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Regional Forester (Objection Reviewing Officer)
333 Broadway SE,
Albuquerque, NM 87102

RE: Objections to Santa Fe Mountain Resiliency Project

Dear Objection Reviewing Officer:

Please accept these objections to the Draft Decision Notice (“Draft DN”) for the Santa Fe Mountain Landscape Resiliency Plan, as well as the associated Final Environmental Assessment (“FEA”). The Responsible Official is Acting Forest Supervisor James D Duran. These objections are submitted on behalf of BlueRibbon Coalition (BRC), including BRC’s individual and organizational members who have enjoyed, and plan in the future to enjoy, access to the Santa Fe Mountain area.

These objections are submitted in accordance with 36 C.F.R. part 218. BRC filed comments on the Santa Fe Mountain Landscape Resiliency Plan and Draft Environmental Assessment (DEA) raising the stated issues or otherwise providing a basis for these objections. The point of contact for this objection is Ben Burr, please direct all communication regarding these objections to Ben Burr at PO Box 5449 Pocatello, ID 83202. We formally request a resolution meeting in accordance with 36 C.F.R. § 218.11. We hereby authorize, indeed encourage, the Reviewing Officer to extend the time for a written response to objections, particularly if it will facilitate a thorough effort to explore opportunities to resolve objections. See, 36 C.F.R. § 218.26(b).

I. Interest of the Objector

BRC has a unique perspective and longstanding interest in motorized vehicle use and vegetation management. BRC is a nonprofit corporation that champions responsible recreation and encourages individual environmental stewardship. BRC members use various motorized and nonmotorized means to access public lands and waters, specifically including use of the Santa Fe Mountain. BRC has a long-standing interest in the protection of the values and natural resources addressed in this process, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors.

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II. Objection Issues

We note at the outset that the agency has conducted a lengthy process, and addressed many of our concerns. We want to express our appreciation for the agency's thoughtful effort, support of stakeholder involvement and collaboration, and patience in this lengthy process. Still, there remain concerns with the current approach, and we raise the following objections, which provide a legal basis for our requested changes to the Draft DN.

The objection process necessarily anticipates the possibility and potential likelihood of success in subsequent litigation brought by an objector. In such a challenge the Administrative Procedure Act (APA) waives the United States' sovereign immunity for those aggrieved by "final agency action." 5 U.S.C. §§ 702, 704; *Lujan v. National Wildlife Federation*, 497 U.S. 871, 882 (1990). APA section 706(2) provides the relevant standard of review: a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (C) short of statutory right; [or] (E) unsupported by substantial evidence...." This standard of review is "narrow" but the agency:

must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made....Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983) (citations omitted). This is considered a deferential standard of review. Still, there always exists some level of litigation risk, and we believe the decision can be improved.

A. Proposed Road Closures and Users with Disabilities

BlueRibbon objects to the 1.5 miles of proposed road closure of Forest Service Road 79W.

"The Proposed Action includes closure of 1.5 miles of Forest Service Road 79W near Arroyo Hondo, which would have some impact on the Arroyo Hondo trailhead access in this area. It would require all users to park at the Arroyo Hondo trailhead rather than continue driving up the rough road, which many prefer to hike anyway."

Non-motorized users should not be given priority access to this area. Although this is a relatively small section of road, there is a unique recreational value with this portion of road that should be preserved. Road closures should only occur during travel management planning. This landscape resiliency project is not the appropriate time to be making decisions about forest system roads.

President Biden has issued an *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. Because this information constitutes new information based on *CFR § 218.8 C*, the USFS should update the plan and proposals to be consistent with the President Biden's *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* and the Department of Agriculture's Equity Action Plan. We recommend that the USFS use this planning process to finally begin to reverse its decades-long systematic discrimination against those with mobility impairment-related disabilities. This includes persons with disabilities and limited physical access.

On his first day in office, President Joe Biden issued an "Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." This executive order established "an ambitious whole-of-government equity agenda" which focuses on addressing "entrenched disparities in our laws and public policies," and mandates a "comprehensive approach to advancing equity for all, including people of

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color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”

Under this executive order, “The term ‘equity’ means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as ... persons with disabilities....” Historically, there has been no group more greatly marginalized and excluded by public land management policies, and motorized travel management policies in particular, than people with disabilities. Outdoor enthusiasts with ambulatory disabilities frequently rely on motorized travel as their sole means to enjoy recreating on public lands. Not everyone has the ability to hike into a remote wilderness area, but many such people are still able to drive Jeeps, side-by-sides, and ATVs, which are restricted to the designated motorized route network.

Management policies focused on “minimizing” the environmental impacts of motorized recreation have resulted in a dramatic decrease in motorized recreation opportunities on public lands over the last 20 years which has disproportionately impacted people with disabilities. Wilderness focused environmental groups with extreme ableist biases have pushed for more and more areas to be closed to motorized recreation and reserved exclusively for hikers, mountain bikers, and other “human powered” and “quiet use” forms of recreation in which many people with disabilities are unable to participate.

Every time motorized routes or areas are closed, people with disabilities that require the use of motorized means to access public lands are barred from those areas forever. There has been little recourse for such people in the past because the Americans With Disabilities Act does not require public land management agencies to consider disproportionate effects on the disabled community, but only requires that they be given access to public lands on equal terms with everyone else. As a result, the USFS has historically failed to give any real consideration to the impacts of motorized route closures on the disabled community when developing travel management plans.

The Biden Administration’s focus on equity, however, changes the equation. While the ADA focuses only on equality of opportunity, equity inherently focuses on equality of outcome. Any policy that is facially neutral but disproportionately harms a disadvantaged or marginalized group is considered inequitable. The USFS is therefore required by this executive order and others mandating that federal agencies consider “environmental justice” in NEPA proceedings to consider whether any route closures in the Santa Fe Mountain Landscape Resiliency Plan would disproportionately harm disabled users’ ability to access public lands.

Any approach to forest management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized access on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them. It is imperative that the USFS consider the access needs of disabled users in drafting the alternatives for this travel plan and ensure that people with disabilities who depend on motorized means do not lose access.

Ultimately landscape resiliency projects should only analyze vegetation and fire resiliency treatments in which we whole-heartedly support. This planning process should not be analyzing and implementing road closures because that is the purpose of the USFS Travel Management Rule.