rule.

While Alternative 3 could be said to provide an alternative without upper tier designations, COHVCO does not believe that the existing forest plan provisions are sufficient to withstand any challenge in Court regarding the Roadless Rule. The FS simply lacks authority to functionally repeal the Roadless Rule.

The Organizations note that no alternative provides for a reduction of roadless areas to the levels and acreage that existed at the time the public consensus was reached. Additionally no viable alternative without upper tier designation is provided despite the clear position of the need for added flexibility that was clearly stated as the basis of the Colorado petition. The principal of upper tier area does not exist in current national roadless rules, and the inclusion of this principal clearly violates the basis and logic of the original Colorado petition.

The current CRA proposal provides for almost 100,000 acre increase in roadless areas when compared to roadless areas at the time of the original public hearings.

The proposed CRA rule and DEIS erroneously rely on the 2008 Wyoming District Court's decision enjoining the 2001 Roadless rule as a valid basis to expand the baseline management position for roadless areas by 155,000 acres in the CRA proposal. While there is a colorable legal argument for the validity of adding these acres, it completely overlooks the fact that the consensus position that was reached in 2005 and is the sole basis for the petition did not include the 155,000 acres in their analysis. It is clear the intent of the CRA petition was to improve fire safety in the forest and adjacent communities which have been exposed to the massive fire risks associated with the pine beetle epidemic. The addition of 155,000 acres of designated roadless area does not address the VERY valid public safety concern that is the basis of the Petition.

When the amended management baseline of roadless area designation is accounted for, the current CRA proposal is an almost 100,000 acre increase in designated roadless areas in comparison to roadless designations that existed at the time of the public consensus reached in 2005. This is directly contrary and misleading when compared to the DEIS statement that the CRA proposal provides a 57,600 acre reduction in roadless areas. Adopting this larger position as the baseline of management also directly conflicts with the scope and intent of the CRA petition. **The end result is there will be significantly MORE acreage with restricted fuels management tools after the adoption of the CRA preferred alternative than existed at the time the consensus position was reached in 2005. This restricted tool box is further limited with the addition of the principal of upper tier areas.** By including the additional 155,000 acres in the CRA proposal, the Forest Service is again moving further from the consensus position that was the basis of the Colorado petition, again in direct contradiction of the FS need for consensus resolution of issues.

The Organizations are concerned regarding the 12% expansion of designated Roadless Areas in the Pike/San Isabel Forest and 5% increase in designated roadless areas in the

San Juan Forest. These area designations are not supported by the analysis of the proposal provided in the RDEIS, as this analysis weighs heavily on providing flexibility to Forest Service employees to mitigate fuel loads in roadless areas. While these areas are not designated upper tier, any roadless area designation will reduce the range of options available to reduce fuel loads on these areas when compared to the existing area designations in Unit level forest plans.

The upper tier area designation does not meet the scope or intent of the proposed rulemaking.

The principal of upper tier area or any expansion of existing roadless areas does not meet the scope or intent of the rulemaking, which is clearly stated as aiming to provide greater management flexibility to address unique local land management challenges while continuing to conserve roadless values and characteristics.⁶ **Despite the extensive analysis of the need for management flexibility in the DEIS, the regulatory impact analysis notes that the lack of flexibility in fuels mitigation tactics that will result from upper tier areas which will have a significant impact on local communities ability to defend against fire risks. This will result in less management flexibility being available to unit managers than currently exists to address fuels issues. This is simply unacceptable.**

Much work and interagency planning and coordination has been completed in Colorado with public support and approval subsequent to the original Roadless Area petition in 2005. These efforts have directly targeted the impacts that wildfires will have on the State of Colorado. Specifically, Colorado has completed a “Colorado Statewide Forest Resource Assessment, 2008”, a “Colorado Statewide Forest Resource Strategy, June 2010”, and the 2008 Statewide Comprehensive Outdoor Recreation Plan (SCORP). The overriding concerns from these state-wide public planning processes were about forest health, insect and disease, and the impacts of catastrophic wildfire on lives, personal property and public land access.

The Statewide Forest Strategy identified 10 threats to Colorado’s important forested areas including unprecedented levels of insect and disease activity, threat of wildfire both inside and outside of wildland-urban interface, forest resiliency under climate change and declining watershed and riparian ecosystem health.

The SCORP identified planning issues and affects related to any decline in forest health. One of the top issues in the SCORP planning process was how forest health and insect infestations and wildfire would adversely affect recreation opportunities. Adverse affects would include: diminished scenic values, hunting in areas of habitat loss, declines in camping as a result of hazard trees and campfire bans, and safety concerns from standing dead and fallen trees. Inventoried roadless areas clearly need attention to restore ecosystem functions; attention completely lacking in upper tier roadless in any meaningful way.

⁶ Regulatory Impact Statement @ pg 32.

None of these plans or strategies recommends adding new planning processes or significant new roadless areas that limit prescriptive forest management strategies. Upper tier designation alternatives that consider a range of limited management acreages from 560,000 to 2.6 million acres is contrary to much public opinion and way outside of their expectations for responsible public land management under current forest conditions. Further, the Colorado Task Force, after a year of public comment, in the recommendations of Governor Owens contained no such provision in the recommendations for upper tier roadless areas. Significantly, this process was aimed directly at all forest stakeholders including local communities, who have now had this foreign designation foisted upon them by a one term governor just before leaving office.

Colorado's Department of Natural Resources, Colorado State Forest Service has recently released their 10th Annual Report on the "Health of Colorado's Forests". It documents the continuing, recurring, and emerging threats and challenges for Colorado's forests. The Report documents with maps and data millions of acres of current and recent past infestations. This epidemic is generating tons per acre of dead standing and down fuels in Colorado's wild, rural and urban forests.

Colorado's Forests and woodlands make up 24.4 million acres, 11.3 million acres on the National Forests. They are under a perfect storm of impacts as a result of years of fire control, maturing forests, lack of forest management projects, climate change, and the loss of forest product based industries. To prove the conflict between upper tier and current proposed forest planning rules requires a simple view of one key area contained in the proposed rules; climate change. To proceed with upper tier management by way of rule as opposed to addressing roadless areas in new forest plans yet to be developed is to force potentially dangers answers to climatologically generated questions and conditions as yet unknown.

These forests are in need of maximum forest management attention to find responsible solutions to forest health, fire and fuels issues. The complexity is made all the more difficult and challenging when associated with a growing wildland-urban interface. Public land managers, now more than ever, need a full and unconstrained set of forest management and vegetative prescription tools and techniques. Upper tier, restrictions on "tree cutting, sale or removal of timber and prohibitions of road construction" are unnecessarily restrictive to allowing professional public land management. These restrictions "tie the hands" of planners and managers in providing the public a full set of choices to manage healthy forests and reduce the risks to forests, habitats and watersheds.

Identifying these additional acreages for roadless management including upper tier restrictions, further limits management techniques that would help prevent watershed impacts and soil erosion. In addition it eliminates options for quality habitat restoration for all species. To provide for an exception for T&E species only is a biased approach to wildlife management, and contrary to integrated population objectives. Restricting upper tier management artificially prohibits the application of the best available silvicultural and fire science techniques the public expects.

Any application of the upper tier principal will restrict the municipalities ability to mitigate fuels and Alternative 4 restricts this ability to a facially unacceptable level as clearly identified in the DEIS, which states:

“However, due to the large number of upper tier acres under Alternative 4, fuel treatments would not be possible on 48% to 52% of CPZs within roadless areas. In contrast, fuel reductions would not be possible on 12% to 13% of CPZs under the proposed rule (under which fewer acres are classified as upper tier).”⁷

The Regulatory Impact Statement specifically notes the disproportionate number of fires within roadless areas that occur within the 1 ½ mile CPZ zone, specifically stating:

“In the period between 1980 and 2008, over 1,700 ignitions affecting over 45,000 acres occurred within roadless areas in Colorado. Over 45 percent of these ignitions and 25 percent of the acres burned were within the 1 1/2 mile CPZ.”⁸

Most unit level FS forest fire management plans have specific provisions precluding the insertion of firefighting personnel and apparatus in an area if there is not a sufficient network of roads to allow for the rapid and safe removal from the area. These policies are not meaningfully addressed other than to note in the DEIS that the lack of roads will negatively impact any response to wildfires in or around the roadless area. The DEIS clearly states:

“In most roadless areas, the limited amount of roads, fuel-breaks, and fuel-treated areas makes them more difficult to treat and more vulnerable to high-severity fires.....Under the 2001 rule, fuel treatments would likely be more expensive and less efficient to implement in IRAs because of the lack of established roads and inability to reconstruct or construct roads.”⁹

Unfortunately the mere reduction in roads will function as a significant impairment of fire fighting ability, which is compounded by the FS’s very valid concern for the safety of their employees. The DEIS fails to analyze the result of combining these issues in any meaningful manner.

The CRA proposal fails to address the adverse modifications of upper tier designations to Endangered Species habitats.

In addition to the limitations placed on communities with the introduction of the upper tier management requirements, these limitations will adversely impact the habitat of several endangered species and violate the Endangered Species Act. Even if this policy does not violate the Endangered Species Act, the adverse impacts to these species

⁷ Roadless Area Conservation: National Forest System Lands in Colorado; Regulatory Impact Analysis and Cost Benefit Analysis @ pg 6.

⁸ Fed Reg vol 76 @ pg 21276

⁹ Regulatory impact @ pg 15

habitats must weigh against the inclusion of this management requirement in the final version of the CRA. **Fire is specifically noted as habitat threat that could destroy cutthroat trout habitat for centuries.**

While the Secretary is to be congratulated for providing Community Protection Zones and access to Colorado Roadless Areas for providing wildlife and T&E species habitat improvement and protection of the lives of citizens, firefighters, water supplies and private property, it is a mystery as to why the category of upper tier is defined and established to change the face of those very same protections. The Organizations believe the current CRA proposals of alternatives 1, 2 and 4 directly and negatively impacts Lynx Habitat in upper tier areas in violation of the Endangered Species act. The intent of the Endangered Species Act has been clearly stated as:

“Congress made it clear that one of the Acts principal purposes – if not its primary purpose- is to “provide a means whereby the ecosystems upon which an endangered and threatened species depend may be conserved”¹⁰

Congressional intent to protect against agency actions that may result in jeopardy to listed species or the adverse modification of their habitat is clearly stated in Section 7:

“Each Federal agency shall... insure that any action....carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.”¹¹

The threshold for triggering consultation “is relatively low” and the failure to consult was one procedural flaw dooming the 2005 State Petitions Rule.¹² This DEIS fails to accurately review and summarize the impacts of upper tier designations on the lynx, which is protected as an endangered species. The Organizations must question the level of habitat specific analysis undertaken in the DEIS and related documents. The regulatory impact statement nakedly asserts:

“The value of roadless areas in conserving biodiversity is likely to increase as habitat loss and habitat degradation increase in scope and magnitude in lands outside of roadless areas.”¹³

That analysis is simply incorrect. Current forest conditions are not the result of a natural course of forest aging as a result of long term fire prevention activities and the loss of the timber industry in Colorado that have occurred. In addition, the management of the forests has resulted in an improvement in the overall health of the forest when compared to the forest condition in 1900, which has occurred without the levels of restrictions that are now sought in upper tier areas. Around 1900 the forest health was

¹⁰ Donald Baur & WM Robert Irvin, *Endangered Species Act; Law, Policy and Perspectives*; American Bar Association Publishing 2010 pg 4.

¹¹ 16 USC 1536 (a).

¹² *State of California ex rel Lockyer v. U.S. Dept. of Agric.*, 575 F.3d 999, 1018 (9th Cir. 2009).

¹³ Regulatory Impact Statement @ pg 13.

terrible and most of it had been cleared to access minerals and to provide wood for settlers.

The DEIS assertion of upper tier improving habitat is not supported by any analysis of viable lynx habitat, which clearly finds multistory forests are the preferred habitat for both the lynx and its preferred food sources. Multistory forest conditions are improved with the harvest of timber and construction of roads. The construction of roads provides more food for the lynx as the primary source of food for the lynx is the snowshoe hare which need grass and low brush to live in. Old growth forests do not provide this habitat, but a fuel remediated area will provide this habitat. As specifically noted in the Southern Rockies Lynx decision:

“The LCAS (as updated in 2004) recommended providing habitat conditions through time to support winter snowshoe hare habitat in multistory forests. **Multistory forest structures can develop from natural processes, such as wildfire or insects and diseases, or from management actions like timber harvest that create small openings where young trees and shrubs can become established and grow....** Alternative F-modified provides clarification that the emphasis is on sustaining winter snowshoe hare habitat, and that uneven-aged management practices will be employed to maintain and encourage desired habitat attributes.”¹⁴

In addition to embracing the range of forest conditions that would result from fuel management activities, the Southern Rockies Lynx Management decision specifically excluded fuels treatments in WUI areas stating:

Based on these comments, Standard *VEG S2* was retained in Alternative F-modified. The standard was reworded to clarify that it only applies to timber management practices that regenerate the stand (clearcut, seed tree, shelterwood, and selection harvests), and to add an exemption for fuels treatment within WUI.¹⁵

The Organizations believe that the upper tier designation does not help wildlife habitat, rather it directly impairs and reduces the viable habitat for endangered species. The Organizations believe that such a restriction makes little sense as the policy is not based on best available science and relevant Forest Service determinations and fails to fully utilize habitats that are available for these species.

Regardless of the quality of the agency’s ultimate decision, the procedural framework chosen to advance it is legally flawed. The agency has not adequately consulted regarding the possible effects of the Rule on listed species. Additionally, the adequacy of mitigation options in upper tier and other areas has not been addressed in the Rule.¹⁶ Even if the

¹⁴ Southern Rockies Lynx Amendment pg 9.

¹⁵ Southern Rockies Lynx Amendment pg 8.

¹⁶ See *NRDC v. Kempthorne*, 506 F.Supp.2d 322, 352-354 (9th Cir. 2007).

agency can legally abdicate tree cutting or other activities often deemed necessary elements of “forest health” or mitigation efforts, neither the DEIS nor RDEIS make any effort to disclose and analyze the potential effects to listed species or other components of the human environment as required by NEPA.

Cutthroat trout habitat is adversely modified with upper tier management requirements

The above ESA and NEPA violations apply with equal, if not greater, force to listed cutthroat trout. Forest fires have been identified as a major threat to habitat for the Endangered Colorado Cutthroat trout, both during the fire itself and from the condition of riparian area after a fire. The Forest Service species conservation report specifically states:

“Lack of connectivity to other populations renders them vulnerable in the short term to extirpation from natural disturbances such as fire, post-fire debris torrents, or floods....”¹⁷

The Conservation Report also noted the significant impact that woody matter has on the cutthroat trout habitat. The Conservation Report notes the impact of fire and insect infestation are both major impacts on woody matters stating:

“large wood (also known as coarse woody debris) plays a dominant role in many montane streams where greenback cutthroat trout persist. Deposition of large wood affects sediment scour and deposition, energy dissipation, and channel form (Montgomery et al. 2003), and creates pools, stores spawning gravels, affords overhead cover, and provides refuge during high flows..... Inputs of large wood are controlled by a variety of processes. Mass mortality of riparian stands from fire, insect damage, or wind is important sources.”¹⁸

Fire is specifically identified as a disturbance that results in trout habitat being unsuitable for centuries, stating:

“In particular, disturbances that dramatically alter channels or riparian zones—debris torrents...and severe fires—will change the discharge-sediment transport regime, re-set forest succession and large wood dynamics, and redistribute suitable and unsuitable habitat in a basin, sometimes for decades or centuries...”¹⁹

This research notes the significant difference in impact to the cutthroat trout between conditions existing before the fire, during the fire and after the fire. The Organizations

¹⁷Dr Michael Young; *Greenback Cutthroat Trout; A technical Conservation Assessment; February 6, 2009* at pg 3.

¹⁸ Young @ pg 20.

¹⁹ Young @ pg 21.

note that the DEIS is completely void of this chronologically based analysis regarding the long term impacts of upper tier areas.

As an example, the proposed alternatives, excepting the gratuitous, no-change methodology, fails to address the differences in wildlife habitat from pre-fire conditions to post-fire conditions. While this single stage analysis maybe simple on paper, the on the ground application of the methodology fails miserably on the ground. The Hayman fire provides an excellent example of how the “on the ground” application of this policy results in failure, as management before and after the fire were completely different. Management after the fire required the addition of sediment traps in numerous waterways adjacent to the fire area in order to protect Endangered Cutthroat trout living in these waters **and lower in the watershed**. These traps could only be constructed with the use of heavy equipment and resources that could only be realistically brought in by road. Without the ability to provide sediment traps, post fire, the impacts to the Trout would have been even more catastrophic if the FS did not have full access to the burn area.

While the ESA may not require the Agency to actively stop a fire from destroying habitat, the RDEIS fails to analyze what an inflexible position post fire will do to aquatic species lower in the watershed. Unlike the Arizona New, Mexico fire where vehicle access allowed for removal of aquatic species, no such luxury is afforded in upper tier areas thereby posing a dramatic negative impact on downstream and adjacent habitat for both T&E species and indicator species that are indigenous to Colorado.

The HAYMAN FIRE PSICC JUNE 2002 HYDROLOGY REPORT, analyzes the sedimentation activities in the river itself and delivery of that sediment to two major reservoirs on the South Platte River. The quantities of sediment that reached these reservoirs are staggering, with a potential 1,950 acre-feet of sediment available for delivery to Cheesman Reservoir and an additional 1,530 acre-feet of sediment that could be delivered to Strontia Springs Reservoir. Since Strontia Spring's capacity is only 7,600 acre-feet, this is potentially 20% of its capacity!

Denver Water placed many sediment traps on tributaries to the South Platte following the Hayman fire. These sediment traps consist of boulders placed in convenient drainage areas, stacked loosely, and followed by straw bales upstream of the boulders. This creates a filter mechanism that allows the runoff water to pass through, while filtering out sediment dirt, gravel, logs and waste products. They have literally collected hundreds of acre feet of sediment that would have otherwise fouled the South Platte's gold medal fisheries and reservoirs.

Without the ability to manipulate aquatic habitat for the protection of T&E species downstream in a post fire situation, how does this not beg non-compliance with the Endangered Species Act? Once again, it may be one thing to state there is no requirement to prevent catastrophic acts of nature, however, post fire mitigation is an entirely different matter and is not adequately discussed. How the CRA's proposal of upper tier will interact with the Endangered Species is as yet undecided. Failure to distinguish from pre to post fire circumstances is a glaring omission both in the RDEIS and proposed range of alternatives.

The RDEIS acknowledges the increased risk of fire in upper tier areas but completely fails to address how the CRA proposal will adapt to the impact of fires. A study group of top biologists from Idaho in reviewing the Idaho Roadless Rule relative to its impact on fish species voiced the concerns below that clearly have strong ramifications for post fire species survival:

“Fire can pose a risk to aquatic organisms when populations are isolated or individuals are not very mobile and therefore do not have the capability to recolonize after local extirpation due to fire disturbance. Salmonids have evolved strategies to survive perturbations occurring at the frequency of wildland fire (10-100 years), but local populations of a species, especially if they are small and/or isolated, may be more ephemeral (Gresswell 1999). Perturbation associated with hydrological processes is probably the primary factor influencing post fire persistence of fishes, benthic macroinvertebrates, and diatoms in fluvial systems (Gresswell 1999). Fires can produce dramatic changes in aquatic and terrestrial ecosystems, including altered sediment and flow regimes, changes in vegetation structure and composition, fish mortality, and even local extinctions. More wildland fires are expected in Idaho due to changes in the climate regime.”²⁰

Note the specific reference to the concept of fire and the expectation of increased risk due to climate change: an example of the proposition that weak analysis of upper tier, ties directly into climate change. How will the proposed planning rule deal with this conundrum?

The Organizations believe that the adverse modifications to the habitats of both the Cutthroat Trout and the Lynx weigh against inclusion of any restrictions regarding fuels mitigation in roadless areas. Not only is the inclusion of the upper tier principal less than best available science for management of the species, the upper tier principal probably violates the Endangered Species Act. The Organizations believe the possible violation of the Endangered Species act is enough reason to remove the upper tier designation. Another roadless rule being challenged in court does not aid anyone, reduce frustration or confusion regarding the roadless rule and clearly does not meet the purpose or intent of the rulemaking.

II. Consequences of on the Ground Management of Wildfires Related to Upper Tier Roadless Areas

NO emergency powers are provided to those responsible for protecting the land. Responsible official should have authority to thin or reduce fuel loads in upper tier when firefighting activities have commenced within a reasonable distance of the upper tier area and personnel and resources are placed on the ground for the protection of various forest

²⁰ *REVISED BIOLOGICAL Assessment, Effects of the Modified Idaho Roadless Rule on Federally Listed Threatened, Endangered, Candidate, and Proposed Species for Terrestrial Wildlife, Aquatics, and Plants* September 12, 2008, pg.65.

resources. Fire breaks, safety or retreat areas for firefighters to utilize prior to the areas combusting are unavailable under the upper tier standard.

The USDA- Forest Service and the State of Colorado have proposed to promulgate a rule to manage roadless area character and values on National Forests in Colorado. The rule making process requires the preparation of an environmental impact statement and assessment of alternatives prior to making a decision for rule implementation. Of particular concern are Alternatives 2 and 4 in establishing higher levels of “upper tier” protection for some Colorado Roadless Areas (CPAs). Alternative 2 designates 562,200 acres to this higher level of management protection, and Alternative 4 would establish 2,614,200 acres as “upper tier”. The upper tier management strategy prohibits the cutting, sale, or removal of trees except as incidental to other management or for personal or administrative use.

This level of CRA adds an additional set of management areas with unique prescriptions, map boundaries (with records to be kept in Washington D. C.), and access constraints and will create additional centralized management and unfunded impacts on field offices and staff. The 2001 Roadless Rule established an administrative/executive process (36 CFR 294) on top of a complexity of congressional laws including the National Forest Management Act (NFMA), which are also now outdated, terribly underfunded, with poorly developed budgets, inadequate continuing resolutions and law suits.

As an example, the comment period just closed on proposed rules to revise forest planning regulations that are substantially different from the rules under which current Resource Management Plans were developed. Publics are weary and confused over trying to sort through an unending set of separate planning rules for public land management, roadless management and travel management. It appears that separate agendas and land management decisions are being pursued outside of NFMA.

Wilderness management in Colorado is also not well staffed or funded. Monitoring is not being completed on acquiring science or measuring change based on natural or visitor impacts. Many maintenance needs are backlogged, including trails, pending planning and funding needs. Volunteers are required to meet minimum visitor contact, maintenance, cleanup and enforcement education programs. High quality roadless and Wilderness management is not currently sustainable. There are very limited budgets and staffing priorities or strategies in place to meet existing management and monitoring requirements for Wilderness and roadless programs. There are also limited investments being made to reduce maintenance or restoration backlogs. Adding additional upper tier areas with restricted management options, at this time is economically unjustifiable considering the additional community and planning complexities.

Congress has specifically directed that National Forests not participate in “buffer management” land and resource policy in various Wilderness designation acts. Congress considered, for their needs, those past inventories of roadless areas and character was sufficient for their needs to further designate additional Wilderness. The designation of upper tier acres and the elimination of management options and techniques outside of

forest plans violate the “no buffer management principle” of Congress and the decision of forest plans through the provisions and promises of the National Forest Management Act. The authors of the Fire and Fuels section of Chapter 3, Affected Environment and Environmental Consequences, RDEIS, have done a good job in developing the potential risks and impacts of not treating unnatural accumulations of fuel. Their inclusion of the 2000 Cohesive Strategy provides a reasonable approach to achieve community goals while sustaining resources and restoring disturbed ecosystems.

The forest service currently has a broader spectrum of management tools remaining under the 2008 Ritter Petition for Colorado Roadless Areas (CRAs) At least the 2008 Petition increases the arsenal of protections available to address areas of unique value compared to the upper tier alternatives. Indeed the basis for upper tier in most cases is an effort to reflect special concerns:

“These areas were selected to become upper tier based on their roadless characteristics, and that they were already designated for higher levels of protection in either draft or final forest plans. “Notice of Proposed Rulemaking”, *Federal Register*, April 15, 2011, (volume 76, number 73), page 21274.

However, tying the hands of those who are in the very best position to manage for the current extraordinary fire conditions in Colorado is a recipe for disaster impacting the human environment. Private property, water storage and human life are the issues, not the effort to create de facto Wilderness without the permission of Congress.

The 2010 Colorado Petition identified 257,000 upper tier acres. The Department of Agriculture sought to increase this to 562,200 under a rationale that does not reflect the recommendations of the 2010 Petition let alone the 2008 Petition. Despite upper tier appearing for the first time in a proposed rule and outside the original Roadless Task Force recommendations, there is an appalling lack of an Alternative that reflects a Colorado Rule similar to the preferred Alternative, but without upper tier acres. While the agency has no responsibility to provide every conceivable alternative, the failure to provide an alternative as recommended here is to fail to meet the standard of a broad range of alternatives.

Numerous assertions of the need for upper tier designations have been made asserting that Idaho has this designation which results in the need for this designation in Colorado’s rule also.

During the course of the public hearings representatives of the Organizations have heard numerous references to the need to change the Colorado Roadless Rule proposal to align it more closely with the Idaho Roadless Rule. The Idaho Roadless Rule does not provide any basis or theory for designations of areas in the Colorado Roadless Rule proposal. These are entirely separate proposals and the Idaho situation is completely different than that of Colorado. Colorado has significantly more Wilderness designated than Idaho, which directly mitigates the need for areas of solitude and lessens the need to protect wilderness characteristics as these characteristics are already protected in designated Wilderness areas in Colorado. Further, Idaho is more thinly populated and hence at lower risk of the impact of upper tier (coined as Wild Land Recreation in the ID Rule).

The \$100million economic impact of the preferred alternative does not take into consideration the much greater potential destruction of communities and water supplies in CO. Further there is no economic analysis of the increase in home owner insurance premiums due to fire loss that can run into hundreds of millions of dollars over a 5 year period. No one denies their will be catastrophic fires, that matter is when.

III. Conclusion

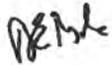
The proposed rule is deeply flawed. It is additionally the product of an illegal process. Finally, it makes little sense to commit the agency to a position on management of Colorado Roadless areas at this point in time, when guidance from the Tenth Circuit Court of Appeals may be imminent in *State of Wyoming v. U.S. Dept. of Agric.*, 10th Cir. Nos. 08-8061, 09-8075 (argued March 10, 2010). The proposed rule should be withdrawn and further analysis performed, to include additional consultation and meaningful consideration of viable alternatives beyond those in the RDEIS.

In the alternative, it is the recommendation of The Organizations that the 2008 Ritter petition be adopted as the basis for any Colorado Roadless Rule.

Sincerely,



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Chairman and President
Colorado OHV Coalition



D.E. Riggle
Director of Operations
Trails Preservation Alliance



Scott Jones
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