



November 3, 2013

Director (210)  
Attn: Brenda Hudgens-Williams  
A20M Street SE, Room 2134LM  
Washington, D.C. 20003

RE: Objections/Appeal to Tres Rios BLM Plan

Dear Ms Hudgens-Williams;

Please accept this correspondence and attachments as the appeal and objections of the above Organizations with regard to the BLM portions of the San Juan/Tres Rios (SJ/TR) Final Environmental Impact Statement ("FEIS") and Resource Management Plan ("RMP"). It is the Organizations position that the analysis of many issues is arbitrary and capricious as a matter of law and fails to provide the hard look at issues mandated by NEPA. Often these analysis and management standards are made in violation of numerous other statutes and regulations.

The SJ/TR FEIS and RMP assert that economic contributions are based on and consistent with USFS VNVUM analysis and specifically cites to recently released NVUM research. This position is facially arbitrary and capricious and must be reversed as the SJ/TR conclusions are anything but consistent with the NVUM conclusions as evidenced by the fact the SJ/TR asserts to be providing analysis consistent with high spending forests. This is directly contradicted by the conclusions regarding the spending profiles of user groups that are reached in the SJ/TR FEIS as these conclusions are often numerous factors less than the spending profiles that are identified for user groups for a low average spending forest. For several user groups, the average spend

for that group is completely outside the conclusions for the range of spending for the same group.

In addition to arbitrary and capricious analysis of economic issues, the current management of numerous locations in the SJ/TR planning area are not accurately reflected in the FEIS/RMP. These are areas with long histories of motorized usage that remain open to such legal usage at this time. The effectiveness of current management in mitigating management issues is simply never addressed before additional management restrictions are applied as part of the FEIS/RMP. As the baseline of management is not accurately reflected in the FEIS/RMP and assertion that the change in management was meaningfully analyzed is arbitrary and capricious as the FEIS analysis asserts there is no change in the management of these areas and such analysis fails to satisfy the hard look requirements of NEPA.

The FEIS/RMP also proposed to make landscape level determinations regarding the suitability/unsuitability of areas for motorized usage. While these determinations appear to be limited to USFS lands the future of this standard for possible application on BLM lands is unclear. As such the errors in the development of this standard are addressed here and the Organizations are not comfortable in assuming that BLM areas currently limited to existing or designated routes currently will not be designated as unsuitable at some point in the future.

Several factors appear to have been relied on in the determinations of area suitability that arbitrarily and capriciously conflict with both agency analysis and USFS regulations such as the Colorado Roadless Rule. How most of these factors are integrated into the final suitability determinations simply are not addressed. Habitat areas are excluded from future suitability despite USFWS analysis made as part of the Endangered Species Act review process that motorized usage of these areas for numerous species is not an issue. Roadless areas are managed under a single standard of review that conflicts with the newly released Colorado Roadless Rule and fails to analyze how areas motorized usage would be a protected characteristic of a roadless area and then found to be unsuitable for motorized usage in two review process that occurred at functionally the same time in the same area.

Prior to addressing the specific appeal points, a brief summary of each Organization is needed. The Colorado Off-Highway Vehicle Coalition ("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.

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 insure 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 winter motorized recreationists across the state to enjoy their passion. CSA currently has 2,500 members. CSA has become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling by working with Federal and state land management agencies and local, state and federal legislators. For purposes of these comments, Colorado Off-Highway Vehicle Coalition, the Trail Preservation Alliance and Colorado Snowmobile Association will be referred to as "the Organizations" in this appeal.

It is the Organizations position that the FEIS and RMP must be remanded to the Field Office for further analysis of the issues more specifically addressed in this appeal. The analysis of these issues and associated balance of uses that will result from meaningful analysis and a hard look at accurate information must then be provided to the public for an additional comment period. It is the Organizations position that an RMP for this area that is based on accurate economic information and accurate application of management standards will look significantly different that the current management standards sought to be applied.

**1. Implications to the appeal process from the renewal of the Service First Agreement are not addressed.**

Prior to addressing the specifics of the Organization's appeal, the Organizations must address the scope of the appeal and a serious concern for treatment of the appeals that may be submitted by the general public. This concern involves the changing status of the Service First agreement and the changes to the agency responsible for on the ground management of certain activities at specific locations on the SJ/TR. This type of ambiguity has become very important in the appeal process as agency deadlines and criteria for submission of appeals are significantly different. Most of the public simply will not be aware of this as all previous actions have been taken under a uniform process as if the public was dealing with a single agency.

Approximately two years ago, the Service First agreement between BLM and USFS expired. Over the last two years significant efforts have been directed towards unwinding the joint management under the Service First agreement as the agreement was not going to be renewed. Often this resulted in management of specific activities being changed from one agency to the other in areas despite long histories of management of that area by an agency.

The Organizations often only became aware of this change in management when a meeting was attended and a new agency was attending the meeting.

This confusion has now been further expanded by the fact that Service First Agreement was recently renewed and made permanent during the appeal portion of this planning process. At this time, the Organizations are not aware of how management of particular areas is going to be resolved. Will these areas be returned to the agency having the historical management under Service First or will management be maintained by the agency having formal jurisdiction over the particular area. As a result of this situation, the Organizations are including many issues in the BLM appeal that have been traditionally USFS tools, such as the Roadless Rule. The Organizations feel preserving our concerns for resolution is the highest priority of the appeal.

The Organizations believe an example of the impacts of rather fluid state of the Service First agreement that was recently encountered will clarify our concerns and this situation involves the management of winter motorized recreation on the Molas Pass area. Historically all management of winter recreation in the area, including grooming permits and management of permittees was handled by the Forest Service. The Organizations only became of BLM jurisdiction when correspondence was sent to members last year evidencing a desire to not renew grooming permits in the Molas Pass area.

Most users simply do not have this level of contact between agency personnel to be aware of these type of changes. The Organizations are certain that as a result of the fluid nature of the Service First agreement appeals of valid concerns regarding the FEIS and RMP made in good faith will be sent to the wrong agency. The changes in the Service First process and how this will impact appeals sent in good faith to the incorrect agency should have been addressed in the FEIS and appeal process and simply has not been. While the Organizations are sympathetic to the situation the agencies are now in, the Organizations also believe provisions must be made to address valid appeals that are incorrectly submitted to the wrong agency based on previous management of the areas subject to the appeal. The Organizations are deeply troubled that there are no provisions for the treatment of appeals that are incorrectly submitted to the wrong agency.

#### **2a. Standard of review.**

The Organizations believe a brief summary of the standard of review that are applied by Courts reviewing agency NEPA analysis is relevant to this discussion, as the courts have consistently directly applied the NEPA regulations to EIS review. As a general review standard, Courts have applied an arbitrary and capricious standard of review for agency actions under NEPA. This standard is reflected as follows:

"...it required only that the agency take a "hard look" at the environmental consequences before taking a major action. *See, Kleppe v. Sierra Club*, 427 U. S. 390, 427 U. S. 410, n. 21 (1976). The role of the courts is simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions, and that its decision is not arbitrary or capricious. *See generally, Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 401 U. S. 415-417 (1971)."<sup>1</sup>

The CEQ regulations note that a detailed statement is a significant tool to be relied upon in the public comment process. These regulations clearly state this relationship as:

"NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."<sup>2</sup>

The Organizations vigorously assert that a hard look has not been taken on numerous issues, such the Colorado Roadless Rule and suitability analysis as both of these standards fail to accurately apply relevant standards and sometimes directly conflict with previous conclusions of other agency who are primarily charged with the management of the issue.

**2b. The standard of review for economic analysis is a de novo standard as the Courts have consistently substituted their judgment regarding the accuracy of economic analysis.**

While the general standard of review for agency actions is an arbitrary and capricious standard of review, Courts have consistently held agencies to a much tighter level of review of economic analysis in the NEPA process as the court makes their own conclusions regarding the accuracy of review without deference to agency findings. Relevant court rulings addressing economic analysis have concluded:

***"an EIS serves two functions. First, it ensures that agencies take a hard look at the environmental effects of proposed projects. Second, it ensures that relevant information regarding proposed projects is available to members of the public so that they may play a role in the decision making process. Robertson*, 490 U.S. at 349, 109 S.Ct. at 1845. *For an EIS to serve these functions, it is essential that the EIS not be based on misleading economic assumptions.*"<sup>3</sup>**

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<sup>1</sup> *See, Baltimore G& E Co v. NRDC*; 462 US 87 (1983) at pg 98.

<sup>2</sup> *See*, 40 CFR 1500.1(b)

<sup>3</sup> *Hughes River Watershed Conservancy v. Glickman*; (4th Circ 1996) 81 F3d 437 at pg 442; 42 ERC 1594, 26 Env'tl. L. Rep 21276.

The Court then discussed the significance of economic analysis in planning as follows:

"Misleading economic assumptions can defeat the first function of an EIS by impairing the agency's consideration of the adverse environmental effects of a proposed project. *See, South La. Env'tl. Council, Inc. v. Sand*, 629 F.2d 1005, 1011-12 (5th Cir.1980). NEPA requires agencies to balance a project's economic benefits against its adverse environmental effects. *Calvert Cliffs' Coordinating Comm. v. United States Atomic Energy Comm'n*, 449 F.2d 1109, 1113 (D.C.Cir.1971). **The use of inflated economic benefits in this balancing process may result in approval of a project that otherwise would not have been approved because of its adverse environmental effects. Similarly, misleading economic assumptions can also defeat the second function of an EIS by skewing the public's evaluation of a project.**"<sup>4</sup>

The level of accuracy of the hard look at economic analysis applied by the Court in the Hughes River decision is significant as the Hughes River Court invalidated an EIS based on an error in economic contribution calculations of approximately 32%.<sup>5</sup> As more specifically addressed later in this appeal, the Organizations vigorously assert the error in economic calculations in the SJ/TR planning is easily more than twice the 32% the Hughes River Court found sufficient to overturn the EIS in that matter. In several categories of spending the FEIS asserts spending amounts of less than 10-20% of the total found in the research that was alleged to be the source of this information. It is the Organizations position that failing to accurately establish current spending of users precludes any meaningful comparison of how management changes will impact these economic benefits.

### **2c. Standards required for application of best available science in the NEPA process.**

The Organizations believe a brief discussion of the agency standards for the development of discussions and analysis of issues in the NEPA and Land Management process are very relevant to a review of the decision making process under an arbitrary and capricious standard of the hard look required by NEPA. The BLM Land Use Planning Handbook requires the incorporation of relevant social science analysis of all concerns as part of its planning process. The handbook specifically states:

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<sup>4</sup> See, Hughes River Supra note 2 at pg .

<sup>5</sup> See, Hughes River, Supra note 2 at pg

“By statute, regulation, and Executive order the BLM must utilize social science in the preparation of informed, sustainable land use planning decisions.”<sup>6</sup>

BLM’s 2008 science strategy also identifies science as a critical component in the public land planning process as follows:

“By making use of the most up-to-date and accurate science and technology and working with scientific and technical experts of other organizations, we will be able to do the best job of managing the land for its environmental, scientific, social, and economic benefits.”<sup>7</sup>

Federal statutes require that best available science be taken into account in all federal planning. The statutes also require planners to ***discuss*** how the best available science was taken into account, and how the science relied upon was interpreted and applied to the issues addressed in the plan. Best available science is specifically defined for planning purposes as:

“§ 219.11 Role of science in planning. (a) The Responsible Official must take into account the best available science. For purposes of this subpart, taking into account the best available science means the Responsible Official must:

- (1) Document how the best available science was taken into account in the planning process within the context of the issues being considered;
- (2) Evaluate and disclose substantial uncertainties in that science;
- (3) Evaluate and disclose substantial risks associated with plan components based on that science; and
- (4) Document that the science was appropriately interpreted and applied.

(b) To meet the requirements of paragraph (a) of this section, the Responsible Official may use independent peer review, a science advisory board, or other review methods to evaluate the consideration of science in the planning process.”<sup>8</sup>

As the Organizations frequently cannot find any basis for the decisions that are more specifically addressed in the subsequent portions of this appeal, there can be no argument that the analysis is sufficient for purposes of the above standards. As there is no analysis, the decisions are arbitrary and capricious per se.

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<sup>6</sup> BLM Land Use Planning Handbook- H-1601-1; Appendix D at page 1.

<sup>7</sup> BLM Science Strategy 2008 – Doc Id BLM/RS/PL-00/001+1700 at pg iv.

<sup>8</sup> See, 36 CFR §219.11.

**3a. Economic impacts from management changes proposed in an RMP is a task to be addressed in every phases of planning.**

To insure economic contributions of public lands to local communities and western states, relevant federal statutes and BLM planning documents implementing these statutes explicitly require economics to be addressed in **every** stage of the planning process to satisfy the hard look requirements of NEPA. The Organizations believe these mandates simply has not been complied with in the TR/SJ process and will result in long term increases in user conflicts and degradation of assets and economic contributions. The Organizations vigorously assert that the hard look of NEPA analysis is not satisfied by citing to NVUM analysis as the source of the comparative recreational spending, when the conclusions regarding average spending reached in the SJ/TR conclusions often fall outside the range of spending identified for a particular user group in the NVUM analysis alleged to be relied on. This is anything but the hard look mandated by NEPA.

In the SJ/TR analysis, the planning area is asserted to be a comparatively high spending area compared to the national averages found in the NVUM process. This assertion directly conflicts with the data that is derived in the SJ/TR plan as the NVUM data provides a national average for those utilizing developed camping opportunities at \$171 to \$183 per day. The SJ/TR plan determines this spending is \$46.11, making any assertion of consistency in conclusions lack factual and legal basis. These issues are discussed in more detail in subsequent portions of this appeal and are not limited to a single user category.

The basic mandate to include documented economic analysis early in the interdisciplinary team process for public lands planning is provided by the Federal Lands Planning and Management Act ("FLPMA). FLPMA specifies the various criteria that must be incorporated at specific times in the development of a land use plan as follows:

**“(c) In the development and revision of land use plans, the Secretary shall–**

**(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;...”<sup>9</sup>**

The basic mandate of FLPMA regarding the critical need for documented economic analysis is more specifically and extensively addressed in Appendix D of the BLM's Land Use Planning Handbook. **The Organizations must note that economic concerns are the only factor that is addressed in every step of the planning process laid out in the BLM planning handbook.**

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<sup>9</sup> See, 43 U.S.C. §1712



No discussion of the methodology used for the analysis process is provided which directly impairs the ability of the Organizations ability to meaningfully discuss the errors in analysis that have lead to conclusions that lack factual and legal basis. Often SJ/TR conclusions regarding average spending of recreational groups are outside the range of spending of all users identified in the NVUM analysis.

**3b. Comparative spending profiles were not included in the DEIS and as such were not subjected to the public review process which has lead to the inclusion of erroneous conclusions.**

Prior to addressing the specific merits of the appeal, the Organizations must note that no public comment period has been provided on two of the major appeal points. The conclusions of the SJ/TR FEIS regarding recreational spending profiles, which directly conflict with the alleged source of the information were not provided in the DEIS As such public comment was not received during the comment process. Under the Section of the Economic analysis there is an undesignated section entitled "changes since the draft environmental Impact Statement and supplement"<sup>10</sup>.

"Recreation use and spending profiles were updated, but they remain constant across alternatives."<sup>11</sup>

In addition to a revision of recreational spending profiles, the Organizations will also note there have been significant revisions to the Colorado Roadless Rule since the release of the DEIS. It is unclear how these changes impacted analysis of roadless areas under BLM management and these changes were clearly not incorporated into the analysis of Colorado Roadless areas in the USFS lands to be managed under the DEIS.

Given the facial inconsistency of the SJ/TR conclusions and the NVUM conclusions asserted to be relied on, the Organizations believe these errors could have been resolved with an additional comment period. Forcing issues of this magnitude to be addressed in an appeal is patently unfair as most of the public simply do not have the time or resources to prepare an appeal of a Resource Plan. This corrupts the spirit and specific mandate of the NEPA process.

**3c. Failure to accurately address economics in the planning process will lead to significant management issues with the implementation of the RMP.**

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<sup>10</sup> FEIS at pg 579

<sup>11</sup> FEIS at pg 580.

The Organizations are very concerned that the faulty economic analysis prepared in the FEIS and RMP have led to an allocation of resources in a manner that simply does not reflect user demands and will rapidly become unsustainable when the RMP provisions are implemented. The Organizations are not alone in their concerns regarding management based on inaccurate analysis. The Western Governors' Association released its *Get Out West* report in conjunction with its economic impact study of recreation on public lands in the Western United States which specifically identified that proper valuation is a significant management concern as follows:

**"Several managers stated that one of the biggest challenges they face is "the undervaluation of outdoor recreation" relative to other land uses."<sup>12</sup>**

The *Get Out West* report from the Western Governors' Association also highlighted how critical proper valuation of recreation is to the development of good management plans based on multiple use principals. The *Get Out West* report specifically found:

**"Good planning not only results in better recreation opportunities, it also helps address and avoid major management challenges – such as limited funding, changing recreation types, user conflicts, and degradation of the assets. Managers with the most successfully managed recreation assets emphasized that they planned early and often. They assessed their opportunities and constraints, prioritized their assets, and defined visions."<sup>13</sup>**

The Organizations believe our concerns regarding the SJ/TR plans and those expressed in the Western Governor's *Get Out West* report virtually mirror each other. This concern must be addressed in order to avoid increases to many other management issues that were sought to be minimized with the creation of the DRMP. There can simply be no factual argument made that recreation has not been significantly undervalued in the SJ/TR both in terms of spending as a whole and comparison across user groups.

**3d. USFS NVUM analysis has long been recognized as best available science on comparative recreational spending.**

The USFS began compiling National Visitor Use Monitoring information("NVUM") data as the result of Executive Order #12,862 issued by President Clinton in 1993 which addressed setting customer service standards for **ALL** Federal agencies. The on-going importance of the issues

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<sup>12</sup> Western Governors Association; *Get out West Report; Managing the Regions Recreational Assets*; June 2012 at pg 3.

<sup>13</sup> *Get Out West Report* at pg 5.

originally addressed in EO #12,862 was recently reaffirmed with the issuance of EO #13,571 on April 27, 2011 by President Barack Obama. Over the 20 year lifespan of the NVUM process, there has been significant peer review of the analysis process and conclusions. The Organizations have found these conclusions to be rather conservative for motorized usage, but these concerns are very minimal here, as the SJ/TR conclusions are significantly below any conclusions reached in the NVUM analysis. NVUM conclusions have now been recognized as best available science on the recreational spending of users.

The NVUM process provides a wide range of information regarding users and economic information is divided into 4 national categories for each user group which are local day use; non-local day usage; local overnight use; and non-local overnight usage.<sup>14</sup> Each group is provided a low, average and high spending amount. The national averages in each category are then adjusted to incorporate comparative local costs for using particular areas of the county, as costs of living and recreation vary significantly throughout the county. These multipliers for local costs are summarized as a below average, average and above average spending area. These localized categories are then multiplied by the visitation to a particular area in each category of user to allow for flexibility of the analysis process and develop site specific total spending conclusions.

It should be noted that the SJ/TR DEIS fails to provide any average spending amounts for the particular user categories used in the NVUM process or the comparative utilization of the SJ/TR area by each user category. The SJ/TR only provides a single average for each group and does not break out day usage or trip length. The failure to provide this information, which should have been developed for the application of the NVUM process has directly prejudiced the Organizations ability to meaningfully discuss errors in conclusions. The Organizations believe the failure to provide this information is a violation of NEPA as a high quality detailed statement of the analysis of the issue under the hard look standard has not been provided.

**4a. The FEIS asserts the SJ/TR is a high spending area, but this position is not reflected in recreational spending profiles in the FEIS.**

As more completely addressed in subsequent portions of this appeal, the Organizations believe the spending profiles relied on for the calculation of recreational expenditures of user groups in the SJ/TR is arbitrary, capricious and a violation of NEPA requirements. Prior to addressing the erroneous conclusions of the particular user groups, the Organizations believe it is important to establish the local multiplier that was used to apply the national averages for each of the

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<sup>14</sup> See; White and Stynes; *Updated Spending Profiles for National Forest Recreation Visitors by Activity*; Nov 2010 at pg 6.

NVUMs four user categories. Those categories are local day use, local overnight use, non-local day use and non-local overnight use.

The FEIS notes that the SJ/TR is a higher than national average spending area, specifically stating:

"Each national forest is classified as a high-, average-, or low-spending area by comparing local spending with national averages. **Spending on the SJNF is classified as a high-spending area. NVUM spending patterns were also applied to recreation visitors on BLM lands.**"<sup>15</sup>

As the SJ/TR has been identified the planning area as a higher than average spending area, each category of user group total should correlate at some level to the higher than average spending information found in the NVUM works. The Organizations will note that it is factually impossible for the SJ/TR analysis to accurately assert average recreational user group spending in a high spending category forest is frequently less than half of the national average spending amounts for that high category of user and for most categories the SJ/TR conclusions fall well below the low average spending found in the NVUM analysis. A more in depth comparison of these differences is provided in the subsequent portions of this appeal.

The Organizations believe such any assertion of consistency with an average spending profile is per se incorrect, arbitrary and capricious and must be reversed to allow for accurate economic analysis and a rebalancing of proposed use to accurately reflect economic contributions with opportunities provided. The Organizations vigorously assert any assertion of higher than average spending amounts reflected in the SJ/TR totals is exactly the type of assertion that courts will find reversible as this assertion directly misleads the public on the accuracy of economic analysis in the RMP and FEIS.

**4b. The SJ/TR conclusions regarding spending profiles of recreational users directly conflicts with NVUM research which the SJ/TR conclusions are alleged to be based on.**

The Organizations believe a brief summary of relevant court ruling on the quality and accuracy of economic analysis in an EIS is very relevant to establish the context of our concerns as the Courts have consistently applied the high standard of a hard look that allows public comment to insure conclusions are not misleading.<sup>16</sup> The SJ/TR FEIS clearly asserts the basis for its economic analysis as follows:

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<sup>15</sup> FEIS at pg 597

<sup>16</sup> Hughes River Watershed Conservancy v. Glickman; (4th Circ 1996) 81 f3d 437 at pg 442; 42 ERC 1594, 26 Env'tl. L. Rep 21276

"Data from the NVUM project for the SJNF (2011) are used to estimate recreational use on the SJNF. BLM estimates were provided by the TRFO..... Spending on the SJNF best matched higher than average spending rates. It is assumed that spending by BLM visitors was similar to those visiting the SJNF." <sup>17</sup>

Analysis methodology is further summarized as follows:

**"Spending on the SJNF is classified as a high-spending area. NVUM spending patterns were also applied to recreation visitors on BLM lands." <sup>18</sup>**

The FEIS notes the research of Drs. Stynes and White that has been produced in association with the NVUM process has been relied on to break down the average spend of each user group into the four categories previously identified.<sup>19</sup> As a result of these assertions, analysis and conclusions reached in the FEIS and the work of Dr Stynes and White done in conjunction with the NVUM process should be roughly consistent. This is simply incorrect and a facial violation of NEPA as there is no analysis of these differences. In insure that the scope of these conflicts is completely reviewed, a complete copy of Drs. Stynes and White research has been included with this appeal for your reference as Exhibit "1".

The FEIS provides the following summary of the conclusions that are alleged to be based on the works of Drs. Styne and White, which in relevant part provides:

Activity	Units	Direct Economic Activity (\$)
<b>Tourism/Recreation spending<sup>1</sup></b>		
Downhill skiing		
Non-local day	Party-trip	\$69
Non-local overnight	Party-trip	\$893
All other recreation		
Local day trip	Party-trip	\$30

<sup>1</sup> White and Stynes (2010).

<sup>2</sup> National Agricultural Statistics Service (2011).

<sup>3</sup> U.S. Energy Information Administration (2011).

<sup>4</sup> Thrash and Powers (2007).

<sup>5</sup> Duvall (2012).

<sup>6</sup> Morgan and Keegan (2011).

The Organizations are vigorously opposed to any assertion of consistency between the SJ/TR conclusions and the high averages of Drs. Styne and White. A brief comparison reveals these

<sup>17</sup> See, Tres Rios FEIS at pg 594.

<sup>18</sup> See, Tres Rios FEIS at pg 597.

<sup>19</sup> See, FEIS Table 3.29.7: Direct Economic Activity Used in Economic Impact Analysis note #1 at pg 595.

high average spending conclusions provided in Table 3.29.7 are inconsistent and do not reflect higher than average spending.<sup>20</sup>

<u>Activity</u>	<u>Unit</u>	<u>Direct Economic Activity(\$)</u>	<u>Drs. Stynes &amp; White high average conclusions</u>	<u>Difference in conclusions between analysis</u>
Downhill skiing				
Non-Local day	Party-trip	\$69	\$181	+ \$112
Non-local overnight	Party-trip	\$893	\$893	0
All other recreation				
Local Day Trip	Party-trip	\$30	\$41	+ \$11.00

The concerns regarding the accuracy of the SJ/TR analysis become more apparent when these amounts are compared to a low average forest spending profile from NVUM analysis:

<u>Activity</u>	<u>Unit</u>	<u>Direct Economic Activity(\$)</u>	<u>Drs. Stynes &amp; White low average conclusions</u>	<u>Difference in conclusions between analysis</u>
Downhill skiing				
Non-Local day	Party-trip	\$69	\$126	+ \$57
Non-local overnight	Party-trip	\$893	\$468	-\$95
All other recreation				
Local Day Trip	Party-trip	\$30	\$39.77	+ \$9.77

The Organizations will note that any assertion of consistency between these conclusions is arbitrary as a matter of law and fact as the average recreational spending found on the SJ/TR is almost 30% less than the conclusions of Dr. Styne and White conclusions for an low average spending forest and 36% below the high average amounts. The arbitrary nature of these conclusions is compounded as the SJ/TR identifies itself as a high spending forest.

The potential impacts to management from inaccurate calculations of the average economic spending of user groups is extensively discussed by Drs. White and Stynes regarding the development of a parking lot as part of a site specific analysis.<sup>21</sup> When these impacts specifically outlined in this example are expanded to allocation of resources on a landscape level plan, the negative implications and possibility of bad management decisions being made

<sup>20</sup> Additional categories are not addressed in the above general spending analysis as sufficient information is not provided in the FEIS to undertake such an analysis.

<sup>21</sup> See, Stynes and White 2010 at pgs 22-28.

expands to a facially unacceptable level and would immediately create arbitrary and capricious decisions.

**4b. Comparisons of the average spending conclusions for users groups found in the NVUM analysis displays the arbitrary and capricious nature of the SJ/TR FEIS conclusions.**

The Organizations believe our concerns will be readily apparent when the conclusions of the SJ/TR analysis are more completely compared to the high averages from NVUM analysis. The FEIS provides the following summary of spending profiles asserted to be consistent with a high average spend:

**Table 3.29.8: Economic Benefits and Financial Revenue Values**

Activity	Unit	Economic Benefit (\$)	Agency Financial Value (\$)
<b>Recreation</b>			
Downhill skiing	Visit	\$208.18	N/A
Cross-country skiing	Visit	\$208.18	N/A
Snowmobiling	Visit	\$127.23	N/A
Hunting	Visit	\$76.71	N/A
Fishing	Visit	\$98.17	N/A
Viewing scenery/wildlife	Visit	\$54.41	N/A
OHV use	Visit	\$86.34	N/A
Driving	Visit	\$78.56	N/A
Hiking/Biking	Visit	\$108.19	N/A
Developed camping	Visit	\$46.11	N/A
Primitive camp/backpacking	Visit	\$48.30	N/A
Other recreation	Visit	\$49.46	N/A

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The works of Drs. Styne and White performed in conjunction with NVUM research and directly cited as authority for the SJ/TR conclusions provide the following conclusions in their research on comparative user group spending:

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<sup>22</sup> See; Tres Rios FEIS at pg 596.

**Table 3. Visitor spending for high, average, and low spending areas by activity, \$ per party per trip (\$2007)**

Activity	Non-Local Day Trips			Non-Local Overnight Trips <sup>a</sup>			Local Day Trips			Local Overnight Trips <sup>a</sup>		
	Low	Avg	High	Low	Avg	High	Low	Avg	High	Low	Avg	High
Downhill skiing	\$126	\$130	\$181	\$468	\$798	\$893	\$68	\$64	\$69	\$359	\$386	\$489
Cross-country skiing	\$87	\$97	\$135	\$315	\$537	\$951	\$26	\$27	\$31	\$242	\$259	\$329
Snowmobile	\$116	\$129	\$180	\$377	\$642	\$1,139	\$72	\$74	\$74	\$289	\$311	\$394
Hunting	\$79	\$88	\$122	\$253	\$368	\$652	\$41	\$51	\$51	\$230	\$248	\$314
Fishing	\$52	\$55	\$77	\$214	\$331	\$548	\$36	\$38	\$38	\$154	\$161	\$205
Nature-related	\$56	\$65	\$90	\$269	\$473	\$826	\$36	\$37	\$42	\$182	\$195	\$247
OHV-use	\$98	\$109	\$151	\$219	\$277	\$491	\$63	\$58	\$58	\$125	\$134	\$170
Driving	\$42	\$54	\$75	\$338	\$576	\$1,021	\$28	\$32	\$30	\$259	\$278	\$353
Developed camping	n/a	n/a	n/a	\$183	\$206	\$300	n/a	n/a	n/a	\$178	\$171	\$217
Prim. camping/bpack	n/a	n/a	n/a	\$108	\$134	\$196	n/a	n/a	n/a	\$121	\$120	\$153
Hiking/biking	\$53	\$50	\$64	\$228	\$473	\$765	\$20	\$21	\$18	\$126	\$150	\$190
Other	\$60	\$72	\$100	\$216	\$330	\$569	\$36	\$40	\$32	\$170	\$187	\$237
<b>Total</b>	<b>\$58</b>	<b>\$65</b>	<b>\$90</b>	<b>\$214</b>	<b>\$366</b>	<b>\$648</b>	<b>\$34</b>	<b>\$34</b>	<b>\$29</b>	<b>\$165</b>	<b>\$177</b>	<b>\$224</b>
Ratio to average	<b>0.90</b>		<b>1.39</b>	<b>0.59</b>		<b>1.77</b>	<b>0.98</b>		<b>0.84</b>	<b>0.93</b>		<b>1.27</b>

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It should also be noted that the Stynes and White work provided a itemized breakdown of most spending categories identified above to allow for more meaningful analysis and application of this information. These itemized breakdowns add further credibility to the Stynes and White works and further evidence the arbitrary nature of the conclusions reached in the SJ/TR plan.

The Organizations must stress the nature of this information as the results are provided in a range of user groups. The breakdown of day vs. overnight visitation and local vs. non-local visitation is not provided in the SJ/TR analysis, which directly impacts the Organizations ability to address this issue in the appeal. It is the Organizations position this type of basic information must be clearly stated in any hard look sufficient for NEPA purposes. Given the SJ/TR planning area has been identified as a high spending forest, each category of user should have an average spend **consistent** with the high average amounts that are provided in the above chart. Incorporation of this position into the subsequent analysis further expands the identified issues when comparing conclusions. Clearly these conclusions are not consistent.

The Organizations vigorously assert that arbitrary nature of the SJ/TR conclusions and failure to apply best available science and analysis methodology is readily apparent when general comparisons regarding of the conclusions of the SJ/TR research and NVUM research are compared. More specifically:

- 1. Every spending category analyzed by Stynes and White places the spending of downhill skiing and snowmobiling at similar spending levels. Stynes and White found the average spending of cross country skiers significantly lower**

<sup>23</sup> See; White and Stynes; *Updated Spending Profiles for National Forest Recreation Visitors by Activity*; Nov 2010 at pg 6.



than downhill skiing and snowmobiling. In contrast the SJ/TR calculations value downhill and cross country skiing exactly the same and assert that snowmobile user spends almost 40% less than the expenditures of downhill and cross country skiers. These conclusions are arbitrary, capricious and fail to rely on best available science.

2. Stynes and White NVUM research indicates cross country skiers spend approximately 1/3 the amount spent by a snowmobiler/downhill skiers for a local day trip in every category. In applying these spending profiles the Stynes and White work specifically compared the spending profiles of cross-country skiers and snowmobilers. This breakout provides the following information:

**Table 18—Total spending resulting from additional visitation to snow facility**

	NL Day	NL OVN	L Day	L OVN	Non- primary	Sum
<b>Snowmobiling</b>						
Party visits	1,920	2,250	6,521	207	1,222	
Average spending	\$129	\$642	\$74	\$311	\$0	
Total spending (\$1,000s)	248	1,444	482	64	0	2,238
<b>Cross-country skiing</b>						
Party visits	583	1,280	7,158	154	700	
Average spending (\$ per party visit)	\$97	\$537	\$27	\$259	\$0	
Total spending (\$1,000s)	56	687	193	40	0	976
<b>Snow facility sum (\$1,000s)</b>						
	304	2,131	675	104	0	3,214

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This directly conflicts with SJ/TR conclusions that average cross-country skiers spend almost twice that of an average snowmobiler. Clearly the SJ/TR conclusions on these spending groups are arbitrary, capricious and fail to rely on best available science.

3. Comparison of the SJ/TR conclusions to the day use cross-country skier spending amount results in a number that is lacking factual and legal basis as NVUM data indicates approximately 50% of visitor days are out of the area.

<sup>24</sup> Stynes and White at pg 25.

**NVUM analysis concludes day use cross country skiers spend \$27 per day while the SJ/TR conclusions assert an average 8 times larger than this category. It is the Organizations position these conclusions simply cannot be reconciled.**

4. OHV users are found to spend similar or higher average amounts in every category of NVUM research when compared to hiker/bikers users. By comparison SJ/TR analysis concludes that the hiking/biking community on average spends 25% more than the average OHV user. This conclusion of the SJ/TR analysis cannot be support by the authority asserted, best available science and violates numerous standards of NEPA.

5. Analysis of developed camping conclusions reached in the SJ/TR analysis also directly conflicts with NVUM analysis. SJ/TR analysis concludes the average spending for a developed camping user is \$ 46.11 while NVUM analysis estimates this higher than average user group spending ranges from \$217 for local usage to \$300 per day. SJ/TR conclusions assert an average spending amount less than 20% of the lowest spending group found in the NVUM analysis. **There is simply no way to reconcile this average spend as the SJ/TR conclusions are completely outside the range of findings of the NVUM analysis**

When a complete review of the works of Dr Stynes and White is conducted, this analysis provides an in depth analysis of how comparative spending analysis will guide site specific development of recreational resources over the life of a RMP. <sup>25</sup> This parking lot example provides an in depth discussion of how the application of accurate information is critical to the planning process. Given the example is a significant portion of the 2010 works of Dr Stynes and White, the Organizaitons have to question how the 2010 analysis was even meaningfully reviewed in the development of the SJ/TR analysis.

It should be noted the site specific example provides a concrete act pattern how the improper spending analysis of the SJ/TR plan will negatively impact future planning, and given the errors in the comparative spending in the SJ/TR analysis between cross-country skiers and snowmobilers will magnify over the life of the plan. Again, the Organizations believe this example provides a concrete example of why the Organizations are so concerned regarding comparative spending. When the implications of the erroneous economic information identified in the site specific example provided by Dr Stynes and White are expanded to address errors in a forest level plan, the implications are truly scary.

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<sup>25</sup> See, Stynes and White at pg 22-28.

It is the Organizations position that a total spending amount for these user groups would vary based on total visitor days, while maintaining an average daily spend that is basically consistent across the planning area. Given the facial conflict between the conclusions that are reached in the FEIS and the conclusions that are reached in the NVUM research that the FEIS cites as authority, the Organizations assert the conclusions of the FEIS are incorrect. The basic accuracy of these conclusions is further drawn into question as the FEIS has allegedly adjusted these numbers upward from NVUM averages as the San Juan/Tres Rios is a high spending area compared to the rest of the nation. This assertion is simply lacking factual and legal basis and must be reversed.

**4c(i). Comparison of high average spending of recreational users directly evidences the arbitrary and capricious nature of the FEIS conclusions.**

The Organizations have identified significant concerns when SJ/TR conclusions are compared to NVUM averages on a general level above. Preparation of additional analysis provides compelling data regarding the inconsistency of SJ/TR conclusions with NVUM high averages. As previously noted the SJ/TR FEIS does not provide sufficient information to provide exact comparisons for each factor but NVUM research indicates that visitation to the San Juan/Tres Rios planning area is 52% from outside the planning region.<sup>26</sup> The Organizations have assumed an even split between the day vs. overnight usage. The Organizations do not believe either factor is sufficient to resolve the stunning inconsistencies in conclusions.

<b><u>Activity</u></b>	<b><u>SJ/TR average</u></b>	<b><u>NVUM high spending average</u></b>	<b><u>Difference between high average NVUM &amp; SJ/TR</u></b>
Downhill skiing	\$208.18	\$408.00	+\$199.82
Cross-Country skiing	\$208.18	\$361.50	+\$153.32
Snowmobile	\$127.23	\$446.75	+\$319.52
Hunting	\$76.71	\$284.75	+\$208.04
Fishing	\$98.17	\$217.00	+\$118.83
Nature Related	\$54.41	\$301.25	+\$246.84
OHV	\$86.34	\$217.50	+\$131.16
Driving	\$78.56	\$369.75	+\$290.96
Developed Camping*	\$48.30	\$258.50	+\$210.20
Primitive Camping*	\$46.11	\$174.50	+\$128.39
Hiking/Biking	\$108.19	\$259.25	+\$151.06

<sup>26</sup> See, Visitor Use Report, San Juan NF USDA Forest Service Region 2 National Visitor Use Monitoring Data Collected FY 2006; Last updated: 20 June 2012 at pg 15. Note: The third round of NVUM analysis for the San Juan NF does not include visitation information at this time.

\*- for purposes of this category non-overnight users are not included as by definition all camping stays are overnight.

The Organizations would be remiss in pointing out there is a significant difference between every category of high average spending for users, which would preclude any assertion of similar analysis methodology between the NVUM process and the SJ/TR process. NVUM conclusions place most high average categories at 2-4 times the value amounts determined in the SJ/TR analysis. Again these types of conclusions are facially inconsistent with any assertion of the SJ/TR being a high spending forest compared to the national averages in the NVUM analysis.

**4c(ii). Significant conflict remains when the SJ/TR conclusions are compared to the low average spend category of NVUM analysis.**

As noted in the previous section of this appeal, there are significant differences between SJ/TR conclusions and NVUM high average calculations, which support a finding of arbitrary and capricious by the courts and a failure to provide a hard look at economic profiles of users. These differences become even more difficult to resolve when the same comparison is made to low average conclusions of NVUM analysis. For purposes of these calculations, it is assumed there is an even split between day/overnight use and local/non-local visitation. These comparisons yield the following results:

<b><u>Activity</u></b>	<b><u>SJ/TR average</u></b>	<b><u>NVUM low average</u></b>	<b><u>Difference between low average NVUM &amp; SJ/TR</u></b>
Downhill skiing	\$208.18	\$255.25	+\$47.07
Cross-Country skiing	\$208.18	\$167	-\$41.18
Snowmobile	\$127.23	\$213.50	+\$86.27
Hunting	\$76.71	\$150.75	+\$74.04
Fishing	\$98.17	\$114	+\$15.83
Nature Related	\$54.41	\$135.75	+\$81.34
OHV	\$86.34	\$126.25	+\$39.91
Driving	\$78.56	\$166.75	+\$88.19
Developed Camping*	\$48.30	\$180.50	+\$132.2
Primitive Camping*	\$46.11	\$114.50	+\$68.39
Hiking/Biking	\$108.19	\$106.75	-\$1.44

\*- for purposes of this category non-overnight users are not included as by definition all camping stays are overnight.

The Organizations submit the failure of the SJ/TR analysis to achieve any level of consistency with even the low average NVUM spending amounts directly evidenced the arbitrary and

capricious nature of these conclusions. Many of the SJ/TR conclusions regarding user spending categories remain 2-3 times below the NVUM low average spending amounts that have been identified and recognized as best available science on the issue. The Organizations assert these comparisons are direct evidence of arbitrary and capricious decision making and forces a conclusion that the plan must be remanded as the scope of error is far beyond the approximately 32% that the Hughes River court found sufficient to reverse the NEPA analysis.

**4d. SJ/TR economic conclusions conflict with State and user group analysis as well as NVUM analysis.**

As noted above, the Organizations believe the conclusions regarding economic analysis are directly in conflict with the NVUM data the conclusions are alleged to be based upon. In addition to these conflicts in value, the Organizations are opposed to these conclusions as they conflict with a wide range of analysis that has been performed by the States of Colorado, Wyoming and numerous user groups. The SJ/TR averages asserted for certain recreational activities sometimes falls outside the range of spending that has been achieved in this research.

CPW Hunting	\$106-216 <sup>27</sup>	TR/SJ Hunting	\$75
COHVCO OHV	\$125-1,225 <sup>28</sup>	TR/SJ OHV	\$86.34
Wyoming State Parks Snowmobile usage <sup>29</sup>	\$98.29- 159 <sup>30</sup>	TR/SJ Snowmobile	\$127

It should also be noted that motorized and non-motorized users carry often carry very similar gear in the backcountry in terms of jackets, packs etc and as a result spending profiles for basic gear should be very similar. Where differences occur is with the purchase of motorized equipment, which can often exceed \$12,000 per unit and operation of the unit. COHVCO analysis indicates that the average motorized user spends between \$19 and 40 per day in gasoline. These expenditures would account for the significant differences that the NVUM

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<sup>27</sup> CPW; *The Economic Impacts of Hunting, Fishing and Wildlife Watching in Colorado* September 2008 at section III, pg 11. A copy of this report is available here <http://wildlife.state.co.us/SiteCollectionDocuments/DOW/About/Reports/08DOWEconomicImpactReport.pdf>

<sup>28</sup> COHVCO, *Economic Contribution of OHV Recreation in Colorado*, August 2013 at pg A-3. A copy of this report has been included with this appeal for your reference as Exhibit 2.

<sup>29</sup> Wyoming State Parks Snowmobile spending report attached with this appeal. It should be noted the daily spending totals do not include the purchase of equipment used for snowmobile recreation. A copy of this work has been included with this appeal as Exhibit 3.

<sup>30</sup> Must be noted these amounts do not include equipment purchases which average \$3367.28 per year

analysis concludes is present between non-motorized and motorized users even if costs of equipment are not accounted for in the spending profiles.<sup>31</sup>

**5a(i). Suitability analysis has been directly impacted by the undervaluation of recreational usage of SJ/TR lands.**

The Organizations assert the application of only two standards of suitability in the analysis of multiple use recreation in the SJ/TR is arbitrary and capricious and a direct result of the poor quality economic analysis that has been done. These standards would be "suitable" and "non-suitable". As previous portions of this appeal have clearly identified that the comparative economic valuation of recreation in the FEIS is arbitrary, capricious and conflicts with the best available science the analysis asserts to be relying upon. As a result of this undervaluation numerous other usages of the area have been found to be of higher value than use of the area for recreational purposes. When recreational spending is estimated at 1/5 its true value, the position of closing areas to benefit wildlife suddenly become more viable. As noted in subsequent portions of this appeal, USFWS conclusions have consistently concluded multiple usage of even endangered species habitat is acceptable as this usage is a huge economic driver for both local and state economies.

It is the Organizations position that applying only two standards to motorized usage is a direct result of the undervaluation of recreational spending and the long term management implications of having only two standards clearly has not been analyzed based on accurate information. The Organizations vigorously assert the application of this standard without reviewing and analyzing the economic implications is a violation of the hard look at economic impacts from management required by NEPA and expressly applied by the courts in the Hughes River decision cited previously.

It has been the Organizations experience that recreational management is anything but a black and white issue and often management standards for recreation are most effective in the gray areas. These gray areas simply are not provided for with only two management standards. The Organizations believe that the inclusion of wide areas that are currently suitable for over ground recreation in the unsuitable category will have long term negative implications to recreational access as these plans are expected to be in place for 20 or more years.

While the LRMP and FEIS do define unsuitable standards as including seasonal restrictions on routes, it has been the Organizations experience that even the best planning documents often are not completely reviewed by those opposed to public access to public lands. The Organizations believe much analysis of existing routes will start and finish with the application of the common meaning of "unsuitable" and immediately weigh against maintaining routes in

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<sup>31</sup> COHVCO, *Economic Contribution of OHV Recreation in Colorado*, August 2013 at pg A-3.

unsuitable areas, despite the long term and effective management of these routes in a sustainable manner.

Often trail usage issues and larger land management decisions are not merely addressed to the BLM or USFS but rather to a wide range of elected officials and often accuracy of current management is not a priority in these discussions. The experiences with the Hidden Gems Wilderness proposal is a perfect example of these types of presentations as current management was never accurately summarized. These inaccurate summaries, especially of the Roadless Rule are highly frustrating and are why the Organizations fought for the specific inclusion of motorized usage as a protected characteristic in the new Colorado Roadless Rule. The Organizations believe management under only two standards will compound this issue beyond its currently unacceptable levels. The Organizations are vigorously opposed to the wide range of management standards that are proposed to be included in the "unsuitable" category. This type of broad management is obviously arbitrary and capricious as specific standards for management are not addressed in the FEIS.

Clearly a designated Wilderness area is unsuitable for motorized routes and should be classified as unsuitable. However, many other issues, such as habitat, are included as "unsuitable" that clearly have suitability at certain times of the year and reflect a different management issue than the statutory prohibition of usage found in the Wilderness Act. The Organizations believe deer and elk winter range is a perfect example of such an area. For the several months of the winter deer and elk are using winter range, the Organizations agree the area is unsuitable. Designating the entire area as unsuitable fails to address the use of the area for the rest of the year, when deer and elk are not in the area. How does the area remain unsuitable as the species that is sought to be protected is not using the area?

The economic impacts of excluding recreational usage of areas when no benefit is accruing to the species can be significant and must be accounted for. Lynx management in Colorado has been plagued by these type of unintended economic issues from closures, and significant efforts are now directed at unwinding these issues as science has now concluded no benefits are flowing to the lynx as a result of the closures that have directly impacted many local economies. These type of unintended economic impacts must be addressed and simply have not been with the application of only two standards in the RMP.

The Organizations are deeply concerned that after 20 years of developing travel plans for these unsuitable areas, there simply will not be any routes in these areas, despite the on-going seasonal suitability of the areas for usage. The Organizations believe these concerns could be mitigated and the significant economic benefits that flow to local communities as a result of the trail network now sought to be made unsuitable could be minimized with the adoption of a third standard such as "limited suitability".

**5a(ii). Suitability fails to account for numerous localized factors that impact routes and the highly effective nature of current management.**

As previously noted the application of blanket standards for suitability has been directly impacted by the undervaluation of recreation in the FEIS and RMP making the conclusions arbitrary and capricious. The arbitrary nature of such an application fails to account for current management and its effective resolution of numerous on the ground issues in trail development. Current management standards that have relocated numerous routes away from site specific issues that could make the route unsuitable have proven to be exceptionally effective. This must be addressed in suitability analysis.

Two categories of suitability also fail to address that many issues with motorized routes are local in nature and do not impact large landscapes. The Organizations are aware of numerous routes that have been moved from creek beds, and area that may not be suitable for the route, to ridges and other less sensitive areas and then crossed the creek with a bridge designed to mitigate any possible negative impacts to the environment from the use of the trail.

The Organizations are aware that both the Delores and Columbine Ranger Districts is currently deploying good management crews funded by grants from the Colorado Parks and Wildlife in order to address site specific issues that may render an area temporarily unsuitable. After resolution of any site specific, trails are built in a manner to provide that not only the route but the entire area is suitable for multiple usage of the area. The Organizations have attached a recent summary report received by CPW Trails Program outlining the numerous site specific issues that have been effectively resolved with the Delores good management crew and the OHV grants and identifying that hundreds of miles of routes have been maintained and improved over the last three years by this crew alone.<sup>32</sup> These grants are specifically funded from the \$25.25 every OHV user pays to register their vehicles under Colorado law. The Organizations have to wonder how much of these efforts have been directed to areas the FEIS and RMP seeks to blanket designate as unsuitable for motorized usage.

The Organizations are not aware of why other districts and offices have not pursued these types of grant funded teams in order to maintain suitability of routes. The Organizations believe the blanket application of unsuitability standards for motorized travel has arbitrarily excluded any review of the effectiveness of current management of these areas making them suitable.

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<sup>32</sup> A copy of this report is attached as Exhibit 3.



**5a(ii) Blanket determinations of the unsuitability of areas for motorized usage will impair funding possible streams from partners in the future.**

As previously addressed in this appeal, the Organizations vigorously assert that the implications of blanket designations of suitability/unsuitability for motorized use is arbitrary and capricious when current management of the area has proven exceptionally effective. In addition to failing to address current management effectiveness, the Organizations assert that the failure to review possible implications to funding opportunities from partners is arbitrary and capricious. While the RMP provides an extensive summary of the funding shortfalls of the agency for the maintenance of routes<sup>33</sup>, the RMP and FEIS fail to address possible implications to future funding sources from management changes. It is the Organizations belief these impacts could be severe and must be addressed.

The Colorado Parks and Wildlife Trails Program is one of the single largest partners for funding of maintenance of multiple use routes in the state of Colorado. The Organizations are not aware of any other partners that have provided this level of funding or commitment of resources for the protection of their recreational activities in the planning area. Over the life of this grant program over \$2,000,000 has directly awarded for projects and teams in the SJ/TR planning area. It is somewhat frustrating to the Organizations that the strength of the partnership was not weighed more heavily in the analysis of the suitable/unsuitable standard.

While there have been a large number of valuable grants awarded, these grants are awarded on a competitive basis and a designation that the area is unsuitable for motorized usage will impair the ability of the grant to score high enough to be funded. The committee awarding these grants is highly interested in the long term success of grants in maintaining access for multiple use.

As part of each application, the application is reviewed to insure the route to be maintained is legal. An unsuitability designation, even if it can be resolved, will not streamline the grant process and application as the RMP provisions addressing this usage will have to be included with every grant application. Every grant application will need to be discussed and be the basis of significant opposition based on the suitability of the area. Development of a "limited suitability" type standard would resolve these concerns and should have been reviewed.

**5b(i). The USFWS and CPW have specifically found that many species habitat areas can co-exist with motorized usage.**

As the Organizations have previously stated, the arbitrary and capricious application of overly broad standards for suitability/unsuitability of areas for motorized recreation will have negative

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<sup>33</sup> See, Resource Management Plan at pg 95.

economic implications that have not been addressed sufficiently in the FEIS and DRMP. The Organizations are vigorously opposed to the starting point of the analysis in the SJ/TR plan that all habitat areas are negatively impacted by motorized usage. This position is simply arbitrary and not based on best available science and as previously noted, fails to address the economic impacts of this management standard.

The arbitrary and capricious application of "unsuitable" standards to all habitat areas will also bring these suitability standards into direct conflict with listing decisions for endangered species that are made by the USFWS. As the FEIS and RMP fail to provide any basis or meaningful analysis of why an area has been found suitable or unsuitable for motorized recreation, the Organizations are forced to address specific decisions regarding habitat and management of many of the common species found on the SJ/TR.

The management of Endangered Species issues is an issue where the BLM LUP Handbook provides specific guidance for this issue.

**"Land use plan decisions should be consistent with BLM's mandate to recover listed species and should be consistent with objectives and recommended actions in approved recovery plans, conservation agreements and strategies, MOUs, and applicable biological opinions for threatened and endangered species."<sup>34</sup>**

The Organizations believe this standard is exceptionally relevant to much of the discussion of USFWS standards and the need to designate possible habitat areas unsuitable for motorized usage is directly contradicted in the listing decision. As the decision to make these areas unsuitable for motorized usage is not consistent with the recommended actions of the listing decision, the Organizations vigorously assert this level of decision making is arbitrary and capricious per se as there is no analysis of any issues to warrant alteration of the USFWS analysis.

As the economic impacts resulting from management restrictions in the possible designation of critical habitat areas for endangered species must be addressed under the ESA, there is a significant body of work addressing the issues of suitability of habitat areas for motorized usage.<sup>35</sup> It should be noted that broad scope rules for any activity are rarely used by the USFWS in their decisions as the USFWS has litigated and lost numerous court battles where broad scale management standards were to be applied. Everyone remembers the California snowy owl issue. Rather than adopt broad scale habitat closures for motorized usage, the USFWS consistently has chosen to establish the dates of a seasonal closure and specific distances that might need to be closed for the proposed habitat area in the listing decision.

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<sup>34</sup> See, BLM LUP Manual Appendix C at pg 5.

<sup>35</sup> See, 16 USC 1533(b)(2).

Often a few feet of boundary around an area is the only difference between alternatives in a FWS habitat designation decision. There can be no argument regarding the supremacy of an ESA decision on management in comparison to other federal planning requirements. The ESA always wins.

Many of these standards and dates are specifically addressed in the Biological opinion that has been published with the FEIS and RMP. It is the Organizations position that these specific standards have been specifically undertaken to minimize economic impacts from the listings. The large scale determinations of suitability based on habitat run directly contrary to these prior determinations and any decision not to address these specific standards in the suitability is per se arbitrary and capricious.

**5b(ii). The proposed blanket unsuitability of all wolverine habitat areas for motorized recreation will conflict with decisions by the USFWS.**

The Organizations have been deeply involved in the stakeholder meetings with CPW, USFWS and numerous other stakeholders regarding the management of the Wolverine in Colorado should CPW move forward with a possible reintroduction of this species. It should be noted that the Organizations were the only group in these stakeholder meetings to support the reintroduction of the wolverine, and this support was heavily based on the development of clear and specific management standards for the motorized recreational usage of the habitat areas. The Organizations are deeply troubled by the blanket unsuitability of all habitat areas for motorized usage as this is exactly the situation that was sought to be avoided with the listing. Implementation of unsuitability decisions will make the Organizations reconsider our ongoing support for any reintroduction as closures were avoided in the listing process but were implemented as unsuitable without a specific discussion or analysis in the RMP. That is a VERY scary precedent.

These stakeholder meetings have covered multiple years and have centered around establishing effective management for the Wolverine prior to its release. These determinations were critical in avoiding the management uncertainty that plagued the lynx and resulted in extensive unintended economic impacts to local communities. These management standards were developed for the overall benefit of the species and are not limited to public lands. As much of habitat in the planning area is under private ownership, private support for the management decisions was critical to improving the survival of the species. These type of factors simply are not addressed in a RMP but must not be arbitrarily overlooked in the application of overly broad management standards.

The unintended economic impacts of the lynx reintroduction were so significant that the Colorado Legislature now requires specific statutory approval for the reintroduction of any

species in Colorado.<sup>36</sup> This legislation must still be obtained prior to the reintroduction of the Wolverine and avoiding opposition resulting from overly broad standards was a serious concern in obtaining this legislation. A blanket closure of all wolverine habitat to motorized usage would insure one thing, the legislation would never be obtained and the wolverine would never be reintroduced in Colorado. This would not advance the survival of the Wolverine as models indicate that Colorado habitat will be some of the most resilient to the impacts of climate change, which is the primary threat to the Wolverine survival. The Organizations do not believe that any credible argument can be made that these types of issues were analyzed in the decision to find all habitat unsuitable for motorized routes. It is the Organizations position that these types of costs and impacts simply were not analyzed in the determination that all wolverine habitat areas would be immediately found unsuitable for motorized routes.

The recent listing decision for the wolverine provides a concrete example of where a designation of habitat area as immediately unsuitable for motorized use in a forest plan would directly conflict with the management required by the USFWS. The Organizations are not able to find any analysis of the benefits or costs of implementing management standards for the management of the wolverine that are more strict than those specifically created by the USFWS and addressing numerous issues that are simply outside the scope of any forest plan.

The recent listing decision notes that the modeled habitat for the wolverine a significant portion of the SJ/TR planning area. The following map reflects the boundary of modeled wolverine habitat in the planning area as follows:

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<sup>36</sup> See, Colorado Revised Statutes §33-2-105.5(2).



While the USFWS has modeled the planning area as habitat, the USFWS has also clearly spoken in their listing decisions to a variety of specific management standards that have been summarized as there should be no changes to forest management as the result of an area being designated as habitat.<sup>38</sup> This makes sense when the primary threat to the Wolverine is identified in the listing decision as global climate change. The USFWS has also taken further steps to insure that changes to forest plans are not incorrectly made by placing a ESA §10j experimental population designation on the Wolverine in Colorado<sup>39</sup> and an ESA §4d designation on the Wolverine outside Colorado.<sup>40</sup>

While these FWS position have been accurately reflected in both the FEIS<sup>41</sup> and §7 consultation documents prepared by the FWS<sup>42</sup> regarding the wolverine management standards, the application of the determination that all habitat areas are immediately unsuitable for motorized use will bring these two standards into direct conflict with USFWS standards and result in a violation of the ESA. This will also negate years of work undertaken by the stakeholders in this issue.

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<sup>37</sup> <http://www.fws.gov/mountain-prairie/species/mammals/wolverine/02012013ModeledWolverineHabitatMap%20.jpg.pdf>

<sup>38</sup> USFWS summary fact sheet available here

<http://www.fws.gov/idaho/Wolverine/WolverineProposed4dRule031113.pdf>

<sup>39</sup> See, **Federal Register** / Vol. 78, No. 23 / Monday, February 4, 2013 / Proposed Rules at pg 7890

<sup>40</sup> <http://www.fws.gov/idaho/Wolverine/WolverineProposed4dRule031113.pdf>

<sup>41</sup> See, FEIS at pg 117.

<sup>42</sup> See, FEIS Volume III Appendix J - Biological Assessment for the San Juan National Forest

**5b(iii). Lynx management will be directly impaired as the USFS has already determined that blanket motorized closures in lynx habitat are not economically viable.**

The management of the lynx and the wolverine have been closely tied to each other in Colorado since the CPW began the reintroduction process in the late 1990's. Much of the original management of the lynx was highly theoretical<sup>43</sup> and many overly cautious management standards were later found to have generated no benefit to the lynx. This is an issue that has greatly impacted the management of any species that CPW seeks to reintroduce in Colorado.

While the SJ/TR does apply the SRLA moving forward, the SRLA does specifically note that Forest Service roads and trails do not result in a benefit or loss to the quality of lynx habitat.<sup>44</sup> This new management position was a significant departure from earlier management standards for lynx habitat that were far more broad in scope and found to be unnecessary by best available science on the issue. Given that management standards similar to the unsuitable type habitat analysis that is now proposed in the SJ/TR plan have already been found to be unnecessary and not supported by best available science, any return to such a standard can be nothing more than an arbitrary and capricious standard. The USFS and USFWS have already concluded that the economic impacts of such a decision outweigh the benefits and are not warranted. The Organizations will again note these agency conclusions support our position that recreation has been significantly undervalued in the SJ/TR plan.

**5b(iv). The designation of lynx habitat as unsuitable for motorized will negatively impact ongoing lynx research.**

The decision to designate all lynx habitat as unsuitable for motorized use also again fails to address the economic impacts of the decision, especially in regard to continued management and research for the benefit of the lynx. The Organizations will admit the relationship between lynx managers and the Organizations has been somewhat troubled at times, however the Rocky Mountain Researcher Station researchers and the Organizations have recently come together to accurately research lynx response to recreational usage of habitat by both motorized and non-motorized users. This research has involved the radio collaring of lynx in areas of high recreational usage and then providing gps units to recreational users of the area to track their usage and has provided preliminary research that is cutting edge nationally. This research is providing real time information regarding the lack of response of lynx to recreational usage of all types. Many motorized users are proud of the fact that they have been able to participate in these research efforts, but these partnerships are not immune from the

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<sup>43</sup> Leonard Ruggerio, Keith Aubry, Steven Buskirk, Gary Koehler, Charles Krebs, Kevin McKelvey & John Squires, *Ecology and Conservation of Lynx in the United States* (2000) at pg 463.

<sup>44</sup> See, SRLA at pg 16.

impacts of arbitrary decisions like making all habitat immediately unsuitable for motorized usage. The Organizations will note that arbitrary and capricious decisions to make all habitat areas unsuitable to motorized usage will not assist with partnerships between recreational users and agency researchers. The Organizations doubt this level of analysis of issues such as this was performed prior to making all habitat unsuitable for motorized usage.

Colorado Snowmobile Assoc sought to donate the use of a snowmobile for the researchers when budget issues for the research arose. While this donation proved to be unsuccessful, the Organizations are aware that the local knowledge and guidance that had resulted from this partnership has been valuable to researchers. In addition to this knowledge, local snowmobile clubs have assisted in removing broken down or stuck equipment of researchers in the backcountry by taking their snowcats to the broken or stuck equipment. Without these recovery services, the Organizations believe it is entirely possible that the equipment would have remained in the backcountry until the spring snowmelt.

**5b(v). Blanket findings of unsuitability of Boreal Toad habitat for motorized usage is arbitrary and capricious and conflicts with USFWS listing decisions.**

Review of the listing decisions and habitat management decisions with regard to the Boreal Toad is another species with a long history of analysis, almost all of which finds the designation of these habitat areas arbitrary and capricious as the primary threat to the species simply has no relationship to motorized usage.

The primary threat to the Boreal Toad is a fungus that is transferred by birds and predation. as the Fish & Wildlife Service clearly identifies in its listing decision as follows:

**“A globally occurring disease of amphibians that is commonly known as chytrid fungus is believed to be the major factor in the decline of the southern Rocky mountain population of the boreal toad.”**<sup>45</sup>

As specifically noted in the Fish & Wildlife Service’s Boreal Toad recovery plan:

“Most habitat alterations from timber harvest, grazing, recreation, and water development would likely not be beneficial to long-term enhancement of boreal toad habitats. **However, none of these activities have been shown to be**

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<sup>45</sup> <http://www.fws.gov/mountain-prairie/species/amphibians/borealtoad/> ; See also *Conservation Plan and Agreement for the management and recovery of the Southern Rocky Mountain Population of the Boreal Toad*, US FWS 2001 @ pg 3.

**primary causative agents for the population decline in the southern Rocky Mountains.”<sup>46</sup>**

Any concerns regarding the need for large habitat closures for the boreal toad have been found to be unwarranted in subsequent research into possible recreational impacts on the toad, as the recommended remedy for recreational impact was education of users of toad habitat.<sup>47</sup> In fact numerous monitoring stations for the Toad are located in areas of heavy recreational activity, but no disproportionate impact has been noted.

As noted in the BA, the only mitigation of usage for boreal toad habitat needed is seasonal closure of 100 ft around an active breeding site.<sup>48</sup> Given the specific conclusions in the BA that 100ft of seasonal closure is sufficient to mitigate any impacts and reliance on Boreal Toad habitat for suitability would be arbitrary and capricious as these type of closures have been found unwarranted by the USFWS.

The Organizations will note that the USFWS has specifically concluded education of users and seasonal closure of 100ft around active breeding areas is effective management of habitat for the boreal toad. Any expansions of the temporary limited scale closures to the scales proposed in the RMP is arbitrary and capricious and not based on best available science.

**5b(vi). Sage Grouse management will be negatively impacted by the unsuitability of all habitat for motorized usage as the USFWS has already concluded this management is not viable.**

The CPW has recently concluded that Sage Grouse populations in Colorado have held steady over the last several years and are at or above target populations.<sup>49</sup>

Primary threat is urbanization of habitat and high speed arterial roads. Recreational usage of habitat areas has been found to be a minimal threat to the Sage Grouse.<sup>50</sup> In addition to the minimal threat to habitat from recreational usage of habitat areas, recent listing decisions have also concluded that a designated trail system is a significant benefit to the Sage Grouse. The 2010 USFWS listing decision discussed changes to designated trails on USFS lands as follows:

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<sup>46</sup> See, Boreal Toad Plan 2001 @ pg 12.

<sup>47</sup> Report on the Status and Conservation of the Boreal Toad *Bufo boreas* in the Southern Rocky Mountains; Annually produced 2001-2006 .

<sup>48</sup> Volume III Appendix J - Biological Assessment for the San Juan National Forest Final Land and Resource Management Plan J-99

<sup>49</sup> See, COLORADO DIVISION OF PARKS AND WILDLIFE REPORT WESTERN ASSOCIATION OF FISH AND WILDLIFE AGENCIES December 2012 at pg 1. A copy of this report is available here: <http://wildlife.state.co.us/SiteCollectionDocuments/DOW/About/Reports/WAFWAColoradoRptDecember2012fullversion.pdf>

<sup>50</sup> Endangered and Threatened Wildlife and Plants; *Endangered Status for Gunnison Sage-Grouse*; 78 Fed. Reg. 2486 (Jan. 11, 2013) at pg 2533.



“As part of the USFS Travel Management planning effort, both the Humboldt-Toiyabe National Forest and the Inyo National Forest are revising road designations in their jurisdictions. The Humboldt-Toiyabe National Forest released its Draft Environmental Impact Statement in July, 2009. The Inyo National Forest completed and released its Final Environmental Impact Statement and Record of Decision in August 2009 for Motorized Travel Management. **The ROD calls for the permanent prohibition on cross country travel off designated authorized roads.**”<sup>51</sup>

Research indicates that seasonal closures for the protection of leks is a highly effective tool, which the status decision specifically notes as follows:

"The BLM and Gunnison County have 38 closure points to minimize impacts to Gunnison sage-grouse within the Basin from March 15 to May 15 each year (BLM 2009, p. 40). **While road closures may be violated in a small number of situations, road closures are having a beneficial effect on Gunnison sage-grouse through avoidance or minimization of impacts during the breeding season.**"<sup>52</sup>

The need to address a wide range of issues is supported in the status decision as closures of recreational access alone is insufficient to address habitat degradation, as the status decision specifically notes as follows:

"Based on modeling results demonstrating the effects of roads on Gunnison sage-grouse (Aldridge *et al.* 2011, entire—discussed in detail in Factor A), implementation of even the most restrictive travel management alternatives proposed by the BLM and USFS will still result in further degradation and fragmentation of Gunnison sage-grouse habitat in the Gunnison Basin." <sup>53</sup>

As previously noted for the wolverine listing and management of deer and elk, private lands play a critical role in the management of Sage Grouse. Blanket closures of habitat areas are a management tool that significant resources have been directed towards analyzing and been found to be unnecessary given the minimal benefits and significant negative economic impacts that could result from the decision. The Organizations believe the USFWS conclusions that the economic costs of this management standard outweigh the benefits again supports the Organizations position that recreation has been seriously undervalued in the SJ/TR plan.

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<sup>51</sup> 12-month findings for petition to list the Greater Sage Grouse (*Centrocercus urophasianus*) as threatened or endangered. Fed Reg. (March 5, 2010) at pg 92.

<sup>52</sup> Status proposal at pg 2532 .

<sup>53</sup> Status proposal at pg 2526.

Arbitrarily finding all Grouse habitat unsuitable for motorized is arbitrary and capricious as the USFWS has already reviewed this standard and found it completely unnecessary.

**5b(vii). Current management of deer and elk habitat has been very effective and weighs heavily against finding these areas unsuitable for motorized usage.**

The Organizations will note that the management of deer and elk priority winter habitat and calving grounds on the SJ/TR has a long history of effective management of these areas with seasonal closures. This is reflected by the fact that every elk and deer management plan created by the CPW clearly states that deer and elk herds are at or above the target populations for the planning area.<sup>54</sup> Some herds are 50% above their target populations, with CPW providing little limitation on hunting licenses.<sup>55</sup>

CPW herd management plans specifically identify the primary issues impacting elk in the SJ/TR planning area are competition with livestock and high levels of private lands in the planning areas.<sup>56</sup> Primary threats to deer populations are predation and disease.<sup>57</sup> The Organizations can see no relationship between impacts to herd populations from predation and disease and the existence of motorized routes in the habitat area.

The Organizations are also vigorously opposed to the designation of large areas of elk and deer habitat as unsuitable for motorized recreation on USFS lands and the continued usage of seasonal closures and route density is continued on BLM lands.<sup>58</sup> No basis for why a single standard is not applied is provided and no explanation of how the area is unsuitable on USFS lands but requires only a seasonal closure on BLM lands is provided.

As previously noted the clearly effective previous management of these habitat areas is simply not addressed in with the blanket application of an unsuitable for motorized usage standard. Contrary to any assertion of improving habitat many hunters find motorized access to hunting areas a key component for a quality hunting experience as they do not have teams of horses to remove animals with. Given the effectiveness of previous management of habitat areas with seasonal closures, any assertion that the area is unsuitable for motorized usage is arbitrary and capricious.

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<sup>54</sup> See, CPW HERMOSA ELK HERD MANAGEMENT PLAN DATA ANALYSIS UNIT E-30; July 2010 at pg 3; and see also San Juan Basin Elk Herd E-31 Data Analysis Unit Plan; November 2006 at pg 3; and see also San Juan Deer Management Plan Data Analysis Unit D-30; August 2001 at pg 3; and see also HERMOSA MULE DEER HERD MANAGEMENT PLAN DATA ANALYSIS UNIT D-52; July 2010 at pg 4.

<sup>55</sup> San Juan Basin Elk Herd E-31 Data Analysis Unit Plan; November 2006 at pg 3.

<sup>56</sup> See,

<sup>57</sup> See, CPW San Juan Deer Management Plan Data Analysis Unit D-30; August 2001 at pg 7; see also.

<sup>58</sup> See, RMP at pg 102.

**5b(viii). Cutthroat trout management will be significantly impaired by designations of habitat as unsuitable as this decision has no relationship to the primary threats to the species.**

The Organizations have to believe that a credible argument could be made that designating all cutthroat trout habitat as unsuitable were developed solely to create conflict between users and the agencies. Cutthroat trout management is clearly an area where previous management activities by agencies left significant room for improvement. This room for improvement as resulted in a high degree of public sensitivity to this issue. This poor management history sets the proper tone for the public perception of application of RMP standards on this issue and understanding the negative implications such a designation would have on relationship between users and the agency in the future.

The Organizations believe a brief summary of the management history of cutthroat trout will help to understand why management of this species is such a sensitive issue for the public and the ongoing need to avoid inaccurate management of the species in the future. The cutthroat trout is a species where USFWS decisions specifically addressing cutthroat trout management are simply never addressed in the development of the suitability standard. The specter of arbitrary management decisions immediately becomes a concern as researchers have uniformly concluded the primary threat to the species to be:

"At the time of Recovery Plan development, the main reasons cited for the subspecies' decline were hybridization, competition with nonnative salmonids, and overharvest (USFWS 1998)."<sup>59</sup>

The hybridization of the cutthroat was the result of management activities that occurred at an unprecedented level in Colorado. The scale of previous management activity does provide a significant amount of context to the levels of frustration. Research has concluded:

**"Between 1885 and 1953 there were 41,014 documented fish stocking events in Colorado by state or federal agencies. The vast majority of these involved brook trout (*Salvelinus fontinalis*), rainbow trout (*Oncorhynchus mykiss*) and cutthroat trout (*O. clarkii*) (Fig. 3, supporting information). Remarkably, over 750 million fish of these three species were stocked from hatcheries into streams and lakes in Colorado over this period of time. Introductions of brook trout and rainbow trout probably had devastating effects on native cutthroat**

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<sup>59</sup> See, US Fish and Wildlife Service; *Greenback Cutthroat Trout; 5 year summary and evaluation*; May 2009 at pg 4. See also pg 39. This document is hereinafter referred to as the "trout 5 year summary and review" in this appeal.

**trout populations because brook trout are superior competitors and rainbow trout hybridize with cutthroat trout (Young & Harig 2001)." <sup>60</sup>**

The June 2006 Conservation strategy and agreement between FWS and the Forest Service provides 7 objectives and 11 strategies for the Colorado Cutthroat trout, all of which seek to address the impacts of stocking 750 million threats to the cutthroat trout. <sup>61</sup>

It should be noted that the 2006 Conservation Strategy does provide a rather lengthy discussion of habitat issues involved in the management of the trout. <sup>62</sup> This discussion immediately centers around removal of non-native fish in contaminated waterways used by the cutthroat to avoid predation, hybridization and effects of superior competition of non-native fish. None of these standards are cited here due to their length and lack of relevance to the suitability standard. The 2006 Conservation Agreement does not even arguably imply any travel management issues, as all habitat discussions are all related to preserving cutthroat trout from non-native species. If there were trail related habitat issues, the Organizations have to believe they would have been discussed in this section. The lack of discussion on this issue is a clear indication of the truly low levels of concern that surround routes adjacent to water bodies.

The 2006 Conservation Agreement provides a general management standard as follows:

"by implementing conservation measures to avoid streamside habitat degradation while approving new grazing, logging, and road and trail construction proposals; by moving existing roads and trails away from streamside habitats and rehabilitating disturbed riparian habitats; **All of these positive activities are ongoing throughout the subspecies' range and are implemented based on agency priorities and funding levels on an annual basis.**" <sup>63</sup>

Given the unprecedented level of impact from previous stocking of 750 million threats to the Colorado cutthroat trout in Colorado waterways, the Organizations believe the low level of any threat from a trail possibly adjacent to the waterway would be readily apparent. Given the scale and type of threat from the 750 million threats to the cutthroat trout, the Organizations

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<sup>60</sup> Metcalf et al; *Historical stocking data and 19th century DNA reveal human-induced changes to native diversity and distribution of cutthroat*; *Molecular Ecology* (2012) 21, 5194–5207.

<sup>61</sup> CRCT Conservation Team. 2006. Conservation agreement for Colorado River cutthroat trout (*Oncorhynchus clarkii pleuriticus*) in the States of Colorado, Utah, and Wyoming. Colorado Division of Wildlife, Fort Collins. at pg 3-4.

<sup>62</sup> See 2006 CRCT Conservation Strategy at pg 9.

<sup>63</sup> See, 5 year trout summary and review at pg 35.

believe designating any area in the state as unsuitable for motorized would result in no benefit to the cutthroat trout.

In May 2009, the USFWS released its first 5 year review of the greenback cutthroat trout endangered species listing status and evaluation. Under federal law, this 5 year review is specifically required to update management of any species. Relevant portions of the Code of Federal Regulations requires:

"424.21 - Periodic review. At least once every 5 years, the Secretary shall conduct a review of each listed species to determine whether it should be delisted or reclassified. Each such determination shall be made in accordance with 424.11, 424.16, and 424.17 of this part, as appropriate." <sup>64</sup>

The 2009 listing decision provided a wealth of relevant information regarding the threats and issues possibly impacting the cutthroat trout as a result of the reintroduction of 750 million threats to the cutthroat trout into its habitat. The listing decision provides a discussion of the impact these 750 million threats had on the cutthroat that could only be described as compelling. The 2009 listing decision provided a limited discussion regarding the three factors for effective trout habitat scope and types of habitat issues that are faced by the Cutthroat trout that simply are not related to the primary threat to the species. This report clearly states:

**"Since completion of the 1998 Recovery Plan, extensive study has been devoted to determining how habitat quality and translocation success are related. Harig and Fausch (2002) developed a model, based on a comparative field study, which predicted that cold summer water temperature, narrow stream width, and lack of deep pools limited translocation success of the greenback. Young and Guenther-Gloss (2004) evaluated the model developed by Harig and Fausch (2002), and found a positive correlation between the three model components and greenback abundance."**<sup>65</sup>

Landscape factors such as water temperature, water depth and stream width are not factors that would be impacted by a TMP, as factors like this would be highly geographically related. It should be noted that CPW has effectively reintroduced cutthroat trout in a large number of lakes in the state. The listing decision does identify trails usage as a low level threat to the cutthroat trout as follows:

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<sup>64</sup> 50 CFR §424.21

<sup>65</sup> See, 5 year trout summary and review at pg 11.

"**Low level threats include** the ongoing negative effects of past mining operations on water quality; the impacts of grazing, logging, **and road and trail construction and use on riparian habitat and streambanks, causing increased erosion, sediment deposition, and in turn elevated water temperatures and higher turbidity;** and the co-occurrence of nonnative salmonids with greenback populations."<sup>66</sup>

The 5 year listing decision specifically states land managers have a significant amount of latitude in addressing these low level threats to the trout. The listing decision recommended management of this issue as follows:

"Regulatory and land management agencies have the ability to improve habitat conditions and eliminate or minimize these threats by.... by implementing conservation measures to avoid streamside habitat degradation while approving new grazing, logging, and road and trail construction proposals; by moving existing roads and trails away from streamside habitats and rehabilitating disturbed riparian habitats;..... All of these positive activities are ongoing throughout the subspecies' range and are implemented based on agency priorities and funding levels on an annual basis."<sup>67</sup>

The 5 year review concludes by recommending the following management of low level threats as follows:

"**Management Actions 4.9** The regulatory and land management agencies involved with greenback recovery should continue their efforts to improve habitat conditions, to establish new populations as appropriate, and minimize the negative effects of ongoing and proposed actions on the subspecies."<sup>68</sup>

Clearly the implications of the 2009 listing decision have not been addressed with the large scale findings of Cutthroat Trout habitat as unsuitable for motorized usage. This position clearly and directly conflicts with the 2009 listing decision from the FWS and 2006 Conservation Strategy and Agreement.

Given the rather troubling history surrounding the management of the cutthroat and the failure of the RMP to accurately address management guidelines and the troubled and visible nature of previous management, the organizations vigorously assert the blanket finding of unsuitability

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<sup>66</sup> See, 5 year trout summary and review at pg 34

<sup>67</sup> See, 5 year trout summary and review at pg 34-35.

<sup>68</sup> See, 5 year trout summary and review at pg 37.

has not been meaningfully analyzed and as a result is arbitrary and capricious per se as motorized usage will not impact water temperature, stream width or other factors to any level comparable to the reintroduction of 750 million direct threats to the cutthroat trout. The arbitrary and capricious nature of this decision is further compounded by the fact that current management of trail crossings at streams has proven highly effective as specifically addressed in the Delores Ranger district good management summary provided with this appeal.

**6a. The clear mandate of Federal law for development of the no action alternative are repeatedly violated in the suitability designations.**

As previously outlined the Organizations are deeply concerned at the failure of the suitability for motorized usage to be impacted by USFWS decisions for the management of numerous endangered species. The Organizations concerns regarding the arbitrary and capricious nature of the suitability standard are not limited to the management of habitat areas. The Organizations vigorously assert the failure to accurately address current management and usage of several areas accurately in both the suitability analysis and land management standards is arbitrary and capricious. The Organizations will note that these management changes may only impact small geographic areas but these are highly valued areas for motorized usage that remain open and have been the basis of numerous hearings and heavy opposition to any discussion about possible closure of the area in the future.

The Organizations are deeply concerned that management of several areas were accurately reflected in the DEIS and the current management standards were changed in the FEIS without explanation. Each of these changes moved an area with a long history of permitted motorized access and usage to an area that is now unsuitable and listed as currently closed under current management. No NEPA analysis or other public process has been cited to support these changes between the FEIS and DEIS.

FLPMA specifically identifies the

"(c) In the development and revision of land use plans, the Secretary shall–

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;....

(5) consider **present** and potential uses of the public lands;"<sup>69</sup>

No detailed statement of high quality information regarding how boundaries were established or why areas that have effectively managed motorized routes with seasonal closures often for a long period of time are suddenly determined to be unsuitable for motorized usage. The

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<sup>69</sup> See, 43 USC §1711.

Organizations believe this position directly evidences the fact that current management of these areas was not accurately incorporated in the analysis.

Federal Law specifically identifies that current levels of resource usage are to be the base line for development of the no action alternative of the EIS.

"At the direction of the Field Manager, in collaboration with any cooperating agencies, BLM will consider all reasonable resource management alternatives and develop several complete alternatives for detailed study. Nonetheless, the decision to designate alternatives for further development and analysis remains the exclusive responsibility of the BLM. **The alternatives developed shall reflect the variety of issues and guidance applicable to the resource uses.** In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, all reasonable variations shall be treated as subalternatives. **One alternative shall be for no action, which means continuation of present level or systems of resource use.**"<sup>70</sup>

The Organizations are vigorously opposed to any closures that result from the arbitrary summary of current management standards. Many of these management standards specifically permit the ongoing usage, making the designation of these areas as closed arbitrary and capricious per se. As more specifically identified and discussed in subsequent portions of this appeal, numerous portions of the no action alternative are not accurately represented in the FEIS. In a more troubling fact pattern, accurate information was provided regarding the usage of these areas in the DEIS and for reasons that are not clear erroneous information was included in the FEIS despite the on-going usage of the areas in a manner consistent with the DEIS designations.

**6b(i). Current management of the Molas Pass area not accurately reflected in the suitability analysis in Alternative A for winter motorized usage.**

The Organizations are deeply troubled regarding the arbitrary changes to current usage and management of winter over the snow recreation on the Molas pass area. Contrary to the Alternative A map that is provided with the FEIS this areas is not currently closed to winter multiple usage recreation. The management of the Molas Pass area for winter recreation has recently been hotly debated in the SJ/TR area and been an area where the changes in management of the area as the result of service first expiration and renewal have been very apparent. The Organizations will note that while the geographic area of Molas Pass is small, it is

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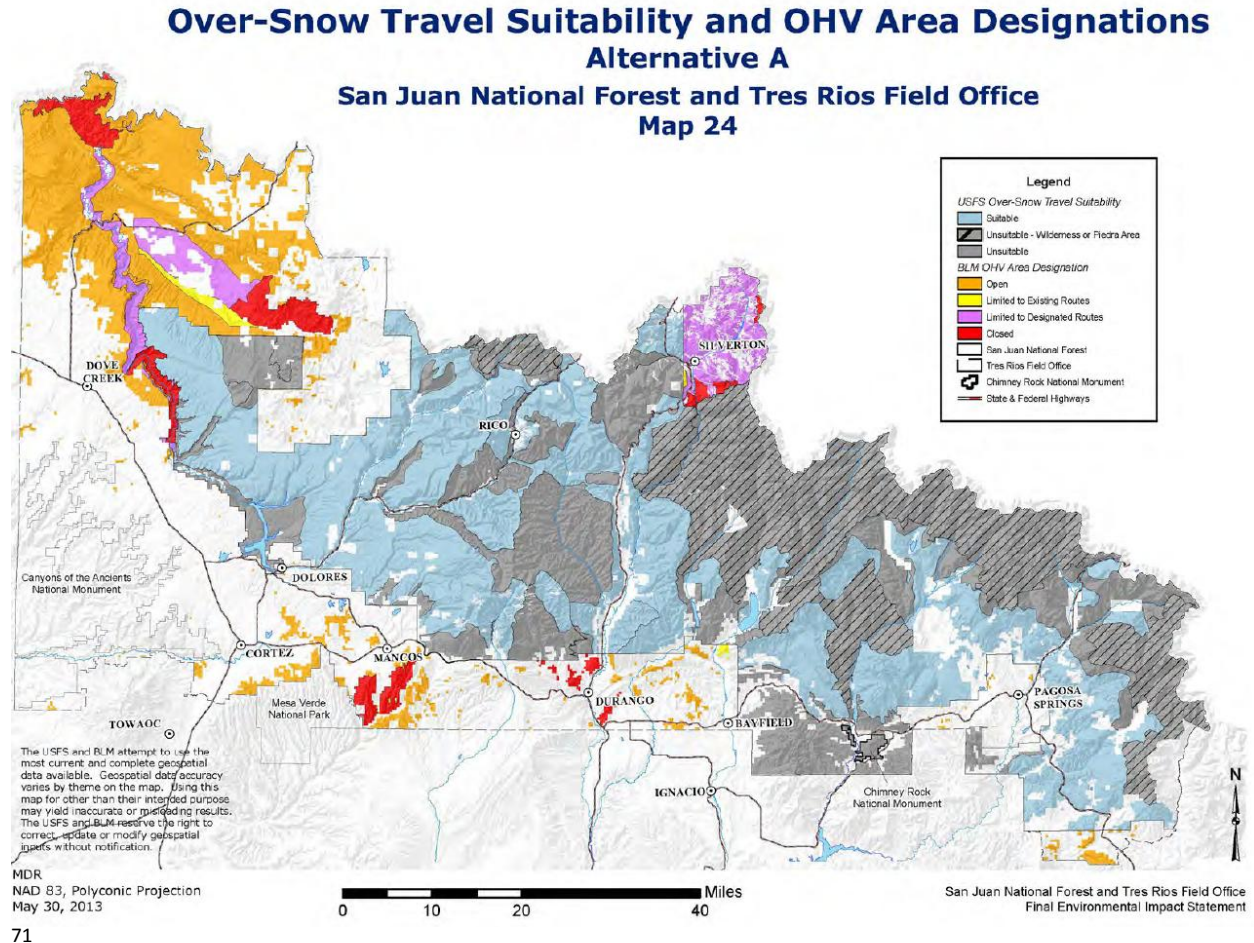
<sup>70</sup> See, 43 CFR §1610-4.5



highly valued by winter motorized users and local communities who heavily benefit from the motorized usage.

As part of these recent discussions between users, permittees, local government and both BLM and USFS officials, the Field Office manager has provided correspondence to local winter users specifically identifying the Molas Pass area as open for motorized usage in the 2012/13 winter season and that the area would remain open to motorized usage during the 2013/14 winter season as well. Given these statements, the Organizations believe the current management that is represented in the FEIS is incorrect, fails to satisfy NEPA and must be withdrawn and corrected.

Current management of the Molas Pass area in SJ/TR plan for winter recreation is identified as closed. The summary FEIS map is as follows:



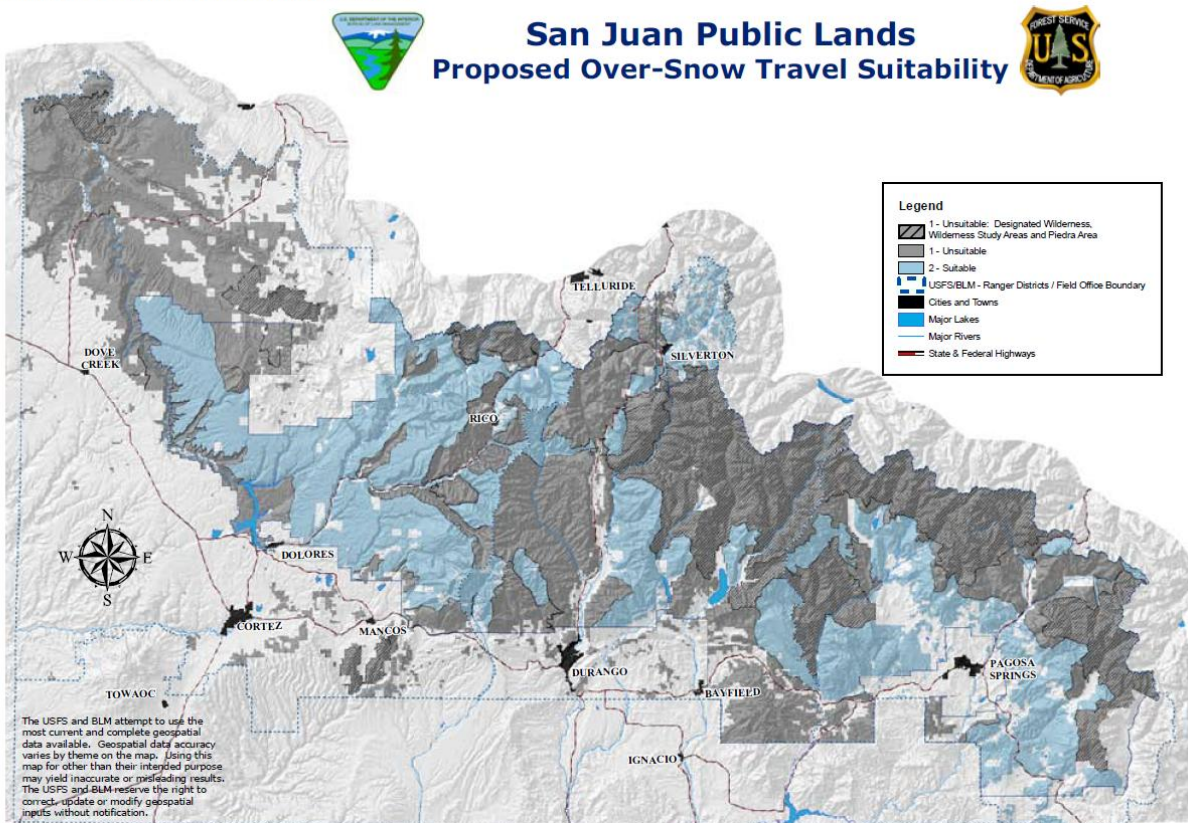
<sup>71</sup> See, FEIS Appendix V Maps - Final; Map 24 at pg 29.

The Organizations believe the current management correspondence and its conflict with the current management map in the FEIS make the decision arbitrary and capricious per se. The Organizations will note that no analysis is provided to support the change in current management or impacts to the planning area from closing the area to winter motorized usage.

A review of the DEIS reveals that the Molas Pass area was identified as suitable for over the snow recreation, which was based on the historical usage of the area for motorized recreation well before any authority was provided for the agency to inventory motorized usage of a WSA. The DEIS provided the following map of winter recreation and it must be noted that the Molas Pass area was specifically identified as open in this map:

Page 142 ■ Volume 2 ■ DRMP ■ Part 2 ■ STRATEGY ■ SUITABILITY

Figure 12 - Proposed Over-Snow Travel Suitability



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The Organizations have to note that the West Needles/Molas Lake area was found suitable for over the snow recreational usage in the draft RMP and EIS that were released previously as noted in the map above. The motorized usage of this area was further identified as a usage that would be permitted to continue in the Roadless review of the West Needles area discussed more completely in other portions of this appeal. The Organizations find the change in current management standards between the DEIS and FEIS arbitrary and capricious per se.

<sup>72</sup> See, DRMP and DEIS Volume 2 Strategy and Suitability At pg 142.

The Organizations are not aware of any NEPA process or other public process that has undertaken by USFS or BLM to explore alteration of the management of the Molas Pass area between release of the DEIS and FEIS. Rather all public process has been commenced by San Juan County, as the San Juan County commissioners held a public hearing to protect motorized access to the Molas Pass area after grooming of the area and permittees were informed that the Molas Pass area would be closed to motorized usage in the future. At this hearing, no one was in favor of any change in motorized usage of the area. The Field Office managers correspondence regarding continuing current usage of the area was made in direct response to the San Juan County Commissioners meeting.<sup>73</sup>

In addition to the general mandates of FLPMA and NEPA, the need for a public process commenced by the agency is specifically mandated for changes in management of agency identified Wilderness Study Areas are required by §603(a) of FLPMA and §3(d) of the Wilderness Act. It is the Organizations position that these public process have never occurred and this change in current management is illegal and the current decisions and associated documents must be reversed and remanded for public process in compliance with the above statutes. Impacts from any change in management of the Molas Pass area simply have not been analyzed.

**6b(ii) WSA areas are managed without regard to grandfathered usages in violation of FLPMA and BLM guidelines.**

As previously noted the Organizations are deeply troubled by the lack of accuracy in maps provided with the RMP motorized usage of the Molas Pass area. The Organizations have been heavily involved with the usage of the Molas Pass area for motorized recreation and this involvement has ranged from numerous meetings with BLM representatives to public hearings held by San Juan County to address the possible loss of the Molas Pass area for winter motorized recreation. This meeting was attended by hundreds of residents of Silverton and numerous surrounding communities and testimony was received from both the San Juan Citizens Alliance and Wilderness Society that they would not support the closure of the area to motorized given the historical usage of the area.

As previously noted, this area has a long history of motorized usage and winter motorized recreation is specifically identified in the inventory of the area that was prepared after the passage of FLPMA.<sup>74</sup> While winter users refer to the area as Molas Pass, the area was managed and inventoried under the name the West Needles Contiguous WSA. This inventory

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<sup>73</sup> A copy of this correspondence is attached to this appeal as Exhibit 4.

<sup>74</sup> See, West Needles Wilderness Study Area; Animas Ranger District San Juan National Forest and San Juan Resource Area Bureau of Land Management San Juan and La Plata Counties; May 1982 at pg. III-4. A copy of this report is attached to this appeal as Exhibit 5.

specifically identified the northern 1264 acres of the West Needles as unsuitable for designation as Wilderness given the inability of the area to be managed for motorized given the proximity of town properties and historical usage.<sup>75</sup>

The Organizations will note that a grandfathered usage and related inventory of suitability of an area for Wilderness designation is the standard relied on in the FEIS for the management of a WSA. The FEIS provides the following definition of a WSA:

**"wilderness study area (WSA):** A designation made through the land use planning process of a roadless area found to have wilderness characteristics as described in Section 2(c) of the Wilderness Act of 1964."<sup>76</sup>

The Organizations will note that this definition is consistent with both §603 of FLPMA and BLM management guidelines for WSA. §603(c) of FLPMA specifically provides

"(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness..."

Given the use of the area as a winter motorized area, it has always been the agency position that impairment of possible Wilderness designation from usage of the area was minimal as every spring the snow melted. After snowmelt the area showed no impacts from usage for winter motorized recreation.

§603(a) of FLPMA further provides the additional mechanism, beyond NEPA analysis, that is to be complied with should there be a change in management:

"The review required by this subsection shall be conducted in accordance with the procedure specified in section 3(d) of the Wilderness Act."

The Organizations are not aware of any public meetings being held pursuant to §3 of the Wilderness Act to support the proposed management changes on Molas pass.

Given the identification of the Molas Pass area as having significant levels of motorized recreation prior to the passage of FLPMA, and no public process has been undertaken to change the area has continued as a grandfathered usage of the area. Such a usage is explicitly protected under FLPMA and specifically allowed under both BLM manuals for the management of grandfathered usages of a Wilderness Study Area.

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<sup>75</sup> Id @ pg IV-10.

<sup>76</sup> FEIS at pg 719.



**6b(iii). BLM guidelines specifically address the management of motorized recreation in WSA areas.**

In addition to the above federal statutes that are violated by the management changes in the Molas Pass area, both BLM guidelines specifically address the management of motorized recreation in WSA. Manual 6330 was recently released to provide permanent standards for the management of WSA. Pursuant to the new manual, open areas are managed as follows:

b. Motorized/Mechanical Transport.

i. Recreational use of motor vehicles or mechanical transport (see Glossary) may only be allowed when such use is consistent with all applicable laws and meets the non-impairment standard. The following are examples of motorized or mechanized transport uses that are not likely to impair an area's suitability and therefore may be allowed in a WSA:

- A. within "open" areas designated prior to the passage of FLPMA (October 21, 1976), unless the area was subsequently limited or closed in a Land Use Plan decision.

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The Organizations will note that BLM Manual 8550, which was superseded by 6330 well prior to the release of the FEIS, and is erroneously relied on in the FEIS as controlling the management also provided similar management of open areas.<sup>78</sup> Again as the area has historically been used for winter motorized recreation, any evidence of impair immediately melts in the spring returning the area to a natural state.

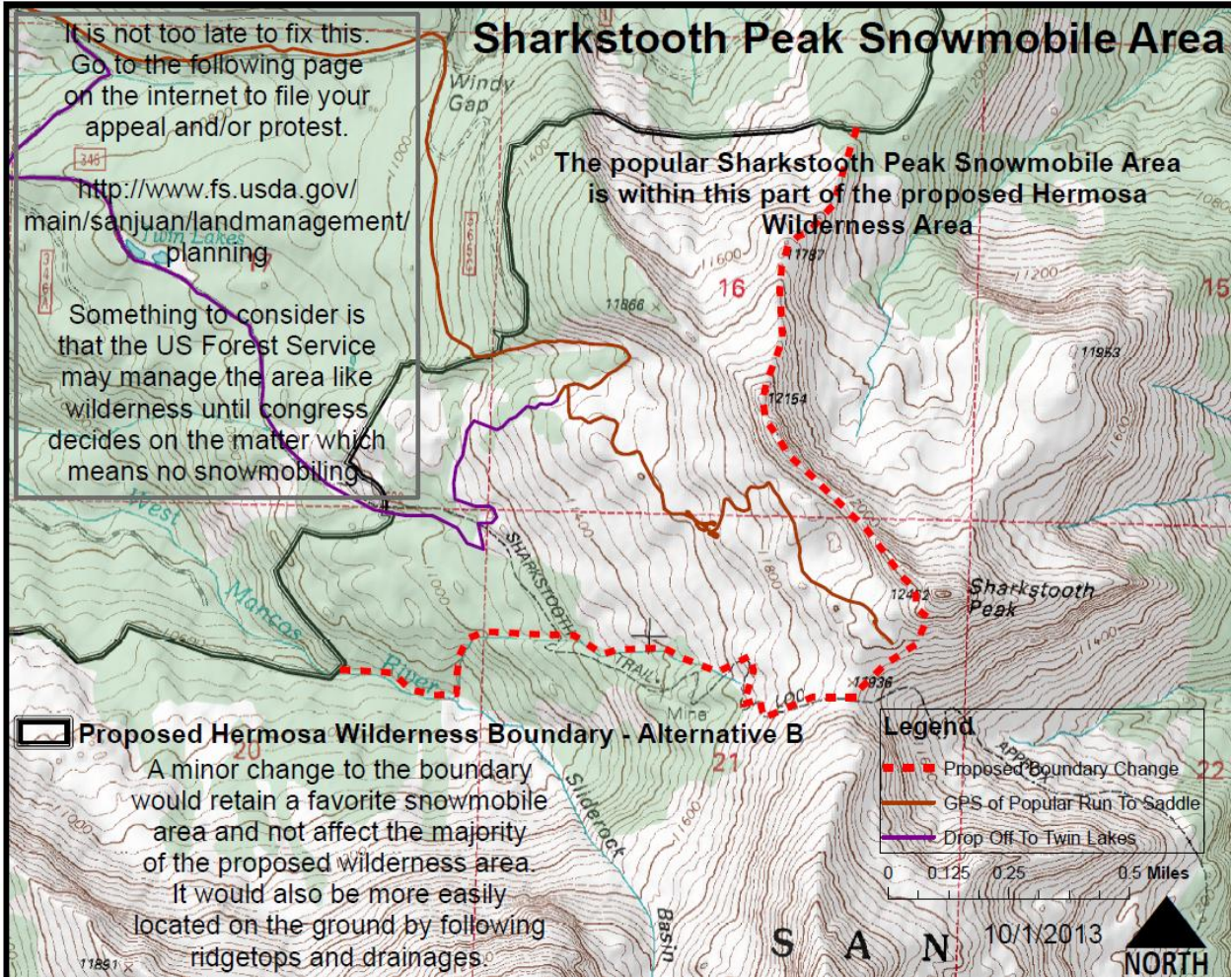
**6c. Current management is not accurately reflected in the Sharktooth portion of winter management in Alternative A.**

As previously noted in the appeal, Winter management of the Molas Pass area is not accurately reflected in the Alternative A suitability map. In addition to Molas Pass area, current management of the Sharktooth area adjacent to the West Mancos River is also not accurately reflected under the current management alternatives for winter recreation.

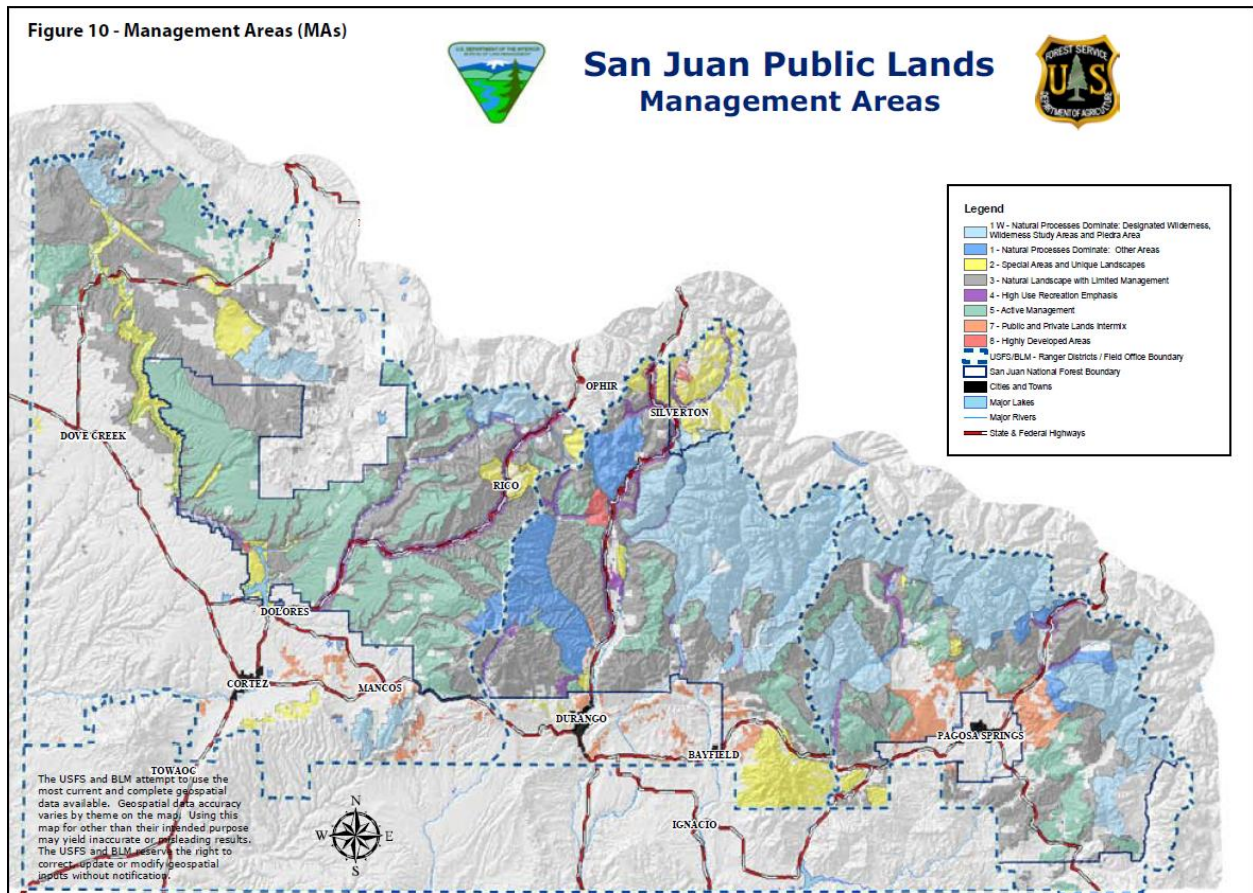
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<sup>77</sup> See BLM Manual 6330.6(b) at pg 1-27.

<sup>78</sup> See, BLM Manual 8550. (H) at pg 45







Pursuant to current management, the Sharkstooth area is managed under a MA3 standard which specifically allows snowmobile usage of the area.<sup>80</sup> For reasons that are not clear, current management of this area for snowmobile usage does not transfer to the Alternative A map provided in the FEIS. As a result, the Organizations are vigorously opposed to any management changes as the baseline for management has not been accurately reflected and as a result no changes in management have been analyzed

**6d. The RMP improperly misleads the public regarding the scope of changes in route management.**

Motorized suitability is an entirely new concept in the SJ/TR plan and as a result an detailed discussion of the integration of current management standards for this principal must be provided and simply has not been. As more specifically addressed in subsequent portions of the appeal numerous issues and factors have been addressed in the suitability designation process that simply are never analyzed in the NEPA documentation.

<sup>79</sup> DEIS at pg 133.

<sup>80</sup> DEIS at pg 135.

The Organizations will note there are significant changes proposed between current management (Alt A) and the preferred alternative (Alt B) in terms of suitability of areas for over the ground recreation for winter usage are previously noted. Current management and the MVUM process have provided extensive review and analysis of numerous historical routes on the SJ/TR, many of which may be hundreds of years in age and predate NEPA and the travel management rule.

Despite the long history of management of motorized recreation on the SJ/TR there are significant changes proposed for the suitability of areas for future summer motorized recreation. The basis for these significant expansions of areas found to be unsuitable are never discussed in the RMP. The LRMP clearly states how changes to current management are to be undertaken in the future as follows:

"A number of travel landscapes on the SJNF have not undergone site-specific overground travel management planning prior to publication of this LRMP. For these landscapes, travel suitability as depicted on Figure 2.13.1 primarily reflects current management and is subject to change through a plan amendment based on site-specific analysis that will be completed through the travel management planning process. Travel management planning will be initiated in these areas after this LRMP is finalized, and in some cases is already underway."<sup>81</sup>

The Organizations will note that if all travel management analysis is occurring in the future, how can there be any change in suitability between Alternative A and Alternative B over the ground suitability maps. By definition there has been no analysis of these changes in the FEIS and LRMP.

**7. Suitability standards for over the ground recreation are arbitrarily limited to application on USFS lands only despite creation of a single standard of analysis.**

The Organizations believe the suitability of areas for motorized recreation is an entirely new concept and standard that has been introduced in the SJ/TR FEIS & RMP. In the RMP, suitability is briefly discussed for both the BLM and USFS lands as a single standard.<sup>82</sup> While the new suitability standard is applied to USFS lands in the SJ/TR planning area, BLM areas are arbitrarily managed as open, limited to existing routes, limited to designated routes and closed.

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<sup>81</sup> See, RMP at pg 98.

<sup>82</sup> See, RMP at pg 96.



The CEQ regulations note that a detailed statement of any standard is a significant tool to be relied upon in the public comment process. These regulations clearly state this relationship as:

“NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”<sup>83</sup>

The Organizations are opposed to the arbitrary nature of the application of this standard as this management forces the Organizations to assume that areas are managed as open or in some manner limited to routes are suitable for motorized usage. This is not an assumption that is sufficient to satisfy NEPA. This assumption also conflict with the management of USFS areas for suitability, as many USFS areas have been restricted to routes for long periods of time and are now found to be unsuitable for motorized usage. The Organizations believe the new suitability standards must be applied equally across both USFS and BLM lands in the planning area or the RMP must be clarified that suitability analysis will only be applied to USFS lands.

As suitability for over the ground usage standards are arbitrarily limited to application on USFS lands, despite a single standard for both USFS and BLM being summarized, the Organizations believe the FEIS and related document are a violation of NEPA and numerous other federal statutes and must be remanded for application of this standard to all lands in the planning area.

**8a. Management standards for numerous factors are provided in the suitability section but are never analyzed or discussed in the FEIS.**

As previously outlined in this appeal, the Organizations are vigorously opposed to the arbitrary and capricious application of the suitability analysis. These concerns are compounded by the fact that numerous standards are specifically created in the RMP but there is no analysis of these issues in the FEIS or explanation of how these new standards have impacted boundaries for areas suitable/unsuitable for motorized recreation. These standards would include:

1. Signage standards;
2. Road density standards; and
3. Water quality standards.

The Organizations are not able to comprehend how a localized management tool like signage of routes could impact the suitability of large landscapes for motorized usage. The Organizations

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<sup>83</sup> See, 40 CFR 1500.1(b)

would also point out that if the effectiveness of signage is a factor impacting future usage, why has the effectiveness of signage under current management also not been taken into account. This type of a distinction is arbitrary and capricious per se and a violation of NEPA that must be addressed.

The Organizations are also not able to identify what road density standards have been applied in the planning area for specific factors and what areas have been found to be above and below the desired density. The creation of road density analysis is a complex task that requires proper application of numerous factors and criteria. The proper application of these numerous criteria are outlined in the USFS manual on Roads Analysis, which is hundreds of pages in length.<sup>84</sup> The USFS roads analysis provides a specific appendix discussing how the application of various factors will impact the conclusions on road density.<sup>85</sup> The Road density manual starts with the following limitation:

#### **"Limitations**

Road density may not be appropriate for some analyses because it does not reflect the character of individual roads. In some watersheds, the aquatic effects from a single problem road will be greater than in an area with high road density. This macro is very sensitive to the size of moving window selected. The roads coverage must extend beyond the boundary, if the road density along the perimeter is to be accurate."<sup>86</sup>

None of these factors are addressed in the RMP or FEIS. The Organizations have also not been provided any analysis of how areas that are above the desired density have been treated in the creation of the suitability areas for multiple usage. This is a NEPA violation.

Often road density is highly variable across the planning area as developed areas, such as campgrounds and other sites frequently have high densities while roads are prohibited in designated Wilderness areas. While there are a wide range of densities needed the RMP proposes only two density standards for roads. These are 2 miles/square mile for water quality issues<sup>87</sup> and 1mile/square mile for wildlife winter range.<sup>88</sup> These two standards make assumptions that are relied on for the basis of these standards that are simply incorrect and not based on best available science. Any implication that a route causing a water quality issue

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<sup>84</sup> See, *USFS Roads Analysis: Informing Decisions About Managing the National Forest Transportation System*, Washington Office FS-643 August 1999.

<sup>85</sup> *Id*, Road Density Manual Appendix 2; *Road Density as an Indicator of Road Hazard* at pg 165.

<sup>86</sup> See, Road Density Manual at pg 166.

<sup>87</sup> See, RMP at pg 102, Route Density Standard 2.13.2

<sup>88</sup> See, RMP at pg 102, Route Density Standard 2.13.29.

should be made only at the localized level, and simply cannot be accurately expanded to a landscape level plan such as the RMP .

Any assertion that large scale water quality issues in the planning area are related to the existence of roads and trails does not accurately reflect the landscape threats to water quality. The limitation of road density to improve water quality assumes that poor water quality in an area can be fixed by closing roads. This is simply not the case as poor water quality often is directly impacted by factors entirely unrelated to roads, such as dissolved solids, mine runoff, recent fires, large tree mortality issues, water diversions impacting flow. There can be no argument that closing roads in the planning area will never address the fact that the Colorado River no longer flows to the Pacific Ocean due to the large amounts of water diversions that are running its length. In 2010 the New Mexico Water Quality Bureau analyzed the Animas River between San Juan River and Ute Tribe Boundary and found the three largest issues with water quality were bacteria(e coli), temperature and dissolved phosphorus.<sup>89</sup> The threat of fire has been specifically identified by the USFS and all front range water districts as the single greatest threat to watershed quality.<sup>90</sup> There recently was a multiday seminar in Durango specifically seeking to address how fire and the mountain pine beetle are negatively impacting water quality in the Durango area.<sup>91</sup> The Organizations vigorously assert closures of areas to motorized access will never address the mountain pine beetle/spruce beetle issue or high levels of E-Coli bacteria in water bodies in the planning area.

The Organizations are aware that road density may be an issue for winter range, in previous portions of this appeal we have specifically cited conclusions that the largest problem for winter range in the planning area is development of private lands for residential and farming activities. While the winter range standards do address the exclusion of seasonal routes from the analysis of road density, the analysis also relies on a conclusion that is not supported by best available science. This conclusion is noted as follows:

"Non-motorized trails and those roads that are closed to all motorized use and/or are in storage are not used for route density calculations."<sup>92</sup>

The Organizations are vigorously opposed to such broad and unscientific analysis for any planning process, as this position is directly contradicted by best available science which has

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<sup>89</sup> Full Report available here. <http://www.nmenv.state.nm.us/swqb/SanJuan/Animas/index.html>

<sup>90</sup> See, PROTECTING FRONT RANGE FOREST WATERSHEDS FROM HIGH-SEVERITY WILDFIRES AN ASSESSMENT BY THE PINCHOT INSTITUTE FOR CONSERVATION FUNDED BY THE FRONT RANGE FUELS TREATMENT PARTNERSHIP; at pg 2.

<sup>91</sup> <http://www.colorado.edu/events/workshops/beetle-water-Durango.html>

<sup>92</sup> See, RMP at pg 103.

concluded that off leash dogs create the largest response from wildlife,<sup>93</sup> followed by non-motorized user of habitat areas. These type of issues have been extensively studied by the National Park Service in addressing winter usage of Yellowstone Park. These analyses are completely relevant to any analysis of suitability and road density on the SJ/TR. If there were an disproportionate impact to elk and deer, the ongoing research in Yellowstone Park would have noted this impact. These analyses have repeatedly found:

“Based on these population-level results, we suggest that the debate regarding effects of human winter recreation on wildlife in Yellowstone is largely a social issue as opposed to a wildlife management issue. Effects of winter disturbances on ungulates from motorized and non-motorized uses more likely accrue at the individual animal level (e.g., temporary displacements and acute increases in heart rate or energy expenditures) than at the population scale. A general tolerance of wildlife to human activities is suggested because of the association between locations of large wintering ungulate herds and winter recreation. Habituation to human activities likely reduces the chance for chronic stress or abandonment of critical wintering habitats that could have significant effects at the population level, especially when these activities are relatively predictable.”<sup>94</sup>

The Organizations have to note that the biologists who performed the research in Yellowstone immediately acknowledged the social scientist’s position, namely that most concerns regarding wildlife management are based more on socially based user conflicts than on scientifically based findings regarding a negative impact.

If closures are adopted for factors that are impacting winter range to a lesser degree, these same tactics and policies must be applied to similar usages that impact the species more. Any other determination is arbitrary and capricious and is directly conflicting any assertion the road density standards in the winter range are being adopted for the benefit of wildlife.

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<sup>93</sup> See, CHAPTER 8 DOMESTIC DOGS IN WILDLIFE HABITATS EFFECTS OF RECREATION ON ROCKY MOUNTAIN WILDLIFE *A Review for Montana*; MONTANA CHAPTER OF THE WILDLIFE SOCIETY; Carolyn A. Sime – Wildlife Biologist, Montana Fish, Wildlife and Parks, Kalispell  
September 1999

<sup>94</sup> US Park Service; White and Davis; *Wildlife response to motorized recreation in the Yellowstone Park*; 2005 annual report; at pg 15.

**8b(i). Providing a "quality recreational experience" is identified as a goal of the motorized suitability analysis but this term is never defined and no analysis of recreational supply factors has been provided.**

The analysis of motorized suitability includes many factors that simply are not analyzed in the FEIS and RMP and often only briefly addresses concepts in a single line or paragraph that are matters of significant debate and analysis. The Organizations do not believe such a cursory review of major issues is a hard look at the issue and is arbitrary and capricious per se.

The RMP provides the following summary of an additional factor that was included in the analysis of motorized suitability but the analysis methodology is simply never explained or discussed in the documents. The RMP specifically states:

**"Providing a quality outdoor recreation experience for both motorized and non-motorized recreation was a primary goal in determining suitable and unsuitable areas for motorized travel."<sup>95</sup>**

The Organizations commend planners for tackling such a lofty goal in a landscape level plan but are troubled on how this standard has been achieved with the boundaries of the suitability areas, as the term "quality recreational experience" is not even defined in any of the planning documents. It is the Organizations position that relevant terms in the analysis process must be at least defined as terms such as this frequently are highly personal and flexible depending on the audience that is reviewing the decisions. The Organizations vigorously assert that the primary goals of any planning process should be defined and the failure to define these basic analysis factors is arbitrary and capricious per se.

The critical need to define what a "quality recreational experience" is encompasses many factors that simply are never even mentioned in the FEIS or ROD. The Organizations will address two of the common factors that are addressed in a definition of a quality recreational experience. These are supply of and demand for analysis of opportunities currently in the planning area and user conflicts in the planning area. Supply and Demand analysis requires a detailed analysis of several large user groups utilizing the planning area, such as the developed camping groups, which have been previously addressed in this appeal. A quality recreational experience would require basic facilities such as showers, water and electrical hookups, a proximity to other recreational opportunities and easy access to their camping facilities. None of these factors have been addressed at any point in the FEIS or RMP.

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<sup>95</sup> See, RMP at pg 98.

The Supply of recreational opportunities also requires some analysis of the resources that are needed for the user groups to achieve the desired outcome. For trails users this frequently involves a basic number of miles of trails. This is heavily impacted by the mode of recreational travel involved, as non-motorized users frequently only require 2-3 miles of routes for a quality recreational day use experience while the motorized or mechanized users require a mileage of routes larger by a factor of 10 to achieve the same quality outdoor experience for their chosen sport.

This imbalance of the suitability allocation also fails to address secondary activities that are involved in the pursuit of the primary recreational experience. Motorized access is frequently a secondary activity of opportunity for most recreational users of the SJ/TR. Frequently those seeking a hunting or hiking opportunity are utilizing a large amount of motorized routes in the area prior to reaching the trailhead, undeveloped campsite or other facility needed to be used to obtain the recreational opportunity in the planning area.

These factors clearly have not been accurately addressed in the development of the suitability standards as most of the planning area has been found unsuitable for motorized usage. The Organizations believe it is significant to note that 5 of the 5 top uses identified for developed sites on the SJ/TR planning area directly relate to motorized access to the site.<sup>96</sup>

Again Supply and Demand type analysis does not support by the NVUM analysis that is asserted to be relied on for much of the analysis in the. The NVUM analysis for the San Juan national forest reveals that only 69 visits(4.6%) of the 1,484 total visits reviewed involved a Wilderness visit despite over 420,000 acres of the planning area being designated as Wilderness.<sup>97</sup> It is the Organizations position that proper management of this issue would include education of the users demanding this type of experience that there is a massive supply of this opportunity in the planning area that is not being utilized rather than the new designation of significant areas of the SJ/TR as unsuitable for motorized usage in order to expand an opportunity for recreation that is not being fully utilized currently.

**8b(ii). Quality recreational experiences involve resolving user conflicts are not identified prior to determinations that travel management closures can resolve the underlying conflict.**

User conflict is another issue that often is significantly involved in a quality recreational experience, and analysis of this issue is critical to insure that an accurate basis for the conflict

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<sup>96</sup> *Id* at pg 21.

<sup>97</sup> *See*, USFS Visitor Use Report, San Juan National Forest; data collected FY 2006 last updated June 20, 2012 at pg 8.

has been determined and that the proper management tools are being applied to remedy the basis of the conflict. The RMP analysis simply starts with the management position that trail closures will reduce user conflicts. No other alternative resolution tools are addressed as possible ways to resolve user conflicts. This oversight is of critical concern as management decisions suffering from this fault frequently increase user conflict.

The Organizations note that user conflicts often exist outside motorized recreation, such as between skiers and snowboarders, heli-skiers and back country skiers, hunters and non-hunters, hunters and other hunters, hikers and bikers, runners and dog walkers on urban trails, and hikers and farmers. Despite the ongoing nature of these conflicts, motorized recreation on public lands is the only area for which closure has been asserted to be properly be the first method for remedying perceived conflicts.

Social scientists have found that resolution of user conflict can only come from educating users in conjunction with limited closures. The RMP simply decides closures are the primary tool to address conflict, which research has concluded is ineffective in dealing with user conflicts and may actually increase levels of conflict. Social scientific research does not show that closures only is a viable starting point for addressing user conflicts. The social sciences specifically require an additional level of review to determine the basis for user conflict must occur prior to any determination that travel management can actually resolve the conflict. This additional analysis was not outlined in the RMP's analysis, and will result in travel management closures becoming the primary tool used to resolve a problem it simply cannot fix. This is simply unacceptable to the Organizations.

The Organizations believe that analysis of how best available science supports the management decisions and direction of the RMP, as mandated by federal statutes and BLM guidelines, constitutes a critical part of the planning process. This analysis will allow the public to understand the basis of alleged user conflicts and why travel management has been chosen to remedy the concern. Relevant social science has clearly found this analysis to be a critical tool in determining the proper methodology for managing and truly resolving user conflicts. The Organizations also believe that when socially based user conflict is properly addressed in the Proposal, the need for travel management closures will be significantly reduced.

The Organizations believe that after a brief summary of research into user conflict, the difference in the RMP management to provide a quality outdoor recreational experience and best available science on the issue will be clear. Researchers have specifically identified that properly determining the basis for or type of user conflict is critical to determining the proper method for managing this conflict. Scientific analysis defines the division of conflicts as follows:

**“For interpersonal conflict to occur, the physical presence or behavior of an individual or a group of recreationists must interfere with the goals of another individual or group....Social values conflict, on the other hand, can occur between groups who do not share the same norms (Ruddell&Gramann, 1994) and/or values (Saremba& Gill, 1991), independent of the physical presence or actual contact between the groups.....When the conflict stems from interpersonal conflict, zoning incompatible users into different locations of the resource is an effective strategy. When the source of conflict is differences in values, however, zoning is not likely to be very effective. In the Mt. Evans study (Vaske et al., 1995), for example, physically separating hunters from nonhunters did not resolve the conflict in social values expressed by the nonhunting group. Just knowing that people hunt in the area resulted in the perception of conflict. For these types of situations, efforts designed to educate and inform the different visiting publics about the reasons underlying management actions may be more effective in reducing conflict.”<sup>98</sup>**

Other researchers have distinguished types of user conflicts based on a goals interference distinction, described as follows:

“The travel management planning process did not directly assess the prevalence of on-site conflict between non-motorized groups accessing and using the yurts and adjacent motorized users.....The common definition of recreation conflict for an individual assumes that people recreate in order to achieve certain goals, and defines conflict as “goal interference attributed to another's behavior” (Jacob & Schreyer, 1980, p. 369). Therefore, conflict as goal interference is not an objective state, but is an individual's appraisal of past and future social contacts that influences either direct or indirect conflict. It is important to note that the absence of recreational goal attainment alone is insufficient to denote the presence of conflict. The perceived source of this goal interference must be identified as other individuals.”<sup>99</sup>

It is significant to note that Mr. Norling’s study, cited above, was specifically created to determine why travel management closures had not resolved user conflicts for winter users of a group of yurts on the Wasache-Cache National forest. As noted in Mr. Norling’s study, the travel management decisions addressing in the areas surrounding the yurts failed to distinguish

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<sup>98</sup> Carothers, P., Vaske, J. J., & Donnelly, M. P. (2001). *Social values versus interpersonal conflict among hikers and mountain biker*; Journal of Leisure Sciences, 23(1) at pg 58.

<sup>99</sup> Norling et al; Conflict attributed to snowmobiles in a sample of backcountry, non-motorized yurt users in the Wasatch –Cache National Forest; Utah State University; 2009 at pg 3.



why the conflict was occurring and this failure prevented the land managers from effectively resolving the conflict.

The Organizations believe that understanding why the travel management plan was unable to resolve socially based user conflicts on the Wasache-Cache National Forest is critical in the SJ/TR planning area. Properly understanding the issue to be resolved will ensure that the same errors that occurred on the Wasache-Cache are not implemented again to address problems they simply cannot resolve. The Organizations believe that the SJ/TR must learn from this failure and move forward with effective management rather than fall victim to the same mistakes again. Unfortunately, the SJ/TR suitability plan appears to be falling victim to the same issues as the Wasache-Cache rather than learning from them, since closures are immediately relied upon to address what the Organizations have to believe are a significant amount of socially based user conflicts.

At no point in the RMP or FEIS is there any mention of programs or resources to be developed that might be available to address socially based user conflicts. While the Organizations are aware that such a discussion is technically outside the RMP, the Organizations believe that if a distinction between the different bases for user conflicts had been made in the planning process, this distinction would have warranted a brief discussion of methods for resolution of socially based conflicts through educational programs. The lack of an educational component in planning as a tool to be utilized in conjunction with travel management issues and trail closures, leads the Organizations to conclude that there was a finding at some point in the planning process to the effect that all user conflicts are personal in nature. This type of finding would be highly inconsistent with both the Organizations experiences with this issue and the related science.

The Organizations believe the proposed management, and associated high levels of route closures that would result over the life of the RMP , will result in increased user conflicts as recreational opportunities in the area will be lost and not replaced to address an issue that the closure simply cannot remedy. As noted above, personal user conflicts only account for a small portion of total user conflicts. While these personal conflicts would be resolved, the overwhelming portion of user conflict results from a lack of social acceptance by certain users and these conflicts would only be resolved with education. The Organizations believe the distinct between personal and social user conflict must be addressed in the RMP and the levels of closures reviewed to insure that the levels of closures are not going to result in increased user conflicts and fail to provide the quality recreational opportunity sought to be provided in the RMP.

**9a. Suitability of areas for motorized usage applies the Colorado Roadless Rule incorrectly and these basis for these changes is not analyzed.**

The Organizations have been vigorously involved in the development of the Colorado Roadless Rule ("CRR") over the last several years and have been supportive of the Proposal as it seeks to provide a dispersed recreational experience for all users. While the CRR addresses characteristics of areas rather than management standards for the areas, the Organizations believe suitability for motorized usage as asserted is also a characteristic of the area rather than a management standard. Given the SJ/TR planning process has extended several years longer than the CRR planning process and encompassed the CRR process completely, the Organizations believe there should be a high level of consistency between the conclusions of these processes. This is simply not the case as almost all areas that were recently found suitable for the preservation and protection of motorized recreation in the CRR have now been found to be unsuitable for motorized usage in the SJ/TR planning. The SJ/TR determinations are made without application of the Upper Tier concept of the CRR, which identifies areas that may not be suitable for motorized use and many other activities.

The Organizations are unable to determine the scope of the erroneous application of the CRR on BLM areas. While BLM lands were outside the scope of the CRR, under service first frequently USFS personnel were reviewing BLM areas, making a proper application of jurisdictional and rulemaking distinctions critical to this analysis process.

At no point in the FEIS, roadless area appendix to the FEIS or the RMP is this distinction between a CRA and an Upper Tier area even mentioned. It appears that for reasons that are never reviewed the unilateral decision was made that all CRR areas would be managed as Upper Tier areas. This decision is a facial violation of NEPA requirements of a detailed statement of high quality information regarding the basis for a decision, it is also a violation of the Colorado Roadless rule as one of the identifying characteristics to be protected under the Colorado Roadless Rule has been completely excluded from these areas.

In addition to failing to comply with NEPA, the change in management standards for roadless areas directly contradicts the conclusions after the largest public lands management input the state of Colorado has ever received. This input included over 300,000 comments from the public.<sup>100</sup> The organizations are very concerned that the failure to accurately address the Colorado Roadless Rule in the first major resource plan issued by the USFS in Colorado will have massive negative repercussions for management of public lands in Colorado for a long time in the future as characteristics that were sought to be protected in the new rule simply are not addressed in the management provisions in the RMP and FEIS.

The purpose and need for the CRR is reflected in its mission statement as follows:

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<sup>100</sup> See, USFS; Rulemaking for Colorado Roadless Areas Volume I Executive Summary; May 2012 at pg 5.

**"The Department, Forest Service, and the State of Colorado agree there is a need to establish management direction for the conservation of roadless area values and characteristics in Colorado."**<sup>101</sup>

Colorado Roadless areas characteristics are defined under the CRR as follows:

*"Roadless Area Characteristics:* Resources or features that are often present in and characterize Colorado Roadless Areas, including: ... **(5) Primitive, semi-primitive nonmotorized and semi-primitive motorized classes of dispersed recreation;**..."<sup>102</sup>

As dispersed motorized use of a Colorado Roadless area is a characteristic that was sought to be conserved with the Colorado Roadless Rules, the Organizations are vigorously opposed to the large scale closure of roadless areas to this use, after most of the planning area was recently found suitable for such use. Rather than rely on previous versions of the Roadless Rule that protected motorized access as a multiple usage of the area, Colorado proactively identified motorized usage as a characteristic to be protected.

The recently released CRR provided a significant change in comparison to the national roadless rule, mainly the CRR provided two different management standards for roadless areas instead of the single previous standard that had been applied. The CRR introduced the concept of Upper Tier Roadless areas with the more traditional CRA areas. Upper Tier Colorado Roadless areas are defined in the CRR as follows:

*"Colorado Roadless Areas Upper Tier Acres:* A subset of Colorado Roadless Areas identified in a set of maps maintained at the national headquarters office of the Forest Service which have limited exceptions to provide a high level of protection for these areas."<sup>103</sup>

The FEIS and RMP specifically apply the newly adopted CRR as provided in the definition of this term, which is reflected as follows:

**"Colorado Roadless Rule:** The culmination of a National Environmental Policy Act process involving all U.S. Forest Service inventoried roadless areas within the state of Colorado. The resulting Colorado Roadless Rule prescribes new management criteria for these areas and changed the boundaries of some roadless area units."<sup>104</sup>

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<sup>101</sup> **Federal Register** /Vol. 77, No. 128 /Tuesday, July 3, 2012 /Rules and Regulations at pg **39577**.

<sup>102</sup> See, 36 CFR §294.41; emphasis added.

<sup>103</sup> See, 36 CFR §294.21

<sup>104</sup> See, FEIS at pg 692.

While the FEIS and RMP claim to directly apply the CRR, at no point in either document is the principal of Upper Tier even addressed or is there any explanation of how the analysis of the CRR process has been integrated into the development of the suitability standards that are applied in the SJ/TR planning process. The Organizations vigorously assert that it is arbitrary and capricious per se to simply ignore portions of FS regulations when such a regulation does not support the management direction that is proposed in a planning document.

The FEIS further clarifies the relationship between the CRR and current management as follows:

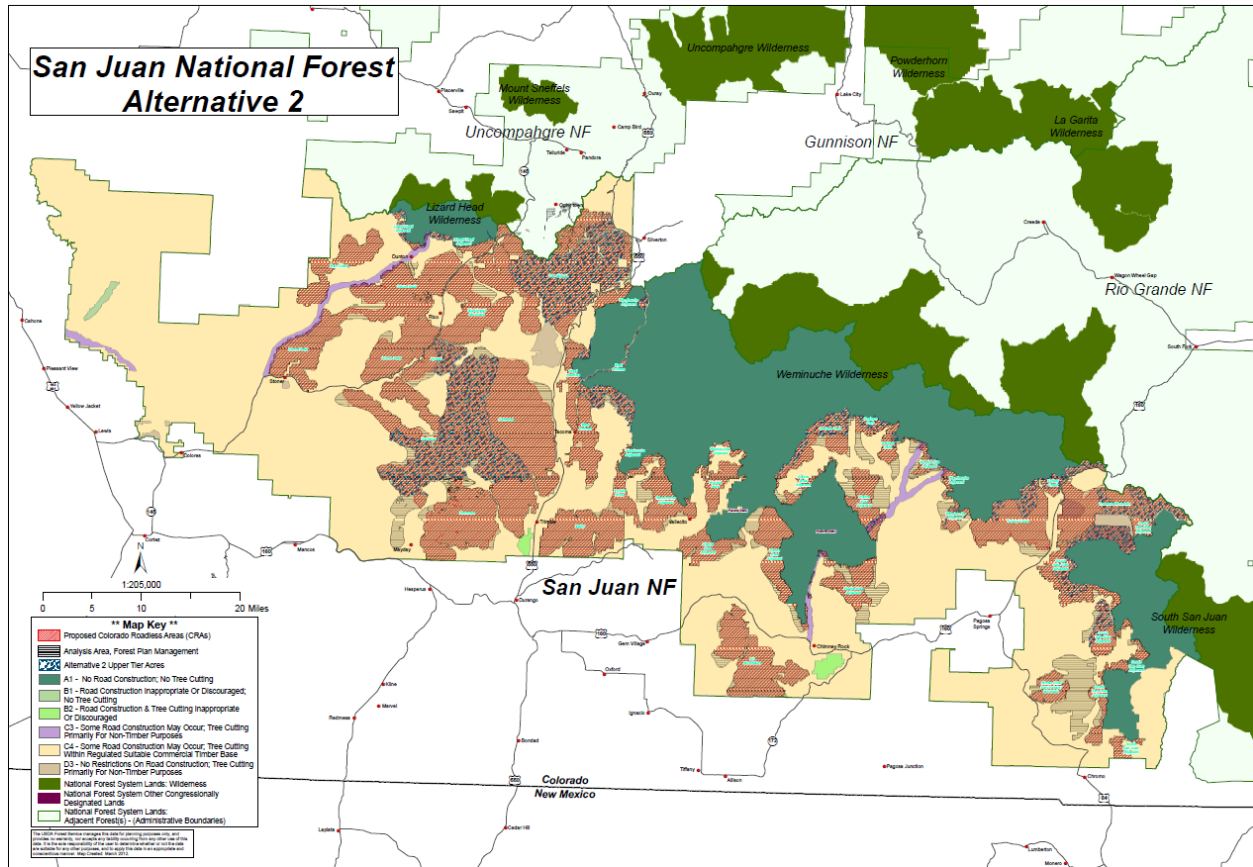
"CRAs are governed by the Colorado Roadless Rule and may have additional restrictions beyond the general suitability identified by MAs. When guidance in a forest plan is more restrictive than direction described in the Colorado Roadless Rule, actions must be consistent with the more restrictive direction."<sup>105</sup>

As a general principal the Organizations agree with this position. However, when a management standard for the protected characteristic of a CRR area is applied in a manner that conflicts with the CRR analysis, the Organizations assert the basis for such a determination must be addressed given the proximity in time between the two planning processes. It is significant to note that at no point in the Colorado Roadless Rule is there any provisions providing the agency the authority to change upper tier boundaries in the Resource planning process without analysis. NEPA further mandates meaningful analysis of changes given the fact that management decisions are now directly impacting a protected characteristic under the CRR.

Pursuant to the Final Colorado Roadless Rule, the distinctions between Colorado Roadless Areas and Upper Tier Roadless areas is reflected in the following map:

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<sup>105</sup> See, RMP at pg 183

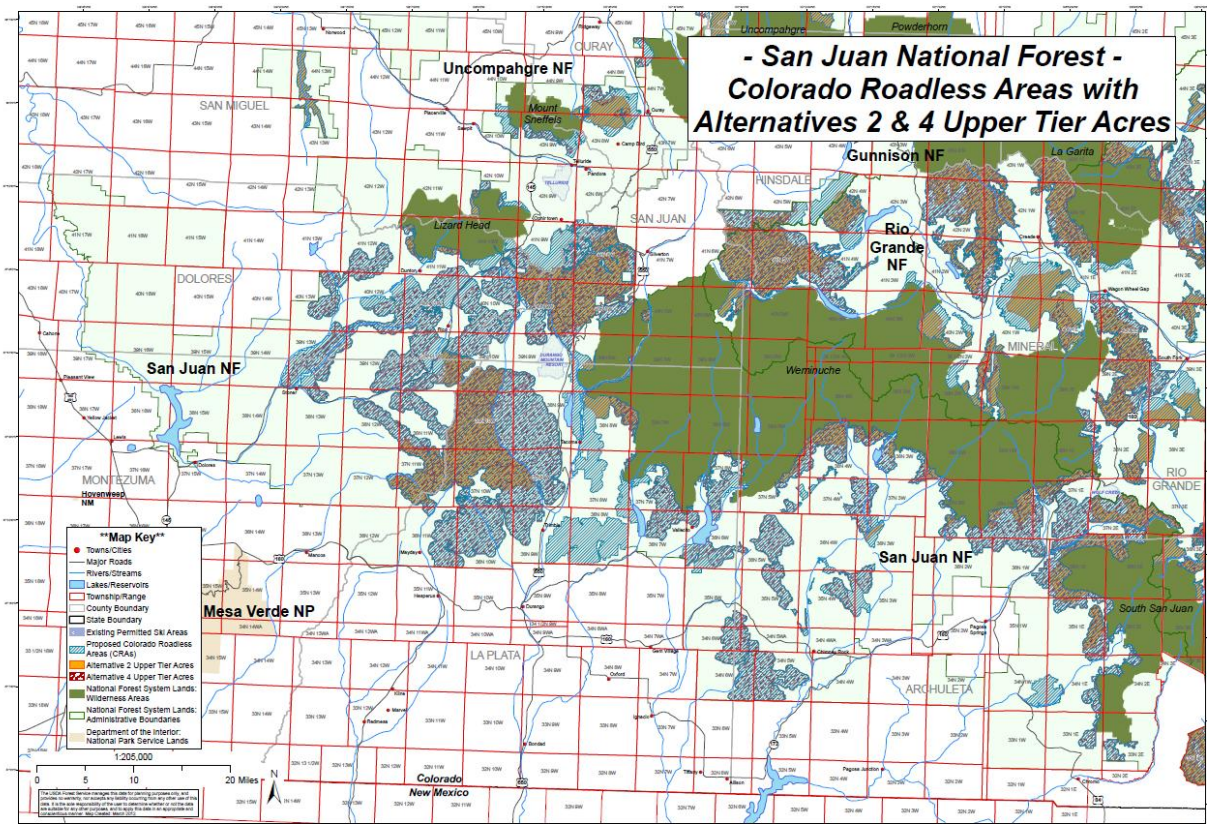


106

It should be noted that only 25% of the areas identified in Colorado as CRA were found eligible for classification as Upper Tier areas.<sup>107</sup> Significant portions of the SJ/TR planning area were reviewed for possible designation under the upper tier standard as proposed under Alternative 4 of the CRR proposal and specifically found not to meet the criteria for the higher levels of protection and lower levels of associated development. These areas are reflected below:

<sup>106</sup> [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5366307.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5366307.pdf)

<sup>107</sup> **Federal Register** /Vol. 77, No. 128 /Tuesday, July 3, 2012 /Rules and Regulations at pg 39591.



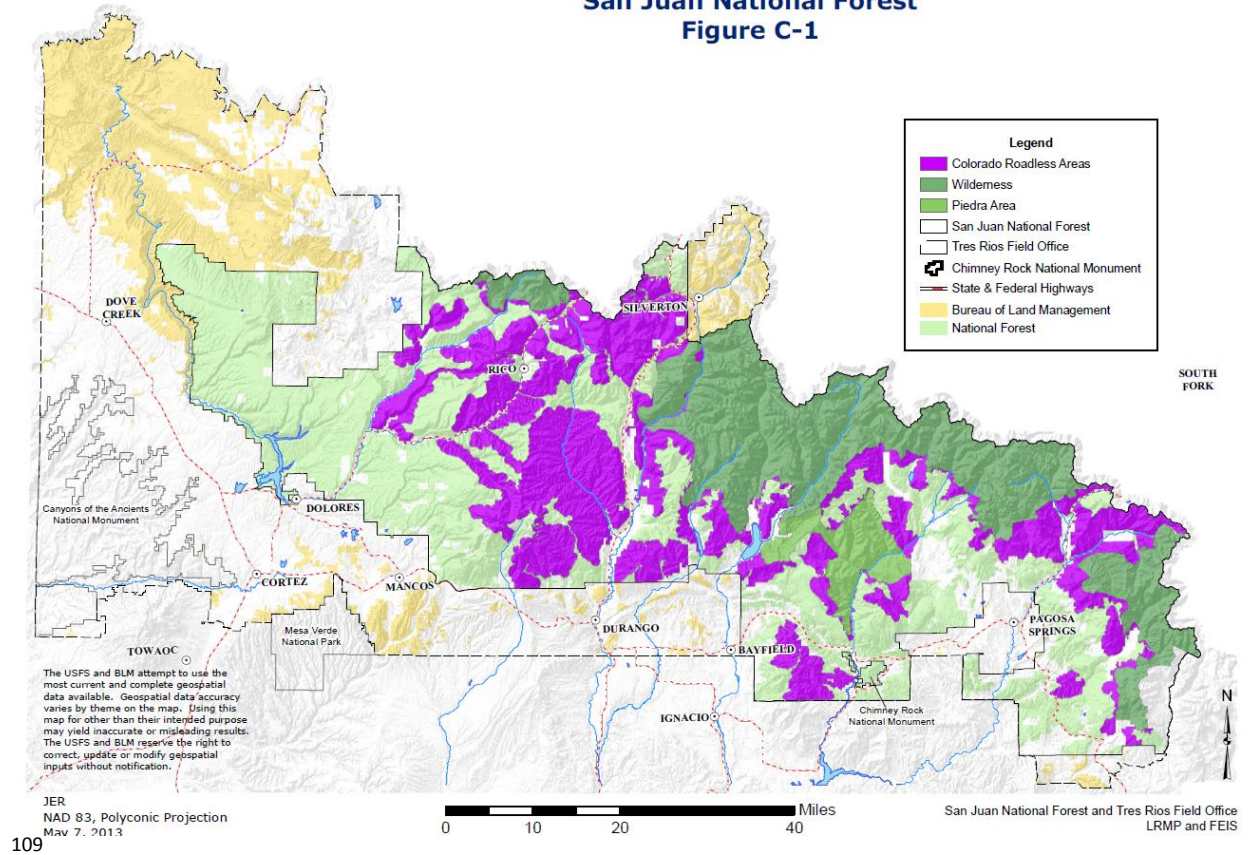
108

By comparison, the San Juan/Tres Rios plan seeks to manage all roadless areas under a single management standard, the boundaries of which are reflected as follows:

<sup>108</sup> [http://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5366311.pdf](http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5366311.pdf)



## Colorado Roadless Areas San Juan National Forest Figure C-1

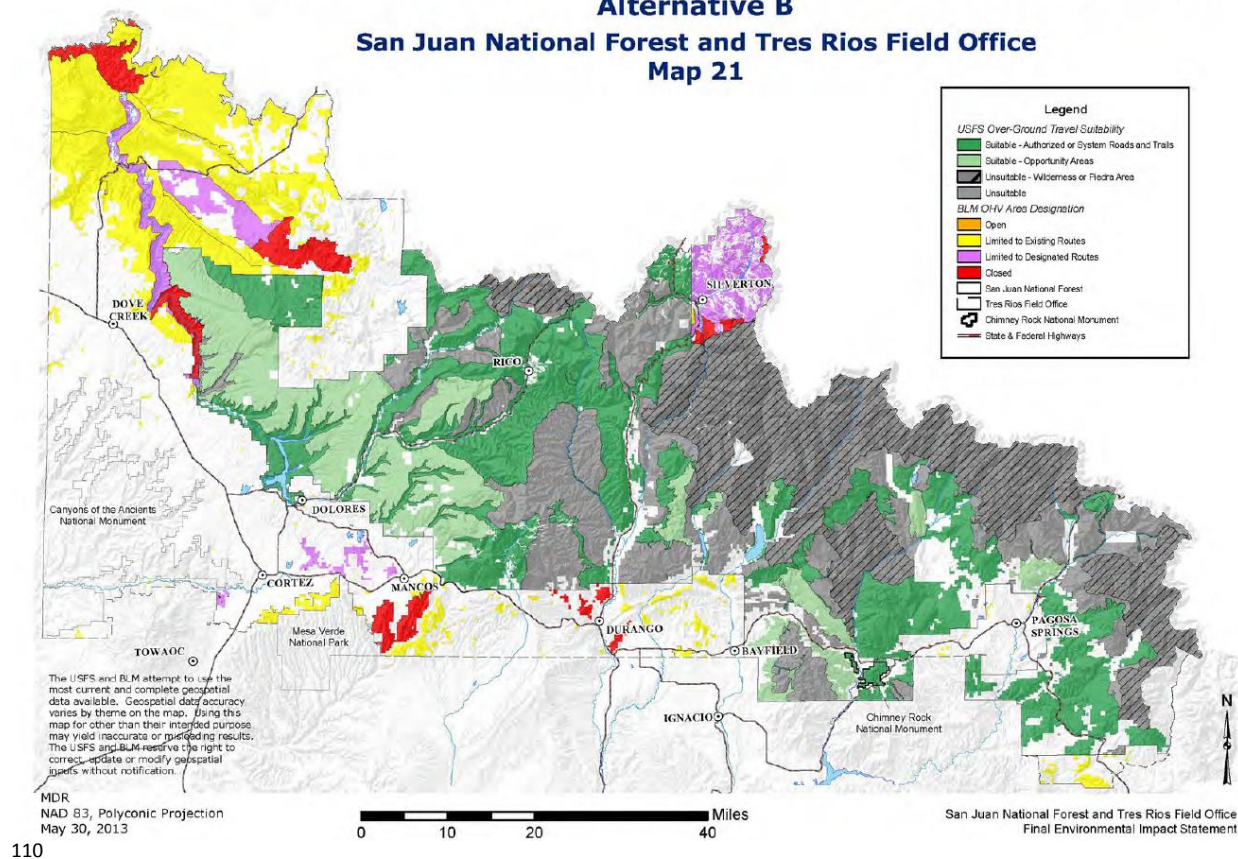


The strong correlation between the boundaries of the erroneously applied Roadless Area boundary and standard is overwhelming when the Roadless Area map in the SJ/TR process and the suitability maps are compared:

<sup>109</sup> See, FEIS Appendix C at pg c-9.

## Over-Ground Travel Suitability and OHV Area Designations Alternative B

### San Juan National Forest and Tres Rios Field Office Map 21



110

It should be noted at no point in the SJ/TR planning process is the existence of the Upper Tier concept addressed or is the fact that only significantly smaller areas were found suitable for Upper Tier designation even addressed despite the analysis of these areas occurring at the same time. The significant impact that results to motorized suitability boundaries as a result of the erroneous application of the CRR cannot be overlooked. Given the massive areas that are managed to exclude a protected characteristic of the CRR, these changes must be meaningfully analyzed and the failure to provide this analysis is per se arbitrary and capricious. The failure to provide this analysis has materially and directly impacted the Organizations ability to meaningfully discuss faults in analysis in this appeal.

### **9b. Modification of upper tier boundaries had been done without public input as specifically prohibited in the CRR.**

As previously noted in this appeal, the development of the CRR was an extensive process that occurred at the same time as the SJ/TR planning process. Often the development of the CRR

<sup>110</sup> See, FEIS Appendix V at pg 29.



was highly charged and conflicted. As a result of the nature of the proceedings the CRR specifically provided for an additional protection regarding the alteration of boundaries of areas that were going to be designated. These standards would be in addition to the standard analysis of management changes required by NEPA. It is the Organizations position that the arbitrary failure to address the concept of Upper Tier in the FEIS or RMP is a per se change in boundary areas and has been undertaken in an arbitrary and capricious manner. Clearly if a hard look at the upper tier standard had been undertaken it would have been addressed in the RMP or FEIS.

The CRR provides the following additional public input process for the changes in any boundary areas as follows:

"The Colorado Roadless Rule provides for future adjustments to be made to CRA boundaries, subject to a public review and comment period, and applicable NEPA or other requirements. In addition, the rule provides for administrative corrections (defined as adjustments to remedy clerical and mapping errors) to upper tier boundaries, subject to a public review and comment period."<sup>111</sup>

The Organizations are not aware of any public process that has been undertaken between the release of the CRR and the release of the final version of the San Juan/Tres Rios plan. As all public comment on these plans was closed several years prior to the introduction of the theory of upper tier areas, any assertion of public comment on the changes lacks factual and legal basis. As the principal of upper tier management appears to have been expanded to manage all CRA as upper tier and totally exclude motorized, this is a violation of the Colorado Roadless Rule. On the converse, the exclusion of the upper tier areas from management analysis is also a violation of the CRA as no public comment or analysis has been undertaken to analyze the removal of the standard.

## **10. Conclusion.**

It is the Organizations position that the analysis of many issues is arbitrary and capricious as a matter of law and fails to provide the hard look at issues mandated by NEPA. Often these analysis and management standards are made in violation of numerous other statutes and regulations.

The SJ/TR FEIS and RMP assert that economic contributions are based on and consistent with USFS VNVUM analysis and specifically cites to recently released NVUM research. This position is facially arbitrary and capricious and must be reversed as the SJ/TR conclusions are anything

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<sup>111</sup> **Federal Register** / Vol. 77, No. 128 / Tuesday, July 3, 2012 / Rules and Regulations at pg **39576**.

but consistent with the NVUM conclusions as evidenced by the fact the SJ/TR asserts to be providing analysis consistent with high spending forests. This is directly contradicted by the conclusions regarding the spending profiles of user groups that are reached in the SJ/TR FEIS as these conclusions are often numerous factors less than the spending profiles that are identified for user groups for a low average spending forest. For several user groups, the average spend for that group is completely outside the conclusions for the range of spending for the same group.

In addition to arbitrary and capricious analysis of economic issues, the current management of numerous locations in the SJ/TR planning area are not accurately reflected in the FEIS/RMP. These are areas with long histories of motorized usage that remain open to such legal usage at this time. The effectiveness of current management in mitigating management issues is simply never addressed before additional management restrictions are applied as part of the FEIS/RMP. As the baseline of management is not accurately reflected in the FEIS/RMP and assertion that the change in management was meaningfully analyzed is arbitrary and capricious as the FEIS analysis asserts there is no change in the management of these areas and such analysis fails to satisfy the hard look requirements of NEPA.

The FEIS/RMP also proposed to make landscape level determinations regarding the suitability/unsuitability of areas for motorized usage. While these determinations appear to be limited to USFS lands the future of this standard for possible application on BLM lands is unclear. As such the errors in the development of this standard are addressed here and the Organizations are not comfortable in assuming that BLM areas currently limited to existing or designated routes currently will not be designated as unsuitable at some point in the future.

Several factors appear to have been relied on in the determinations of area suitability that arbitrarily and capriciously conflict with both agency analysis and USFS regulations such as the Colorado Roadless Rule. How most of these factors are integrated into the final suitability determinations simply are not addressed. Habitat areas are excluded from future suitability despite USFWS analysis made as part of the Endangered Species Act review process that motorized usage of these areas for numerous species is not an issue. Roadless areas are managed under a single standard of review that conflicts with the newly released Colorado Roadless Rule and fails to analyze how areas motorized usage would be a protected characteristic of a roadless area and then found to be unsuitable for motorized usage in two review process that occurred at functionally the same time in the same area.

It is the Organizations position that the FEIS and RMP must be remanded to the Field Office for further analysis of the issues more specifically addressed in this appeal. The analysis of these issues and associated balance of uses that will result from meaningful analysis and a hard look at accurate information must then be provided to the public for an additional comment period.

It is the Organizations position that an RMP for this area that is based on accurate economic information and accurate application of management standards will look significantly different that the current management standards sought to be applied.

Respectfully Submitted,

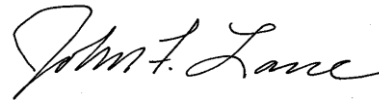


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Enclosures