

January 17, 2025

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Aspen-Sopris Ranger District
U.S. Forest Service
c/o Philip Nyland
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Carbondale, CO 81623

Submitted electronically: <https://cara.fs2c.usda.gov/Public//CommentInput?Project=67247>

RE: Aspen-Sopris Wildlife Habitat Improvement Project Supplemental EA

Dear Ranger Warner:

Thanks for the opportunity to comment on the Aspen-Sopris Wildlife Habitat Improvement Project (ASWHIP) supplemental environmental assessment (SEA). These comments are submitted on behalf of Wilderness Workshop (WW) and Rocky Smith.

We submitted comments on the ASWHIP project with a coalition of groups in January of 2011. *See* Exhibit 1 (attached). Many concerns raised in those comments remain applicable today and deserve reconsideration. We incorporate our 2011 comments here.

Our prior comments were largely supportive of the agency's proposal to use prescribed fire as a management tool and the reintroduction of fire to fire-dependent ecosystems. Now, though, the Forest Service wants flexibility to treat more of the project area mechanically. This SEA is intended to support a new decision giving the agency that flexibility.

For reasons discussed extensively in our 2011 comments, we favor the use of fire over mechanical treatment. We certainly understand the challenges the Forest Service has encountered during implementation of this project and the agency's desire for increased flexibility. We know there will sometimes be a need to suppress natural fires to protect communities and associated infrastructure. And we acknowledge that as a result, projects like this one, designed to produce or mimic the beneficial ecological impacts of wildfire, remain relevant.

Recent fires in the Los Angeles area underscore the threat and challenge of fire in the wildland urban interface (WUI) and the importance of proactive mitigation work to reduce the threat. However, not all of this project is proposed within the WUI, nor is the purpose and need of this project explicitly designed to reduce fuel loads or protect communities from the impact of wildfire. We are concerned that this project—which we hoped would be used as a reset, reintroducing fire and setting the expectation that all efforts would be made moving forward to let natural fire do its job—will necessitate an endless cycle of mechanical interventions.¹ Every

¹ *See* Attachment 1, at 5-6 (“After historic conditions are restored, future management should ensure that natural processes keep treated areas within that historic range of variability to the greatest extent practicable. Reliance on active management and human manipulation to keep areas within the historic range after treatment would mean that

effort should be made to let nature run its course in local forests rather than embarking on an interminable cycle of mechanical treatment. This is especially true if, as in this case, the forest service's original goal was to "us[e] prescribed fire to restore [the project area's] wildlife habitat characteristics" because habitat has "become degraded due to the disruption or cessation of fire as a natural disturbance event." *See Aspen-Sopris Wildlife Habitat Improvement Project EA* (June 2011), at 2, 3.

The comments below include suggested boundary modifications that would allow natural processes to take place while also protecting wilderness and other values. The boundary modifications may also simplify implementation. Comments below also identify analytical shortcomings that must be resolved prior to approval of the proposal.

I. The USFS Must Consider Reasonable Alternatives.

An EA "[s]hall include brief discussions of the need for the proposal, of alternatives as required by [NEPA] section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." *Id.* § 1508.9(b). The alternatives section is the "heart" of the agency's environmental analysis, and the agency must rigorously explore and objectively evaluate all reasonable alternatives. 40 C.F.R. § 1502.14. Courts have found that "failure to examine a reasonable alternative renders an [EA] inadequate." *Hualapai Indian Tribe v. Haaland*, No. CV-24-08154-PCT-DJH, at *46 (D. Ariz. Nov. 5, 2024).

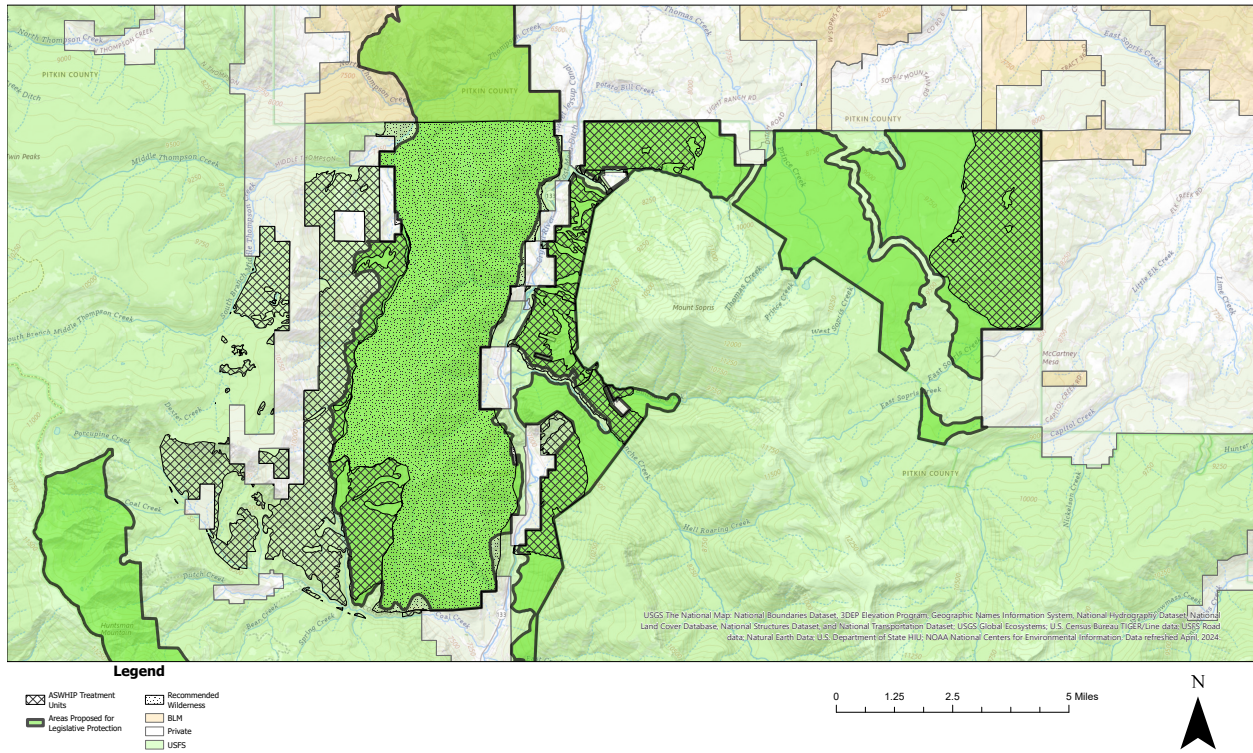
The purpose of this SEA is to "allow for greater flexibility in prescribed treatment options (prescribed fire and/or mechanical) to achieve the objective of wildlife habitat improvement over a greater extent of the planning area." SEA at 4. The SEA was undertaken by the Forest Service after years of implementing a 2011 decision made clear that prescribed fire treatments were infeasible in certain areas due to "specific conditions such as proximity to homes, private lands, terrain aspect, angle, access and location of the treatment area mid-slope relative to its position on a given slope (bottom, mid, or top)." SEA at 1. The SEA focuses on analysis of new circumstances and changed conditions. *Id.*

However, the draft fails to acknowledge some new information and changed circumstances that could affect approval and implementation, including legislative proposals intended to protect existing values on public lands that overlap several of the proposed treatment areas. As long as the agency is undertaking a supplemental analysis to consider new information with the goal of better implementing the proposed action, the Forest Service should consider modifying project boundaries in several discrete areas to avoid overlap and potential conflict with legislative proposals that would designate wilderness and other Congressional protections. Such an alternative could reduce potential conflict moving forward, protect existing values, and help the agency achieve its goal of more effectively implementing the proposed habitat improvements.

this project is simply the first action in an unending cycle of active management actions necessary to maintain desired conditions. That would be a very expensive and ecologically questionable permanent commitment."); *see also id.* (discussing how future management of treated areas should minimize the need for follow-up treatments).

Below we’ve provided maps of these areas, including their overlap with the proposed treatment areas (crosshatched), and some detail on the recent legislative proposals that should be considered.

Assignment Ridge, Crystal River, and Hay Park Areas
ASWHIP Treatment Areas and Legislative Proposals



Assignment Ridge has been proposed for wilderness in numerous proposals since ASWHIP was originally approved in June of 2011, including the Colorado Wilderness Act², the Central Mountains Outdoor Heritage Proposal³, the Hidden Gems Wilderness Proposal, and the area is the subject of current discussions with Congressional Offices.

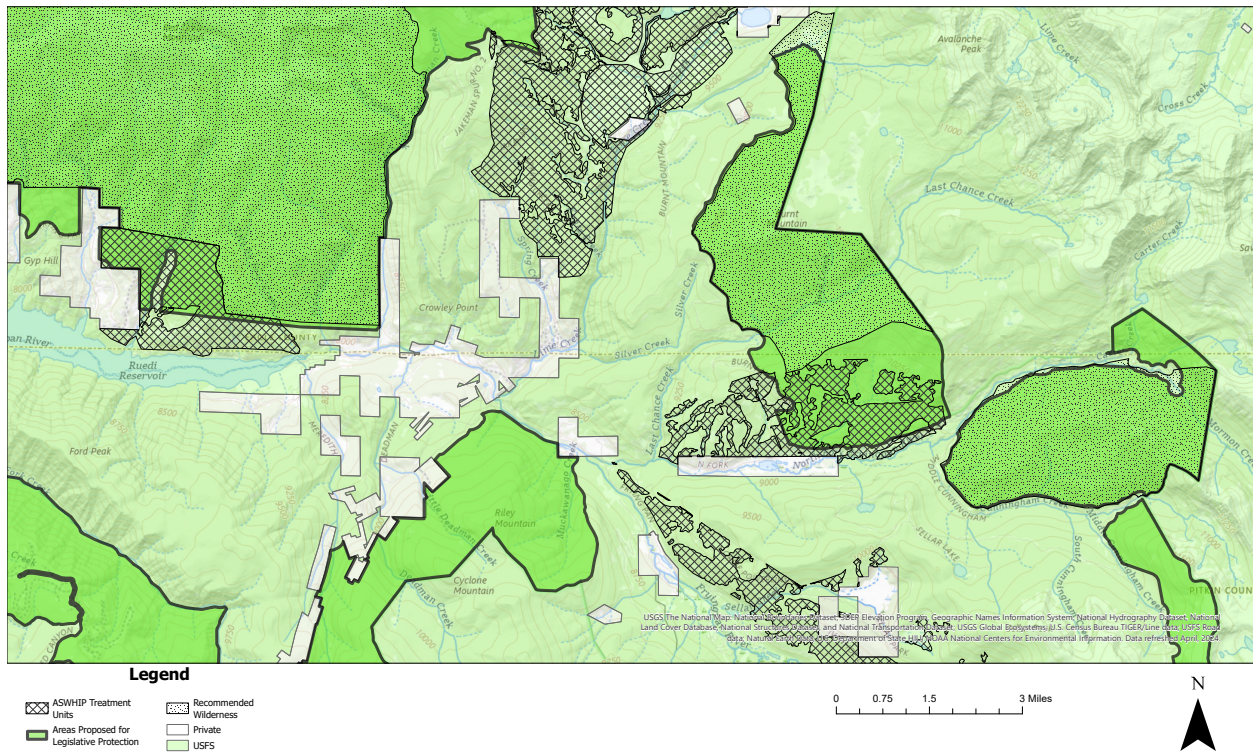
Crystal River and Hay Park have been proposed for wilderness in the Central Mountains Outdoor Heritage Proposal, the Hidden Gems Wilderness Proposal, and they are the subject of current discussions with Congressional Offices.

² See Congresswoman Diana Degette’s “Protecting Colorado’s Wilderness” webpage, available at <https://degette.house.gov/issues/protecting-colorados-wilderness#:~:text=The%20Colorado%20Wilderness%20Act%20will,level%20of%20permanent%20protection%20available> (last accessed 1/16/25); see also Congress.gov “H.R.9400 - Colorado Wilderness Act of 2024” webpage, available at <https://www.congress.gov/bill/118th-congress/house-bill/9400/text> (last accessed 1/16/25).

³ See map of Central Mountains Outdoor Heritage Proposal (attached as Exhibit 2).

Red Table and Woods Lake Areas

ASWHIP Treatment Areas and Legislative Proposals



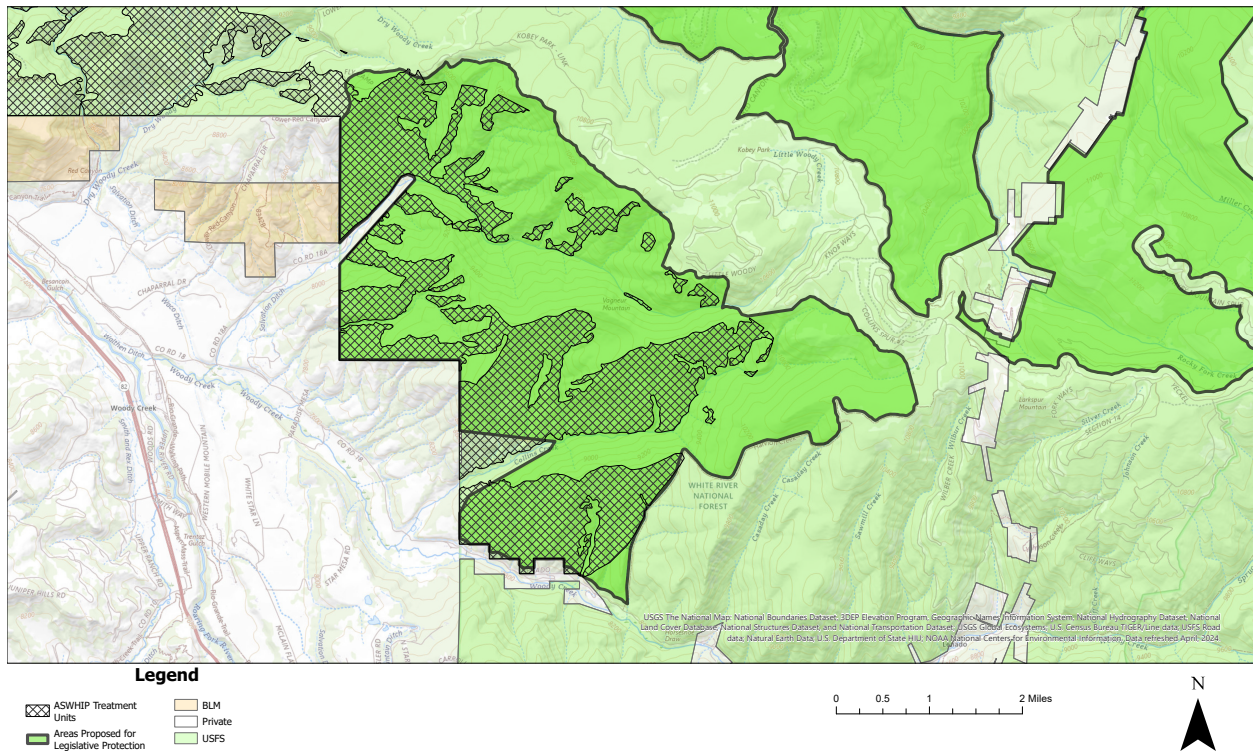
Red Table has been proposed as a Special Management Area in numerous recent proposals including the Central Mountains Outdoor Heritage Proposal, the Eagle and Summit County Wilderness Preservation Act⁴, the Hidden Gems Wilderness Proposal, and is the subject of current discussions with Congressional Offices.

Woods Lake has been included in the Central Mountains Outdoor Heritage Proposal, the Hidden Gems Wilderness Proposal, and is the subject of current discussions with Congressional Offices.

⁴ Congress.gov “H.R.1701 - To designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, to designate the Red Table Mountain, Pisgah Mountain, Castle Peak, Tenmile, Hoosier Ridge, and Porcupine Gulch Special Management Areas, and for other purposes” website, available at <https://www.congress.gov/bill/112th-congress/house-bill/1701/text> (last accessed 1/16/25).

North Woody Area

ASWHIP Treatment Areas and Legislative Proposals



The North Woody area has a long history of inclusion in citizen wilderness proposals and is the subject of current discussions with Congressional Offices.

RECOMMENDATION: The Forest Service must consider a reasonable alternative in this SEA that excludes all or some of these areas from proposed treatment to ensure protection of the values that legislative proposals aim to maintain. Doing so will reduce potential complications and conflict and help the agency achieve its goal of implementing this wildlife habitat improvement project.

- II. The Forest Service must adopt a final decision that protects important values and supports the purpose and need of the project.

After analyzing reasonable alternatives, the Forest Service should choose an alternative that both protects wilderness character and important wildland values identified by legislative proposals and advances the habitat enhancement goals of the proposed action.

At a minimum, the final decision should eliminate future treatments in the Assigination Ridge proposed wilderness, the northwest portion of the Hay Park proposed wilderness, portions of the Crystal River proposed wilderness near Avalanche Creek and portions of the North Woody and Woods Lake proposed wilderness. These areas are being actively discussed in current legislative

efforts and generally are located further away from human infrastructure, making them ideal locations to prioritize and protect Wilderness values.

We further emphasize that ASWHIP is a habitat improvement project, and therefore retained treatment areas and future treatments must primarily serve that purpose. If the Forest Service is considering existing ASWHIP treatment areas as beneficial for wildfire mitigation or other purposes, then the agency must instead prepare a new environmental analysis and decision document to show how those activities would mitigate fire risk, rather than simply retaining ASWHIP areas for that purpose.

We welcome the opportunity to discuss boundary modifications that would advance the goals of this project and the goals of these broadly supported legislative proposals.

RECOMMENDATION: The Forest Service should adopt a balanced alternative that removes treatment areas in the Assignment Ridge, the northwest portion of the Hay Park proposed wilderness, portions of the Crystal River proposed wilderness near Avalanche Creek, and portions of the North Woody and Woods Lake proposed wilderness.

III. The SEA Fails to Include Baseline Information to Inform Climate Analysis.

The National Environmental Policy Act (NEPA), 42 U.S.C.S. § 4321 *et seq.*, requires agencies to describe the environment to be affected by alternatives under consideration and ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. 40 C.F.R. § 1500.1(b); *see also* 40 C.F.R. § 1502.15. Accurate scientific analysis is essential to implementing the law.

NEPA further mandates that the agency provide the public “the underlying environmental data’ from which the Forest Service develop[ed] its opinions and arrive[d] at its decisions.” *WildEarth Guardians v. Mont. Snowmobile Ass’n*, 790 F.3d 920, 925 (9th Cir. 2015). Included in this underlying environmental data is consideration of baseline conditions.

Courts have consistently acknowledged the importance of obtaining information on baseline conditions prior to approving projects. *Half Moon Bay Fishermans’ Mktg. Assn. v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988); *see also Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1104 (9th Cir. 2016) (invalidating FEIS because for failure to consider baseline conditions). “The agency must explain the conclusions it has drawn from its chosen methodology, and the reasons it considered the underlying evidence to be reliable.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1075 (9th Cir. 2011) (citation omitted). In the end, “vague and conclusory statements, without any supporting data, do not constitute a ‘hard look’ at the environmental consequences of the action as required by NEPA.” *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 973 (9th Cir. 2006); *see also Ocean Advocates v. Army Corps of Engineers*, 402 F.3d 846, 869 (9th Cir. 2004) (finding that a vague and uncertain analysis is insufficient to meet NEPA’s mandate). Applying these principles, several cases have found environmental analyses insufficient for failing to establish an environmental baseline. *See e.g., Or. Nat. Desert Ass’n v. Jewell*, 840 F.3d 562, 564 (9th Cir. 2016).

Here, the SEA improperly relies on the 2011 decision as a baseline for its climate analysis. Reliance on the 2011 decision is indefensible since that decision has not been and probably cannot be implemented. Further, the 2011 decision was not supported by adequate climate analysis. Consequently, the agency's approach fails to satisfy NEPA's hard look requirement.

This SEA was undertaken because the 2011 decision proved unworkable. Based on the "experience of implementing both prescribed fire and mechanical treatments since 2011, planners gained a greater understanding of constraints and risks associated with implementing prescribed fire." SEA at 1. After it became clear that approvals made in 2011 were too challenging to implement, the Forest Service initiated this SEA to support a modified project that could be implemented.

Nonetheless, the SEA uses the 2011 decision as a baseline for comparison. The SEA says: "This analysis focuses on the change in treatment itself, not the entire project that was approved in 2011." SEA at 13. The agency's conclusion also confirms this approach: "The proposed action would not cause significant effects to the climate because the change from the approved treatment to the proposed treatment would release an insubstantial amount of greenhouse gas emissions." Id. at 14.

This approach masks the real climate impacts of the project. Rather than comparing existing conditions to potential impacts that would accrue from the proposed action, the SEA compares impacts of the proposed action to actions approved in 2011 that never transpired.

This error is compounded by the fact that the 2011 decision is unsupported by adequate climate analysis. The SEA claims that "[t]he 2011 environmental analysis considered climate change." SEA at 6. That is untrue. The word "climate" is only used a few times in the 2011 EA. That document includes no discussion of carbon stocks and greenhouse gas emissions and no analysis of related impacts. Instead, it focuses exclusively on equipment emissions: "Equipment emissions would be short term and quite small relative to GHG emissions in Colorado such that their impact to global climate change is not measurable." 2011 EA at 24.

NEPA requires more. The law mandates that the Forest Service provide the public with the underlying environmental data, including disclosure of baseline conditions. Neither the SEA nor the 2011 EA have taken a hard look at the climate impacts the proposed action would have on the existing environment.

RECOMMENDATION: The Forest Service's analysis should provide clear analysis disclosing the climate impacts of the proposed treatments compared to existing conditions as a baseline.

IV. The Project Must Maintain or Improve Roadless Characteristics.

The Colorado Roadless Rule includes a general prohibition on tree cutting, though there are limited exceptions that appear to apply to this proposed project. 36 C.F.R. § 294.42. Even where

exceptions apply, though, the Rule requires that the Forest Service maintain or improve roadless area characteristics over the long term. *Id.* at § 294.42(c).

The SEA proposes mechanical treatment of approximately 26,700 acres in the following Colorado Roadless Areas: Gallo Hill (82), Crystal River (70B), Hay Park (70A), Basalt Mt A (51A), Sloan Peak (61), and North Woody (71). SEA at 8. The Forest Service must ensure any final decision maintains or improves roadless characteristics in these areas.

Our 2011 comments raised concerns related to mechanical treatments in roadless areas. Use of heavy equipment, in particular, could impact and degrade roadless characteristics, including high quality or undisturbed soil, water, or air resources; primitive and semi-primitive recreation; and landscape character and integrity. *See* Attachment 1, at 2-3.⁵

The SEA should include information gleaned from treatments that have already been undertaken. Did the project design criteria effectively protect roadless values? Are there modifications to those design criteria that would better protect these special places? Have roadless characteristics been maintained and/or improved in treated areas?

The SEA notes that some of the areas already treated have recovered to the point where they may need “secondary treatment.” SEA at 12. This cycle of ongoing treatment is not analyzed by the Forest Service, but it should be, as it is a reasonably foreseeable action. If this project is not intended to be a “one-time” reset, then the foreseeable impacts of continued treatment over a longer term must be considered. “Constant gardening” may result in a need to maintain roads or other paths for workers to access the roadless areas. These corridors could create vectors for new recreation (including public motorized use) as well as weed introduction and spread. Frequent treatment would degrade naturalness and may cause lasting impacts to other roadless characteristics. These issues are not discussed in the SEA, but they raise questions about whether the proposed treatments will maintain or improve roadless area characteristics.

RECOMMENDATION: The Forest Service must choose an alternative that maintains or enhances roadless characteristics within the Colorado Roadless Areas that would be treated by this project. Further, the agency’s analysis should include sufficient detail to support a conclusion that the final decision will maintain or improve roadless characteristics.

V. Additional Questions

This SEA presents an opportunity to modify the project based on lessons learned, but—aside from the challenges of implementing prescribed fire—it does not include any such discussion. Have weed mitigation protocols been adequate? Has the agency undertaken monitoring of treatments that confirms their efficacy and that the impacts are no more than what was expected? That information should be included in the SEA.

⁵ Our 2011 comments referred to the roadless area characteristics in the national Roadless Area Conservation Rule (RACR), which then applied to Colorado Roadless Areas. In 2012, the Colorado Roadless Rule (CRR) became effective. The definition of “roadless area characteristics” in the CRR is the same as in RACR.

Our 2011 comments also urged the Forest Service to monitor treated areas to better assess the efficacy of treatments, make corrections, and adjust future treatments. *See* Attachment 1 at 8. We suggested monitoring vegetation composition (especially including any presence of weeds), vegetation condition, soil erosion, water quality, wildlife use, and any human use of treated areas that could affect achievement of the desired conditions. We also suggested using control sites that would not be treated for purposes of comparison to help gauge the results of treatment. It does not appear that the Forest Service has undertaken formal monitoring. We urge the agency to incorporate a monitoring plan into any approval. If there is monitoring data on existing treatments, the agency should incorporate that information into the SEA and make it publicly accessible.

Thank you for your consideration,

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Attachments: 2