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Delivered via email to r02admin_review@fs.fed.us

Objection Reviewing Officer, Regional Forester
USFS Rocky Mountain Region
15 Burnett Court
Durango, CO 80401

RE: Objections to Rico West Dolores TMP Forest Plan Amendment

Dear Objection Reviewing Officer:

Please accept these objections to the Draft Record of Decision (“Draft ROD”) for the Rico West Dolores Roads and Trails (Travel Management) Project Forest Plan Amendment on the Dolores Ranger District, San Juan National Forest. We believe the Responsible Official is Forest Supervisor Kara Chadwick. These objections are submitted on behalf of the San Juan Trail Riders (“SJTR”), Public Access Preservation Association (“PAPA”), Trails Preservation Alliance (“TPA”), Colorado Off Highway Vehicle Coalition (“COHVCO”), and BlueRibbon Coalition/Sharetrails.org (“BRC”), including these organizations’ individual and organizational members who have enjoyed, and plan in the future to enjoy, access to the San Juan National Forest and Rico West Dolores area (collectively, the “Objectors”).

These objections are submitted in accordance with 36 C.F.R. part 219. The Objectors, as well as their members, filed comments raising the issues, otherwise providing a basis for these objections, or the issues arose after the opportunities for comment. The “lead objector” is SJTR. The point of contact for the lead objector and all objectors is the undersigned, and please direct all communication regarding these objections to Paul Turcke at 950 West Bannock Street, Suite 520; Boise, Idaho 83702; 208-331-1800; pat@msbtlaw.com. We formally request a resolution meeting in accordance with 36 C.F.R. § 219.57. We hereby authorize, indeed encourage, the Reviewing Officer to extend the time for a written response to objections, particularly if it will facilitate a thorough effort to explore opportunities to resolve objections. See, 36 C.F.R. § 219.56(g). Given the close connection to, and overlap with, the project-level decision addressing site-specific travel management designations in the same project area, we ask that these objections to the Forest Plan Amendment be read in conjunction with our objections to the project-level decision dated December 29, 2017. To the extent authorized, we hereby incorporate those objections and all exhibits thereto by reference herein.

I. Interest of the Organizations

Our project-level decision objections detail the interests of our clients, which we restate here. Our clients have a unique perspective and longstanding interest in use of the San Juan National Forest and Rico West Dolores area and management of these areas. Aside from member and stakeholder participation in the full array of planning processes, we have played a central role on behalf of recreation interests in litigation, particularly including as defendant-intervenors in *Backcountry Hunters and Anglers, Colorado Chapter v. U.S. Forest Service*, Case No. 11-CV-3139 (D. Colo.) and Nos. 13-1216 and 14-1137 (10th Cir.). We remain committed to this presence in ongoing management of the Rico West Dolores, in whatever role may now become necessary.

SJTR is a Colorado nonprofit corporation with approximately 400 members. SJTR is based in Durango and its members are primarily from Colorado. SJTR goals and purposes include to provide an organized network for trail enthusiasts, to promote active participation in off-highway vehicle management, to maintain a focused dialogue with the San Juan National Forest, to educate land managers about “Tread Lightly” and other trail conservation practices, and to encourage cooperation and coordination between user groups and engaged interests. SJTR members have used and have concrete plans in the future to use motorized and non-motorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access federal lands throughout the United States, including Forest Service-managed lands in the Rico West Dolores area of the San Juan National Forest.

PAPA is a Colorado nonprofit corporation with approximately 300 participants. PAPA is based in Telluride and its members are primarily from Colorado. PAPA protects and promotes public land access, primarily through advocacy and on-the-ground support such as volunteering for trail projects, event support or similar activities as authorized by the Forest Service and other partners. PAPA members regularly use Forest Service lands throughout the United States, including the Rico West Dolores area, for recreational and aesthetic purposes including off-highway vehicle, motorcycle, mountain bike, equestrian, or hiking travel on trails or primitive roads.

TPA is a Colorado nonprofit corporation. TPA is a volunteer organization created to be a viable partner to public lands managers, working with the USFS and BLM to preserve the sport of trail riding and multi-use recreation. TPA acts as an advocate for the sport and takes the necessary action to insure that the USFS and BLM allocate a fair and equitable percentage of public lands access to diverse multi-use recreational opportunities. TPA members have used, and hope in the future to use, motorized and nonmotorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access federal lands throughout the United States, including in the Rico West Dolores area of the San Juan National Forest.

COHVCO is a Colorado nonprofit corporation. COHVCO is a grassroots advocacy organization representing approximately 230,000 registered off-highway vehicle (“OHV”) users in Colorado seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of multi-use and 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. Like the other organizations, COHVCO includes members who use motorized and non-motorized means to gain access to and recreate upon lands in the Rico West Dolores area of the San Juan National Forest.

BRC is a nonprofit corporation that champions responsible recreation and encourages individual environmental stewardship. BRC has members in all 50 states, including Colorado. BRC members use various motorized and nonmotorized means to access public lands, specifically including the Rico West Dolores project area. BlueRibbon has a long-standing interest in the protection of the values and natural resources addressed in this process, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors.

All of the above-described organizations have participated, including through their members, in the multiple administrative processes and earlier lawsuit involving the Rico West Dolores area. In addition to their unique perspective in these roles and as trail-based recreationists, the organizations' members own property, hold jobs or conduct businesses, and are members of the communities within and near the Rico West Dolores area. Many have lifetime familiarity hunting, fishing, camping, and participating in a wide range of outdoor activities in the locale and in specific sites throughout the Rico West Dolores area. This background and perspective is particularly relevant given the creative and unusual framing of some issues and factual conclusions in the Draft ROD and related documents.

II. Objection Issues

We raise the following objections, which provide a legal basis for our requested changes to the Draft ROD.

The objection process necessarily anticipates any likelihood of success in subsequent litigation brought by an objector. In such a challenge the Administrative Procedure Act (APA) waives the United States' sovereign immunity for those aggrieved by "final agency action." 5 U.S.C. §§ 702, 704; *Lujan v. National Wildlife Fedn.*, 497 U.S. 871, 882 (1990). APA section 706(2) provides the relevant standard of review: a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) unsupported by substantial evidence...." There are numerous procedural errors associated with the proposed Forest Plan amendment which run afoul of even this deferential standard of review. We stated at the time the 2012 Forest Planning Rule was issued that it would prove to contain poison pills and pitfalls for certain litigation, and the proposed Forest Plan Amendment fulfills those predictions.

A. The Forest Service is Applying the Wrong Objection Resolution Procedures.

The Forest Service appears to be attempting some concurrent application of the project-

level and Forest Plan amendment objection resolution procedures outlined in 36 C.F.R. parts 218 and 219, respectively. We have not been contacted regarding a resolution meeting for our part 218 objections, which is concerning given the tight timeframes arguably imposed by the regulations. See, e.g., 36 C.F.R. § 218.26(b). The regulations may contemplate the possibility (if not likelihood) of concurrent project-level and Plan amendment decisions/objections, and direct:

When a plan amendment is approved in a decision document approving a project or activity and that amendment applies only to the project or activity, the administrative review process of 36 CFR part 215 or part 218, subpart A, applies instead of the objection process established in this subpart.

36 C.F.R. § 219.59(b). We think this means that rather than attempting concurrent objection processes under parts 218 and 219, the agency should be conducting an objection process here under part 218. It is creating procedural tension to conduct multiple objection processes, and to fail to address the relationship between them.

The Forest Service needs to address the confusion and potential error created by conducting concurrent processes under parts 218 and 219, or to otherwise conform the objection resolution process to section 219.59.

B. Merging a Project-Level Decision with Plan Amendment Invites Error.

The timing and sequence of the project-level and Plan amendment decisions is confusing, illogical, and invites legal error. The regulations provide for broad discretion in determining “whether and how to amend the plan and to determine the scope and scale of any amendment.” 36 C.F.R. § 219.13(b). It makes at least logical sense to complete the project-level decision first, and then make the aforementioned determinations following issuance of the project Final ROD, rather than shooting at the moving target of the project Draft ROD. It is possible that the objection review process on the project-level decision will result in changes, which would arguably necessitate modification and republication of a ROD on any Forest Plan amendment.

The agency should consider redefining the timing and sequence between the Rico West Dolores route designation decision and any resulting Forest Plan amendment.

C. The Effort to Conduct the Part 219 Process is Fundamentally Flawed.

We dispute whether the part 219 objection process applies, but assuming it does there are conspicuous flaws in the Forest’s effort thereunder. For starters, the Draft ROD fails to even indicate the identity of the Responsible Official. We speculate it is the San Juan Forest Supervisor, but nowhere does the document so indicate. The Draft ROD is written in the first person, i.e. it refers throughout to “my” decision but contains neither a signature block nor any form of salutation or other introduction identifying the speaker. In fact, the concluding “contact” text directs any inquiries to the Dolores District staff, who are obviously not empowered to conduct or act on a Forest Plan amendment decision.

The next and more serious flaw is the assertion that the “transition provisions” apply to this proposed Forest Plan amendment. See, Draft ROD at 6. This discussion notes that the “RWD project” was initiated on December 15, 2014, and states that since the project occurs within the applicable timeframe the Forest Supervisor can, and is, applying the 1982 Planning Rule regulations in evaluating and approving the proposed Plan amendment. *Id.* This flatly contradicts the cited regulation. The referenced “transition period” applies only to plan amendments “that were initiated before May 9, 2012...” 36 C.F.R. § 219.17(b)(3). It appears undisputed that this process was initiated after the applicable date. This is important, because by erroneously proceeding under the 1982 Rule the Draft ROD follows the wrong structure and standards in evaluating the proposed Forest Plan amendment.

Another procedural error occurs through the apparent failure to comply with all of part 219’s labyrinthine notice provisions. In particular, the regulations require certain notice(s) be provided “during the NEPA scoping process and in the appropriate NEPA documents....” 36 C.F.R. § 219.52(a); see also, 36 C.F.R. § 219.13(b). The scoping process did not address any Forest Plan amendment issues or process. Similarly, the DEIS only cursorily mentions the OGTS maps and hints at the possibility of changing them through a plan amendment, but lacks the specific disclosures required by the above-cited regulation. See, DEIS at 203-204.

These procedural errors have tainted the current process and necessitate some form of remand or corrective action so that the agency can consider the right factors in the right sequence and the public can meaningfully be informed of and participate in any plan amendment process.

D. A Plan Amendment May be Unnecessary.

In our final but perhaps broadest objection we question whether the ROS and OGTS mapping changes even require a Forest Plan amendment. Overlays like ROS are not dispositive of site-specific uses, and the Forest Service should consider the accuracy or wisdom of sending that potential message by so vigorously redrawing these maps at this stage of the travel management process.

The Forest Service has clarified on countless occasions the broad, programmatic nature of forest plan guidance. Particularly relevant here is the vigor and content of that effort in the *CBHA* litigation, primarily to counter Petitioner’s argument in that case that Management Area designations foreclosed designation or continued use of motorized routes. As agency counsel noted, the San Juan Forest Plan “makes management area designations which identify a primary management emphasis for each management area” but such “primary emphas[e]s” must be understood within the context of the Plan’s “programmatic statement of intent” and with the recognition that “all prescriptions associated with a management area are multiple use prescriptions.” Respondents’ [USFS] Opposition to Petitioner’s Motion for Preliminary Injunction dated April 25, 2012 (No. 1:11-cv-3139 (D. Colo.)) at 14 (attached hereto as Exhibit A); see also, Declaration of Mark Stiles at ¶¶ 29-31 (attached hereto as Exhibit B). The agency has successfully argued against the need to do what it is now attempting in the Forest Plan amendment. See, Response Brief of Federal Appellees dated July 31, 2014 (Nos. 13-1216, 14-1137 (10th Cir.)) at 44-50 (rejecting CBHA’s interpretation of the Forest Plan and assertion that

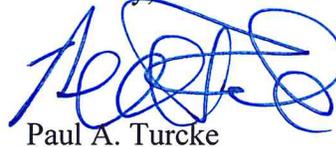
continuation of motorized travel required a Plan amendment).

Forest Plan elements like ROS or OGTS do not dictate ground-level actions or activities. By attempting the current Forest Plan amendment, and particularly by doing so contemporaneously with the project-level designation process, the Forest Service seems to be walking away from its correct (and successful) understanding of the Forest Plan in the *CBHA* litigation. The objection process offers the Service the ability to consider the resulting implications, and to revisit the proper relationship between project-level travel management and broader constructs like ROS.

III. Conclusion

The Draft ROD and associated Forest Plan Amendment is unnecessary and embodies the confusing and contradictory nature of the underlying regulatory framework. We appreciate the opportunity to address these concerns in the objection process and urge you to utilize the objection process to remand and refocus the current planning effort.

Sincerely,



Paul A. Turcke

/PAT

Enclosure/Exhibit List:

- A- Respondents' [USFS] Opposition to Petitioner's Motion for Preliminary Injunction (No. 1:11-cv-3139 (D. Colo.))
- B- Declaration of Mark Stiles
- C- Response Brief of Federal Appellees (Nos. 13-1216, 14-1137 (10th Cir.))