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January 30, 2015

Derek Padilla, District Ranger  
Dolores Ranger District  
29211 Highway 184  
Dolores, CO 81323

**RE: Rico-West Dolores Roads and Trails Travel Management;  
Comments to Proposed Action**

Dear Ranger Padilla and ID Team:

We submit the following comments regarding the Proposed Action, Travel Management for the Rico-West Dolores Roads and Trails, December, 2014 (the "PA"). We submit these comments on behalf of our clients the Trails Preservation Alliance ("TPA"), Colorado Off Highway Vehicle Coalition ("COHVCO"), Public Access Preservation Association ("PAPA"), San Juan Trail Riders ("SJTR"), and the Blue Ribbon Coalition ("BRC"). We appreciate the opportunity to provide comments and to work with the Forest Service to ensure that the public is afforded appropriate continuing motorized recreation and access opportunities in the Rico-West Dolores Area ("RWD").

These comments are supplemental to, and independent of, any submitted separately by the above-named organizations, or any of their members. The agency shall independently evaluate and respond to all such comments. An effective response to such comments will be essential to the long-term success of travel management in the RWD. Please direct any correspondence regarding these comments to Paul Turcke via the above-listed contact information or [pat@msbtlaw.com](mailto:pat@msbtlaw.com).

## **INTRODUCTION**

We are disappointed by the PA. We have expended meaningful resources alongside the Forest Service defending against the unjustified and unnecessarily elaborate claims in *Backcountry Hunters and Anglers, Colorado Chapter v. U.S. Forest Service*, Case No. 11-CV-3139 (D.Colo.) and Nos. 13-1216 & 14-1137 (10<sup>th</sup> Cir.) (the "CBHA litigation"). The singular plaintiff in that litigation does not represent a significant constituency of users in the RWD or beyond. Notably absent from that litigation has been an array of "first tier" environmental groups or legal counsel, as is frequently seen in cases of this nature that are a high priority to the "nonmotorized" user community. Rather, this is an aberrational lawsuit that has been

aggressively, yet to this point unsuccessfully, advanced by an outlier group. We applaud the efforts of the Forest Service, and its legal counsel, in all aspects of the response to the CBHA litigation.

Despite the foregoing, the PA contains significant and unjustified concessions that cannot be viewed as anything other than capitulation to the plaintiffs in the CBHA litigation, or their closely-aligned special interests such as the for-profit, and world renown, operations of the Dunton Hot Springs LLC. The restrictions in the PA, such as seasonal closures for aggressively hunted ungulate populations, or nonmotorized buffers around the Town of Rico, stand as glaring reversals of prior agency determinations and/or closely parallel specific requests from anti-motorized advocates. Whether intentional or not, the Forest Service sends the message through this PA that the agency will capitulate to litigation, and more aggressive litigation will prompt greater capitulation by the agency. We ask the agency to carefully reconsider this message.

There are lawsuits and then there are lawsuits. We are not so naïve as to ignore the fact that some lawsuits are well-conceived and well-executed, and raise substantial procedural/resource concerns while representing meaningful risk to orderly agency operations. Without downplaying the importance of its opportunities or resources, the RWD does not present such delicate challenges. The alleged bases for change, such as elk populations or claims of user conflict, are among “bottom of the barrel” tools in the bucket of anti-access advocates. The RWD effort is not driven by listed, or even sensitive, species concerns. Elk in the RWD are thriving, and if anything are hunted too successfully by too many humans. The RWD, San Juan Forest, and State of Colorado offer world-class opportunities for nonmotorized recreation and adventure. The RWD project is largely an exercise in social engineering, not management of resources facing meaningful risk.

Closely associated with the litigation is the fact that this effort follows from the agency’s self-imposed remand of the 2009 TMP. We interpret this remand, based on our own experience but more importantly on the agency’s representations in the CBHA litigation, as being driven by procedural concerns. In other words, there is nothing that was substantially wrong with the on-the-ground components of the 2009 decision, so much as the manner in which they were packaged.

Fortunately, this process is at its earliest stages. There is ample time to steer it back on course. It may provide procedural cover to include components of the PA within the range of alternatives, but it is essential that the Forest Service create an alternative that will modify or eliminate certain elements of the PA, and reinstate some of the well-conceived elements of the 2009 TMP. A well-designed process can maintain the few remaining, highly desirable motorized recreation opportunities in the RWD while highlighting, and enhancing, the RWD’s similarly desirable nonmotorized recreation opportunities. There is ample room for diverse recreation in the RWD.

## OVERVIEW ON TRAVEL PLANNING

This project addresses the multiple purposes of revisiting travel planning for the RWD following remand of the 2009 TMP and adoption of the 2013 Forest Plan, consistent with national policy articulated in the 2005 Travel Management Rule (“TMR”) (70 Fed. Reg. 68264 *et seq.*, Nov. 9, 2005; 36 CFR Parts 212, 251, 261 and 295). It is important to note at the outset that the TMR is not a “closure” directive as portrayed by some preservationist special interests. Then-Chief Dale Bosworth stated upon release of the TMR that “[l]and Managers will use the new rule to continue to work with motorized sports enthusiasts, conservations, state and local officials and others to provide responsible motorized recreational experiences in national forests and grasslands for the long run.” USDA Forest Service, News Releases, “*USDA Releases Final Rule for Motorized Recreation in National Forests & Grasslands*,” dated November 2, 2005. “A managed system of roads, trails and area designated for motor vehicle use will better protect natural and cultural resources, address use conflicts, and secure sustainable opportunities for public enjoyment of national forests and grasslands.” Travel Management Rule Final Communication Plan, November 2, 2005, p.5. In fact, “it is Forest Service Policy to provide to diversity of road and trail opportunities for experiencing a variety of environments and modes of travel consistent with the National Forest recreation role and land capability.” Forest Service Manual 2353.03(2); *see also*, 70 Fed. Reg. 68264 (“motor vehicles are a legitimate and appropriate way for people to enjoy their National Forests in the right places and with the proper management.”). The Forest Service should be planning for a managed system, and working with all groups, including OHV enthusiasts, in order to comply with not only the agency’s own directives and the Travel Management Rule, but the policies behind the Rule.

In summary, the TMR is designed to address the threat of “unmanaged recreation” and to put the agency in a position to be pro-active in addressing what is now a dominant use of the National Forest System. Properly understood, the TMR is not intended to reflect some broad agency policy against motorized travel, or to wipe the slate clean of appropriate access that has existed for decades within Forest System units. The TMR is not a closure direction, but a means for the agency to make improvements to better ensure sustainable travel networks on Forest Service lands.

## GENERAL COMMENT THEMES

There are several key elements within the PA, or issues implicated by it, that we wish to stress at the scoping phase. Again, the time to address and properly plan for these issues is now.

### **(1) The Seasonal Motorized Travel Closure is Excessive and Unjustified.**

The Forest Service is proposing to restrict access on single-track motorcycle trails from September 9 through June 30, allowing motorcycle access only from July 1 to September 8. PA at 5. The alleged justifications for this closure are concerns expressed by “some hunters...that

motor noise on the single track trails disturbs their hunting experience.” *Id.* Second, the agency claims the Forest Plan “emphasizes providing for elk production habitat during the time of year when elk are calving.” *Id.* There is not even a rational basis to defend these purported bases for the dramatic seasonal restrictions proposed.

Starting with the second justification, there is no rational basis to suggest that elk calving or other habitat needs are not amply met in the RWD. To now assert differently would have the Forest Service dramatically contradicting its sworn testimony in the CBHA litigation:

It is generally accepted big game require a minimum functional security area size of 250 acres. The spaces between the current designated road and trail system provide a total of 157,568 acres of security areas spread across the Rico-West area (the smallest is around 450 acres and the average size is around 5.000 acres). In my professional option the movement of big game populations for seasonal migration and the use of production and foraging areas is not restrained by the 14 [motorcycle] trails, based on the size of the land spaces in between that provide for security.

Declaration of Ivan Messinger at ¶ 6, Docket No. 34-7, *CBHA v. USFS*, Case No. 11-CV-3139 (D.Colo.) (attached as Exhibit “A” hereto). Further, the PA fails to recognize or discuss the fact that concerns about elk habitat security focus on human disturbance, not solely motorized disturbance. Again, as Mr. Messinger testified, “[i]f motorcycle use was removed, the trails would continue to be used by hikers, horseback riders and mountain bikers so there would still be a disturbance to wildlife from humans.” *Id.* at ¶ 7.

Our clients have carefully scrutinized the wildlife-based rationale for seasonal restrictions, including working with our wildlife biologist consultant, John Monarch. We incorporate Mr. Monarch’s comments by reference herein. In short, Mr. Monarch breaks the elk equation into several key elements. The first important element is that there is essentially no “problem” that needs fixing with RWD (or larger DAU 24) elk herds. Even if there was some issue, the USFS has not, and cannot, demonstrate that long-existing single-track motorcycle riding is a causative factor that can be rationally singled out for restrictions. We ask the Forest Service to carefully review the points made by Mr. Monarch and consider whether it will serve the resource, the user community, or the agencies well to continue on the rationale outlined in the PA.

The concerns about ill-defined concerns from “some hunters” are an even flimsier justification for closing these trails for nearly ten months of the year. CPW manages elk hunting with a decided emphasis on maximizing hunter opportunity, and perhaps not coincidentally, hunting-derived revenue. The RWD game management units are not controlled hunting units and are not managed for low tag numbers and the related relative solitude and “high quality” hunting experience. Elk hunters in the RWD, like much of Colorado, should expect to encounter

numerous other hunters, many of whom will be employing a motorized means of conveyance, which may often display registration from outside the State of Colorado. For the Forest Service to claim it is responding to a need to create “higher quality” elk hunting experiences in the RWD by instituting motorized closures is well outside the range of credible agency behavior that we see in travel planning.

It is essential that the Forest Service immediately rethink the PA’s emphasis and configuration of seasonal restrictions. There is no defensible justification for these restrictions, and our clients will oppose them through any all available procedures.

**(2) It is Inappropriate to Create a Nonmotorized Buffer around the Town of Rico.**

The PA reflects an apparent Forest Service determination that the Town of Rico has requested a 3 mile “motor free” zone around its borders. We question whether the Town has properly formalized this request, and if so it is at the urging of special interests like the Rico Alpine Society or business owners hoping to expand or create their own markets catering to nonmotorized devotees.

Our clients have attempted to create and maintain a mutually respectful and beneficial relationship with both residents and “officials” in the Town of Rico. We are not aware that the Town has conducted a meaningful public process to formulate a position on the PA or RWD planning. To the extent there is some suggestion of such an effort, it predates the 2009 TMP and is of questionable present validity.

We can appreciate that backcountry communities in Colorado desire a diversity of recreational experiences, and that this includes meaningful opportunities for nonmotorized recreation, including both short loops or “day trips” as well as “staging” or access corridors for more extended backcountry experiences. However, these opportunities do not necessitate elimination of motorized access. The Forest Service should carefully determine the array of Rico routes that can support a robust and diverse transportation network and recreation experience, including motorized access/recreation.

**(3) Subjective User Conflict is Not a Defensible Basis for Motorized Closures.**

There is some indication the Forest Service is relying on subjective “user conflict” to justify certain trail closures. There is no basis in logic or the law to do this. Our organizations have spent decades fighting this issue, and we will do so here. “User conflict” is intentionally manufactured by anti-access advocates. The RWD generally contains well designed and long traveled trails that do not have public safety or other true conflicts between uses. The entire RWD is “open” to nonmotorized travel, there is a simple answer for those who wish to avoid motorized traffic – stay away from the handful of motorized trails.

While anti-access forces still attempt to recirculate a handful of long-ago rulings on this topic, the fact is that “user conflict” claims have been recently and forcefully rejected by the courts. In *Wild Wilderness v. Allen*, 12 F.Supp.3d 1309, 1330 (D.Or. 2014), the court found that “tradeoffs between motorized and nonmotorized users have already occurred and will continue in the future. The record demonstrates that the Forest Service is continuing a long, inclusive process to manage winter recreation use on the Cascade Lakes Highway.” The court’s decision may be viewed at:

<http://www.snowmobilers.org/docs/KAPKA-decision-March-2014.pdf>

A more recent decision in the 10<sup>th</sup> Circuit upheld the Forest Service designation of long-existing motorized access along the Albany Trail against preservationist claims of user conflict. *Biodiversity Conservation Alliance v. U.S. Forest Service*, 765 F.3d 1264, 1275 (10<sup>th</sup> Cir. 2014). This motorized designation was upheld, even where the Albany Trail traverses an Inventoried Roadless Area which anti-access advocates regularly seek to imbue with quasi-Wilderness status.

We urge the Forest Service to understand the full extent of its discretionary authority, and exercise that authority in focusing on a management approach in the same spirit as the Kapka Butte and Albany Trail projects.

**(4) The Remaining RWD Motorized Trails Have Received Sustainable Motorized Travel for Decades, and Ample Nonmotorized Rereation Opportunities Abound.**

The routes that remain for motorized access in the RWD have receive motorized access since the first motorized vehicles could first access them. Many others have been closed. The Forest Service featured this fact in defending the lawsuit, acknowledging that the currently designated motorized routes in the RWD “are generally 18 inches or less in width and have historically been open to shared uses of hiking, horse-back riding, mountain biking, and motorcycle use for decades.” Declaration of Mark W. Stiles at ¶ 10, Docket No. 34-2, *CBHA v. USFS*, Case No. 11-CV-3139 (D.Colo.)(attached as Exhibit “B” hereto).

The RWD and Colorado are a mecca for Wilderness and nonmotorized recreation opportunity. If users are frustrated by the existence of continuing motorized use on currently designated routes in the RWD, it is because they have not become properly informed about the management prescriptions in the area and/or have formed unrealistic expectations centered on their own individual desires. The agency has taken numerous measures “to inform and educate trail users of what to expect on a shared-use trail” and agency staff “have heard from the public of many examples of courteous recreation behavior across all types of use...[and] have also heard of examples of poor share the trail behavior across all types of uses.” Declaration of Penelope K. Wu at ¶ 7, Docket No. 34-5, *CBHA v. USFS*, Case No. 11-CV-3139 (D.Colo.)(attached as Exhibit “C” hereto). Ms. Wu insightfully opined that negative impacts attributed to motorcycle noise are “in the ‘ear of the listener’ in terms of tolerance or acceptance

of vehicle noise” and that “[n]oise is acceptable in an area managed for multiple uses including motorcycles and is typical of other motorized trails on the San Juan National Forest.” *Id.* at ¶ 8. On the National Forest System and our broader culture, we cannot and should not capitulate to the uninformed, subjective desires of a small minority of chronically dissatisfied individuals. If the Forest Service wishes to breed a culture of discontent, conflict and litigation, then the PA represents the perfect next step.

**(5) The Agency Duty to “Minimize” Need Not Unduly Restrict Remaining Access.**

It is both legally and pragmatically essential that the agency use its discretionary authority to formally establish a sustainable, yet functional, network of designated routes. It is likely that various preservationist and anti-access special interests will incant a litany of alleged legal violations designed to symie adoption of or any meaningful network of vehicle routes in the project area. They are certainly entitled to voice their opinions, but the agency should carefully evaluate any such claims and realize they are often thinly veiled efforts to advance an agenda that includes significantly reducing, if not eliminating, recreational use of vehicles in the National Forest System. The agency is empowered to reject these anti-access positions through correct interpretation of the law, as reflected in various recent court decisions.

A favored line of recent attack has been through the “minimization criteria.” The minimization criteria have been around since 1972 and long received only passing interest, but have acquired teeth largely through recent litigation involving similar regulatory language addressing management of the National Forest System. *See*, 36 CFR § 212.55(b) (requiring agency to “consider effects...with the objective of minimizing” a variety of factors including damage to soil, watershed, vegetation and other forest resources; harassment of wildlife and significant disruption of wildlife habitats; conflicts between motor vehicle and other uses; and conflicts among different classes of motor vehicle uses). In particular, this renewed interest springs in large part from the decision by a U.S. Magistrate declaring invalid the Salmon Challis NF travel decision. This decision was issued in 2011, and is published as *Idaho Conservation League v. Guzman*, 766 F.Supp.2d 1056 (D.Idaho 2011). In short, that decision rejected the Forest Service effort to characterize the minimization criteria as providing broad guidance (“consider with objective of minimizing”) and interpreted the language as requiring the agency to show, in its NEPA analysis, how it applied the minimization factors in selecting from decision options for specific routes. There have been several more decisions that have followed similar reasoning, which have only come from federal district courts. The 9<sup>th</sup> Circuit has on three (3) occasions heard cases involving the OHV “minimization criteria” and has declined to follow the *Guzman* court’s reasoning in two of those cases, with the third still under advisement following argument on November 7, 2013.

The agency has broad discretion applying the minimization criteria and is certainly not obligated to restrict motorized access, particularly in response to the subjective complaints or other “evidence” provided by self-interested nonmotorized use advocates. Several decisions

reflect this important truth, most notably the two (2) 9<sup>th</sup> Circuit decisions on the topic, both issued in unpublished memorandum dispositions. *See, The Pryors Coalition v. Weldon*, 803 F.Supp.2d 1184 (D.Mont. 2011), *aff'd*, 551 Fed.Appx. 426 (9<sup>th</sup> Cir. 2014); *The Wilderness Soc’y v. BLM*, 822 F.Supp.2d 933, *aff’d*, 526 Fed.Appx. 790 (9<sup>th</sup> Cir. 2013). Relatedly, nonmotorized recreationists have no inherent “right” to exclusive use, or any use, that exceeds or trumps those of other recreationists. *See, Bicycle Trails Council of Marin v. Babbitt*, 82 F.3d 1445 (9<sup>th</sup> Cir. 1994) (rejecting challenge to NPS management plan restrictions on bike access). The agency cannot be strong-armed into motorized use closures or restrictions, and a well-reasoned and documented balance affording reasonable opportunities to a spectrum of recreational uses will be upheld by the courts. Our clients were among the parties to the *Pryors* case, and a copy of the Circuit’s decision can be viewed at:

[http://www.sharetrails.org/uploads/54-1-Memorandum\\_decision\\_01.07.14.pdf](http://www.sharetrails.org/uploads/54-1-Memorandum_decision_01.07.14.pdf)

The fact is that “minimization” has not recently been a productive line of argument for anti-access advocates, and for several years the courts have been ruling in favor of the Forest Service and other agencies on these issues. There are no recent litigation developments that should cause a different outcome in the RWD. Decades of Wilderness designation and closures have already “minimized” the impacts of motorized recreation in the RWD. The Forest Service should avoid capitulating to false cries for new closures based on a myopic interpretation of the minimization duty.

### **SPECIFIC ROUTE COMMENTS**

There are many route-specific elements of the PA that should be modified. This process is an excellent opportunity for the Forest Service to establish a well-designed, diverse road and trail system that can meet user needs while properly shaping their behavior long into the future. Our clients and their members will provide extensive and detailed input on these issues, and we will simply summarize some of their key observations.

#### **(A) Specific Route Proposals in the PA Should be Modified.**

The project area is subdivided into 9 different areas. The proposals are acceptable for some areas. The areas/routes that need changes are briefly described below:

(1) Area 2- Winter Trail 202, West Fall 640 and East Fall 646 should remain open in their current motorized designation. The Winter Trail reroute should be nonmotorized, and an additional nonmotorized trail should be constructed between this reroute and the Burro Ridge Trailhead. This offers a “motor free” experience and access to the Lizard Head Wilderness.

(2) Area 3- Spring Creek 627, Morrison 610, and Loading Pen 738 should be designated as motorized single-track.



(3) Area 4- Wildcat 207 should not be eliminated but rather extended southward to the railroad right of way. One or both sections of the Ryman Trail should be single-track motorized and connect Calico South 211 and Priest Gulch 645. Burnett Creek 641 should be designated as motorized single-track.

(4) Area 5- Sockrider 6 should remain a motorized section of the Calico 208 trail. Any nonmotorized redesignation of Horse Creek 626 should be offset by addition of replacement motorized trail miles somewhere in the system.

(5) Area 9- The lower Bear Creek Trail 145 should not be nonmotorized, but we would accept this redesignation if a bypass or suitable replacement motorized trail miles could be added.

**(B) Certain Components of the 2009 TMP Should be Reinstated.**

In addition to the specific routes described above, there are elements of the 2009 TMP that appear to have been unnecessarily or unwisely removed from the PA. Some of these are discussed in (A) above, but at the risk of redundancy we wish to identify the list of these 2009 TMP routes that appear to have been omitted from the PA. Specifically, we are concerned about the following elements:

- (1) Priest Gulch Cut-Off
- (2) Wildcat
- (3) Winter
- (4) West Fall Creek
- (5) East Fall Creek
- (6) Sockrider section of Callico Trail
- (7) Spring Creek Extension to FS 692
- (8) Grindstone Loop
- (9) Ryman Creek
- (10) Burnett Creek and Trailhead

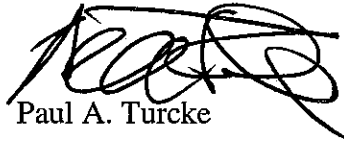
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**CONCLUSION**

We sincerely hope the Forest Service does not carry forth the primary themes of the PA. Doing so will insure continuing dispute and litigation over the RWD trails. Instead, the Forest Service has the opportunity to await the final resolution of the CBHA litigation, to make modifications along the lines proposed by our clients, and to bring consistency and closure to RWD travel planning.

Sincerely,

MOORE SMITH BUXTON & TURCKE, CHTD.



Paul A. Turcke

PAT/kmd

cc: Don Riggle, TPA/COHVCO  
Gary Wilkinson, SJTR  
Tom Thomas, PAPA

**EXHIBIT "A"**

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

Civil Action No. 1:11-cv-03139-JLK

**BACKCOUNTRY HUNTERS AND ANGLERS, Colorado Chapter,**  
Petitioner,

v.

**UNITED STATES FOREST SERVICE**, a federal agency within the U.S. Department of Agriculture; **MARK STILES**, in his official capacity as Forest Supervisor for the San Juan National Forest, **THOMAS TIDWELL**, in his official capacity as Chief of the United States Forest Service,

Respondents,

and

**COLORADO OFF HIGHWAY VEHICLE COALITION, TRAILS PRESERVATION ALLIANCE, SAN JUAN TRAIL RIDERS, PUBLIC ACCESS PRESERVATION ASS'N, and THE BLUE RIBBON COALITION**

Respondent-Intervenors.

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**DECLARATION OF IVAN MESSINGER**

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I, Ivan Messinger, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed by the United States Department of Agriculture, Forest Service, as the Dolores District Wildlife Biologist for the San Juan National Forest in Dolores, Colorado. I have been in this position since February 2010. Prior to this position I was employed for 11 years as a wildlife biologist for private industry.
2. I graduated from Mississippi State University with a Bachelor of Science degree in Forestry/Wildlife Biology in 1995.

**EXHIBIT "A"**

3. As the Wildlife Biologist for the Dolores Ranger District, my duties include analyzing wildlife effects of proposed projects for documents prepared under the National Environmental Policy Act. I am also responsible for monitoring wildlife biology related issues for various resource programs and execution of the standards and guidelines in the Forest Plan.
4. I mountain biked the entire length of the Calico trail in late summer 2011 to evaluate potential wildlife effects for a trail maintenance project. I also mountain biked the majority of the Bear Creek trail in summer 2011 for personal recreation and am familiar with the existing condition and use of the trail. I have walked sections of several of the fourteen trails associated with this litigation for personal recreation.
5. Mr. Marion and Mr. Sykes express the desire to have the opportunity to hunt elk and also expressed general concern for the health of elk and deer herds (Marion Decl ¶ 34; Sykes Decl. ¶¶ 11 and 14). Because big game herds are wide-ranging, I will discuss this topic for the roads and trails in the entire Rico-West area. Elk and deer (big game) are generalists (meaning they use a diversity of habitats across the landscape and this varies in season and in elevation) and are wide ranging within Rico-West area and use varied habitat for production (calving or fawning) and foraging. Big-game species use multiple movement corridors within the Rico-West area that allow for the seasonal migration from the higher elevations to lower elevations. The Forest Service is responsible for providing habitat for a variety of game and non-game species. The Colorado State Parks and Wildlife (previously Colorado Division of Wildlife) manage herd populations through the issuance of hunter licenses and also set hunting season dates.

**EXHIBIT "A"**

6. Mr. Marion states wildlife need large security areas that are not split up by motorized routes (Marion Decl. ¶ 37). A major influence on the seasonal big game movement and effectiveness of big-game habitat for calving/fawning and foraging, is the availability of functional security areas (any area that will hold elk during periods of stress because of geography, topography, vegetation, or a combination of those features). It is generally accepted big game require a minimum functional security area size of 250 acres. The spaces between the current designated road and trail system provide a total of 157,568 acres of security areas spread across the Rico-West area (the smallest is 450 acres and the average size is around 5,000 acres). In my professional opinion the movement of big game populations for seasonal migration and the use of production and foraging areas is not restrained by the 14 trails, based on the size of the land spaces in between that provide for security. The closure order eliminating cross-country travel further improves habitat in the land areas between the trails.
7. If motorcycle use was removed, the trails would continue to be used by hikers, horseback riders and mountain bikers so there would still be a disturbance to wildlife from humans.
8. Mr. Marion includes citations to a report which summarizes research titled "Off-Road Vehicle Impacts to Wildlife" (Marion Decl. ¶ 30), and also an "ORV White Paper" (Marion Decl. ¶ 32). Both of these reports are summary lists of research articles where the authors make their own general conclusions. I looked at the list of research article titles and recognized some of them from my own reading. There are few research projects that studied areas where the only motorized use was motorcycles on single track trails. Many of the studies looked at designated roads, undesignated routes and/or cross-country travel, and ATV trails which are 50 inches wide and not 18 inches or less like

these 14 trails. Therefore, the physical trail impacts discussed in the research do not readily apply to the 14 trails in this case. In addition, some of the articles describe research in other parts of the country, like deserts that are different from the Rico-West area. The conclusion drawn by the authors of these summary papers is noted, but cannot stand as peer reviewed research conclusions. On the other hand, noise impacts mentioned in the research articles are similar to motorcycle noise and this effect is incorporated in my earlier statements about wildlife security areas. The land spaces between the roads and trails provide ample habitat for elk and deer. Trail traffic -- both motorized or non-motorized -- does not affect big-game individuals and I have no concern for the population viability of big game based on current existing uses.

9. In addition, big game forage (the grass, forbs and shrubs they eat) is not be significantly reduced by use of the fourteen trails; regardless of the use (motorized or non-motorized) based on the total acreage of forage potential removed by the trail size.
10. The Petitioner makes comments referencing the population condition and habitat condition of several game and non-games species. Petitioner also reference bighorn sheep and Uncompahgre fritillary butterfly, two species not found in the Rico-West area. (Pet.'s PI Br 2 and 3). For the other species mentioned, although we have no absolute population numbers, we do evaluate and monitor population and habitat condition trends. We have several monitoring tools that are used to assess population and habitats of game and non-game species including Forest Service sensitive species. We routinely conduct monitoring of known territories of species. In addition, we continually conduct surveys to identify new territories of species identified for management by the Forest Plan. The deer and elk movement and population data used for monitoring is provided to the Forest

Service by Colorado Parks and Wildlife annually. To date, I am unaware of any monitoring of any species that point to a need for emergency closure to any type of use on the existing trails in the Rico-West area.

11. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and I would so testify if called upon to do so in a court of law.

Executed on 4/23/12

*Is/ [Signature]*

IVAN MESSINGER, Wildlife Biologist  
San Juan National Forest  
Dolores District  
Dolores, Colorado



# **EXHIBIT “B”**

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

Civil Action No. 1:11-cv-03139-JLK

**BACKCOUNTRY HUNTERS AND ANGLERS, Colorado Chapter,**  
Petitioner,

v.

**UNITED STATES FOREST SERVICE**, a federal agency within the U.S. Department of Agriculture; **MARK STILES**, in his official capacity as Forest Supervisor for the San Juan National Forest, **THOMAS TIDWELL**, in his official capacity as Chief of the United States Forest Service,

Respondents,

and

**COLORADO OFF HIGHWAY VEHICLE COALITION, TRAILS PRESERVATION ALLIANCE, SAN JUAN TRAIL RIDERS, PUBLIC ACCESS PRESERVATION ASS'N, and THE BLUE RIBBON COALITION**

Respondent-Intervenors.

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**DECLARATION OF MARK W. STILES**

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I, Mark Stiles, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed by the United States Department of Agriculture, Forest Service, as the Forest Supervisor for the San Juan National Forest in Durango, Colorado and I have served in this capacity since May of 2003. I have been employed by federal land and natural resource agencies for more than 30 years. During my federal career I have worked for the Soil Conservation Service, the Bureau of Land Management (BLM), the Immediate Office of the Secretary-U.S. Department of the Interior, and the USDA Forest

**EXHIBIT "B"**

Service. In my career I have held line management positions in the BLM and Forest Service for a combined 19 years.

2. I hold a Bachelor of Science in Wildlife Biology from Colorado State University (1978), and Master of Science in Economics from Colorado State University (1983).
3. I am personally familiar with portions of several of the 14 trails identified in the Petitioner's Complaint. I have become familiar with these trails through my personal outdoor recreational activities in the area beginning in the early 1980's and through my professional connection to the San Juan National Forest beginning in 2002 (temporary detail assignment prior to my official placement in 2003). I have camped and hunted big game along and adjacent to the Calico Trail and East Fall Creek Trail for multiple years. I have hiked portions of the Calico Trail during summer months. I have visited trailheads and walked short portions of several other trails identified in this case, during both personal endeavors and professional field visits. I have not used motorcycles on any of the 14 trails identified.
4. Under 36 C.F.R. 212 the definition of a *Forest road or trail* is a road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources. A *Road* is defined as a motor vehicle route over 50 inches wide, unless identified and managed as a trail. A *Trail* is a route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail. An *Unauthorized road or trail* is a road or trail that is not a forest road or trail or a temporary road or trail and that is not included in a forest transportation atlas.

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5. In my capacity of Forest Supervisor, on June 16, 2010, I issued a National Forest System Area Restriction for the San Juan National Forest, Special Order SJ-2010-08. (Forest Order) (AR R05018). This Forest Order administratively prohibited and eliminated cross-country motorized travel within the Rico-West Dolores Travel Management Area on the Dolores Ranger District of the San Juan National Forest (Restricted Area) by closing the Restricted Area to cross-country travel. Cross-country motorized travel is defined as use of a motor vehicle off of roads and trails designated for motorized use. (AR 05013).
6. The Forest Order did not authorize, change, restrict, or in any manner affect travel or the use of motorized vehicles on any road or trail in the Restricted Area. The Forest Order specifically stated that it did not affect the use of motorized vehicles on National Forest System Roads (NFSR), nor did it restrict further the operation of vehicles on motorized trails. (AR R05018). No change in the location or type of use on existing roads and trails occurred under this Forest Order. (AR R05018 and R05014). Nor did the Forest Order specifically distinguish the 14 trails identified in Petitioner's Complaint from any other existing road or trail. Therefore, it is a mischaracterization to say that the Forest Order authorized motorized use on the 14 trails identified in Petitioner's Complaint. It did not.
7. My authority to issue the Forest Order was based on three regulations which allow me to issue temporary emergency Forest Orders to provide short-term resource protection or to protect public health and safety: 36 C.F.R. 220.6 (d), 36 C.F.R. 212.52(b), and 36 C.F.R. 212.52(b)(2). (AR R05013). The content of the Forest Order itself complies with 36 C.F.R. 261.50(a).

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8. These regulations do not provide emergency authority to issue a new decision authorizing new motorized uses on National Forest System lands. Decisions to authorize new motorized uses on National Forest System lands require compliance with the 2005 Forest Service Travel Management Rule, Subpart B-Designation of Roads, Trails, and Areas for Motor Vehicle Use, 36 C.F.R. 212.50 *et. seq.*, and require appropriate environmental analysis consistent with agency procedures under the National Environmental Protection Act. 36 C.F.R. 212.52(a).
9. In a supporting decision letter documenting my reasons for the decision to issue the Forest Order and my conclusion that the decision was appropriately categorically excluded from documentation in an environmental impact statement or an environmental assessment, I stated that the object of the 2005 Travel Management Rule was not to unnecessarily limit access to the Forest, but to protect the Forest from unmanaged motorized recreational use. (AR R05013). I also reaffirmed the limits of my Order and stated that "No change in current road and trail designations (location or type of use) occur under this decision." (AR R05014). The order was to provide short-term resource protection until a revised Rico-West Dolores Travel Management occurs..." (AR R05014).
10. The current road and trail designations (location or type of use) in the Restricted Area have allowed motorized and non-motorized uses for over three decades. The 14 trails at issue in this litigation are generally 18 inches or less in width and have historically been open to shared uses of hiking, horse-backing riding, mountain biking, and motorcycle use for decades.

11. I used the 2005 San Juan National Forest Visitor Map to depict the areas closed to motorized travel, *i.e.*, only the spaces and areas between the current roads and trails are closed to off-road and off-trail motorized use. My use of the 2005 San Juan National Forest Visitor Map did not open motorized travel on these roads and trails. (AR R04872 and AR R05011). In addition, publication of trail visitor use maps is not a decision that requires compliance with the National Environmental Policy Act. Rather, publication of a visitor use map is a ministerial action that only reflects past decisions or actions that created the roads and trails in the Restricted Area.
12. My staff reviewed travel maps produced during the time period between 1971 and 2005. These maps are dated 1971 (AR R04859), 1972 (AR R04860), 1974 (AR R04861), 1978 (AR R04862), 1985 (AR R04864) 1994 (AR R04867), 2001 (AR R04871), and 2005 (AR R04872) and depict travel as allowed on the San Juan National Forest at that time. The use designations for the 14 trails identified in Petitioner's Complaint have remained largely unchanged throughout that entire period of time up through the present day.
13. The map attached to Forest Order as Exhibit A matches the 2005 Visitor Map (AR R04872) except for the temporary elimination of cross-country travel. If a trail fell within an area that was previously open to motor vehicle use everywhere, the trail was depicted as open on the Forest Order Map and the land area surrounding the trail was closed to motor vehicle use.
14. Out of concern for the impacts of cross-country travel brought forward by my staff and some of the comments received during the Rico-West Dolores (RWD) Travel Management Plan (TMP) analysis, I chose to take action regarding cross-country travel.

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I did not choose to close trails or roads as I believed it was an action better left for future travel management decisions.

15. Mr. Marion filed an extensive Freedom of Information Act (FOIA) request on July 28, 2010, seeking numerous documents relating to the 14 trails. Specifically, Mr. Marion asked for all documents and correspondence between the San Juan National Forest personnel and the Region 2 Appeal Team regarding the Appeal of the RWD TMP, and all records and correspondence between the San Juan National Forest and members of multiple trail or preservation user groups concerning the RWD TMP, its appeal, and any informal appeal resolution meeting and meeting summary. While there is some overlap between the information requested in the FOIA request and the Forest Order, because the Forest Order was more focused and only restricted cross-country travel and was not a "decision to allow motorized travel on these trails", the material considered in issuing the Forest Order was limited to those portions of the RWD TMP administrative record and other documents relevant to that Forest Order. The Administrative Record filed in this case did not include material which would be necessary to "make a decision to allow motorized travel on these trails" because the Forest Order did not make that decision. Decisions designating trails, including motorized use, will be made in the new analysis for the RWD TMP. The portions of the reversed 2009 RWD TMP that were relevant to cross-country impacts, which was the decision made in my Forest Order, were included and made part of the administrative record.
16. The reversed 2009 RWD TMP was a decision made by District Ranger Steve Beverlin in September 2009, pursuant to the 2005 Travel Management Rule of the U.S. Forest Service. The 2005 Travel Management Rule provided national consistency and clarity on

motor vehicle use and also provided a national framework under which route designations would be made at the local level. The object of the 2005 Travel Management Rule was to protect the Forest from unmanaged motorized recreational use. Travel Management: Designated Routes and Areas for Motor Vehicle Use, 70 Fed. Reg., 68264 (codified at 36 C.F.R. 212.50).

17. To comply with the 2005 Travel Management Rule, District Ranger Beverlin began the environmental review process required by the National Environmental Protection Act (NEPA). This process culminated in his Decision Notice and Finding of No Significant Impact for the Rico – West Dolores Travel Management Plan dated September, 2009. (AR R04681). The Decision would have designated a different configuration of roads and trails open for motorized travel than exists today, and would have also restricted motorized cross-country travel. (AR R04681).
18. District Ranger Beverlin's decision was appealed by eight parties, including the Petitioner, and I was the Appeal Deciding Officer for that appeal. Ultimately I determined that District Ranger Beverlin's decision was not supported by the record and I remanded the decision back to the District. (AR R04825).
19. A re-analysis of the RWD travel management under the 2005 Forest Rule has not yet been completed.
20. After remanding District Ranger Beverlin's RWD TMP decision, I was concerned that there was the potential for considerable adverse effects on soil, vegetation, and wildlife habitat if the area remained open for cross-country travel pending completion of the new environmental analysis and a new travel management decision. Due to the controversial nature of the situation, I was also concerned that the area was at an accelerated risk of

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adverse resource impacts from cross-country motorized travel. I determined that eliminating cross-country travel could achieve many resource benefits while limiting impacts to existing uses, and that this restriction should continue until the re-analysis of the current road and trail system could be completed. (AR R05016). I issued the Forest Order to address these concerns. (AR R05016).

21. Based on input from Dolores District and Supervisor's Office staff, and my own knowledge of portions of the Rico-West area, I disagree with the Petitioner's conclusion as to the level of harm from motorcycle travel on the 14 trails. I did not find -- and do not now find -- that motorcycle use is directly causing or will directly cause considerable adverse effects on public safety or soil, vegetation, wildlife, wildlife habitat, or cultural resources at a level which would require a temporary, emergency closure of motorized use on these 14 trails under 36 C.F.R. 212.52(b)(2). Instead, I find that the conditions existing on each of these multiple-use trails are typical of many trails managed under trail programs on National Forest lands. While localized maintenance issues periodically occur and require remediation, there are management tools which are used to address such issues and remediate any harm that eliminate any immediate need to close these trails to motorcycle use.

22. Petitioner's assertion that my email dated February 26, 2010, to Mr. Marion and others was a finding of "considerable adverse effects" sufficient to justify a closure under Executive Order 11989 and 36 C.F.R. 252.52(b)(2) misconstrues and distorts my email and its meaning (Pet.'s PI Br 55-57). My email response clearly states that I personally visited the site and agreed that the area was in need of remedial action and that "some level of corrective action is appropriate" with this action to be taken "as soon as

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practicable to prevent further degradation in the area.” (Pet.’s PI Br. Exhibit 23). My email was in response to Petitioner’s letter, and was not a finding of significant adverse effects pursuant to the controlling regulation (which is 36 C.F.R. 212.52(b)(2) and not 36 C.F.R. 252.52(b)(2) as cited by Petitioner). The Dolores District Ranger has begun to remedy the problems identified; the District Ranger signed a categorical exclusion decision to construct a turnpike and fill in the improperly engineered drainage ditch -- which was a primary contributor to the trail problem-- and the project is scheduled to be implemented this summer. Moreover, as stated in my email this area is in need of trail maintenance actions to correct drainage and trail braiding problems regardless of the types or modes of trail use. This turnpike is removable, so the project does not set precedent for, nor preclude future choices as to the location of this section of trail.

23. After my Forest Order was issued, Mr. Marion submitted photos of the Eagle Peak Trail attached to Pet.’s PI Br. Exhibit P#1 to the Dolores District staff. In response to the information provided by Mr. Marion and these photographs, the Forest Service trail crew visited the sites and found no problems that warranted immediate emergency action. Instead, the staff identified maintenance needs and scheduled crew time to work on those areas.

24. I also do not concur with Mr. Marion’s belief that there are safety concerns which would require immediate emergency closure of these trails. Similar to other “shared-use” trails on the San Juan National Forest lands, the Forest Service provides trail maps and signage that informs trail users of the types of use to expect on each of these 14 trails. Forest Service signs and maps include public education about trail etiquette. While I understand people have different values and their experience may be diminished by encountering a

type of use different from their own, I have not received reports of serious safety accidents as a result of horse, hike, mountain bike or motorcycle encounters on these trails.

25. Exhibits 8 and 11 of Pet.'s PI Br. reference two letters from the Colorado Division of Wildlife (CDOW) to the Forest Service. Petitioner cites to these two CDOW letters and discusses the letters in the Marion Declaration. (Marion Decl. ¶ 37, Pet.'s PI Br. 6-7, 21-22, 24-25). These CDOW letters were submitted to the Forest Service during the 2009 RWD TMP analysis (AR R03228-R03231, AR R03856-R03859) and were considered by the agency during that process. As stated previously, the 2009 RWD TMP decision has been remanded. When the Forest Service continues its evaluation of the existing roads and trails, scheduled to begin in September 2012, it will again request comments from this state agency and will consider those comments when making a new travel management decision. Any analysis undertaken as a result of a proposal to change the type of use on these trails will consider all types of uses on the trails because wildlife disturbance and the localized trail resource damage is caused in part by horse travel, foot travel and mountain bikes along with motorcycles. Resources such as wildlife habitat are best addressed by looking at the connectivity of the entire road and trail system. As they had with the prior 2009 RWD TMP, the Petitioner will have an opportunity to provide input into that decision and to challenge the decision, when final, if they do not believe the process to be legally sufficient.

26. As described in the Categorical Exclusion letter (AR R05013), I considered public comment from the 2009 RWD TMP analysis relative to proposals to eliminate cross-country travel. The CDOW letters supported my Forest Order decision, which continued

the Forest Service's recommendation to eliminate cross-country travel. My Forest Order preserved this situation until a new analysis of the roads and trails themselves can be made.

27. I disagree with Petitioner's articulation of my position relative to my decision to remand the RWD TMP (Petitioner states that "The ARO recommended reversing the TMP because, among other things, designating trails in MA3A areas "as motorized violates the Forest Plan." Pet.'s PI Br.12). The Appeal Reviewing Officer recommended reversing the Manager's decision on this point (AR R04821) but did not provide the rationale for this recommendation. In my letter to Mr. and Ms. Marion dated December 14, 2009, I stated that the Appeal Reviewing Officer "found that the Rico-West Dolores Travel Management Plan EA and project record do not provide sufficient information to support the Manager's decision. Therefore he recommended that I reverse the Manager's decision." (AR R04820). I concurred in this finding and, based on insufficient evidence in the record, reversed the Manager's decision. (AR R04825). My decision that the record did not adequately disclose, explain, or demonstrate his analysis and conclusions, does not mean that I concurred with the Appellants' position concerning the designation of motorized use on trails within Management Area 3A. In fact, I do not concur in their interpretation of the motorized usage allowed in Management Area 3A.
28. In the case of Management Area 3A, desired conditions include semi-primitive non-motorized recreation settings (AR R01676). However, at the same time, Management Area 3A includes desired conditions for specifically identified motorized corridors that pass through the Management Area (AR R01677). Thus, there is some level of noise and

physical impacts anticipated within this Management Area from use of these corridors that is consistent with the Management Area 3A designation.

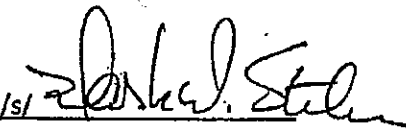
29. I disagree with the Petitioner's interpretation of the San Juan National Forest Plan. When existing trails and roads are located in a 3A Management area, their inclusion in that area does not automatically close the roads and trails. (Pet.'s PI Br. 10-11). Forest Plans are guiding documents that describe goals, objectives, standards and guidelines for management of the National Forests. Forest Plans contain management direction that sets direction for desired future conditions and forest plans usually do not make site-specific project level decisions. In September 1990, in the case of Amendment 11, a decision was made to change the Management Area 3A by expanding its boundaries (AR R01956). However, Amendment 11 did not change the existing motorized uses within the expanded Management Area 3A or close the newly encompassed roads and trails. Closing these roads and trails would take a new and subsequent site-specific decision. Absent a site-specific closure decision, the existing roads and trails their location and uses stay the same.

30. The Petitioner states that the only way a motorized corridor through Management Area 3A is 'specifically identified' is through listing in Appendix G of the Forest Plan. (Pet.'s PI Br. 9, 10, 11) This is incorrect. The Forest Plan does not specify any particular procedure for specifically identifying motorized corridors within Management Area 3A (AR R01676 - R01689). At the time the 1983 Forest Plan was issued, Appendix G was apparently intended as a public information tool and not as the defining articulation of motorized trails in Management Area 3A, and it was not even included when the Forest Plan was republished with the 1992 Forest Plan Amendment.

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31. The Forest Service has never used Appendix G to specifically identify motorized corridors. Rather, the historic travel management practice and interpretation of the San Juan National Forest staff has been to define 'specifically identified motorized corridors' as those roads and trails that are part of the National Forest trail system and are shown as such on maps.
32. The Multiple Use - Sustained Yield Act of 1960 (Public Law 86-517) is clear that the Forest Service must manage for non-timber values, like recreation, range, watershed, wildlife and fishery purposes. The National Forest Management Act embodied these uses by creating a forest planning process. On the San Juan National Forest, which a popular destination for outdoor recreation enthusiasts, it is my job to provide the balance of multiple recreation uses.
32. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and I would so testify if called upon to do so in a court of law.

Executed on 24<sup>th</sup> of April 2012

  
/s/ Mark W. Stiles

MARK W. STILES  
Forest Supervisor  
San Juan National Forest  
Supervisor's Office  
Durango, Colorado

# **EXHIBIT “C”**

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

Civil Action No. 1:11-cv-03139-JLK

**BACKCOUNTRY HUNTERS AND ANGLERS, Colorado Chapter,**  
Petitioner,

v.

**UNITED STATES FOREST SERVICE, a federal agency within the U.S. Department of  
Agriculture; MARK STILES, in his official capacity as Forest Supervisor for the San Juan  
National Forest, THOMAS TIDWELL, in his official capacity as Chief of the United States Forest  
Service,**

Respondents,

and

**COLORADO OFF HIGHWAY VEHICLE COALITION, TRAILS PRESERVATION  
ALLIANCE, SAN JUAN TRAIL RIDERS, PUBLIC ACCESS PRESERVATION ASS'N, and  
THE BLUE RIBBON COALITION**

Respondent-Intervenors.

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**DECLARATION OF PENELOPE K. WU**

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I, Penelope (Penny) K. Wu, pursuant to 28 U.S.C. § 1746, declare as follows:

- 1) I am employed by the United States Department of Agriculture, Forest Service, as a Supervisory Outdoor Recreation Planner for the Dolores Ranger District, San Juan National Forest in Dolores, Colorado. I have served in this capacity since September 1999 and have worked for the USDA Forest Service for over 22 years. I started my career with the Forest Service in Vermont in 1989 as a Forestry Aid (Recreation) on the Manchester District, Green Mountain National Forest (GMNF). In 1990, I was rehired as a Co-Operative Educational Student / Outdoor Recreation Planner Trainee. Upon graduation from the University of

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Vermont with a Degree in Outdoor Recreation Management in 1993, I served as the Manchester District's Outdoor Recreation Planner with an emphasis in managing their trails program.

- 2) As Supervisory Outdoor Recreation Planner, Dolores Ranger District, San Juan National Forest, Colorado, I am responsible for overall administration and management of various district recreation programs including: developed recreation, dispersed recreation, wilderness areas, trails, special uses/special events, and travel management.
- 3) I have been on every trail associated with this injunction except for the Little Bear Creek and Wildcat Trails. From late 2000 – 2006, I was consistently on all of these trails at least once each year and sometimes up to three times a year. Since 2007, I have been on the Calico, Priest Gulch, Bear Creek, and Ryman Creek Trails one or two times each year.
- 4) In his declaration, Mr. Marion says that in recent years he has 'noticed many new Forest Service signs that purport to allow ORV use on the trails' (Marion Decl. ¶ 38). His experience with new Forest Service signs is consistent across the San Juan National Forest because it was only since the early 2000s that trail maintenance has been emphasized. Beginning in the early 2000s, additional resources and efforts were made to properly sign trails. This does not mean that new decisions were made on these trails. Rather, these maintenance actions are consistent with trail decisions made over 30 years ago. Contrary to Petitioner's allegation that these are new trail decisions, signage has been consistent with the Travel Maps and Visitor Maps provided to the public since the 1970s.
- 5) Mr. Marion also notes the Forest Service has conducted trail maintenance which he feels was done to "repair ORV damage and/or to facilitate ORV damage" (Marion Decl. ¶ 39). Trail maintenance has never been conducted to respond to or facilitate a certain type of use. Rather,

annual routine trail maintenance is accomplished with the objective of sustaining all of the uses currently designated on a particular trail. For these 14 trails, routine maintenance was done to respond and facilitate motorized and non-motorized uses. This annual maintenance includes the removal of tree deadfall (known as blowdowns); the cleaning or reconstruction of drainage features (such as waterbars, rolling dips, ditches, culverts, etc.); and the signing of trails. Such actions are needed on a recurring basis on motorized, non-motorized, and wilderness trails.

- 6) Mr. Marion and Mr. Sykes stated that noise from motorcycles destroys their desired 'quiet use' experience (Marion Decl. ¶ 24 2 and Sykes Decl. ¶ 11). I understand that people hold different values and expectations for their outdoor recreation experience. However, multiple use trails or 'shared use' trails are a standard practice across the San Juan National Forest to accommodate the various recreational users and these 14 trails are typical multiple use trails. These 14 trails are utilized by hikers, horseback riders, mountain bikers, and motorcyclists, and these uses have occurred for decades on these trails. Some motorcycle riders commented during the Rico-West Dolores travel analysis that they had ridden in this area in the 1960s.
- 7) To inform and educate trail users of what to expect on a shared-use trail, the district has implemented several strategies on these 14 trails, many of which have been adopted across the San Juan National Forest. When trail users fully understand what to expect on a trail, it can help to alleviate potential issues, such as noise and/or safety conflicts. For example, each of the main trailheads for the 14 trails has a 3-panel sign kiosk that provides a map, shared use and/or environmental ethics messages. Each of the 14 trails also has sign posts at trail intersections that explain authorized uses; these types of signs are standard across many national forests in the country (Mr. Marion provided a photo example of our standardized trail

sign attached to his declaration on page 2 of Exhibit P, Part #1). Also, each of these 14 trails has a trail 'yield' sign that describes how trail users should yield when encountering others. For example, motorized users should always yield to non-motorized users, mountain bikers should yield to hikers/horseback riders, and hikers should yield to horseback riders. Mr. Marion's experiences of motorcycles that do not yield is an example of poor trail behavior (Marion Decl. ¶ 24 3). I have heard from the public of many examples of courteous recreation behavior across all types of use (horse, hike, mountain bike and motorcycle). I have also heard of examples of poor share the trail behavior across all types of uses. Despite these examples, I have never received a report of an encounter that warranted immediate emergency remedial action.

- 8) Mr. Marion reports that he is negatively impacted by motorcycle noise on these 14 trails (Marion Decl. ¶ 24 2). This affect is in the 'ear of the listener' in terms of tolerance or acceptance of vehicle noise. Noise can be short term as a motorcycle passes through a particular area. Noise is acceptable in an area managed for multiple uses including motorcycles and is typical of other motorized trails on the San Juan National Forest. I have heard people's comments expressing concern for noise, and also reports of people enjoying their experience regardless of the motor noise. As explained above, proper signing helps a person understand that they may hear noise on these trails.
- 9) The Colorado State Sound Law requires the operation of any off-highway vehicle to meet a 99dB(a) if manufactured before 1/1/1998; and 96dB(a) if manufactured after 1/1/1998. This is consistent with sound laws in several states across the country. For the past two years sound testing was done on the district for off-highway vehicles under the *Stay the Trail* Program. This testing demonstrated that a majority of OHVs are within state requirements. During

2011, the district also utilized Colorado State Parks OHV Enforcement Pilot Program to assist with weekend patrols of the Calico Trail. These patrols focus on monitoring, education, and enforcement.

**Response to Petitioner's Exhibit(s) Containing Trail Photos: N, P (Part#1), P (Part#2), and R**

10) *Exhibit P of Petitioner's Declaration – Photos of Eagle Peak Trail.* These photos were sent after the Forest Order was issued and I received these 34 photos on August 8, 2011. On August 10, 2011, Chris Bouton, Forestry Technician (Trails), Carith Kamermans, Forestry Technician (Trails), and I conducted an onsite trail review to determine if a maintenance action plan was needed. Our findings and conclusions found the majority of the trail to be in excellent condition. We did find that maintenance on various segments of the upper 2/3 of trail was needed, primarily due to major rain events. Our conclusions also found that maintenance work was needed because there were no drainage features present to take water from major rain events off of the trail and not because of motorcycles use on the trail. In response to this need, we created an action plan involving a trail crew that started work in approximately late August 2011. The crew did not finish because the back-country camp ran out of potable drinking water. This work will resume in 2012.

11) My response to Mr. Marion's report and photos of the Eagle Peak Trail is a typical response to how the District evaluates concerns, complaints, or reports of trail issues received from the public. First I direct my staff to conduct field reviews to determine if further action and/or mitigation is warranted. If warranted, I create an action plan for addressing maintenance issues. My staff typically can address a maintenance issue in one field season although as illustrated previously, maintenance work may span two field seasons.

12) The Eagle Peak Trail is approximately 6.15 miles in total length. Mr. Marion failed to describe condition of first 1.5 miles of trail, which provides excellent examples of properly functioning trail drainage features. Mr. Marion's Part #1 of Exhibit P depicts that he hiked approximately 3.0 miles of trail. In my professional opinion and through verification from the August 10, 2011 field review, along with trail crew reports, there is approximately 0.33 miles of maintenance work needed in this section. Mr. Marion's Part #2 of Exhibit P depicts that he hiked approximately 1.65 miles of trail. In my professional opinion and through verification from the August 10, 2011 field review, along with trail crew reports, there is 500 feet of total maintenance needed in this section of trail. Based on my assessment, less than 1% of the 6.15 miles of Eagle Peak Trail requires maintenance (ie, less than ½ mile of work needed; or specifically 2,260 feet needs maintenance out of a total of 32,472 feet).

13) Regardless of whether the trail is open to motorcycles, the overall condition of the Eagle Peak Trail is indicative to what is found on other trails at comparable elevations, with similar soil and vegetation types.

14) *Declaration of Robert H. Marion - Exhibit P (Part#1); Eagle Peak Trail; Pages 1 - 26.*

The 26 pages of photos represent approximately 3.0 miles of trail covered by Mr. Marion. Of this, it is my opinion that only 0.33 miles of maintenance is needed. The following page specific findings, conclusions, and recommendations are based on my professional opinion, along with discussion held with my trail staff during the August 10, 2011 field review.

Page 1: Cover Sheet of Exhibit P (Part#1) of Declaration of Robert H. Marion

Pages 2 & 3: Both photos provide good examples of agency trail signs and usage strips depicting what the trail is open to; in the distance of the photo on Page 2, one can see the 'yield' sign depicting desired user etiquette.

Page 4: In the photo caption, Mr. Marion states that the trail depth is 2 feet below surface. I disagree with this claim. We measured trail depth on August 10, 2011 and the trail depth averages one foot below surface. The maintenance issue in this segment is caused by water running down the trail and creating a 'cupped' tread; it is not caused by the type of trail use. The lower half of this photo depicts properly functioning check-steps. The upper half of the photo is void of water bars which would properly drain water from the trail and thus alleviate the cupping effect. To solve this typical maintenance issue, water bars would be installed at the very top of the photo.

Pages 6 – 10; 12 – 16; 19. In the photo captions, Mr. Marion states that the 'trail bed is 1-2 feet deep,' that 'very large rocks have been surfaced by dirtbikes,' and his allegations that the trail is 'widening due to riders.' I disagree with Mr. Marion's assessment that these effects are caused by motorcycle use on the trail. The overall condition of the trail is indicative to what is found at similar elevations, in similar soil and vegetation types, even on a non-motorized trail. The overall condition of this segment of trail meets agency standards and guidelines. In order to further assist with draining water off the trail, the trail crew would re-construct existing and/or install additional water bars. I do agree with Mr. Marion (pg. 9), that deadfall was cleared.

Page 11. In the photo caption Mr. Marion implies that this area is 'totally destroyed.' The photo shows a small opening in the forest in which water is moving properly off of the trail and to the 'right.'

Pages 21 - 23. In the photo captions on pages 21 and 22 Mr. Marion states that the 'original trail was to the right,' and that there is 'continued erosion.' I disagree with Mr. Marion. 'The trail is properly functioning and water is able to drain from the trail. On Page 23 I also

disagree with Mr. Marion when he states this is 'another example.' This photo depicts a good example of a climbing-turn. There is a very short section of trail (about five feet in length) located left of the climbing-turn in which occasional trail users are short-cutting the curve; this is another example of routine maintenance which is easily solved by adding wood debris to the inside of the curve making it physically difficult for trail users to short-cut the curve.

Page 24. Mr. Marion states that the trail is '10 feet wide' and that 'erosion continues.' We measured the trail and it is approximately 3 feet wide; there is also no severe cupping of the trail to indicate erosion. This segment meets agency standards and guidelines.

Page 25. In the photo caption, Mr. Marion states there is a 'one foot drop off at the exposed root.' I disagree; we measured the trail depth at the tree roots which averages four inches, well within agency guidance. I agree there is 'travel around the tree on the left;' to discourage this I recommend adding wood debris to the left of the trail.

Page 26. Mr. Marion states in this photo that 'terrain has been destroyed.' I disagree with Mr. Marion, as we found this area (including both the trail and surrounding vegetation) to be in good condition. There is no evidence of destroyed terrain as Mr. Marion implies.

15) *Declaration of Robert H. Marion - Exhibit P (Part#2); Eagle Peak Trail; Pages 1 - 10.*

The 10 pages of photos represent approximately 1.65 miles of trail covered by Mr. Marion; of which the Forest Service concludes only 500 feet of maintenance is needed. The following page specific findings, conclusions, and recommendations are based on my professional opinion, along with discussion held with my trail staff during our August 10, 2011 field review.

Page 1: Cover Sheet of Exhibit P (Part#2) of Declaration of Robert H. Marion

Page 2 & 3. In the photo captions Mr. Marion states that 'the entire left bank is destroyed...that there is a wide destruction zone...that top soil is being lost and small meadow destroyed.' I disagree with Mr. Marion's conclusions on damage. I found this area -- including the trail and surrounding vegetation -- to be in good condition. There is no evidence of area 'being destroyed by riders' or any of the other allegations made by Mr. Marion.

Pages 4 - 8. The total trail length depicted in pages 4 - 8 is approximately 300 feet. We determined that 200 feet needs trail maintenance and/or reconstruction. I agree there is some trail erosion and that in some isolated spots there are depths of 2-3 feet deep. I disagree it is due specifically to motorcycles or to any one type of trail use. In my opinion this area requires water bars. If water bars were in place water would properly drain water off the trail. To address the isolated trail erosion that is occurring, my maintenance action plan calls for tread reconstruction, including installation of water bars. I disagree with Mr. Marion when he states that the trail is '10 feet wide' and that the 'trail has been expanded to greater than 15 feet;' we measured the trail and it is 3 feet wide, well within agency standards and guidelines.

Pages 9. In the photo caption Mr. Marion states that there is 'more of the continued trail widening and erosion.' The overall condition of trail is indicative to what is found at similar elevations, in similar soil and vegetation types, even on a non-motorized trail. The overall condition of this segment of trail meets agency standards and guidelines.

Page 10. I disagree with Mr. Marion's implication that a new trail is made by motorcycles when he states 'riders do not like this so they make a new trail.' I agree there is a paralleling trail (also known as braiding), however it could be from any user type. The drainage structures shown in this photo need to be reconstructed and the paralleling trail needs to be rehabilitated.



- 16) *Declaration of Robert H. Marion - Exhibit N; 5 pages.* Without conducting an on-site field review of this particular trail, it is difficult to ascertain from the photos what is happening at this location. It appears there may have been off-trail motorized travel, which is illegal under the current 2010 Forest Order. It does not appear from the photos that there are resource impacts. My recommendation would be to conduct a field review to determine if a trail maintenance action plan is needed.
- 17) *Declaration of Robert H. Marion - Exhibit R - Calico Trail; 44 pages.* I agree the photos are of the Calico Trail, primarily the upper Calico Trail. These photos were submitted to the deciding official during the scoping period for the Calico Trail Reconstruction Project and were also considered by the deciding officer. Review of these photos at this time depicts trail maintenance and reconstruction needs as analyzed and approved under a Categorical Exclusion completed in 2011. The project is planned to begin this year when conditions warrant on-site mobilization of materials, supplies, equipment, and crews.
- 18) I have estimated the cost the agency would incur if this Court were to issue an injunction enjoining motorcycle use from Injunction from June – October 2012. The total cost is estimated at approximately \$14,859.00 and includes four categories:
- a) Initial Signing – altering signage at trailheads, trails, and intersections: five employee work days at a cost of \$270.00 per day, for a total of \$1,350.00;
  - b) Public Relations – informing the public about the change in use, including press releases, newspaper interviews/field visits; map inserts, mailings, public handouts; info at Rico stores: five employee work days at a cost of \$367 per day, for a total of \$1,835.00;
  - c) Monitoring – assessing trail conditions and reposting signs: 23 employee days at a cost of \$118 per day, for a total of \$2,714.00;

**EXHIBIT "C"**

d) Enforcement – providing a presence at trailheads, patrolling trails, and issuing citations: 32 employee days at a cost of \$280 per day, for a total of \$8,960.00.

19) I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and I would so testify if called upon to do so in a court of law.

Executed on

4/24/12

/s/ Penelope K. Wu

PENELOPE K. WU  
Supervisory Outdoor Recreation Planner  
Dolores District  
San Juan National Forest  
Dolores, Colorado