

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

Civil Action No. 1:18-cv-02354-WYD

TRAILS PRESERVATION ALLIANCE, SAN JUAN TRAIL RIDERS, PUBLIC ACCESS
PRESERVATION ASSOCIATION,

Petitioners,

vs.

U.S. FOREST SERVICE; SAN JUAN NATIONAL FOREST; KARA CHADWICK,
Forest Supervisor; DEREK PADILLA, Dolores District Ranger,

Respondents,

and

WILDEARTH GUARDIANS, SAN JUAN CITIZENS ALLIANCE, DUNTON HOT
SPRINGS, INC., SHEEP MOUNTAIN ALLIANCE,

Proposed Respondents-Intervenors.

MOTION TO INTERVENE

Proposed Respondents-Intervenors WildEarth Guardians, San Juan Citizens Alliance, Dunton Hot Springs, Inc., and Sheep Mountain Alliance (collectively “Proposed Intervenors”) respectfully move to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) as respondents in this litigation. In the alternative, Proposed Intervenors request leave to intervene by permission under Federal Rule of Civil Procedure 24(b). A proposed answer accompanies this filing.

In accordance with D.C.COLO.LCivR 7.1(a), counsel for Proposed Intervenors conferred with counsel for Petitioners Trails Preservation Alliance, San Juan Trail Riders,

and Public Access Preservation Association (collectively “Trail Riders”) by phone on November 2, 2018. Counsel for Trail Riders indicated that they do not oppose this motion to intervene. Counsel for Proposed Intervenors discussed this motion with counsel for Respondents United States Forest Service, San Juan National Forest, Kara Chadwick, and Derek Padilla (collectively “Forest Service”) by phone on November 7, 2018. Counsel for the Forest Service indicated that they take no position on this motion to intervene.

ARGUMENT

I. Proposed Intervenors are entitled to intervene as of right.

Federal Rule of Civil Procedure 24(a) provides that:

On timely motion, the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a). The Tenth Circuit has identified four requirements that must be met for a party to intervene as of right: (1) a timely motion to intervene; (2) a claimed interest relating to the property or transaction at issue; (3) the applicant’s interest may as a practical matter be impaired or impeded; and (4) the applicant’s interest is not adequately represented by existing parties. *Western Energy Alliance v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017); *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001) (citing *Coalition of Arizona/New Mexico Counties v. Dep’t of Interior*, 100 F.3d 837, 840 (10th Cir. 1996)). The Tenth Circuit “follows ‘a somewhat liberal line in allowing intervention.’” *Utah Ass’n of Counties*, 255 F.3d at 1249 (quoting *Nat’l Farm Lines v. Interstate Commerce Comm’n*, 564 F.2d

381, 384 (10th Cir. 1977)). Proposed Intervenor satisfy the four-part Rule 24(a) test and qualify to intervene as of right in this case.

A. Proposed Intervenor’s motion to intervene is timely.

In the Tenth Circuit, “[t]he timeliness of a motion to intervene is assessed ‘in light of all the circumstances, including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances.’” *Utah Ass’n of Counties*, 255 F.3d at 1250 (quoting *Sanguine, Ltd. V. U.S. Dep’t of Interior*, 736 F.2d 1416, 1418 (10th Cir. 1984)). In *Utah Ass’n of Counties*, the Tenth Circuit found a motion to intervene to be timely even though filed two and one half years after the complaint was filed, and despite substantial case activity including “document discovery, discovery disputes, and motions by defendants seeking dismissal on jurisdictional grounds.” *Id.* at 1250-51. In *Western Energy Alliance*, the Tenth Circuit agreed with a district court determination that a motion to intervene filed “just over two months after the [Plaintiff] filed the complaint” was timely “[g]iven how early in the lawsuit the groups moved to intervene, and, as a result, the lack of prejudice to the [Plaintiff].” *Western Energy Alliance*, 877 F.3d at 1164-65.

Here, Proposed Intervenor’s motion to intervene is timely because they have not delayed in seeking intervention, granting the present motion would not prejudice any party, and no unusual circumstances exist. The Trail Riders’ Petition for Review was filed on September 14, 2018. *See* Doc. No. 1. The Court entered a scheduling order on September 17, 2018 ordering the parties to confer and file a Joint Case Management Plan (JCMP) by “the deadline for defendants’ response to the complaint.” Doc. No. 5 at 1-2. The Trail Riders and

the Forest Service stipulated to extend the deadline for the Forest Service's response to the Petition for Review until December 7, 2018. Doc. No. 8 at 1. As such, no responsive pleading has been filed, the administrative record has not yet been filed, and no case management order has been entered. Given that this motion to intervene is being filed approximately two months after the filing of the Trail Riders' Petition for Review and that no major case events have yet occurred, Proposed Intervenors satisfy the timeliness requirement for intervention as of right.

B. Proposed Intervenors have significant protectable interests in the San Juan National Forest and Rico-West Dolores project area.

An applicant for intervention must have an interest that is “direct, substantial, and legally protectable.” *Utah Ass’n of Counties*, 255 F.3d at 1251. Although having a direct, substantial, and legally protectable interest is likely to justify intervention, “other interests may suffice.” *San Juan County, Utah v. U.S.*, 503 F.3d 1163, 1194-95 (10th Cir. 2007) (en banc), *abrogated on other grounds by Hollingsworth v. Perry*, 570 U.S. 693 (2013). The interest inquiry is “highly fact-specific” and is “primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Utah Ass’n of Counties*, 255 F.3d 1251-52. “The interest of the intervenor is not measured by the particular issue before the court but is instead measured by whether the interest the intervenor claims is *related to the property that is the subject of the action.*” *Id.* (emphasis in original). “The applicant must have an interest that could be adversely affected by the litigation. But practical judgment must be applied in determining whether the strength of the interest and the potential risk of injury to that interest justify intervention.” *San Juan County*,

503 F.3d at 1199. The Tenth Circuit has recognized that “the requirements for intervention may be relaxed in cases raising significant public interests.” *Id.* at 1201.

In *San Juan County*, the Tenth Circuit found that an environmental organization’s “concern in ... the potential damage to the environment arising from vehicular traffic [on public lands] ... is a legally protectable interest.” *San Juan County*, 503 F.3d at 1199. Further, the court noted that the environmental organization would have had standing in the case if it had filed suit, and therefore it met the legally protectable interest test. *Id.* As in *San Juan County*, here, Proposed Intervenors’ interests in the potential damage to portions of the San Juan National Forest arising from off-highway vehicle use on the forest are direct, substantial, and legally protectable. Further, Proposed Intervenors have standing to sue over the Rico-West Dolores travel management planning decision, and therefore have a legally protectable interest in the present case.

Proposed Intervenors have direct, substantial, and legally protectable interests in the Rico-West Dolores project area’s ecological, biological, scientific, scenic, historic, and aesthetic resources, which are protected by a number of environmental and land management statutes and regulations, including the National Environmental Policy Act, 42 U.S.C. §§ 4321-4347, the National Forest Management Act, 16 U.S.C. § 1600 *et seq.*, the Endangered Species Act, 16 U.S.C. § 1531-1544, and the Travel Management Rule, 36 C.F.R. §§ 212, 251, 261, 295. Further, Proposed Intervenor Dunton Hot Springs, Inc. has an economic interest in the Rico-West Dolores project area as the business is located within the project area and is impacted by motor vehicle use on the San Juan National Forest.

Proposed intervenors are public interest environmental organizations and a private business that have worked for years to protect the ecological, biological, scientific, scenic, historic, and aesthetic resources of the San Juan National Forest generally, and the Rico-West Dolores project area specifically. *See* Declaration of Judi Brawer at 2-5 ¶¶ 6-12; Declaration of Karen (Lexi) Tuddenham at 2-4 ¶¶ 4-11; Declaration of Jim Buickerood at 2 ¶ 7, 3-4 ¶¶ 10-11; Declaration of Edoardo Rossi at 2-3 ¶¶ 9-10, 13.

WildEarth Guardians (“Guardians”) has members who regularly recreate—including hunting elk and other game animals—on the San Juan National Forest and Rico-West Dolores project area. Brawer Dec. at 2 ¶ 6. Guardians’ members regularly visit the project area for its outstanding opportunities to enjoy solitude, hiking, hunting opportunities, and other quiet-use activities, and are harmed by off-highway vehicle use on the Forest and within the Rico-West Dolores project area. *Id.* at 2 ¶ 6, 3-4 ¶ 10. Guardians has been deeply involved in the Rico-West Dolores travel management planning process, including submitting extensive comments, filing objections to the draft Record of Decision, and participating in multiple objection resolution meetings with the Forest Service and other interested parties. *Id.* at 2-3 ¶¶ 7-9. Guardians and its members would be harmed if the Court were to grant the requested relief in the ‘Trail Riders’ Petition for Review. *Id.* at 3-5 ¶¶ 10-12.

San Juan Citizens Alliance is headquartered in Durango, Colorado and advocates for clean water, pure air, and healthy lands in the San Juan Basin. San Juan Citizens Alliance has staff and members who regularly recreate on and otherwise enjoy the San Juan National Forest and Rico-West Dolores project area. Buickerood Dec. at 1-2 ¶¶ 3-5. San Juan Citizens Alliance’s staff and members regularly visit the project area for its outstanding opportunities

to enjoy solitude, hiking, hunting and fishing opportunities, and other quiet-use activities, and are harmed by off-highway vehicle use on the Forest and within the Rico-West Dolores project area. *Id.* at 2 ¶ 7. San Juan Citizens Alliance has been deeply involved in the Rico-West Dolores travel management planning process, including submitting extensive comments, filing objections to the draft Record of Decision, and participating in multiple objection resolution meetings with the Forest Service and other interested parties. *Id.* at 2-3 ¶ 8. San Juan Citizens Alliance and its members would be harmed if the Court were to grant the requested relief in the Trail Riders' Petition for Review. *Id.* at 3-4 ¶ 10-12.

Sheep Mountain Alliance ("Sheep Mountain") is headquartered in Telluride, Colorado and is dedicated to the preservation of the natural environment in the Telluride region and southwest Colorado. Tuddenham Dec. at 1-2 ¶¶ 3-4. Sheep Mountain's staff and members regularly recreate on and otherwise enjoy the San Juan National Forest and Rico-West Dolores project area. *Id.* at 2-3 ¶¶ 5-7. Sheep Mountain's staff and members regularly visit the project area for its outstanding opportunities to enjoy solitude, hiking, hunting and fishing opportunities, and other quiet-use activities, and are harmed by off-highway vehicle use on the Forest and within the Rico-West Dolores project area. *Id.* at 3 ¶¶ 7, 9-10. Sheep Mountain has been deeply involved in the Rico-West Dolores travel management planning process, including submitting extensive comments, filing objections to the draft Record of Decision, and participating in multiple objection resolution meetings with the Forest Service and other interested parties. *Id.* at 3 ¶ 8. Sheep Mountain and its members would be harmed if the Court were to grant the requested relief in the Trail Riders' Petition for Review. *Id.* at 3-4 ¶¶ 9-11.

Dunton Hot Springs, Inc. (“Dunton”) is a small resort nestled deep in the San Juan Mountains. Rossi Dec. at 1 ¶ 5. Dunton owns property in the West Fork of the Dolores River and on Lizard Head Meadows within the Rico-West Dolores project area in the Dolores Ranger District of the San Juan National Forest. *Id.* at 2 ¶ 6. Specifically, Dunton owns the Dunton Hot Springs Resort and numerous individual parcels along the West Dolores River. *Id.* Dunton has an outfitter permit from the Forest Service for tourist-related hiking, horseback riding, and mountain biking in the Forest. *Id.* at 2 ¶ 7. Dunton’s owners and guests frequently recreate in the surrounding San Juan National Forest—including within the Rico-West Dolores project area—enjoying horseback riding, hiking, cross-country skiing, hunting, fishing, mushroom foraging, photography, wildlife watching, and other activities. *Id.* at 2 ¶¶ 7-8. Dunton regularly employs approximately forty-seven employees and numerous independent contractors. *Id.* at 2 ¶ 7. Dunton’s owners and guests enjoy quiet recreation on the San Juan National Forest and Rico-West Dolores project area, and are harmed by off-highway motorized vehicle use on the Forest and within the Rico-West Dolores project area. *Id.* at 2 ¶ 9. Dunton’s guests choose to spend money at Dunton because of the quiet recreation opportunities that the resort provides, and excessive motorized recreation impairs their ability to engage in such activities. *Id.* at 2 ¶ 9. Dunton has been deeply involved in the Rico-West Dolores travel management planning process, including submitting extensive comments, filing objections to the draft Record of Decision, and participating in multiple objection resolution meetings with the Forest Service and other interested parties. *Id.* at 3 ¶ 11. Dunton would be harmed if the Court were to grant the requested relief in the Trail Riders’ Petition for Review. *Id.* at 3 ¶ 13.

As described above, and in greater detail in the attached declarations, Proposed Intervenor have various interests in the Rico-West Dolores project area, including quiet recreation, hunting, and economic interests. Further, these entities have a record of advocacy for the protection of public lands, including those within the Rico-West Dolores project area. These interests would be harmed if the Court were to grant the Trail Riders' requested relief. The Tenth Circuit is clear that protecting environmental interests—and specifically those resulting from motor vehicle use—are legally protectable interests sufficient to satisfy the requirements of Rule 24(a)(2) for intervention as of right. *See Western Energy Alliance*, 877 F.3d at 1165 (“[W]e have declared it indisputable that a prospective intervenor’s environmental concern is a legally protectable interest.”) (quoting *WildEarth Guardians v. Nat’l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010)); *San Juan County*, 503 F.3d at 1199. Therefore, Proposed Intervenor have “claim[ed] an interest relating to the property or transaction that is the subject of the action” and satisfy the legally protectable interest requirement for intervention as of right. *See Fed. R. Civ. P. 24(a)(2)*.

C. Proposed Intervenor’s interests in the San Juan National Forest and Rico-West Dolores project area may be impaired as a result of this litigation.

Rule 24(a)’s impairment requirement “requires the intervenors to demonstrate that the disposition of this action may as a practical matter impair or impede their ability to protect their interest.” *Utah Ass’n of Counties*, 255 F.3d at 1253. Rule 24(a) “refers to impairment ‘as a practical matter.’ Thus, the court is not limited to consequences of a strictly legal nature.” *Id.* (quoting *Natural Res. Def. Council v. U.S. Nuclear Regulatory Comm’n*, 578 F.2d 1341, 1345 (10th Cir. 1978)). The Tenth Circuit has noted that “[i]f an absentee would be

substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene....” *San Juan County*, 503 F.3d at 1195 (quoting Fed. R. Civ. P. 24 Advisory Committee’s Note to 1966 Amendments). Additionally, the Tenth Circuit has held that an intervenor’s “interest in the environmental impact of ... vehicular traffic satisfies the conditions of Rule 24(a)(2)” that an intervenor be “so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest.” *Id.* at 1201.

Importantly, the Tenth Circuit explains “[t]his element ‘presents a minimal burden.’” *Western Energy Alliance*, 877 F.3d at 1167 (citing *WildEarth Guardians*, 604 F.3d at 1199). A movant need only “show it is ‘possible’ that the interests they identify will be impaired” and “is met in environmental cases where the district court’s decision would require the federal agency to engage in an additional round of administrative planning and decision-making that itself might harm the movants’ interests, even if they could participate in the subsequent decision-making.” *Id.*

Here, if the Trail Riders’ requests for relief are granted, Proposed Intervenors’ interests would be impaired. *See, e.g.* Brawer Dec. at 3-4 ¶¶ 10-11; Tuddenham Dec. at 3-4 ¶¶ 9-10; Buickerood Dec. at 3-4 ¶¶ 10-12; Rossi Dec. at 3-4 ¶¶ 13-14. Trail Riders seeks an order from this Court “[d]eclar[ing] unlawful and set[ing] aside” the Rico-West Dolores project Record of Decision. *See* Doc. No. 1 at 27. This would have the effect of reinstating the previous travel management policy of the forest—or lack thereof—and would require the Forest Service to conduct a new round of planning and decision-making, as required by the Travel Management Rule, that could harm Proposed Intervenors’ interests, despite their

ability to participate in any such future public process. *See Western Energy Alliance*, 877 F.3d at 1167 (citing *WildEarth Guardians*, 604 F.3d at 1199). Importantly, should Trail Riders be successful, the Rico-West Dolores project area would be left without restrictions on off-highway motorized vehicle use until a new travel decision is made. This includes elimination of the requirement to prohibit cross-country motorized travel except where specifically authorized. *See* 36 C.F.R. §§ 212.50(a); 261.13. Further, Trail Riders' requested relief would allow motorized use on 30 miles of single-track motorcycle trails that were closed by the Rico-West Dolores Record of Decision. *See* Doc. No. 1 at 15 ¶ 52. Proposed-Intervenors support the closure of these 30 miles of trails to motorized recreation. *See* Brawer Dec. at 3 ¶ 9. Although Proposed Intervenors could participate in a future travel management process for the Rico-West Dolores project area, it is possible that a subsequent travel decision could provide fewer restrictions on off-highway vehicle use than the existing decision, which would harm Proposed Intervenors' legally protectable interests. *See id.* at 4 ¶ 11.

Such relief would adversely affect the ability of Proposed Intervenors to protect and defend the natural resources of the San Juan National Forest and Rico-West Dolores project area. *See id.* at 3-5 ¶¶ 10-12; Tuddenham Dec. at 3-4 ¶¶ 9-11. Furthermore, such relief would have a significant adverse impact on the quiet enjoyment of the forest by Proposed Intervenors' members, as well as their recreational, scenic, economic and aesthetic interests in the forest. *Id.* This would impair Proposed Intervenors' members' ability of to use and enjoy the San Juan National Forest and Rico-West Dolores project area in the future. *Id.* Because Proposed Intervenors are so situated that the disposition of this action may as a practical matter impair their ability to protect their recreational, scenic, economic, and

aesthetic interests in the project area, they satisfy the impairment requirement for intervention as of right.

D. The existing parties do not adequately represent Proposed Intervenors' interests in the San Juan National Forest and Rico-West Dolores project area.

The Supreme Court explains that the inadequate representation requirement of Rule 24(a) “is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n. 10 (1972). “The possibility that the interests of the applicant and the parties may diverge ‘need not be great’ in order to satisfy this minimal burden.” *Utah Ass’n*, 255 F.3d at 1254 (citing *Natural Res. Def. Council*, 578 F.2d at 1341). The Tenth Circuit has found “merit” in arguments stating that the possibility of inadequate representation is “easily made when the party upon which the intervenor must rely is the government, whose obligation is to represent not only the interest of the intervenor but the public interest generally, and who may not view that interest as coextensive with the intervenor’s particular interest.” *Id.* at 1254-55. “In litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor.” *Id.* 1255-56; *see also Western Energy Alliance*, 877 F.3d at 1168 (“[W]e have held that the government cannot adequately represent the interests of a private intervenor *and* the interests of the public.”) (emphasis original). “Moreover, [the Tenth Circuit] do[es] not assume that the government agency’s position will stay ‘static or unaffected by unanticipated policy shifts.’” *Western Energy Alliance*, 877 F.3d at 1168 (citation omitted).

In *Utah Ass'n*, the Tenth Circuit found there to be inadequate representation of interests and granted intervention as of right to a group of environmental organizations despite the fact that both the government and the environmental groups had previously both vigorously defended the same government decision. *Id.* Amongst the reasons listed by the Tenth Circuit for why intervention as of right was proper was federal defendants' failure to take a position on the applicant's motion to intervene in the litigation. *Id.* at 1256 (federal defendants' "silence on any intent to defend the [intervenors'] special interests is deafening.") (citation omitted).

Here, Trail Riders do not adequately represent Proposed Intervenors' interests. Trail Riders' interest in reducing or eliminating restrictions on motorized recreation in the Rico-West Dolores project area directly conflicts with Proposed Intervenors' interest in opposing such reductions or eliminations of restrictions on motorized recreation.

The Forest Service also does not adequately represent Proposed Intervenors' interests as the Forest Service's interests differ from those of Proposed Intervenors. Proposed Intervenors represent the particularized concerns of the environmental community and a private business, whereas the Forest Service represents the broader public interest, as well as its own interest in managing lands under its jurisdiction. *See e.g., Utah Ass'n*, 255 F.3d at 1254-56 (the government must represent the public interest generally, not just the interests of would-be intervenors). While Proposed Intervenors have an interest in restricting motorized recreation in the Rico-West Dolores project area, the Forest Service must represent the interests of the entire public, including motorized recreation interest groups such as Trail Riders, and therefore cannot adequately represent the interests of Proposed Intervenors.

Importantly, here Proposed Intervenor filed objections on the Record of Decision at issue asserting that there were insufficient restrictions on motorized recreation in the Rico-West Dolores project area. *See, e.g.* Brawer Dec. at 2-3 ¶¶ 7-9; Tuddenham Dec. at 3 ¶ 8. The Forest Service denied Proposed Intervenor's objections, which demonstrates the divergent interests of Proposed Intervenor and the Forest Service and highlights the potential for inadequate representation of Proposed Intervenor's interests. Additionally, the Forest Service has not taken a position on Proposed Intervenor's motion, nor has it stated that it will adequately defend Proposed Intervenor's interests, and therefore the Court cannot assume that they will do so. *See e.g., Utah Ass'n*, 255 F.3d at 1256 (no position by government on motion to intervene supports assertion that government will not represent the interests of would-be intervenors).

In addition to seeking to intervene in the Trail Riders' litigation, Proposed Intervenor are also challenging a portion of the Record of Decision in separately-filed litigation. *See* Brawer Dec. at 4-5 ¶ 12. Because Proposed Intervenor are seeking to uphold portions of the Record of Decision, while challenging others, there is no way for the Forest Service to represent Proposed Intervenor's interests here.

Because the Forest Service's interests do not mirror those of Proposed Intervenor, it is likely that Federal Defendants will not advance the same legal arguments as Proposed Intervenor in this case. Similarly, it is likely that Federal Defendants and Proposed Intervenor may differ on the interpretation of law and framing of legal arguments in this case. *See e.g., Forest Guardians v. U.S. Forest Serv.*, 2008 WL 5975041 at *4 (D.N.M. August 29,

2008) (noting that an intervenor and federal defendant may interpret the law differently because of differing interests).

Finally, should Trail Riders' prevail in this case, the Forest Service would not adequately represent Proposed Intervenors' interests in the remedial phase of the case. The Forest Service would not be able to present evidence of direct harm to Proposed Intervenors' members that would result from the relief Trail Riders seek. Such information would be a crucial component of the Court's evaluation of the balance of harms.

Proposed Intervenors have demonstrated that the existing parties to this case do not adequately represent their interests in this litigation, and therefore intervention as of right is proper. *See New Mexico Off-Highway Vehicle Alliance v. U.S. Forest Serv.*, 540 Fed. Appx. 877 (10th Cir. 2013) (concluding conservation organizations—including WildEarth Guardians—could intervene in action challenging travel management decision in federal court).

II. Alternatively, Proposed Intervenors should be allowed permissive intervention.

Proposed Intervenors meet the requirements for intervention as of right under Federal Rule of Civil Procedure 24(a), however they also meet the requirements for permissive intervention under Federal Rule of Civil Procedure 24(b). Rule 24(b) describes the requirements that must be met to qualify for permissive intervention:

On timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24(b).

Here, even if Proposed Intervenors do not qualify to intervene as of right under Rule 24(a), they would still be entitled to intervene permissively under Rule 24(b). Proposed

Intervenors meet the requirements of Rule 24(b) because they seek to defend portions of the Rico-West Dolores travel management decision and therefore will address questions of law and fact in common with those raised in Trail Riders' Petition for Review. Furthermore, Proposed Intervenors have a substantial interest in restricting motorized recreation in the Rico-West Dolores project area and their participation in the travel management planning process could contribute to the resolution of this case.

Finally, Proposed Intervenors' intervention will not unduly delay or prejudice the adjudication of the original parties' rights. The Petition for Review was only filed in mid-September 2018, no responsive pleading has yet been filed by the Forest Service, the administrative record has not yet been filed, and there has otherwise been no significant filings in this case.

Given the importance of the issues involved, the significant interests of Proposed Intervenors, and the early stage of this case, permissive intervention is appropriate under Rule 24(b).

CONCLUSION

For the foregoing reasons, Proposed Intervenors should be granted intervention as of right pursuant to Rule 24(a). However, should the Court decide that Proposed Intervenors do not meet the requirements of Rule 24(a), Proposed Intervenors request that the Court allow them to intervene pursuant to Rule 24(b).

Respectfully submitted and dated this 13th day of November, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Colorado by using the Court's CM/ECF system on November 13, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the District Court's CM/ECF system.

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