SAN JUAN CITIZENS ALLIANCE

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November 8, 2021

Objection Reviewing Officer
USDA Forest Service Rocky Mountain Region
PO Box 18980
Golden, CO 80402

Submitted via project website: http://www.fs.usda.gov/project/?project=57154.

Re: OBJECTION Pursuant to 36 C.F.R. § 218.8 to the Draft Decision Notice and Finding of No Significant Impact for the Valle Seco 2019 Land Exchange project, Pagosa Ranger District, San Juan National Forest

Dear Objection Reviewing Officer:

The San Juan Citizens Alliance, Center for Biological Diversity, Defenders of Wildlife, and Great Old Broads for Wilderness, collectively "Objectors," hereby submit these objections to the San Juan National Forest's Draft Decision Notice (DDN), the Finding of No Significant Impact (FONSI), and the Final Environmental Assessment (Final EA) for the Valle Seco Land Exchange project, released by the USDA Forest Service on September 24, 2021.

Project Objected To

Pursuant to 36 C.F.R. § 218.8(d)(4), the SJCA and Objectors object to the following project:

Project: **Valle Seco 2019 Land Exchange project, Pagosa Ranger District, San Juan National Forest**

Responsible Official: **Kara Chadwick, Forest Supervisor. San Juan National Forest**

Timeliness

These objections are timely filed. Notice of the draft DN and FONSI was published in the Durango Herald (the newspaper of record) on Sept. 24, 2021.

Lead Objector

As required by 36 C.F.R. § 218.8(d)(3), the Objectors designate the "Lead Objector" as follows:

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Interests and Participation of the Objectors

San Juan Citizens Alliance (SJCA) is a non-profit organization with over 1,000 members in the Four Corners region. SJCA is actively involved in monitoring and scrutinizing National Forest management, overseeing government decision-making and compliance with environmental laws, advocating for cleaner air quality and better stewardship of natural systems, promoting reduced energy consumption, energy efficiency and renewable energy, and working for improvements to community health. SJCA members in the Four Corners region use and plan to use the federal lands in the Pagosa Ranger District of the San Juan National Forest, including specifically the national forest lands included within Valle Seco 2019 Land Exchange project area. SJCA members are affected by the proposed project activities.

The Center for Biological Diversity ("the Center") is a non-profit environmental organization with over 61,000 members, and 1.6 million activist-supporters nationwide who value wilderness, biodiversity, old growth forests, and the threatened and endangered species which occur on America's spectacular public lands and waters. Center members and supporters use and enjoy the San Juan National Forest, and the lands of the Valle Seco 2019 Land Exchange Project area for recreation, photography, nature study, and spiritual renewal.

Defenders of Wildlife (Defenders) is a non-profit, membership organization headquartered in Washington, D.C. with field offices throughout the country, including in Denver, Colorado. Founded in 1947, Defenders is a science-based conservation organization with more than 371,000 members nationwide, including more than 9,400 members in Colorado. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities and the preservation of the habitats on which they depend. Members of Defenders have an abiding interest in protection of wild landscapes in the San Juan Mountains and elsewhere.

Great Old Broads for Wilderness (Broads) is a national grassroots organization, led by women, that engages and inspires activism to preserve and protect wilderness and wild lands. Conceived by older women who love wilderness, Broads gives voice to the millions of Americans who want to protect their public lands as Wilderness for this and future generations. Broads has several local chapters, or Broad bands, in western Colorado. Broads member value and enjoy roadless areas across the San Juan Mountains on a regular basis.

Objectors raised these issues in our scoping letter dated December 13, 2019 and in our comment letter on the Valle Seco 2019 Land Exchange Draft Environmental Assessment dated October 5, 2020.

Introduction
Objectors share the goal of protecting valuable wildlife habitat in southwest Colorado, including parcels like those in Valle Seco. Where we significantly disagree with the Forest Service, and with the land exchange proponents, is the false choice presented here between either saving Colorado Roadless Areas or saving big game winter habitat in Valle Seco.

We find reprehensible the proponents' tactics of taking hostage valued wildlife resources and threatening to destroy those very resources if they don't get their way. We have encountered precisely these same tactics over and over again, often promoted by the same hired agents of the Valle Seco 2019 Land Exchange Project. As long as the public and the Forest Service continue to acquiesce to these kinds of intolerable demands, we can expect the proponents to repeatedly pursue the same approach. At some point, the public and the agencies need to say enough, that doing business with these kinds of partners is not in the public interest.

I. The Forest Service's Redefinition of Roadless Areas is Arbitrary and Capricious, and a Significant Action Requiring an Environmental Impact Statement.

The draft decision for the Valle Seco 2019 Land Exchange Project is to implement the land exchange through Alternative 3 with modifications.[1] Alternative 3 includes the exchange of federal Parcels 1-9 for non-federal Parcel A, and the boundary modification of the Winter Hills/Serviceberry Mountain Colorado Roadless Area (CRA) to add an additional 4,675 acres to the CRA.[2] This alternative was developed and selected in response to comments, and specifically to address concerns of the Colorado Department of Natural Resources (which is a cooperating agency for this project) about loss of roadless areas.[3]

The boundary modification included in the draft decision's selected Alternative 3 envisions "modifying" the Winter Hills/Serviceberry Mountain CRA to incorporate land west of Highway 84, adjacent to Parcel A, as an extension of the existing CRA that is entirely located east of Highway 84. While we are sympathetic to providing Colorado Roadless Rule protections to additional qualifying lands (we can provide a lengthy list of other qualifying non-contiguous areas that deserve consideration in other Forest Service project decisions throughout Colorado), the appropriate process is to amend to the Colorado Roadless Rule to add new areas to the list of areas covered by the Rule. This boundary modification approach is seemingly an attempt to avoid the process of amending the Rule to cover additional listed areas.

Apparently the project decision, which incorporates modifying a CRA boundary, is premised on a rationale that redefines roadless areas and changes the application of the Colorado Roadless Rule. A decision of this magnitude must be fully vetted in an open public engagement process and cannot be accomplished in an arbitrary backdoor manner via an explanation buried in the Response to Public Comments for the project.

The project decision that entails modification of a CRA boundary relies upon an unfounded determination that "the Colorado Roadless Rule does not specify that roadless areas must be one

[1] DDN and FONSI at 2.
[2] Final EA at 26.
[3] Response to Comments at 15.

contiguous block."[4] This statement that roadless areas are not required to be contiguous blocks of land is erroneous, unsupported, and contrary to more than 80 years of Forest Service regulation and policy.

The Forest Service first promulgated rules to protect roadless areas in 1939. The "U Regulations" created categories of wilderness areas (greater than 100,000 acres) and wild areas (between 5,000 and 100,000 acres). The agency's regulation described these as "suitable areas of national forest land **in single tracts** (emphasis added)." 36 CFR 252.21 (1939) (copy attached).

The Forest Service subsequently used this regulatory authority to administratively designate wilderness areas and wild areas from among the pre-existing primitive areas previously established under the 1929 L-20 regulation. These administrative wilderness areas and wild areas comprised the original set of legislative wilderness areas designated in 1964 upon enactment of the Wilderness Act. The Wilderness Act itself applied a similar definition derived from the 1939 U Regulations that defined the qualifying criterion that an area "has at least 5,000 acres of land or is of sufficient size as to make practical its preservation and use in an unimpaired condition."

Every subsequent roadless area evaluation has employed the same, common sense application of roadless areas as national forest lands comprised of a single contiguous tract as originally spelled out by the 1939 regulation. The two Roadless Area Review and Evaluations (RARE) in the 1970s, the national Roadless Area Conservation Rule in 2001, and the Colorado Roadless Rule in 2012 all implicitly utilized this widely understood and accepted definition of a roadless area, a definition first spelled out in Forest Service regulation in 1939.

The Colorado Roadless Rule tiered off of the Inventoried Roadless Areas (IRA) identified in the 2001 national Roadless Area Conservation Rule.[5] The 2001 Roadless Rule in turn is based on the existing list of inventoried roadless areas then in effect, utilizing primarily the RARE II Roadless Area Review and Evaluation inventory completed in 1979.[6] RARE II began in 1977 with a Forest Service inventory of roadless, undeveloped areas that met minimum criteria for wilderness consideration under the Wilderness Act, applying the Forest Service's roadless area definition that by the 1970s had been in effect for almost 40 years: "The criteria defined a roadless area as an area exclusive of improve roads constructed or maintained for travel by means of motorized vehicles intended for highway use."[7] The list of RARE II inventoried roadless areas consisted of stand-alone areas greater than 5,000 acres in size in a single tract, or areas adjacent to existing wilderness, national parks or other similar administrative units.

Now, in the Decision Notice for the Valle Seco 2019 Land Exchange, the Forest Service is providing a sweeping redefinition of roadless areas. Instead of being "a single tract" of suitable lands as first established in regulation in 1939 and used in every subsequent roadless area review, now the Forest Service has created a new definition that consists of a collection of non-

[4] Response to Comments at 19.
[5] "The 2001 Roadless Rule used the inventoried roadless areas from the Forest Plan that was in effect at the time the 2001 Rule was developed, or a roadless inventory that had undergone public involvement. The date of each Forest's inventory used for the 2001 Rule is shown here. Acreages are from the 2001 Roadless Rule FEIS." Table A-1, Colorado Roadless Rule FEIS.
[6] Forest Service Roadless Area Conservation DEIS, May 2000, at 1-4.
[7] RARE II Roadless Area Review and Evaluation FEIS, January 1979 at 6.

contiguous areas with similar characteristics.[8] This redefinition of what constitutes a roadless area is a dramatic and significant modification of the Colorado Roadless Rule, one that requires a full-fledged Environmental Impact Statement with ample public notification and participation.

The Forest Service cannot adopt a novel definition of roadless areas that upends more than 80 years of established regulation and policy via an Environmental Assessment and Decision Notice for an obscure land exchange in a remote corner of Colorado. The agency provides no basis or evidence for its new interpretation, or any explanation for why decades of regulation and policy should be thrown out without any notice or evaluation. This is the very definition of an arbitrary and capricious action. Further, the 1978 NEPA regulations (which the Forest Service applied to this action) state that factors the agency must use to determine significance include, among others, "[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration."[9] This proposed action represents such a decision. Because his action will have significant impacts, the Forest Service must prepare an EIS.

As a side note, the Forest Service attempts to defend its new definition via a list of other Colorado Roadless Areas it asserts are non-contiguous. In fact, each and every one of the areas listed is a single contiguous tract, complying with the 80+ years of agency regulation and policy.[10] Specifically, Weston Peak is a stand-alone CRA comprised of 13,100 acres in a single tract; Porphyry Peak is stand-alone CRA of 3,400 acres in a single tract; Elkhorn is stand-alone CRA of 11,000 acres in a single tract that contains a primitive system road (FDR 508) that crosses the northern end of the area; and North St. Vrain is stand-alone CRA of 7,200 acres in a single tract. Other areas identified are all contiguous with existing designated wilderness areas.

In as much as the decision is based on an erroneous application of the Colorado Roadless Rule, it must be overturned and a new decision issued that complies with the Rule.

We further note that should this matter reach a federal court, that court is unlikely to defer to the agency's novel interpretation of its regulations allowing boundary "modifications" to include distant, stand-alone areas. Under the standards explained by the Supreme Court in *Kisor v. Wilkie*, courts first attempt to discern the meaning of the regulations through the usual means of understanding a rule.[11] Here, the Forest Service stretches the meaning of "modification" beyond its plain meaning. The Supreme Court warned that courts may consider deferring to an agency interpretation of its own rule "only if a regulation is genuinely ambiguous. And when we use that

[8] "Since there is no clear direction in the Colorado Roadless Rule or the Forest Plan that requires all the lands within a CRA to be contiguous, and since the two areas share similar characteristics, the Forest Service chose to proceed with a boundary modification rather than addition of a new roadless area." Response to Comments at 19.

[9] 40 C.F.R. § 1508.27(b)(6).

[10] "Many of the non-contiguous CRAs are adjacent to other CRAs or designated wilderness areas, but there are some that are not adjacent to other CRAs or designated wilderness areas. Some examples include the Weston Peak CRA and the Porphyry Peak CRA on the Pike San Isabel NF, the Elkhorn CRA on the Routt NF, and the North St. Vrain CRA on the Arapahoe Roosevelt NF. " Response to Comments at 23

[11] 139 S. Ct. 2400, 2415 (2019) (to determine a regulation's meaning, court must "'carefully consider[]' the text, structure, history, and purpose of a regulation, in all the ways it would if it had no agency to fall back on.").

term, we mean it—genuinely ambiguous, even after a court has resorted to all the standard tools of interpretation."[12]

Here, the Colorado Roadless Rule contains two different terms for boundary adjustments, distinguishing between two different situations: those cases where the agency may "modify" CRA boundaries, and those where it may "add new Colorado Roadless Areas."[13] Surely, there would never be a need to "add" a "new" area if the Forest Service could always, as it chose to do here, simply tack on a free-standing area to a similar existing CRA. The reading of the Rule most consistent with the history of Forest Service regulations governing roadless areas (discussed above) and the plain meaning of the words is that boundary "modifications" mean adding *adjacent* acreage to existing areas by means of moving the existing boundary this way or that, and "adding new" CRAs means delineating and protecting free-standing areas *not contiguous with any existing roadless landscape*.

But even assuming, as the Forest Service appears to, that the Colorado Roadless Rule is ambiguous, courts should not defer to the Forest Service's strained interpretation here. "If genuine ambiguity remains, moreover, the agency's reading must still be 'reasonable.'"[14] As discussed, the Forest Service's interpretation is not reasonable. In addition, "the regulatory interpretation must be one actually made by the agency. In other words, it must be the agency's 'authoritative' or 'official position,' rather than any more ad hoc statement not reflecting the agency's views."[15] Here, the agency's interpretation is contained in a response to comments in an EA on a specific project, not an agency guidance or handbook. It is therefore unlikely that a court would afford that statement any deference.

For all of these reasons, a court is likely to reject the Forest Service's strained, novel interpretation of its regulations that conflict with their plain meaning.

> *Suggested Remedy:* The Forest Service can accomplish its desired outcome of creating a new roadless area west of Highway 84 in the vicinity of Valle Seco through the direct amendment of the Colorado Roadless Rule via adding to the list of areas covered by the Rule. However, the Forest Service cannot arbitrarily and capriciously redefine what constitutes a roadless area, in contravention of 80+ years of established regulation and policy, without a robust public process and Environmental Impact Statement, and without amendment of the Colorado Roadless Rule.

II. The Proposed Valle Seco 2019 Land Exchange Does Not Adhere To The Colorado Roadless Rule.

We understand that the Forest Service is as confused as the public about the interaction between the decision by the Forest Supervisor that selects an alternative premised on roadless area boundary modifications and the apparently separate decision by the Chief to make those boundary modifications. Given that the NEPA analysis and associated Decision Notice and FONSI all depend entirely upon robust analysis of the roadless area concerns, one of the five

[12] *Id*. at 2414.
[13] 36 C.F.R. § 294.47(a).
[14] *Kisor*, 139 S. Ct. at 2415.
[15] *Id*. at 2416.

highlighted primary issues of concern in the Final EA, we provide objection to the interpretation and application of the Colorado Roadless Rule used in the Final EA, Decision Notice, and FONSI.

As noted in the Final EA, "although the boundary modification decision is not being made as part of this EA, the impacts of the boundary modification are analyzed in this EA as a connected action,"[16] and ""The CRA boundary modifications are considered connected actions to the land exchange."[17]

The Colorado Roadless Rule permits the Chief of the Forest Service to modify Colorado Roadless Area (CRA) boundaries, or add new areas, "based on changed circumstances" after providing public notice and a 90-day public comment period. The rule reads:

> The Chief of the Forest Service may modify the boundaries of any designated Colorado Roadless Area identified in § 294.49 or add new Colorado Roadless Areas based on changed circumstances. Modifications and additions will be reflected in the set of maps maintained at the national headquarters office of the Forest Service…. Public notice with a minimum 90-day comment period will be provided for any proposed Colorado Roadless Area boundary modifications or additions.

36 C.F.R. § 294.47(a).

This provision is unique to the Colorado Roadless Rule. The 2001 national Roadless Area Conservation Rule apparently allows the agency to modify roadless area boundaries, but does not define the process for doing so. 36 C.F.R. § 294.11 (2001) (defining "inventoried roadless areas" as "[a]reas identified in a set of inventoried roadless area maps … which are held at the National headquarters office of the Forest Service, *or any subsequent update or revision of those maps*." (emphasis added)).

A similar provision occurs in the 2008 Idaho Roadless Rule. 36 C.F.R. § 294.27(b). While the Forest Service has three times modified Idaho roadless area boundaries, and has acknowledged that the standard for modification or addition includes "changed circumstances," we could locate no evidence that the Forest Service has ever specifically justified its decision on the basis of "changed circumstances" or explained the meaning of that phrase.

Changed circumstances routinely refer to emerging data that has bearing on boundaries and management intent where data on the ground contradicts the findings that went into the original boundary. These might include inaccurate road locations, streambeds, seasonal impoundments, easements, un-inventoried or adjacent roadless acres, etc., any of which might require a change in the boundary. In the Colorado Roadless Rule FEIS response to comments, the Forest Service described the circumstances that would permit a boundary modification associated with changed circumstances:

[16] Final EA at Introduction.
[17] Final EA at 25.

> Because of the continual improvement in mapping technology, Alternative 2 in the FEIS includes a provision to administratively correct CRA boundaries. Also included is a provision to modify boundaries, which can be done during forest plan revision or any other time there is a substantial update to a boundary or the identification of new roadless areas. *The modification language in preferred alternative uses "changed circumstance" because any number of circumstances will present themselves in the future, including a reduction in road miles that could cause a roadless boundary to be adjusted*[18]

In lieu of finding any relevant, site-specific changed circumstance for the South San Juan Adjacent CRA that would conform to the circumstances anticipated during the crafting of the Colorado Roadless Rule, the Final EA instead describes a variety of unrelated activities occurring elsewhere across the San Juan NF:

> For this project, three changed circumstances have been identified:
> 1) the opportunity to conduct a land exchange to acquire critical winter range and a crucial migration corridor for elk and mule deer in the Valle Seco area;
> 2) the opportunity to acquire jurisdictional control over National Forest System Road 653 in the Valle Seco area; and
> 3) the closure of all or portions of three system roads (NFSR 653.C, NFSR 653.D and NFSR 619) in the Valle Seco area that have been decommissioned since the Colorado Roadless Rule has been in effect.[19]

As this list confirms, the Final EA does not identify any changed circumstance associated with Parcel 1 within the South San Juan Adjacent CRA since the San Juan NF confirmed its boundary in the 2012 Colorado Roadless Rule. None of the three items noted above has anything to do with changes to, or circumstances within, Parcel 1 which the Forest Service intends to exchange.

Rather than apply the type of specific on-the-ground explanation for a boundary modification for the South San Juan Adjacent CRA as the Forest Service described above in the Colorado Roadless Rule FEIS, relevant application of changed circumstance criteria is completely lacking for the South San Juan Adjacent CRA boundary modification. This is contrasted by the common sense application associated with the explanation for the Alternative 2 modification of the Winter Hills/Serviceberry Mountain CRA where "there is an abandoned, non-system road that went to an abandoned communication site on the top of Serviceberry Mountain within the 529 acres proposed for addition to the CRA under Alternative 2."[20]

The Forest Service appears to offer two defenses of its decision to ignore the need for a changed circumstance relevant directly to the South San Juans Adjacent CRA.

One response is that "The Colorado Roadless Rule does not contain specific requirements that changed circumstances solely consist of alterations to conditions on-the-ground on the exact acres that are being proposed for a boundary modification."[21] This response clearly attempts to

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[18] *See* Rulemaking for Colorado Roadless Areas, Final Environmental Impact Statement, May 2012 at H-17 (emphasis added).
[19] Final EA at 35.
[20] Final EA at 39.
[21] Response to Comments at 27.

take advantage of ambiguity in the Colorado Roadless Rule in direct contravention to common sense application of the Rule, and in opposition to the explanation the Forest Service provided during the evaluation and adoption of the Colorado Roadless Rule in its associated FEIS. As noted above, courts are unlikely to defer to this type of unsupported interpretation.

The other defense is that the Forest Service previously overlooked unauthorized trespass roads into several areas on the periphery of a portion of Parcel 1 within the South San Juan Adjacent CRA, and perhaps that provides some rationale to now belatedly modify the boundary because of those impacts.

> In terms of conditions on Federal Parcel 1, there is a total of 1,827 feet of roads. It is true that these roads were in existence on the ground in 2012 at the time the Colorado Roadless Rule went into effect. However, since these un-inventoried roads were not mapped in the SJNF's GIS database at that time, the Forest Service was unaware of them and their presence was not considered when the CRA boundaries were originally created in 2012. If the Forest Service had been aware of the presence of these roads in 2012, this likely would have had a bearing on the final boundaries of the South San Juan Adjacent CRA.[22]

The Final EA provides a map depicting the location of unauthorized roads in Parcel 1 within the South San Juan Adjacent CRA (Figure 10, Appendix B). If these intrusions are of such significant impact so as to require a boundary modification, that could be easily accomplished by removing 15 or 20 acres at most from the CRA, leaving the other 150 acres or more intact. Further, the Forest Service nowhere asserts that, upon re-inventory, it concluded that Parcel 1 lacks roadless characteristics, and so it must redraw the boundaries. The San Juan National Forest should not use the presence of unauthorized roads as an after-the-fact pretext to support transferring roadless lands out of public ownership.

The Forest Service describes the CRA boundary modifications as connected actions to the land exchange.[23] CEQ regulations define "connected actions" that must be considered in the same NEPA document as actions that

> (i) Automatically trigger other actions which may require environmental impact statements.
>
> (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
>
> (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

40 C.F.R. § 1508.25(a). Given the Forest Service interpretation that the CRA boundary modifications are connected actions, it would be helpful to explain if that is because the CRA boundaries will only be modified in the event the land exchange is undertaken, or if the boundary modifications are interdependent parts of a larger action, i.e., the land exchange, or if the boundary modifications automatically trigger some other action requiring an environmental impact statement, per the CEQ regulations. The Forest Service failed to do so here.

[22] Response to Comments at 26.
[23] Final EA at 25.

Suggested Remedy: Modify the South San Juan Adjacent CRA boundary to exclude the newly identified impacts caused by unauthorized trespass roads, and remove the remaining qualifying CRA portion of Parcel 1 from the land exchange.

III. The Land Exchange Is Contrary To Forest Plan Direction And Guidance.

We object to the Forest Service's interpretation that disposal of Parcel 1 from the South San Juan Adjacent CRA conforms to Forest Plan direction. The Final EA states that "Direction related to Colorado Roadless Areas is provided by the Colorado Roadless Rule, as well as the San Juan National Forest Land and Resource Management Plan."[24] The Forest Service asserts that the proposed land exchange is consistent with the Colorado Roadless Rule and the Forest Plan. We disagree.

The South San Juan Adjacent CRA, including Parcel 1, is managed under Management Area 1 (MA1), Natural Processes Dominate. MA1 is applied to the areas at the least developed, most pristine end of the spectrum:

> These relatively pristine lands are places where natural ecological processes operate free from human influences. Succession, fire, insects, disease, floods, and other natural processes and disturbance events shape the composition, structure, and landscape patterns of the vegetation. These areas contribute significantly to ecosystem and species diversity and sustainability, serve as habitat for fauna and flora, and offer wildlife corridors, reference areas, primitive recreation opportunities, and places for people seeking natural scenery and solitude. Roads and human structures are absent and management activities are limited on MA 1 lands. Motorized travel, and in most cases, motorized equipment are prohibited. MA 1 areas include designated wilderness areas, the Piedra Area, WSAs, and other lands where a primary desired condition is to maintain the undeveloped natural character of the landscape.[25]

The Forest Plan clearly documents that this CRA is one of the premier locations of pristine lands on the San Juan National Forest, and it is lumped together with designated wilderness areas as a place to emphasize protection of its undeveloped character. The Forest Plan declined to recommend the South San Juan Adjacent CRA for wilderness designation. The Final EA notes that "the Forest Plan stated that management under the Colorado Roadless Rule would protect roadless characteristics while allowing for management activities not allowed under wilderness designation (Forest Plan Appendix C, pgs. 51, 61, and 69)."[26] Now, though, the San Juan NF is proposing to dispose of roadless lands and hence neither the Forest Plan nor the Colorado Roadless Rule would offer any protection, contrary to the Plan's stated management direction.

The Forest Service's response to the concern about disposal of MA1 areas is that the because the Plan does not explicitly prohibit disposal of these most pristine and undeveloped areas of the

[24] Final EA at 33.
[25] 2013 BLM Tres Rios Field Office/San Juan National Forest Land and Resource Management Plan (Forest Plan) at 185.
[26] Final EA at 34.

national forest, the agency is free to disregard the direction and intent of the Plan.[27] This strikes us a duplicitous after asserting in the Plan that management under the Colorado Roadless Rule protects roadless characteristics, which clearly won't apply after the roadless lands are conveyed out of public ownership.

The Final EA does not demonstrate how the public is guaranteed that the undeveloped character of the South San Juan Adjacent CRA will be protected if the public no longer has jurisdiction over the land. The Colorado Roadless Rule also directs that management activities, of which a discretionary land exchange is one, must conserve roadless area characteristics. "Activities must be designed to conserve the roadless area characteristics although applying the exceptions may have effects to some roadless area characteristics."[28]

The exceptions described in the Rule concern road building and tree cutting. They do not include discretionary decisions to dispose of roadless areas that would henceforth be available to any number of activities that would not conserve roadless area characteristics.

Disposal of the South San Juan Adjacent CRA is not in the public interest, and does not conform to the Forest Plan. Disposal would not maintain the CRA's undeveloped natural character, as spelled out by the Forest Plan. Any attempt to exchange these lands out of the National Forest System would therefore violate the Forest Plan, in violation of the National Forest Management Act. While the Forest Service could attempt to amend the Forest Plan to permit the exchange, that amendment would demonstrate that an EIS is necessary.

Suggested Remedy: Remove Parcel 1 from the land exchange.

IV. The Proposed Land Exchange Is Not In The Public Interest And Violates Forest Service Land Exchange Regulations.

Land exchanges are discretionary and thus there is no requirement for the Forest Service to undertake this project. "The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties."[29]

The Forest Service is required to make a decision that serves the public interest.[30] In this case, the proposed land exchange is not in the public interest. The loss of roadless areas lands with protected designations, suitable wild and scenic river corridors, and fragmentation of existing intact habitats are just a few of the reasons why this exchange is not in the public interest and should be rejected out of hand.

Furthermore, the Forest Service can only consider land exchanges consistent with its land and resource management plans. This exchange is contrary to multiple aspects of the San Juan Land

[27] "A review of this information and the allowable use tables provided in the Forest Plan shows that there are no prohibitions or restrictions related to conducting land exchanges in MA1 areas." Response to Comments at 12.
[28] 36 C.F.R. § 294.40.
[29] 36 C.F.R. § 254.3(a).
[30] 36 C.F.R. § 254(b.)

and Resource Management Plan (Forest Plan) because it proposes to dispose of roadless areas, wild and scenic river corridors, and riparian corridors specifically called out for retention and protection in the Forest Plan.

> The authorized officer shall consider only those exchange proposals that are consistent with land and resource management plans (36 CFR part 219).[31]

The regulations do not give the Forest Service discretion to ignore its Forest Plan and pursue projects contrary to the Plan's plain direction.

> A land exchange may be completed only after it has been determined that the overall public interest would be well served.[32]

The federal parcels proposed for conveyance include significant values and uses that are in the public interest to retain. These include the enumerated roadless characteristics present in Parcel 1, the protection of which motivated the agency's promulgation of first the national Roadless Area Conservation Rule and then subsequently the Colorado Roadless Rule.

The draft decision is particularly at odds with two key factors of the Forest Service's public interest determination:

> 3) securing important resource management objectives including protection of fish and wildlife habitat, cultural resources, watersheds, wilderness and aesthetic values, enhancement of recreational opportunities and public access;
> …
> 9) implementation of applicable Forest Land and Resource Management Plans….[33]

Parcel 1 within the South San Juan Adjacent CRA possesses wilderness characteristics, as the San Juan National Forest concluded the area was both capable and available for wilderness in the Forest Plan.[34] In lieu of recommending its designation as wilderness, the San Juan National Forest instead decided that "management under the Colorado Roadless Rule would protect roadless characteristics."[35] Trading lands capable and available for wilderness, and lands alternatively protected under the Colorado Roadless Rule, is directly counter to the public interest determination around "securing important wilderness and aesthetic values."

Similarly, implementation of the Forest Plan direction to manage Parcel 1 and the South San Juan Adjacent CRA as a Management Area 1, the most pristine end of the management spectrum, will be defeated if the parcel is exchanged out of public ownership. The public interest determination significantly omits any mention or discussion of the Forest Plan direction for Parcel 1. As such, the public interest determination fails to fulfill the regulatory requirements.

> *Suggested Remedy*: Remove Parcel 1 from the land exchange.

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[31] 36 C.F.R. § 254(f).
[32] 36 CFR § 254.3(b).
[33] 36 C.F.R. § 254.3(b)
[34] Forest Plan at C-51.
[35] Ibid.

V. The Decision Apparently Allows Oversnow Motorized Use in Contradiction to the Project's Stated Purposes.

The project's stated purpose and need starts with:

> 1) Secure important elk and mule deer winter range, winter concentration areas, severe winter range, and migratory corridors in order to maintain wildlife habitat capability and effectiveness and habitat connectivity for spring and fall migrations.[36]

The decision includes a requirement to close roads to wheeled motorized use:

> The **closure of NFSR 653 to public wheeled motorized use** will also help minimize disturbance impacts to elk and mule deer habitat and individuals, thus increasing habitat effectiveness for elk and mule deer in and around non-Federal Parcel A (EA, Section 3.3.1)."[37]

Similarly,

> Public wheeled motorized access into the area from Highway 84 will be prohibited during the winter to minimize disturbance to wintering big game.[38]

And,

> The impacts of closing NFSR 653 to public wheeled motorized use is analyzed under Alternatives 3 and 4 in Sections 3.3.1, 3.7 and 3.8.[39]

The choice of words "wheeled motorized use" throughout the Final EA and Decision Notice is apparently intentional in order to distinguish between oversnow motorized use involving snowmobiles or other non-wheeled motorized uses compared with standard wheeled vehicles.

The San Juan National Forest, and Pagosa Ranger District, lacks a winter travel management plan. It appears the national forest lands surrounding Valle Seco and Parcel A are open to winter use by snowmobiles and non-wheeled motorized vehicles. Acquiring Parcel A for the purported need to protect wintering big game, and prohibiting wheeled motorized use but still providing for snowmobiling in big game winter habitat – and indeed, opening the acquired parcel to the public for snowmobiling, as it is not open to the public now – seems to be self-defeating. Failing to disclose that the area will be open to snowmobiling, and failing to disclose the impact of opening the area to snowmobiling on elk, also fails to take the hard look at the project's impacts as required by NEPA.

[36] Decision Notice at 1.
[37] Decision Notice at 6 (emphasis in original).
[38] Final EA at 60.
[39] Response to Comments at 32.

The project decision needs to clarify whether all motorized use is prohibited in winter to protect wintering big game, or if snowmobiling is deemed compatible with big game winter range and will be permitted, and if so, why it is deemed compatible.

> *Suggested Remedy:* Prohibit all public motorized access during winter into the area, not just wheeled motorized access. Disclose the impacts to elk in Parcel A caused by winter recreation, including snowmobiling if that use is not prohibited.

CONCLUSION

The San Juan Citizens Alliance and Objectors hereby request a meeting to discuss potential resolution of issues raised in this objection, pursuant to 36 C.F.R. § 218.11(a).

We hope that the Forest Service will use the objection process and such a meeting as opportunities to engage with stakeholders, including San Juan Citizens Alliance and Objectors, to develop a project that is broadly supported and protects valued public resources.

Sincerely yours,

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CHAPTER II—FOREST SERVICE

DEPARTMENT OF AGRICULTURE

PART 201—NATIONAL FORESTS

§ 201.1b *List of national forests showing States in which they are located and dates of Proclamations or Executive orders establishing and modifying.*

CALENDAR YEAR 1939

Forest	State or Territory	Documents affecting		
		No.	Date	Citation
Beaverhead	Montana	Proc. 2339	June 29	4 F.R. 2747.
Cache	Utah and Idaho	Proc. 2333	Apr. 28	4 F.R. 1763.
Cache	Utah and Idaho	E.O. 8130	May 11	4 F.R. 2017.
Cache	Utah and Idaho	Proc. 2356	Sept. 6	4 F.R. 3860.
Caribou	Idaho	E.O. 8130	May 11	4 F.R. 2017.
Chattahoochee	Georgia	Proc. 2355	Sept. 6	4 F.R. 3859.
Clark	Missouri	Proc. 2363	Sept. 11	4 F.R. 3908.
Hiawatha	Michigan	Proc. 2318	Jan. 3	4 F.R. 75.
Homochitto	Mississippi	E.O. 8100	Apr. 28	4 F.R. 1725.
Kaniksu	Washington	Pub. 374	Aug. 10	53 Stat. 1347.
Mark Twain	Missouri	Proc. 2362	Sept. 11	4 F.R. 3907.
Shawnee	Illinois	Proc. 2357	Sept. 6	4 F.R. 3860.
Tongass	Alaska	Proc. 2330	Apr. 18	4 F.R. 1661.
Wenatchee	Washington	Pub. 394	Aug 11	53 Stat. 1412.
Whitman	Oregon	Proc. 2332	Apr. 26	4 F.R. 1716.

NOTE: For full text of Proclamations and Executive orders mentioned in this section, see Title 3 of this Supplement.

PART 251—LAND USES

§ 251.13 *Use of public campgrounds.* [Revoked]

NOTE: This section was revoked Sept. 19, 1939; 4 F.R. 3994. The subject matter is now contained in § 251.24.

§ 251.20 *Wilderness areas.* Upon recommendation of the Chief, Forest Service, national forest lands in single tracts of not less than 100,000 acres may be designated by the Secretary as "wilderness areas," within which there shall be no roads or other provision for motorized transportation, no commercial timber cutting, and no occupancy under special use permit for hotels, stores, resorts, summer homes, organization camps, hunting and fishing lodges, or similar uses: *Provided, however,* That where roads are necessary for ingress or egress to private property these may be allowed under appropriate conditions determined by the forest supervisor, and the boundary of the wilderness area shall thereupon be modified to exclude the portion affected by the road.

Grazing of domestic livestock, development of water storage projects which do not involve road construction, and improvements necessary for fire protection may be permitted subject to such restrictions as the Chief deems desirable. Within such designated wildernesses, the landing of airplanes on national forest land or water and the use of motor boats on national forest waters are prohibited, except where such use has already become well established or for administrative needs and emergencies.

Wilderness areas will not be modified or eliminated except by order of the Secretary. Notice of every proposed establishment, modification, or elimination will be published or publicly posted by the Forest Service for a period of at least

90 days prior to the approval of the contemplated order and if there is any demand for a public hearing, the regional forester shall hold such hearing and make full report thereon to the Chief of the Forest Service, who will submit it with his recommendations to the Secretary.* [Reg. U–1, Sept. 19, 1939; 4 F.R. 3994]

*§§ 251.20 to 251.25, inclusive, issued under the authority contained in sec. 1, 30 Stat. 35, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472.

§ 251.21 *Wild areas.* Suitable areas of national forest land in single tracts of less than 100,000 acres but not less than 5,000 acres may be designated by the Chief, Forest Service, as "wild areas," which shall be administered in the same manner as wilderness areas, with the same restrictions upon their use. The procedure for establishment, modification, or elimination of wild areas shall be as for wilderness areas, except that final action in each case will be by the Chief.* [Reg. U–2, Sept. 19, 1939; 4 F.R. 3994]

§ 251.22 *Recreation areas.* Suitable areas of national forest land other than wilderness or wild areas which should be managed principally for recreation use but on which certain other uses are permitted may be given special classification. Areas in excess of 100,000 acres will be approved by the Secretary of Agriculture; areas of less than 100,000 acres may be approved by the Chief, or by such officers as he may designate.* [Reg. U–3, Sept. 19, 1939; 4 F.R. 3994]

[*Preceding section in small type, superseded by following section during period covered by this Supplement*]

§ 251.22 *Recreation areas.* Suitable areas of national forest land other than wilderness or wild areas which should be managed principally for recreation use but on which certain other uses may or may not be permitted may be given special classification. Areas in excess of 100,000 acres will be approved by the Secretary of Agriculture; areas of less than 100,000 acres may be approved by the Chief, Forest Service, or by such officers as he may designate.* [As amended Oct. 3, 1939; 4 F.R. 4156]

§ 251.23 *Experimental and natural areas.* The Chief of the Forest Service shall determine, define, and permanently record a series of areas of national forest land to be known as experimental forests sufficient in number and extent adequately to provide for the experimental work necessary as a basis for forest production or forest and range production in each forest region, these areas to be dedicated to and used for research; also where necessary a supplemental series of areas for range investigations to be known as experimental ranges; and a series to be known as natural areas sufficient in number and extent adequately to illustrate or typify virgin conditions of forest or range growth in each forest or range region, to be retained in a virgin or unmodified condition for the purposes of science, research, and education. Within areas so designated occupancy thereof under a special use permit shall not be allowed, or the construction of permanent improvements permitted thereon, except improvements required in connection with their experimental use, unless authorized by the Chief of the Forest Service or the Secretary.* [Reg. U–4, Sept. 19, 1939; 4 F.R. 3994]

§ 251.24 *Use of public campgrounds.* Public campgrounds established upon national forest lands which are improved by the Forest Service, either from public funds or in cooperation with other public or private agencies, are for transient use by the public and shall not be occupied for extended periods or used for forms of occupancy which, in the opinion of the forest supervisor, are contrary to general public interest.

The forest supervisor may, in his discretion, prohibit the occupancy of designated campgrounds by house trailers, the erection or use of unsightly and inappropriate structures or appurtenances, and may fix a maximum limit upon the number of consecutive days during which any person or group of persons may occupy a designated campground.

Notice of such prohibitions or restrictions shall be given by a sign posted within said campground, and occupancy or use of the ground in violation of such prohibitions or restrictions is prohibited.* [Reg. U–5, Sept. 19, 1939; 4 F.R. 3994]

§ 251.25 *Occupancy and use.* Occupancy and use of national forest land shall be permitted only upon compliance with reasonable conditions looking to the promotion of public health, welfare, safety, or convenience. Public notices shall be posted by the forest supervisor,

*For statutory citation, see note to § 251.20.

setting forth such conditions with respect to any areas on which special restrictions should be imposed.* [Reg. U–6, Sept. 19, 1939; 4 F.R. 3994]

PART 261—TRESPASS

§ 261.2 *Fire uses restricted.*

* * * * *

(o) Having in possession, or firing or causing to be fired any tracer bullet or tracer charge onto or across such lands. (Sec. 1, 30 Stat. 35, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472) [As added May 24, 1939; 4 F.R. 2131]

§ 261.11 *Occupancy trespasses.*

* * * * *

(g) Occupying a public campground upon national forest lands for a period of time in excess of that established by the forest supervisor under the provisions of § 251.24.

* * * * *

(j) Occupancy or use of land in violation of conditions authorized by § 251.25. (Sec. 1, 30 Stat. 35, sec. 1, 33 Stat. 628; 16 U.S.C. 551, 472) [As amended Sept. 19, 1939; 4 F.R. 3994]

NOTE: Paragraph (g) of this section was amended and paragraph (j) was added, Sept. 19, 1939; 4 F.R. 3994.

*For statutory citation, see note to § 251.20.