

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

Civil Action No. 1:18-cv-2903

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

Petitioners,

vs.

DEREK PADILLA, in his official capacity as District Ranger, Dolores Ranger District, San Juan National Forest, United States Forest Service; and UNITED STATES FOREST SERVICE, a federal agency of the United States Department of Agriculture,

Federal Respondents.

**PETITION FOR REVIEW
SEEKING DECLARATORY AND INJUNCTIVE RELIEF**

1. Petitioners WildEarth Guardians, San Juan Citizens Alliance, Dunton Hot Springs, Inc., and Sheep Mountain Alliance (collectively, “Petitioners”) respectfully file this civil suit challenging the actions of Federal Respondents Derek Padilla and the United States Forest Service (collectively “Forest Service”) to authorize the Rico-West Dolores Roads and Trails (Travel Management) Project in a final Record of Decision (“ROD”) and final Environmental Impact Statement (“FEIS”) in Colorado. The decision was issued on July 30, 2018. This suit alleges violations of the National Forest Management Act (“NFMA”), 16 U.S.C. §§ 1600 *et seq.*; Forest Service travel management regulations, 36 C.F.R. Part 212; and National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*; the Administrative

Procedure Act (“APA”), 5 U.S.C. § 551, *et seq.*, and any implementing regulations for these statutes.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1331. Final agency action exists that is subject to judicial review under 5 U.S.C. § 704. An actual, justiciable controversy exists between Petitioners and the Forest Service. The Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 & 2202 and 5 U.S.C. §§ 705 & 706.

3. Venue in this court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. The first named defendant’s office is located within this judicial district. The FEIS and ROD at issue in this litigation were prepared within this judicial district. The lands affected by the Rico-West Dolores Roads and Trails Project are located within this judicial district.

4. Petitioners have exhausted any and all available and required administrative remedies.

PARTIES

5. Petitioner WILDEARTH GUARDIANS is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. WildEarth Guardians has more than 220,000 members and activists across the American West, including many who reside in the State of Colorado. WildEarth Guardians’ members regularly recreate throughout Colorado, including on the Dolores Ranger District of the San Juan National Forest and throughout the Rico-West Dolores Roads and Trails

Project area, for the purposes of hiking, recreation, bird watching, observing and attempting to observe wildlife such as elk, hunting, solitude, and other recreational and professional pursuits. WildEarth Guardians' members have engaged in these activities in the past, and intend to do so again in the near future. WildEarth Guardians and its members have a procedural interest in ensuring that all Forest Service activities comply with all applicable federal statutes and regulations. The interests of WildEarth Guardians and its members will be irreparably impaired if the Rico-West Dolores Roads and Trails Project is allowed to proceed without compliance with federal environmental laws.

6. Petitioner 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 more than 1000 staff and members. San Juan Citizens Alliance staff and members regularly recreate on and otherwise enjoy the San Juan National Forest and Rico-West Dolores project area. 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 intend to do so again in the future. 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. San Juan Citizens Alliance and its members have a procedural interest in ensuring that all Forest Service activities comply with all applicable federal statutes and regulations. The interests of San Juan Citizens

Alliance and its members are harmed by off-highway vehicle use on the Forest and within the Rico-West Dolores project area, will be irreparably impaired if the Rico-West Dolores Roads and Trails Project is allowed to proceed without compliance with federal environmental laws.

7. Petitioner 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. Sheep Mountain’s staff and members regularly recreate on and otherwise enjoy the San Juan National Forest and Rico-West Dolores project area. 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. 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. Sheep Mountain and its members have a procedural interest in ensuring that all Forest Service activities comply with all applicable federal statutes and regulations. The interests of Sheep Mountain and its members will be irreparably impaired if the Rico-West Dolores Roads and Trails Project is allowed to proceed without compliance with federal environmental laws.

8. Dunton Hot Springs, Inc. (“Dunton”) is a small resort nestled deep in the San Juan Mountains. 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. Specifically, Dunton owns the Dunton Hot Springs Resort and numerous individual parcels along the West Dolores River. Dunton has an outfitter permit from the Forest Service for tourist-related hiking, horseback riding, and mountain biking in the Forest. 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. Dunton's owners have staff have engaged in these activities in the past, and intend to do so in the near future. Dunton regularly employs approximately forty-seven employees and numerous independent contractors. 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. 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. 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. Dunton, its owners, and its staff have a procedural interest in ensuring that all Forest Service activities comply with all applicable federal statutes and regulations. The interests of Dunton, its owners, and staff will be

irreparably impaired if the Rico-West Dolores Roads and Trails Project is allowed to proceed without compliance with federal environmental laws.

9. The aesthetic, recreational, scientific, educational, and other interests of Petitioners and its members have been and will continue to be adversely affected and irreparably injured if the Forest Service continues to act and fails to act as alleged, and affirmatively implements the action that Petitioners challenge with this litigation. These are actual, concrete, particularized injuries caused by the Forest Service's failure to comply with mandatory duties under NFMA, NEPA, the travel management rule, and the APA. The relief sought in this case would, if granted, redress these injuries.

10. Defendant DEREK PADILLA is the District Ranger for the Dolores Ranger District of the San Juan National Forest. He is sued in his official capacity. As the District Ranger for the Dolores Ranger District, Mr. Padilla signed the ROD for the Rico-West Dolores Roads and Trails Project. Mr. Padilla is the federal official with responsibility for all of the Forest Service officials' actions and inactions challenged in this Petition for Review.

11. Defendant UNITED STATES FOREST SERVICE is an agency of the United States and is a division of the Department of Agriculture. The Forest Service is charged with managing the lands and resources within the San Juan National Forests in accordance with federal laws and regulations.

FACTS

12. The Rico-West Dolores Roads and Trails Project is located within the San Juan National Forest. The majority of the Project would be implemented on the Dolores Ranger

District of the San Juan National Forest. The Project area spans approximately 244,554 acres of National Forest System lands. The Project area occupies portions of Dolores and Montezuma counties in southwest Colorado.

13. The Rico-West Dolores Roads and Trails Project changes motorized travel management within the Rico-West Dolores landscape area. The Rico-West Dolores Roads and Trails Project designates over-ground motorized routes and trails. The Rico-West Dolores Roads and Trails Project identifies the minimum road system. The Rico-West Dolores Roads and Trails Project identifies roads or trails to decommission or convert roads to motorized trails that would not be part of the minimum road system. The Rico-West Dolores Roads and Trails Project identifies the location, trail class, allowed uses, realignments and trail developments for motorized trails. The Rico-West Dolores Roads and Trails Project authorizes motorized use on roads and trails within specific seasonal dates, and prohibits motorized use outside of those dates.

14. The largest communities surrounding the Project area are Cortez, Dolores, Dove Creek, the Town of Rico, Telluride, and the unincorporated residential areas around Groundhog Mountain. The Project area is bisected by Highway 145, which follows the Dolores River and is part of the San Juan Scenic Byway. The east side of the Project area is the “spine” of the La Plata Mountains. The Colorado Trail is a nonmotorized state-wide trail that runs along the “spine” of the La Plata Mountains. Boggy-Glade travel management area borders the west side of the Project area. Private land also borders the west side of the Project area. The north portion of the Project area includes 20,682 acres that make up a

portion of the Lizard Head Wilderness. The Project area includes 129,865 acres of Colorado Roadless Areas. The Project area includes Storm Peak Colorado Roadless Area. The Project area includes Ryman Colorado Roadless Area. The Project area includes Black Hawk Mountain Colorado Roadless Area. The Project area includes portions of San Miguel Colorado Roadless Area. The Project area includes portions of Hermosa Colorado Roadless Area. The Project area is within the Upper Dolores River Watershed. The main river within the Project area is the Dolores River. Tributary streams run through drainages on either side of the Dolores River within the Project area. The Project area provides habitat for elk. Elk are distributed broadly across the Project area.

15. In 2006, the Forest Service identified three landscape areas within the Dolores District for travel management planning efforts: the Rico-West Dolores, Mancos-Cortez, and Boggy-Glade landscapes. The Forest Service approved changes in travel management for the Mancos-Cortez and Boggy-Glade landscapes by 2012.

16. From 2007 to 2009 the Dolores Ranger District conducted a NEPA analysis for changes in travel management on the Rico-West Dolores landscape area. In December 2009 a Forest Service Appeals Officer determined the travel management plan did not provide sufficient information to support a final decision. The Appeals Officer sent the Rico West Dolores travel management plan back to the San Juan National Forest for further consideration.

17. In 2010, the Forest Service issued a Decision Memo for the Rico-West Dolores landscape area. The 2010 Decision Memo temporarily eliminated cross-country motorized

travel off of the road and trail system in areas previously designated as open to motor vehicle use. In the 2010 Decision Memo, the Forest Service stated that motor vehicle use in the Rico West Dolores landscape area will directly cause considerable adverse effects if not restricted. The 2010 Decision Memo did not change motor vehicle designations on roads and trails. The 2010 Decision Memo did not impose seasonal motorized use restrictions.

18. A 2011 lawsuit challenged the 2010 Decision Memo as authorizing motorized use on 14 trails within the Rico West Dolores landscape area. The U.S. District Court for the District of Colorado denied the challenge in district court orders entered in *Backcountry Hunters and Anglers v. U.S. Forest Serv.*, Case No. 11-cv-3139-MSK-KLM (D. Colo.), on March 21, 2014 and February 13, 2014. The district court concluded the 2010 Decision Memo restated existing motorized use authorizations and therefore was not a major federal action subject to review under the APA. On appeal, the Tenth Circuit Court of Appeals dismissed the challenge on jurisdictional grounds. *Backcountry Hunters and Anglers v. U.S. Forest Service*, Case Nos. 13-1216 & 14-1137 (10th Cir.), Order and Judgment date May 27, 2015.

19. In September 2013, the Dolores Ranger District published its first motor vehicle use map (“MVUM”). The Forest Service based the motorized designations depicted on the MVUM on the existing road and trail system for the Rico-West Dolores landscape and the travel management decisions for the Mancos-Cortez and Boggy-Glade landscapes. In 2014 the Dolores Ranger District republished the MVUM. In 2015 the Dolores Ranger District republished the MVUM and included edits to the map for the Mancos-Cortez and Boggy-Glade landscapes.

20. In 2015, the Forest Service's 2010 Decision Memo that temporarily eliminated cross-country motorized travel off of the road and trail system within the Rico West Dolores landscape expired.

21. In 2014, the Forest Service initiated travel management planning for the Rico-West Dolores landscape area on the Dolores Ranger District. The Forest Service accepted public comments for the RWD Roads and Trails (Travel Management) Project Scoping Document between December 12, 2014 and January 30, 2015. The Forest Service hosted a public open house at the Dolores Community Center on January 15, 2015. On May 29, 2015, the Forest Service initiated a supplementary scoping process for accepting public comment.

22. In January 2015, Petitioner San Juan Citizens Alliance submitted scoping comments on the Forest Service's proposed action for travel management for the Rico-West Dolores Roads and Trails Project. Petitioner San Juan Citizens Alliance's scoping comments were timely. In January 2015, Petitioner Dunton Hot Springs, Inc. submitted scoping comments on the Forest Service's proposed action for travel management for the Rico-West Dolores Roads and Trails Project. Petitioner Dunton Hot Springs, Inc.'s scoping comments were timely.

23. On May 6, 2016, the Dolores District Ranger published a draft Environmental Impact Statement ("DEIS") for the Rico-West Dolores Roads and Trails Project.

24. In June 2016, Petitioner WildEarth Guardians submitted comments on the DEIS for the Rico-West Dolores Roads and Trails Project. Petitioner WildEarth Guardians' DEIS comments were timely. In July 2016, Petitioner Dunton Hot Springs, Inc. submitted

comments on the DEIS for the Rico-West Dolores Roads and Trails Project. Petitioner Dunton Hot Springs, Inc.'s DEIS comments were timely. In July 2016, Petitioner San Juan Citizens Alliance submitted comments on the DEIS for the Rico-West Dolores Roads and Trails Project. Petitioner San Juan Citizens Alliance's DEIS comments were timely. In July 2016, Petitioner Sheep Mountain Alliance submitted comments on the DEIS for the Rico-West Dolores Roads and Trails Project. Petitioner Sheep Mountain Alliance's DEIS comments were timely.

25. On July 7, 2017, the Forest Service published a supplemental draft Environmental Impact Statement ("SDEIS") for the Rico-West Dolores Roads and Trails Project. The SDEIS clarified that the Forest Service intended to include identification of the minimum road system for the Project area in its decision. The Forest Service provided a 45-day opportunity for public comment on the SDEIS.

26. In August 2017, Petitioner San Juan Citizens Alliance submitted comments on the SDEIS for the Rico-West Dolores Roads and Trails Project. Petitioner San Juan Citizens Alliance's SDEIS comments were timely. In August 2017, Petitioner Dunton Hot Springs, Inc. submitted comments on the SDEIS for the Rico-West Dolores Roads and Trails Project. Petitioner Dunton Hot Springs, Inc.'s SDEIS comments were timely. In August 2017, Petitioner Sheep Mountain Alliance submitted comments on the SDEIS for the Rico-West Dolores Roads and Trails Project. Petitioner Sheep Mountain Alliance's SDEIS comments were timely. In August 2017, Petitioner WildEarth Guardians submitted

comments on the SDEIS for the Rico-West Dolores Roads and Trails Project. Petitioner WildEarth Guardians' SDEIS comments were timely.

27. On November 14, 2017, the Forest Service published the legal notice of the Rico-West Dolores Roads and Trails (Travel Management) Project Draft Record of Decision ("DROD") and Final Environmental Impact Statement ("FEIS") for its project-level draft decision, which initiated a 45-day objection filing period. Dolores District Ranger Derek Padilla planned to sign the ROD for the project-level travel management decision. On November 15, 2017, the Forest Service published the legal notice for the Rico-West Dolores Roads and Trails (Travel Management) Project Draft Record of Decision and Final Environmental Impact Statement ("FEIS") to amend the San Juan Forest Plan, which initiated a 60-day objection filing period. Forest Supervisor Kara Chadwick planned to sign the ROD to amend the San Juan Forest Plan.

28. In December 2017, Petitioners WildEarth Guardians, Dunton Hot Springs, Inc., and San Juan Citizens Alliance submitted Objections to the Forest Service related to the Rico-West Dolores Roads and Trails Project DROD and FEIS for the project-level travel management decision. Objections from Petitioners WildEarth Guardians, Dunton Hot Springs, Inc., and San Juan Citizens Alliance were timely.

29. In January 2018, Petitioners WildEarth Guardians, Dunton Hot Springs, Inc., and Sheep Mountain Alliance submitted Objections to the Forest Service related to the Rico-West Dolores Roads and Trails Project DROD and FEIS for the amendment to the San

Juan Forest Plan. Objections from Petitioners WildEarth Guardians, Dunton Hot Springs, Inc., and Sheep Mountain Alliance were timely.

30. On February 16, 2018, Petitioners submitted a letter to the Forest Service requesting the agency set aside objections that failed to meet the objection criteria in the agency's own rules.

31. On February 22, 2018, Petitioners participated in an objection resolution phone call with the Forest Service and other objecting parties.

32. On February 28, 2018 the Forest Service offered its first proposed resolution for the Rico-West Dolores Roads and Trails Project. On March 2, 2018 San Juan Trail Riders and other objectors proposed a resolution responding to the Forest Service's proposal.

33. On March 6, 2018 the Forest Service offered a second resolution proposal for the Rico-West Dolores Roads and Trails Project. Later on March 6, 2018, Petitioners offered a resolution responding to the proposed resolutions from the Forest Service and San Juan Trail Riders and other objectors.

34. On March 7, 2018, Petitioners participated in a second objection resolution phone call with the Forest Service and other objecting parties. On March 7, 2018 the Forest Service offered a third resolution proposal for the Rico-West Dolores Roads and Trails Project. On March 10, 2018 Petitioners offered a resolution responding to the Forest Service's third proposed resolution. On March 13, 2018 San Juan Trail Riders and other objectors offered a resolution responding to the Forest Service's third proposed resolution. On March 15, 2018

Petitioners offered a second, revised resolution responding to the Forest Service's third proposed resolution.

35. On March 16, 2018, Petitioners participated in a third objection resolution phone call with the Forest Service and other objecting parties. On March 16, 2018 San Juan Trail Riders and other objectors offered a second, revised resolution responding to the Forest Service's third proposed resolution. On March 23, 2018, Petitioners offered a third, revised resolution responding to the Forest Service's third proposed resolution.

36. On April 4, 2018 the Forest Service issued its written response to objections to the Rico-West Dolores Roads and Trails Project. The reviewing officer concluded the analysis in the project record supports the reasoning contained the Draft ROD for the Responsible Official's preferred alternative (Alternative B, with modifications).

37. On July 30, 2018, the Forest Service signed its final ROD for the Rico-West Dolores Roads and Trails Project. The Forest Service selected Alternative B, with modifications.

38. The final ROD for the Rico-West Dolores Roads and Trails Project designated 199 miles of roads and 103 miles of trails for motorized use. It eliminated cross-country motorized travel in the project area. The final ROD applied seasonal motorized use restrictions allowing single track motorized use from June 1 to October 30. It applied seasonal motorized use restrictions allowing ATV/UTV and single-track motorized use on 62-inch trails (except in the Black Mesa area) from June 1 to October 30. The final ROD applied seasonal motorized use restrictions allowing ATV/UTV and single-track motorized use on 62-inch trails (within the Black Mesa area) from June 1 to September 7.

39. The Project area is an incredibly varied landscape of mesas with huge expanses of aspen stands, jagged snow-covered peaks, and steep slopes of dense conifers. The Project area straddles two major physiographic provinces: The Southern Rocky Mountains and the Colorado Plateau. The Project area contains large tracts of public lands that provide essential habitat to a wide range of wildlife and aquatic life.

40. The majority of the Rico-West Dolores Project area on the San Juan National Forest provides habitat for elk. The Project area makes up 7.9 percent of Disappointment Creek Elk Management Area Data Analysis Unit E-24 (DAU-E24). DAU-E24 has an area of 5,055 square miles and encompasses portions of Dolores, Montezuma, Montrose, and San Miguel Counties. The elk population in the Project area currently meets objectives for DAU-E24. Elk numbers have been in a downward trend across southwest Colorado. The decline in elk population trends corresponds with an increase in recreational use of the forest over the past 30 years. Disturbance associated with roads and trails has been identified by Colorado Parks and Wildlife as having negative impacts to elk and production. Disturbance associated with degradation of habitat and reduction of the forest's functionality as useful elk habitat has been identified by Colorado Parks and Wildlife as having negative impacts to elk and production. Disturbance during critical life functions such as disturbance in calving areas is a controlling and limiting factor for elk populations.

41. The Rico-West Dolores Roads and Trails Project will adversely impact elk.

42. The Rico-West Dolores Roads and Trails Project will adversely impact elk habitat.

43. The Rico-West Dolores Roads and Trails Project will adversely impact water quality.

44. The Rico-West Dolores Roads and Trails Project will adversely impact quiet uses of the Project area.

45. The Rico-West Dolores Roads and Trails Project will adversely impact hunter opportunities. The Rico-West Dolores Roads and Trails Project will adversely impact elk hunter opportunities.

46. Elk require a combination of forage, cover, and rearing, and the ability to move across and out of the Project area. The Project area includes 57,421 acres of forage for elk. The Project area includes 179,566 acres of cover for elk. Two polygons of elk production areas mapped by Colorado Parks and Wildlife exist in the Project area. Elk production areas in the Project area total 154,132 acres.

47. Elk production areas are defined as the part of the overall range of elk occupied by females from May 15 to June 30 for calving. Elk calving grounds are carefully selected by cows. Elk calving grounds are generally in locations where dense cover, forage, and surface water are in close juxtaposition.

48. A security area is any area that will hold elk during periods of stress because of geography, topography, vegetation, or a combination of those features. For the Rico-West Dolores Roads and Trails Project, the Forest Service calculated security areas within the Project area by buffering all motorized roads and trails designated in the decision with a half mile buffer.

49. Elk habitat effectiveness is the percentage of available habitat that is used by elk outside of the hunting season. Elk habitat effectiveness is adversely influenced by the

presence of roads and trails that are open to vehicular traffic. To determine elk habitat effectiveness in the Project area following implementation of the Rico-West Dolores Roads and Trails Project, the Forest Service assessed the security area polygons within the Project area for cover and forage.

50. The elk rut and mating season is from mid-September until mid-October. Colorado Parks and Wildlife does not allow elk hunting in the last week of September through the second week in October to protect elk during the mating season.

51. The main river within the Project area is the Dolores River. Numerous steep-gradient drainages descend from the mesas or uplifted mountains in the Project area. Tributary streams run through drainages on either side of the low-gradient alluvial valleys of the Dolores and West Dolores Rivers within the Project area. Tributary streams of the Dolores River within the Project area provide desirable habitat for many species of fish and wildlife. The Dolores River is a low-gradient response-reach stream that tends to accumulate excess sediment. The West Dolores River is a low-gradient response-reach stream that tends to accumulate excess sediment. Parts of Bear Creek are low-gradient response-reach stream sections that tend to accumulate excess sediment. Spring Creek is an outstanding water located within the Project area.

52. The Project area is well known for camping and challenging hiking trails. Highway 145 travels along the valley floor adjacent to the Dolores River with steep mountain slopes on either side. Various trailheads exist along Highway 145 within the Project area. Various forest roads intersect from Highway 145 and provide additional trailhead access points. The

Project area is also important for horseback riding, fishing, and other non-motorized uses on the San Juan National Forest.

53. The Project area is well known for big-game hunting opportunities. The Project area is very popular for hunting in the fall. Hunters have requested the Dolores Ranger District provide larger “walk-in” areas for hunting. Hunting within the Project area provides an economic benefit to surrounding communities. Businesses along Highway 145 in the Project area and along West Dolores River cater to outdoor recreation clients.

54. The Forest Service has identified OHV use as a growing threat to National Forests. OHV use adversely impacts the natural environment.

55. Motorized OHV use can damage soils. Motorized OHV use can degrade water quality. Motorized OHV use can degrade riparian habitat. Motorized OHV use can damage vegetation. Motorized OHV use can impact wildlife. For big game, the maximum disturbance occurs when human activities coincide with critical wildlife use periods. Motorized OHV use can impact wildlife habitat. Motorized OHV use can increase the spread of invasive species.

56. Motorized OHV use can interfere with non-motorized recreational users of the San Juan National Forest.

57. The San Juan National Forest Land and Resource Management Plan (“Forest Plan”) includes a Desired Condition 2.3.2 that production areas are capable of supporting populations that meet state population objectives. Desired Condition 2.3.2 states production areas provide sustainable forage and habitat in areas with acceptable levels of human

disturbance which do not reduce habitat effectiveness. Desired Condition 2.3.22 directs management activities and human disturbance levels especially in calving grounds provide effective habitat capable of meeting state population objectives. Guideline 2.3.59 states that projects or activities that adversely impact elk production areas should be limited or avoided. Guideline 2.3.59 states this will keep reproductive success from being negatively impacted from management activities by using access restrictions from May 15 through June 30 for elk. Seasonal closures are used to protect wildlife during critical periods while allowing motorized use during less critical times. Guideline 2.3.62 states that projects or activities in big-game production areas and important migration corridors should be designed and conducted in a manner that preserves and does not reduce habitat effectiveness within those mapped areas. Guideline 2.3.63 states that anthropomorphic activity should be designed to maintain and continue to provide effective habitat components that support critical life functions.

58. The Rico-West Dolores Roads and Trails Project would establish motorized designated routes within elk production areas. The Rico-West Dolores Roads and Trails Project would adversely impact elk production areas. The Rico-West Dolores Roads and Trails Project authorizes motorized vehicle use in elk production areas from June 1 to October 30. The Rico-West Dolores Roads and Trails Project authorizes motorized vehicle use in elk production areas during elk calving season. The Forest Service did not provide the public with maps during the administrative process showing which motorized trails go

through elk production areas. The Forest Service has not prepared maps showing which motorized trails go through elk production areas.

59. The Rico-West Dolores Roads and Trails Project authorizes motorized vehicle use in areas used for elk rut and mating habitat from June 1 to October 30. The Rico-West Dolores Roads and Trails Project authorizes motorized vehicle use in elk rut and mating habitat during elk rut and mating season.

60. Most elk calves in Colorado are born between May 15 and June 15. Young elk calves are highly vulnerable to death by predation and exposure. Disruption of elk during the elk calving period can harm elk and reproductive success. Disruption of the early part of the elk rut results in later spring births. Disruption of the early part of the elk rut results in an increase in winter mortality of calves. The magnitude of disturbance to elk throughout the Project area increases dramatically during the big-game hunting seasons. Prohibiting motor vehicle use on trails in elk production areas during calving season can mitigate the impact of human activity on elk. During the administrative process for the Rico-West Dolores Roads and Trails Project, Colorado Parks and Wildlife recommended the Forest Service close motorized trails in the Project area until June 30 annually. Prohibiting motor vehicle use on trails in elk rut and mating habitat during rut and mating season can mitigate the impact of human activity on elk.

61. The Rico West Dolores Roads and Trails Project would adversely impact big game. The Rico West Dolores Roads and Trails Project would adversely impact elk. The Rico-West Dolores Roads and Trails Project reduces available elk security habitat in the project area.

The Rico-West Dolores Roads and Trails Project reduces connectivity between elk security habitat. The Rico-West Dolores Roads and Trails Project results in isolated blocks of elk security habitat.

62. Elk that are stressed or displaced from preferred habitats move to areas that are less desirable. The Rico-West Dolores Roads and Trails Project will create disturbances to elk habitat that will likely drive elk onto private property. Big game displaced from public land onto adjacent private land can contribute to game damage problems.

63. The Rico-West Dolores Roads and Trails Project will alter the distribution of elk populations in the Rico-West Dolores landscape. The Rico-West Dolores Roads and Trails Project will lead to big game population dispersal onto private property. This will impact citizens who legally hunt elk.

64. The Rico-West Dolores Roads and Trails Project authorizes motorized use on trails that run adjacent to or cross the headwaters of numerous tributaries and streams. Motorized use at the headwaters of Fish Creek has caused known damage to water quality, willow galleries, beaver habitat, and aquatic wildlife. Motorized use at the headwaters of Willow Creek has caused known damage to water quality and riparian areas. Motorized use of trails is known to have some level of adverse impact on 37.3 acres of palustrine wetlands. The motorized Winter Trail has known adverse impacts to wetlands. The motorized North Calico Trail has known adverse impacts to wetlands. The motorized Spring Creek Trail has known adverse impacts to wetlands. The motorized East Fork Trail has known adverse impacts to wetlands. The motorized Goldrun Trail #618 crosses Bear Creek. Motorized

Bear Creek Trail #607 runs adjacent to Bear Creek. Motorized Grindstone Trail #608 crosses Bear Creek and runs adjacent to Grindstone Creek. Grindstone Creek is a tributary of Bear Creek. Bear Creek is a popular fly-fishing stream. The Rico-West Dolores Roads and Trails Project authorizes 7.4 miles of motorized trails within 100 feet of riparian areas and wetlands within Colorado Roadless Areas.

65. The Rico-West Dolores Roads and Trails Project authorizes motorized use from June through the end of October. Heavy winter snowfall at higher elevations within the Project area produces a spike in the streamflow with spring melt. From mid-June to early October the Project area can be subject to monsoon-like thunderstorms. Rainstorm events and intercepted spring water can result in water flowing down roads and trails.

66. Motorized use of trails in June and October will damage water quality. Motorized use of trails in June and October will adversely affect aquatic species. Motorized use adjacent to waters and that crosses water will add sediment to streams. Increased turbidity then adversely impacts turbidity and temperature. Motorized use on trails adjacent to waters or that cross waters will damage riparian vegetation and soils. The motorized crossings will fragment aquatic habitat. Motorized use during wet seasons results in trail rutting, erosion, poor drainage, and trail widening. Rutting in trails channels and increases runoff. The increased runoff will impact peak flows as well as increase turbidity.

67. Authorizing motorized use in June and October on trails that run adjacent to or that cross streams will jeopardize the water quality and habitat of aquatic species within the project area.

68. The Rico-West Dolores Roads and Trails Project will increase conflicts between motorized recreationists and non-motorized recreationists within the project area. Residents, guests, and property owners in areas adjacent to or in proximity to roads or motorized trails requested a reduction or elimination of motor vehicle use on trails.

69. The noise, emissions, and presence of OHVs will deter other individuals—including Petitioners' members, staff, and supporters—who visit the Rico-West Dolores landscape to enjoy the peaceful surroundings of an undisturbed ecosystem. The motorized trails jeopardize the quiet enjoyment of equestrian riders and cause them to avoid already established equestrian trails.

70. Authorizing motorized use in June on high-elevation trails will create deep ruts in the trails. Deep ruts in trails make it difficult for hikers and horses to walk on the same trails. Authorizing motorized use in June will adversely impact hikers' and horseback riders' use of those trails.

71. The archery hunting season for elk starts in late August and ends in mid-September. Fall rifle season for elk is from October through mid-November. For 2018, the first rifle season for elk is October 13-17. The second rifle season for elk in 2018 is October 20-28. The third rifle season for elk in 2018 is November 3-11. The fourth rifle season for elk in 2018 is November 14-18. The Rico-West Dolores Roads and Trails Project authorizes motorized vehicle use from June 1 to October 30. The Rico-West Dolores Roads and Trails Project authorizes motorized vehicle use during all of the archery hunting season for elk. The Rico-West Dolores Roads and Trails Project authorizes motorized vehicle use during

the first and second rifle seasons for elk. In 2006, only 16 percent of hunters hunted during the third and fourth rifle seasons for elk.

72. The noise and presence of OHVs will disturb elk during the fall rut and mating season. The noise and presence of OHVs on the Rico-West Dolores landscape during October will displace elk onto private property. In turn, the noise and presence of OHVs will deter hunters—including Petitioners’ members, staff, and supporters—who visit the Rico-West Dolores landscape for fall elk hunting. Authorizing motorized use in October will adversely impact hunter experiences on the landscape.

**FIRST CLAIM FOR RELIEF
VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT AND ITS
IMPLEMENTING REGULATIONS**

INCONSISTENCY WITH THE SAN JUAN FOREST PLAN

73. Petitioner incorporates by reference all preceding paragraphs.

74. The Rico-West Dolores Roads and Trails Project final ROD and FEIS violate the National Forest Management Act (“NFMA”) because they do not comply with the San Juan Forest Plan.

75. NFMA requires the Forest Service to develop and follow Land and Resource Management Plans (“Forest Plans”) for each National Forest. 16 U.S.C. §§ 1604(a), (e), & (g)(3)(b). NFMA and its implementing regulations require that all management actions, including specific projects, approved by the Forest Service be consistent with the applicable Forest Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e).

76. The Forest Service violated NFMA and its implementing regulations by approving a project that is inconsistent with the San Juan Forest Plan.

77. The Rico-West Dolores Roads and Trails project is inconsistent with San Juan Forest Plan components related to elk and elk habitat.

78. San Juan Forest Plan Desired Condition 2.3.22 states: “Management activities and human disturbance levels (especially in severe winter range, winter concentration areas, and calving grounds) provide effective habitat capable of meeting state population objectives.”

79. The Rico-West Dolores Roads and Trails project is inconsistent with San Juan Forest Plan Desired Condition 2.3.22. The Rico-West Dolores Roads and Trails project ROD does not explain how the project complies with San Juan Forest Plan Desired Condition 2.3.22. The Rico-West Dolores Roads and Trails project FEIS does not explain how the project complies with San Juan Forest Plan Desired Condition 2.3.22.

80. San Juan Forest Plan Guideline 2.3.59 states: “Projects or activities that adversely impact...elk production areas should be limited or avoided. This will keep reproductive success from being negatively impacted from management activities by using access restrictions during the following periods...Elk: May 15-June 30.”

81. The Rico-West Dolores Roads and Trails project is inconsistent with San Juan Forest Plan Guideline 2.3.59. The Rico-West Dolores Roads and Trails project adversely impacts elk production areas. The Rico-West Dolores Roads and Trails project allows motorized travel on trails going through elk production areas. The Rico-West Dolores Roads and Trails project allows motorized travel on trails going through elk production areas between June 1

and June 30. Motorized travel on trails passing through elk production areas during elk calving season can adversely affect elk. Motorized travel on trails passing through elk production areas during elk calving season can negatively impact reproductive success.

82. San Juan Forest Plan Guideline 2.3.62 states: ““Projects or activities in big game critical winter range, winter concentration areas, severe winter range, production areas, and important migration corridors should be designed and conducted in a manner that preserves and does not reduce habitat effectiveness within those mapped areas.” Forest Plan Guideline 2.3.62.

83. The Rico-West Dolores Roads and Trails project is inconsistent with San Juan Forest Plan Guideline 2.3.62. The Rico-West Dolores Roads and Trails project reduces habitat effectiveness as it relates to elk production areas. Motorized travel on trails passing through elk production areas reduces the habitat effectiveness of those areas.

84. San Juan Forest Plan Guideline 2.3.63 states: “In order to provide for healthy ungulate populations capable of meeting state population objectives, anthropomorphic activity and improvements across the planning area should be designed to maintain and continue to provide effective habitat components that support critical life functions. This includes components of size and quality on the landscape providing connectivity to seasonal habitats (wildlife travel corridors), production areas, critical winter range, severe winter range, and winter concentration areas, along with other habitat components necessary to support herd viability.” Forest Plan Guideline 2.3.63.

85. The Rico-West Dolores Roads and Trails project is inconsistent with San Juan Forest Plan Guideline 2.3.63. The Rico-West Dolores Roads and Trails project does not maintain effective habitat components that support critical life functions.

86. The Forest Service violated the National Forest Management Act and its implementing regulations by approving a project that is inconsistent with the San Juan Forest Plan, and as a result is arbitrary, capricious, an abuse of discretion, and not in accordance with the law and procedures required by law. 5 U.S.C. § 706(2)(A).

**SECOND CLAIM FOR RELIEF
VIOLATIONS OF THE TRAVEL MANAGEMENT RULE AND EXECUTIVE
ORDER 11644 AS AMENDED**

**FAILURE TO CONSIDER AND COMPLY WITH THE TRAVEL
MANAGEMENT RULE AND EXECUTIVE ORDER 11644'S MINIMIZATION
CRITERIA**

87. Petitioners incorporate by reference all preceding paragraphs.

88. The Rico-West Dolores Roads and Trails project ROD and FEIS violate the 2005 Travel Management Rule and Executive Order 11644, as amended, because they fail to demonstrate implementation of and compliance with the Travel Management Rule's "minimization criteria."

89. Executive Order 11644, as amended by Executive Order 11989, obligates the Forest Service to develop travel management regulations to limit OHV use only to designated trails for "the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among various uses of those lands."

90. Executive Order 11644 obligates the Forest Service to promulgate rules requiring it to locate motorized routes to (1) minimize damage to soil, watershed, vegetation, or other resources of public lands; (2) minimize harassment of wildlife or significant disruption of wildlife habitats; and (3) minimize conflicts between off-road vehicle use and other recreational uses.

91. The Forest Service promulgated the Travel Management Rule in 2005 implementing the requirements of Executive Order 11644 as amended.

92. The Travel Management Rule states general and specific criteria the Forest Service must consider and apply when designating roads, trails, and areas for motor vehicle use on National Forests with the objective of minimizing damage to forest resources, harassment of wildlife, disruption of wildlife habitat, and conflicts with other recreational uses. 36 C.F.R. § 212.55.

93. General criteria must be considered and applied for the designation of roads, trails, and areas for motor vehicle use include effects on natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among users of the Forest, and the availability of resources for necessary administration and maintenance. 36 C.F.R. § 212.55(a).

94. Specific criteria must be considered and applied in designating trails and areas for motor vehicle use, with the objective of minimizing, include damage to soil, watersheds, vegetation, and other forest resources; harassment of wildlife and significant disruption of wildlife habitats; and conflicts between motor vehicle use and existing or proposed

recreational uses of the Forest. 36 C.F.R. § 212.55(b). These specific criteria are referred to as the “minimization criteria.” The Forest Service must not just consider these minimization criteria, but must affirmatively demonstrate how it evaluated and applied the minimization criteria in any decision designating trails and areas for motor vehicle use with the objective of minimizing impacts and conflicts.

95. The Forest Service must comply with the Travel Management Rule and Executive Order 11644’s requirements by demonstrating in the record how it applied the minimization criteria with the objective of minimizing impacts and conflicts when it designated trails for OHV use. The Forest Service did not consider or apply the minimization criteria in locating motorized trails as part of the Rico-West Dolores Roads and Trails project.

96. The Forest Service did not minimize harassment of wildlife and significant disruption of wildlife habitat in implementing inadequate seasonal restrictions on motorized travel in the Rico-West Dolores Roads and Trails project.

97. The Forest Service did not minimize conflicts amongst different types of forest users—including between motorized and non-motorized recreationists—in implementing inadequate seasonal restrictions on motorized travel in the Rico-West Dolores Roads and Trails project.

98. The Forest Service’s Rico-West Dolores Roads and Trails project decision failed to demonstrate implementation of the “minimization criteria” required by the 2005 Travel Management Rule and Executive Order 11644 as amended, and as a result is arbitrary and

capricious, an abuse of discretion, and not in accordance with the law. 36 C.F.R. § 212.55(b); 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF
VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT
FAILURE TO TAKE A “HARD LOOK” AT THE DIRECT, INDIRECT, AND
CUMULATIVE IMPACTS OF THE RICO-WEST DOLORES ROADS AND
TRAILS PROJECT

99. Petitioners incorporate by reference all preceding paragraphs.

100. The Rico-West Dolores Roads and Trails project violates NEPA because the ROD and FEIS fail to take a hard look at the direct, indirect, and cumulative impacts of the Forest Service’s proposed actions.

101. The regulations implementing NEPA require the Forest Service to disclose and analyze the environmental effects of the proposed action and alternatives to it. 40 C.F.R. § 1500.1(b). Specifically, the regulation explains that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.*

102. The Forest Service is required to disclose and analyze the direct, indirect, and cumulative effects of the proposed action on the environment. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.25(c)(3), 1508.27(b)(7).

103. When analyzing cumulative effects, the Forest Service must analyze the effects on the environment resulting from the incremental impacts of the action, and its alternatives, when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7.

104. To satisfy the requirements of the NEPA regulations, the Forest Service must take a “hard look” at the impacts resulting from the proposed action.

105. The Forest Service failed to take the requisite “hard look” at the direct, indirect, and cumulative impacts likely to result from the Rico-West Dolores Roads and Trails project on the San Juan National Forest. For example, but not limited to:

- a. The Forest Service failed to take a hard look at the direct, indirect, and cumulative impacts of allowing motorized use in elk production areas during the elk calving season.
- b. The Forest Service failed to take a hard look at the direct, indirect, and cumulative impacts of allowing motorized use in habitat used by elk for the rut and mating during elk rut and mating season.
- c. The Forest Service failed to consider or assess security area polygons in relation to elk production areas.
- d. The Forest Service failed to consider or assess direct, indirect, or cumulative impacts to elk production areas in its analysis of impacts to elk habitat effectiveness.

- e. The Forest Service did not consider or assess the direct, indirect, or cumulative impacts of the Rico-West Dolores Roads and Trails project on wildlife habitat connectivity between elk production areas.
- f. The Forest Service did not consider or assess the cumulative impacts to elk of allowing motorized use in elk habitat in the fall when combined with the impacts from big-game hunting during the same period.

106. The Forest Service failed to take the requisite hard look at the direct, indirect, and cumulative effects of the Rico-West Dolores Roads and Trails project as required by NEPA, which is arbitrary, capricious, and not in accordance with the APA. 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

Petitioners respectfully requests that this Court:

1. Declare that the Forest Service violated the National Forest Management Act and its implementing regulations, the travel management rule, the National Environmental Policy Act, and the Administrative Procedure Act in developing and authorizing the Rico West Dolores Roads and Trails Project;
2. Enjoin the Forest Service and its agents from allowing motorized travel on trails in the Rico-West Dolores Roads and Trails Project area from September 9 through June 30 each year, unless and until the violations of federal law set forth herein have been corrected to this satisfaction of this Court;
3. Award Petitioners their costs of suit and attorneys' fees; and
4. Grant Petitioners such other and further relief as the Court deems just and equitable.

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

/s/ John R. Mellgren
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