Data Submitted (UTC 11): 9/26/2023 6:00:00 AM
First name: Bob
Last name: Randall
Organization: Keep Routt Wild
Title: Attorney
Comments: Mr. Bacon,

Keep Routt Wild hereby submits its objection to the US Forest Service's decision on the Mad Rabbit Trails Project #50917, and accompanying exhibits. The letter and exhibits were sent yesterday to your attention via USPS Priority Mail (tracking number 9510-8122-0958-3268-6709-85) and also via email and fax.

Please let me know if you have trouble accessing this submission. Thank you for your consideration of Keep Routt Wild's objection to the Mad Rabbit Trails Project #50917.

Sincerely,

Bob Randall

Sarah Judkins

Attorneys for Keep Routt Wild

September 25, 2023

Russell Bacon, Reviewing Officer

USDA Forest Service

Medicine Bow-Routt National Forests and Thunder Basin National Grassland

2468 Jackson Street

Laramie, WY 82070

Via Electronic Filing Submission

Re: Objection to the Mad Rabbit Trails Project #50917

Dear Mr. Bacon,

Keep Routt Wild (KRW), through its undersigned attorneys, submits this objection to the Mad Rabbit Trails Project #50917 (Project) in the Routt National Forest (Forest) pursuant to 36 C.F.R. Part 218. In addition to previous comments in the record with the Forest Service on this Project, see Exhibit A, KRW submitted written comments on the Draft Environmental Assessment (DEA), describing the inadequacy of the agency[rsquo]s analysis of the proposed action under the National Environmental Policy Act and its concerns about the negative effects of the proposed action.[1] Although the Forest Service[rsquo]s Final Environmental Assessment (FEA) and draft Finding of No Significant Impact (FONSI) have several changes compared to the DEA, the environmental assessment still fails to [ldquo][b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.[rdquo] 40 C.F.R. [sect] 1508.9(a)(1) (1978).

This objection raises key deficiencies with the Forest Service[rsquo]s reliance on the FEA to support its Finding of No Significant Impact (FONSI), which KRW previously raised in its comments on the DEA:

* The FEA and draft FONSI improperly segmented review of a comprehensive and interconnected trail system;2
* Approving the proposed action without conducting an EIS violates the Colorado Roadless Rule;[2]
* The Forest Service relied on invalid scientific information to establish an inappropriate buffer for elk habitat areas;[3]

* The Forest Service relied on improper and inappropriate habitat models;[4]
* The Forest Service may not mitigate impacts from newly developed trails by closing old illegal trails;[5]
* The FEA and draft FONSI improperly rely on an outdated Forest Plan which is no longer scientifically valid;[6] and
* The Forest Service failed to address KRW[rsquo]s compromise proposal, including its adaptive management protocols to ensure only minimal impacts from a project with a smaller scope.

Because of these deficiencies, KRW objects to the FEA and draft FONSI. To comply with NEPA, Forest Service statutory and regulatory requirements, and the Colorado Roadless Rule, the Forest Service must withdraw the FEA and draft FONSI and defer decision on the Project while it prepares an environmental impact statement (EIS) or until a new Forest Plan has been adopted. An EIS is necessary to comprehensively analyze the cumulative impacts of the trail system and other developments in Steamboat Springs and surrounding lands and due to the significant effects of the proposed Mad Rabbit Project on the environment. The EIS must: afford

detailed consideration to a reasonable range of alternatives, including an alternative akin to the compromise proposal that KRW has previously presented to the Forest Service, see Exhibit D; assume that current unauthorized trails will be closed, not as part of the Project or as mitigation for the Project; analyze the Project[rsquo]s impacts using updated habitat models and disturbance buffers that are consistent with sound science and current knowledge; and otherwise comply with NEPA[rsquo]s and other requirements for an EIS.

1. Background on KRW

KRW is a community organization dedicated to preserving wildlife and wild places in Routt County. Its mission is to promote policies and practices for the benefit of conserving the Yampa Valley for future generations of outdoor enthusiasts by balancing opportunities for recreational development with the habitat needs of wildlife. Its members are hikers, bikers, hunters, anglers, skiers, ranchers, and local business owners that call Routt County home.

KRW has been engaged with and involved in the Mad Rabbit Trails Project proposal for over four years. KRW participated in the Routt Recreation Roundtable in late 2018 and early 2019, which discussed the Mad Rabbit Trails Project and recreation around Steamboat. KRW submitted its first set of detailed comments on the Mad Rabbit Trails Project on August 9, 2019, submitted a second set of objections on August 14, 2019, and submitted numerous letters to the Forest Service over the last several years. As discussed above, KRW submitted comments on the DEA in opposition to the Project. KRW incorporates by reference this previous correspondence with the Forest Service, attached as Exhibit A, into these comments.

1. The Final EA and Draft FONSI Improperly Segmented Review of a

Comprehensive Trail System.

NEPA requires agencies to consider connected, cumulative, and similar actions in the same NEPA document and analysis. See 40 C.F.R. [sect] 1508.25(a)(1)-(3). Agencies cannot minimize the potential environmental consequences of a proposed action [ldquo]by segmenting or isolating an individual action that, by itself, may not have a significant environmental impact.[rdquo] Citizens[rsquo] Comm. to Save Our Canyons v. U.S. Forest Serv., 297 F.3d 1012, 1028 (10th Cir. 2002). This is to prevent agencies from [ldquo]artificially subdivid[ing][rdquo] major federal actions into [ldquo]small, individually insignificant projects[rdquo] to avoid or shortcut the NEPA process. SeeSan Juan Citizens[rsquo] All. v. Salazar, 2009 U.S. Dist. LEXIS 29804, *45 (D. Colo. Mar. 30, 2009) (citing Citizens[rsquo] Comm., 297 F.3d at 1028). [ldquo]The anti-segmentation rule prevents agencies from issuing multiple EAs finding no significant impact for specific actions where the integrated project would have a significant environmental impact and require the issuance of a detailed EIS.[rdquo] Audubon Soc'y of Greater Denver v. U.S. Army Corps of Eng'rs, 2017 U.S. Dist. LEXIS 204127, *45 (D. Colo. Dec. 12, 2017).

Like the DEA, the FEA and draft FONSI fail to analyze the impacts of the Project in concert with the earlier Buffalo Pass Trails Project and subsequent recreation developments in the Hahns Peak/Bear Ears Ranger District. This violates NEPA[rsquo]s mandates to consider connected, cumulative, and similar actions in the same NEPA document and analysis and to avoid segmenting one larger project into several, smaller environmental analyses.

The Mad Rabbit Trails Project is just one piece of a comprehensive trails program in the Hahns Peak/Bear Ears Ranger District that the Forest Service has failed to analyze in an inclusive manner. NEPA demands that the different phases and segments of this program be analyzed together. Mad Rabbit is part of the larger phased trails program funded by the City of Steamboat Springs under the 2013 ballot proposal 2A, known as the Steamboat Springs Trails Alliance (SSTA) proposal. The SSTA proposal details the trails network to be developed with 2A funding, including many of the Buffalo Pass and Mad Rabbit trails, and was a legal part of the ballot measure. Shortly after approval of Amendment 2A in 2013, the Forest Service recognized that the 2A tax funds, along with other motorized trails grants, presented [ldquo]the need for a comprehensive trails planning effort on the District.[rdquo]USFS Mad Rabbit Trails ProjectNewsletterat 1. As a result, the Forest Service

developed an updated Trails Master Plan in 2015 to guide overall development of trails in the Hahns Peak/Bears Ears Ranger District. To the best of KRW[rsquo]s knowledge, the Forest Service did not conduct any analysis under NEPA when approving that Master Plan.

The [ldquo]first area[rdquo] selected for implementation under this Plan and funded pursuant to the

2A Proposal was the construction of approximately 40 miles of Forest Service trails in the Buffalo Pass area. See Newsletter at 2. The Forest Service characterized this project as a [ldquo]subset of the districtwide Trails Master Plan.[rdquo] USFS, Buffalo Pass Trails Project: Environmental

Assessment & Finding of No Significant Impact (May 2016) at 4. The Forest Service approved this first phase after conducting only a brief analysis in an EA and issuing a FONSI. See id. at 43.

The Forest Service has repeatedly stated that the Mad Rabbit Trails Project is the second phase in its decade-long redevelopment of the Hahns Peak/Bears Ears Ranger District. See Newsletter at 2 ([ldquo]With implementation of the Buffalo Pass Trails Project underway, the District is looking at the next phase of trail development with the Mad Rabbit Trails Project[rdquo]); see also USFS, Forest Service Seeking Public Input on Mad Rabbit Trails Project (Jan. 9, 2018) (describing the Mad Rabbit Trails Project as [ldquo]part of a larger comprehensive trail planning effort by the Hahns Peak/Bears Ears Ranger District, the City of Steamboat Springs, and multiple partners[rdquo]).

This phased development is further confirmed by an internal email Brendan Kelly wrote and sent to the internal Forest Service Mad Rabbit team, acquired through a FOIA request and attached as Exhibit B. For the record, at the time Mr. Kelly was a Forest Service Recreation Specialist and the team leader of the Mad Rabbit Trails Project. In that email to team members, he described the history behind the Mad Rabbit Trails Project. That email begins with the 2013 Steamboat Trails Alliance proposal, and it describes the Buffalo Pass trail EA as Phase 1 of that proposal and Mad Rabbit as Phase 2. This is a clear admission that the trails considered in the Buffalo Pass EA and those currently being evaluated in the Mad Rabbit EA are connected actions under NEPA and must be considered in a single NEPA document. NEPA prohibits segmenting these connected actions and considering their impacts in isolation.

Indeed, since the time the Forest Service requested comments on this project, it has begun identifying additional projects to be included in the next phases of its efforts. These subsequent projects have proceeded along similar lines with abbreviated EAs resulting in FONSIs. For example, the Buffalo Pass Road Reconstruction Project was announced September 13, 2019, with proposed road improvements and recreation management for the Buffalo Pass Road corridor. This road serves as an access point to many of the trails approved in the Buffalo Pass Trails Project and is an integral part of the recreation network. The deterioration of this road has been accelerated by the increased use of the Buffalo Pass trails, and its improvement will increase trail use in the area. KRW articulated its concerns about the project, and the associated NEPA issues, in a letter to the Forest Service dated October 17, 2019, attached as Exhibit C.

Another connected project is the Muddy Pass gap reroute that the Continental Divide Trail Coalition is currently developing. The purpose of this reroute is to avoid 11 miles of pavement along U.S. Highway 40, State Highway 14, and Jackson County Road 53. The proposal would connect with the Continental Divide Trail (CDT) near Trail 7, perhaps even connecting to it. Despite this, the FEA and FONSI contemplate adding trails that loop to the current CDT without accounting for how the Muddy Pass gap project will change the geographic area[rsquo]s terrain. Overlooking these two projects shows why the Forest Service must create a comprehensive geographic plan as opposed to allowing a collage of haphazardly built trails.

The Forest Service acknowledges previous and subsequent trail projects are constituent parts of a comprehensive plan to reimagine recreation in the Hahns Peak/Bears Ears Ranger District. Yet the Forest Service refuses to evaluate the environmental impacts of these connected actions and this comprehensive plan at geographic scale. Instead, it continues to approve each project through EAs that only superficially mention the related projects, fail to analyze the cumulative and indirect impacts of these connected actions, and refuse to consider a reasonable range of alternatives at a programmatic scale accounting for the interconnectedness of these projects. The FEA and draft FONSI continue this pattern. See, e.g., FEA at 58 (noting there are [ldquo][r]ecent cumulative impacts[rdquo] relevant to elk habitat effectiveness including the 48.6 miles of trail approved under the Buffalo Pass Trails Project, without any further analysis).

The Forest Service failed to conduct this broader comprehensive analysis in the FEA; as a result, the Forest Service has never meaningfully analyzed the various projects described above as connected actions or the cumulative effects of this comprehensive trail system. This is inconsistent with the intent of NEPA to provide a thorough, full identification and analysis of a proposal[rsquo]s impact and reasonable alternatives to incurring that impact prior to approving a project. As a result, the Forest Service[rsquo]s approval, through the FONSI, of this project without the analysis of the full cumulative impacts of the comprehensive trails system would violate NEPA.

III. Approving the Project without Conducting an EIS violates the Colorado Roadless Rule.

A significant portion of the Project[rsquo]s trails are located within the Long Park Colorado Roadless Area (CRA), the Mad Creek CRA, and the Walton Creek CRA. These lands are protected by the Colorado Roadless Rule, which requires the preparation of an EIS for actions that would [ldquo]significantly alter the undeveloped character of a [CRA].[rdquo] 36 C.F.R. [sect] 294.45(a). Even after KRW and others commented on this requirement, the Forest Service still failed to analyze the proposed action[rsquo]s impact on the undeveloped character of any of the CRAs, particularly the Long Park CRA where most of the development is proposed to occur. And those impacts are immense and significant, as discussed below. Therefore, an EIS is required under the Colorado Roadless Rule and the Forest Service would violate that Rule in approving the Project through an EA and FONSI.

The Forest Service[rsquo]s profile of the Long Park CRA states that [ldquo][m]uch of the CRA appears undisturbed, with little evidence of modification[rdquo] and further states that development and intrusion on the fringes of the CRA detract from its natural appearance. USFS Rocky Mountain Region, Profiles of Routt National Forest Roadless Areasat 13 (July 23, 2008). As the Forest Service has recognized, recreational use of CRAs can significantly alter the undeveloped character of a roadless area, including opportunities for solitude. Id. As explained in KRW[rsquo]s comments on the DEA,[7] KRW performed a traffic estimate based on the SSTA Proposal[rsquo]s estimated incremental number of visitors, which projects an incremental 1,740 users per day

will visit the Mad Rabbit

Trails Project area over the summer months; this will significantly alter the undeveloped characteristics of the Long Park CRA, as seen by examining two characteristics [ldquo]often present in[rdquo] CRAs. 36 CFR [sect] 294.41.

First, CRAs are a [ldquo][h]abitat for threatened, endangered, and sensitive species, and species dependent on large undisturbed areas of land.[rdquo] Id. Elk are a species dependent on large undisturbed areas of land. As discussed herein and in KRW[rsquo]s comments on the DEA, the Forest Service insufficiently analyzed the proposed action[rsquo]s impact on elk, noting the DEA: (1) uses outdated data on elk habitat effectiveness, see infra Section V; (2) relies on avoidance assumptions unsupported by record evidence, see infra Section IV; (3) recommends actions inconsistent with best management practices, see supra Section IV; (4) underemphasizes the significance of declining elk health and elk habitats, see supra Section VII; and (5) underemphasizes the intensity of recreation impacts on elk health and habitat, see supra Section VII.

Second, CRAs are [ldquo][p]rimitive, semi-primitive non-motorized and semi-primitive motorized classes of dispersed recreation.[rdquo] 36 C.F.R. [sect] 294.41. The FEA claims it [ldquo]maintains or improves semi-primitive non-motorized opportunities in each of the three Colorado Roadless Areas, with notable improvements in the Long Park Colorado Roadless Area where there is a lack of semi-primitive trail experiences.[rdquo] FEA at 71. But it fails to explain how constructing highvolume trails built for tourism meets the Forest Service[rsquo]s definition of semi-primitive recreation. The Forest Service defines semi-primitive non-motorized recreation opportunities as follows:

The area is 1/2 mile from all roads or trails with motorized use and generally exceeds 2,500 acres to 5,000 acres in size unless contiguous to wilderness. The area can include primitive roads and trails if they are usually closed to motorized use. Access roads are Level 1. The natural setting may have subtle modifications that would be noticed but would not draw the attention of an observer in the area. Structures are rare and isolated. The social setting provides for 6 to 15 parties encountered per day on trails and 6 or less parties visible at campsites. On-site controls are present but subtle. Interpretation is through self-discovery with some use of maps, brochures and guide books. Typical activities include hiking, horseback riding, cross-country skiing, canoeing, hunting and fishing.

USFS Recreation Opportunity Spectrum(emphasis added).

Similarly, the Forest Service ROS Primer and Field Guide states with respect to Social Encounters: [ldquo]This factor refers to the number and type of other recreationists met along travelways, or camped within sight or sound of others. This setting indicator measures the extent to which an area provides experiences such as solitude, or the opportunity for social interaction. Increasing the number of visitors to an area changes the kind of recreation experience offered, attracting new users and causing others to leave.[rdquo] The Primer states for semi-primitive non-motorized, [ldquo]6-15 parties met per day. 6 or less parties seen at campsite.[rdquo]

The Forest Service has not analyzed or explained how a project projected to add 1,740 incremental users per day to a trail system meets this criterion for a semi-primitive, non-motorized area of encountering 15 or fewer parties per day. Assuming an average party size of two, and trail users spread equally across the new trails, the average encounter rate would be over 50 parties encountered per hour. This far exceeds the 15 parties per day limit of semi-primitive nonmotorized. This issue is particularly salient for the Ferndale area, where there are approximately 17.8 miles of trail within a 1.5 mile radius. This is very high density for a CRA, particularly because these trails are in a Colorado Parks and Wildlife (CPW)-mapped elk production area. Because these trails have easy access from U.S. Highway 40, there is very high likelihood that traffic on these trails will well

exceed the limit for semi-primitive non-motorized areas.

Moreover, the Forest Service aggregated the effects of the Project across all three CRAs within the Project area in order to evaluate compliance with the Colorado Roadless Rule. This is not authorized by the Colorado Roadless Rule, as the text of the rule is explicitly singular. Each CRA must be evaluated separately. In particular, the FEA eliminates some impacts in the Mad

Creek CRA by rehabilitating unauthorized trails to compensate for new impacts in the Long Park CRA due to newly authorized trails. See Worksheet [ndash] Roadless Area Characteristics (Worksheet). Table 5 in Appendix D is explicit. Summing new trail mileage and subtracting the mileage due to removal of unauthorized trails was calculated for each CRA, and then summed. Putting aside that seldom-used unauthorized trails present much lower impacts than new trails built for high use and tourism, it shows that Mad Creek CRA netted a loss of 10.1 miles of trail, while Long Park CRA netted an increase of 20 miles of trails, with a net sum of approximately 10 miles across all three CRAs. Site-specific analysis, as NEPA and the Colorado Rule require, mandates that each CRA be evaluated independently for each characteristic along with the undeveloped character of that CRA.

Although the Colorado Roadless Rule does not prohibit these types of activity in a CRA, it does require the preparation of an EIS to analyze these impacts prior to the Forest Service approving the Project. The Project will significantly alter the undeveloped character of a CRA due to its significant impacts on a species dependent on large undisturbed areas of land (elk) and an area designated as semi-primitive non-motorized. As a result, the Forest Service[rsquo]s failure to complete an EIS for the Project violates the Colorado Roadless Rule.

IV. The Forest Service Relied on Invalid Scientific Information to Establish an Inappropriate Buffer for Elk Habitat Areas.

In the FEA, the Forest Service supports much of its analysis and draft FONSI by observing that many trails are located within one mile of an [ldquo]open road,[rdquo] including U.S. Highway 40. It claims that this minimizes the impacts to elk habitat from the new trails. FEA at 39. None of the studies the Forest Service cites support this [ldquo]one mile[rdquo] concept and it is inconsistent with sound science and current knowledge on the subject as evidenced in recent studies on the subject.

The Forest Service purports to rely upon two scientific studies, Wisdom (2018) and Wisdom and Johnson (2019) to support this one-mile buffer. However, neither study mentions this recommendation. For example, the FEA[rsquo]s Analysis Methodology for Terrestrial Wildlife section states [ldquo]Recommendations from Wisdom et al. (2018) were also followed to keep trail development within one mile of open roads to maintain habitat effectiveness within large, undisturbed blocks including habitats within the Long Park Colorado Roadless Area [hellip] Wisdom and Johnson (2019) found this type of trail planning reduces habitat compression by maximizing large undisturbed areas with high habitat value.[rdquo] FEA at 39. However, neither study includes that recommendation, or any recommendation, regarding placing trails near open roads or at what distance. The Forest Service repeats this error in the Terrestrial Biological Evaluation (TBE), dated October 20, 2022, stating: [ldquo]Wisdom et al. (2018) was a guiding document for the Mad Rabbit Trails project to keep trail development within one mile of open roads.[rdquo] TBE at 16.

This one-mile buffer is similarly not supported by any of the literature cited in the Analysis Methodology for Terrestrial Wildlife. The FEA cites Wisdom (2018) for the fact that a distance response by elk to trail-based recreation mirrored the avoidance distances (0.3 -1) by elk to open roads. There are several problems with the Forest Service[rsquo]s interpretation of this finding. First, the Forest Service assumed, without explanation, a one-mile avoidance distance to open roads, even though the study reported a range. Second, the Forest Service

considered U.S. Highway 40, a major cross-country highway, to be an open road with similar characteristics to the [ldquo]open roads[rdquo] studied in Wisdom; but Wisdom (2018) defined [ldquo]open roads[rdquo] as [ldquo]forest roads open to traffic,[rdquo] not paved highways. Subsequent research from Dr. Wisdom shows that this equivalence is false: highways have smaller disturbance distances than human activity on recreational trails. See Wisdom, Modeling Elk Habitat Use in the Blue Mountains of Oregon and Washington, Slide 23 (2020). A Federal Highway Administration (FHWA) study supports this conclusion as well. See

Ward et al., Effects of Highway Operations, Practices, and Facilities on Elk, Mule Deer, andPronghorn Antelope (1980). These studies make clear the inadequacy and inaccuracy of the Forest Service[rsquo]s analysis and assumption that placing recreational trails within one mile of U.S. Highway 40 will significantly reduce or eliminate incremental disturbance to elk. The FEA conclusion is based on a misunderstanding of Wisdom et al. 2018 and inconsistent with the best available science. It also ignores the extended disturbance distances from the recreational trail itself. Accordingly, the Forest Service should use 400m as the actual avoidance buffer from US 40, with 800m being the maximum zone of influence, and prepare a proper GIS analysis using disturbance bands based on data from research, as required by NEPA.

Moreover, the Forest Service failed to follow the guidelines and best practices they purport to rely upon. The Terrestrial Biological Evaluation states: [ldquo]This project has incorporated guidance and best management practices from the Colorado[rsquo]s Guide to Planning Trails with Wildlife in Mind (Colorado Trails Taskforce 2021).[rdquo] TBE at 13. However, the Project took several exceptions to this guide, justifying the exceptions, in part, by restating the erroneous understandings of Wisdom et al. (2018) documented above.

For example, the Forest Service uses one guideline that trail densities in elk production areas not exceed one linear mile of trail per square mile (mi/sq. mi). However, trail densities far exceed this one mi/sq. mi in several locations, most notably in the Ferndale area and along Highway 40. A trail density measurement in the Ferndale area found 17.81 miles of nonmotorized trails within a 1.5 mile radius search radius, equating to over 2.5 mi/sq. mile. These trails traverse elk calving areas and should be limited to the 1 mi/sq. mi guideline. The one-mile buffer, refuted above, does not give immunity to the guideline. The area where the trail density was measured is shown in the image below.

This is not the only instance of the Forest Service failing to follow the best practices detailed in the Guide to Planning Trails with Wildlife in Mind ([ldquo]Guide[rdquo]). First, the Forest Service did not avoid locating new trails within CPW-mapped elk production areas. See Guide at 44. The Forest Service could have achieved this by moving the trails from the north side of U.S. Highway 40 to the south side of the highway. The FEA refused to analyze this alternative in detail, stating that [ldquo][a]dding new trails on the south side of U.S. Highway 40 would require developing several new trailheads, and certain potential trailhead locations raised safety concerns . . . with the Colorado Department of Transportation.[rdquo] Id. at 9.

Second, the Forest Service did not implement seasonal timing restrictions for trail users from May 15 through June 30. Over 14 miles of proposed trails (Trails 19, 20, 21, 22, and 30) through CPW-mapped elk production areas have no closure at all. This is inconsistent with the Guide[rsquo]s best management practice of [ldquo]implement[ing] seasonal timing restrictions for all trail users from May 15 through June 30[rdquo] for [ldquo]trails within elk production areas[rdquo] and [ldquo]implement[ing] seasonal timing restrictions for all trail users from December 1 through April 30[rdquo] for [ldquo]trails within elk winter range.[rdquo] Id. Additionally, the trails that do have a seasonal closure have a conditional seasonal closure, that will not go into effect if there is [ldquo]12[rdquo] or more average snowpack depth.[rdquo] FEA at 104. This is a new condition, added since the DEA, but the Forest Service does not cite any scientific study supporting that elk production area closures are unnecessary at 12[rdquo] snow depth. Indeed, the evidence is that cow elk will tolerate high levels of snowpack as they search to give birth. CPW reported a radio-collared cow elk that migrated 250 miles, and crossed the Continental Divide, giving birth to a female calf in the area of Mexican Ridge in North Park on June 13, 2019. The Tower weather station, nearby on the Continental Divide, reported 83 inchesof snow on that date.

Third, the Forest Service did not implement year-round dog-on-leash restrictions. This is inconsistent with the Guide[rsquo]s finding that it is a best management practice to do so [ldquo][f]or trails within elk winter range, production areas, and summer concentration areas.[rdquo] Id. No reason was given for this exception.

As discussed above, several key elements of the Forest Service[rsquo]s trail routes are unsupported by the cited studies or do not follow best management practices (which the Forest Service purports to follow). Due to these deficiencies, the Forest Service[rsquo]s analysis in the FEA does not support the conclusion to approve the Project through a FONSI, rather than an EIS.

V. The Forest Service Used Improper and Inappropriate Elk Habitat Models.

The FEA[rsquo]s reliance on outdated science compromises much of the analysis in the FEA. As one example, the Forest Service used the outdated elk habitat effectiveness (HE) tool, rather than methods consistent with sound science and current knowledge on the subject, such as disturbance analyses. HE is a metric measuring the percentage of usable habitat during the nonhunting season. The Forest Plan sets a standard of 50% or more for elk HE in the Middle Yampa Geographic Area (MYGA), which KRW takes no issue with. Early analytic models used crude estimates of road density and cover availability, irrespective of their location, to estimate HE. However, methods consistent with sound science and current knowledge now use disturbance band analysis superimposed over habitat to calculate HE.

Instead of using contemporary methodologies, the FEA calculates elk HE with an obsolete estimation technique published in 1983. The FEA cites [ldquo]calculations for habitat effectiveness [that] were completed in 1999 and recently updated in 2021.[rdquo] FEA at 39. The 1999 calculations used the HE model developed by L. Jack Lyon in 1983. SeeForest Plan Final EIS Appendix B at 48 (noting the Forest Plan revision relied on a slightly modified version of the 1983 methodology when making its 1999 calculations); see also FEA at 39 (describing the 1999 calculations in the FEA identically to the calculations in Forest Plan Final EIS Appendix B). The 2021 update also relied on the methodology from 1983. Yet, the 1983 technique does not include trails in the indexes for hiding cover or open roads, see FEA at 39-40, meaning the FEA does not evaluate the central objective of the Mad Rabbit Trails Project[mdash]trail construction and usage[mdash]when analyzing elk HE. [ldquo]There is no change in habitat effectiveness from the no action related to the Mad Rabbit proposal. Trails are not part of the calculation for habitat effectiveness.[rdquo] FEA at 40. This makes the use of the elk HE model chosen by the Forest Service to be inaccurate and inappropriate for analyzing the impact from the Mad Rabbit Trails Project.

Furthermore, a contemporary study by Forest Service researchers found that models based on open road density, as the case with the FEA model, performed poorly in comparison to models based on distance bands using GIS analysis. Rowland et al.,Effects of Roads on Elk: Implicationsfor Management in Forested Ecosystems, at 3 (2005). It states:

Knowledge has been gained not only about elk response to roads, but also about modeling this relationship. Results from research at Starkey suggested that a roadeffects model based on distance bands provides a more

spatially explicit and biologically meaningful tool than a traditional model based on road density (Rowland et al. 2000). This analysis, based on more than 100,000 radiolocations of cow elk during spring and summer, found no relation between numbers of elk locations and HE scores based on open road density in 15 elk [ldquo]analysis units.[rdquo] However, elk preference increased strongly (as measured by selection ratios) as distance to open roads increased. Such distance-to-roads analyses are readily accomplished using widely available spatial data layers in a GIS.

Equally important, contemporary methodologies, like that shown above, indicate elk HE is more challenged than the FEA suggests. KRW, in cooperation with Rocky Mountain Wild, performed a GIS analysis of the project area with respect to elk HE. See Larry Desjardin et al., Recreational Disturbance Modeling of Elk Habitat in Medicine Bow-Routt National Forests(Feb. 19, 2022). The analysis found that it is likely that the elk HE metric of 50% is not being met in either the Middle Yampa Geographical Area (MYGA) or the project area, and that the Mad Rabbit Trail Project will lower elk HE further below the Forest Plan[rsquo]s standard.

The analysis was updated to reflect the proposed action in the FEA. It found that over 3900 acres of habitat are lost due to the proposed action. It also found that 53% of the MYGA landscape was heavily disturbed, as defined by the user separation disturbance metric, and an additional 29% was in the Zone of Influence, a partially disturbed area where elk may flee. Only 18% was undisturbed. This leads to a high probability that elk HE is well below the 50% Forest Plan standard.

A map showing the habitat disturbance by the proposed action is below. Together, the user separation disturbance (solid brown) and the zone of influence (crosshatch) give insight into the impact of human activity on elk habitat. Solid green shows undisturbed habitat. The user separation distance defines a high-avoidance area on both sides of a trail or road where elk habitation rates are very low compared to their natural state. The zone of influence is farther from a road or trail, where habitation rates may be lower than the natural state, but not as low as the user separation disturbance.

Image above shows the cumulative elk habitat disturbance of the proposed action over the project area

The second map below is the same map of human disturbance overlayed with CPWidentified elk production areas and elk summer concentration. The GIS analysis makes clear that there are concentrated disturbances in identified elk habitat areas. The analysis also shows the important value geospatial analysis brings to modern elk habitat effectiveness analysis techniques compared to the simplistic method employed by the Forest Service where the location of the disturbances is disregarded.

In sum, the use of outdated science renders the FEA[rsquo]s analysis insufficient for determining whether to prepare an EIS or FONSI. The FEA acknowledges that the model chosen does not include the impact from trails, only roads. Indeed, the Rowland study specifically repudiates the 1983 technique used in the FEA even for roads, stating [ldquo][t]his analysis, based on more than 100,000 radiolocations of cow elk during spring and summer, found no relation between numbers of elk locations and HE scores based on open road density in 15 [lsquo]elk analysis units.[rsquo][rdquo] Rowland 2005 at 3. Basing an analysis on outdated science is inconsistent with the Forest Service[rsquo]s NEPA regulations that require the Service to [ldquo]use the best available scientific information to inform the planning process.[rdquo] 36 C.F.R. [sect] 219.3. For these reasons,

the Forest Service must conduct an EIS, using the most rigorous and update-to-date scientific understanding before making a decision on the Project.

1. The Forest Service May Not Mitigate Impacts from Newly Developed Trails by

Closing Old Illegal Trails

In the FEA and draft FONSI, the Forest Service appears to justify the impacts of approving the construction of 41 miles of new trails through rehabilitation and closure of 36 miles of illegal or unauthorized trails. Draft FONSI at 1. However, these 36 miles of unauthorized trails, which now require rehabilitation and closure, are the result of the lack of Forest Service enforcement or action to discourage use of these illegal trails. Indeed, the Forest Service may, and should, decommission these trails without building new trails in sensitive areas.

Nonetheless, the FEA and draft FONSI have artificially linked the two separate actions of building new trails in sensitive areas and closing unauthorized trails. This linkage undermines the validity of the FEA analysis and draft FONSI in several respects:

*
* Having framed a [ldquo]dual purpose[rdquo] need for the Project in this manner, the No Action Alternative, described in the FEA, assumes that the Forest Service will continue to allow these trails to exist and be used, rather than allowing for their remediation and closure, as it should do in stewarding the Forest; it states that the No Action Alternative [ldquo]analyzes the effects to resources if unauthorized, non-system trail use continues to increase in the project area based on anticipated recreational use.[rdquo] FEA at 11.
* The FEA and draft FONSI improperly ignore the probability that these non-system trails can be remediated and closed independently of Mad Rabbit, pursuant to a Categorical Exclusion, 36 C.F.R. [sect] 220.6(e)(20), and expressed interest and request from volunteers to implement this.
* By assuming that the future [ldquo]no action[rdquo] baseline includes the Forest Service failing to address these trails, and that the Forest Service will not allow for their independent remediation, the FEA and draft FONSI essentially credit the remediation of unauthorized trails[mdash]an action the Forest Service should undertake regardless[mdash]as mitigation rationalizing the impacts associated with the new trails.

This sets a terrible precedent in addition to creating a NEPA vulnerability in multiple respects. This approach seeks to mitigate impacts, through separate trail remediation, actions that could likely occur independent of and without the proposed Project. It also seeks to offset impacts through mitigation that is out-of-kind and insufficient. The FEA provides no evidence that closing the unauthorized trails will offset the impacts of the newly constructed trails sufficient to justify a FONSI. These disparate trail activities will occur in different locations (and different CRAs). Moreover, the scope and intensity of human disturbance to wildlife is dependent on the frequency and type of activity, not only the length of the trail or its status as part of a trail system. In seeking to implicitly [ldquo]mitigate[rdquo] the impacts of the new trails by closing unauthorized trails, the Forest Service should have analyzed the traffic on the trails that will be rehabilitated and closed compared to the intensity of use and

disturbance of those that will be constructed. It is improper to assume, without analysis, that closing rarely used, unauthorized trails will mitigate the impact from the new trails which are being purpose-built as high-volume recreational trails to promote tourism. The Forest Service has not properly analyzed this issue and should do so in a new EIS.

1. The Context and Intensity of the Proposed Action Require Preparation of an EIS.

In evaluating whether to prepare an EIS, agencies must consider both the context and intensity of a proposed action and its alternatives. 40 C.F.R. [sect] 1508.27. Here, both the context and intensity of the Mad Rabbit Project require an EIS.

A. Context

The CEQ NEPA regulations require agencies to analyze an action [ldquo]in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality.[rdquo] Id. at [sect] 1508.27(a). Here, the affected region is primarily the MYGA as defined in the 1998 Forest Plan. See FEA at 39; see also Forest Plan at Figure 3-18. The MYGA contains the Mad Creek Roadless Area in its north, the Long Park Roadless Area in its center, and the Walton Peak Roadless Area in its south. There are numerous multi-use non-motorized trails in the area, including many new multi-use trails built as part of the Buffalo Pass Trails Project. The affected region is also part of Game Management Unit (GMU) 14, which is itself part of the E-2 Bear[rsquo]s Ear elk herd. A significant portion of the area is elk habitat, including production areas, migration corridors, and summer range. Our comments here focus on elk as they are an indicator species and their protection serves as a proxy for addressing concerns related to a host of other species who share the same habitat, like dusky and sharp-tailed grouse, lynx, mule deer, pronghorn, goshawks, and other raptors.

The importance of the affected region to the second largest elk herd in Colorado is context that strongly weighs in favor of conducting an EIS. Protecting elk habitat is increasingly recognized as a core goal of land management. For example, the Colorado Roadless Rule[mdash]which postdates the relevant Forest Plan[mdash]aims to protect habitats for [ldquo]species dependent on large, undisturbed areas of land[rdquo] like elk. 36 C.F.R. [sect] 294.41; see id. [sect] 294.40. Indeed, the FEA notes that [ldquo]effects to elk have been considered due to the importance of elk identified as a local species of concern during the public scoping period.[rdquo] FEA at 38. But the DEA[rsquo]s consideration of elk is deficient, especially in light of another key contextual detail[mdash]the worrisome decline in the health of the local elk population and their relative reproductive success around the proposed project area.

Over the past fifteen years, there has been a decrease in both the classified population of the resident herd and the associated calf:cow ratio. See FEA at 56 (noting local elk herds [ldquo]have been displaying what would be considered a decreasing trend in both number of elk classified and calf:cow ratios[rdquo]); see alsoCPW Commission Issue Paperat 13 (Nov. 2021) (showing the decline in the resident elk population from approximately 750 to 510 individuals from 2006 to 2019). Most concerning, there is a precipitous decline in the calf:cow ration in GMU 14. There is little doubt that this lower calf:cow ratio is driven, in part, by the high degree of recreational development in GMU 14 on Forest Service lands. However, while GMU 14 data is mentioned in the FEA, the cumulative impacts to the herd are only mentioned qualitatively.

Figure above shows the measured calf:cow ratio in GMU 14. Courtesy of CPW.

Moreover, the FEA does not include the latest data on the E-2 herd. The figure below, from CPW, shows the most recent population estimates of the E-2 herd, and a worrying steep decline in the post-hunt population estimate. This places the E-2 herd only slightly above the lower limit of the E-2 population objective of 15,000 elk, and with a steep decline.

Figure above shows the estimated population of the E-2 herd. Courtesy of CPW

Since CPW measured the post-hunt population, the E-2 situation has become even more dire. According to CPW, [ldquo]This past winter had the most severe snow conditions residents saw in the past 70 years for the northwest corner of the state, ranging from Rangely to Steamboat Springs and the Wyoming state line [ndash] even surpassing the severe winter of 1983-84. Multiple heavy snowstorms with strong winds generated hard-packed snow that severely buried food for elk, mule deer and pronghorn.[rdquo] CPW further states, [ldquo]The Severe Winter Zone [which includes the E-2 Bear[rsquo]s Ear elk herd] is an area known for some of the largest elk herds in the nation, and severe winter conditions have resulted in high elk calf and above-average cow mortality. Survival rates are the lowest CPW has ever documented and below what CPW previously thought possible in elk.[rdquo] (emphasis added). As a result, CPW severely curtailed hunting licenses. CPW states, [ldquo]Antlerless elk license recommendations were reduced in E-2 (Bears Ears) by 5,600 (-89%) with all public cow hunts reduced to the minimum of 10 licenses per hunt code.[rdquo]

While most winterkill occurs at the very end of a winter season, survivability is often dependent on the size of an ungulate[rsquo]s fat stores accumulated during summer and fall. A study of Rocky Mountain elk by Cook (2004) found, [ldquo]Summer-autumn nutrition largely determined calf body size at the start of winter and, consequently, determined the proportion of winter survived. Survival of cows over winter was as related to body fat at the onset of winter as it was to nutrition during winter. Thus, our data suggest that the limiting effects of summer-autumn nutrition on populations may be greater than often assumed, perhaps greater than those during winter in some ecosystems.[rdquo] This study links summer nutrition with winter survival and reproduction rates. Summer nutrition is directly linked to available habitat and lack of human disturbance.

In sum, elk are hugely important to local ecosystems and communities, their health is declining, they are an important indicator species for numerous other species, and the proposed action involves the very activities partially responsible for such decline. This context makes the need for an EIS clear, and any failure to prepare such a document would violate NEPA.

In addition, the Forest Service[rsquo]s approach in ignoring the critical role of the project area to elk and other ungulates is inconsistent with that of BLM, the Council on Environmental Quality (CEQ), and the Governor of Colorado[rsquo]s Executive Order on wildlife corridors. Last fall, BLM released a new policy designed to prioritize habitat connectivity thereby [ldquo]preserving the ability of wildlife to migrate between and across seasonal habitat.[rdquo] BLM Press Release, Bureauof LandManagement Releases Policy To Support Habitat Connectivity On Public Lands(Nov. 15, 2022). BLM[rsquo]s new policy instructs BLM staff to [ldquo]assess public lands for habitat connectivity[rdquo] and ensure that [ldquo]areas of habitat connectivity [are] addressed and appropriately analyzed in new land use plans and revisions.[rdquo] BLM IM 2023-005, Change 1, Habitat Connectivity on Public Lands (Nov. 18, 2022). The wildlife management prescriptions, particularly with respect to migratory routes, between the Forest Service and BLM are inconsistent and, in some cases, conflicting. Having consistent practices for managing the health of the herd is essential to their success.

In addition, since the DEA was published, CEQ released new guidance to federal departments and agencies regarding ecological connectivity and wildlife corridors. CEQ, Guidance for Federal Departments and Agencies on Ecological Connectivity and WildlifeCorridors (Mar. 21, 2023). Recreation and tourism management is explicitly identified as a focal area where connectivity and corridors should be considered early in planning, funding and decision making. Id. at 4. The CEQ document encourages agencies to proactively design projects to conserve, enhance, protect, or restore connectivity and corridors and states that agencies should look for opportunities to carry out restoration to promote connectivity. In contrast to the Forest Service[rsquo]s approach here, it provides that [ldquo]Federal agencies should rely on a mitigation hierarchy that first seeks to avoid and minimize adverse impacts to the maximum extent practicable.[rdquo] Id. at 7.

Finally, the Forest Service[rsquo]s proposed decision here is inconsistent with the Colorado Governor[rsquo]s Executive Order on conserving big game winter range and migration corridors, which sets forth the State[rsquo]s policy and strategy to conserve these important areas. Executive OrderD2019-011 (Aug. 21, 2019). The Executive Order recognizes and directs state agencies to take various actions to conserve and protect winter range and migration corridors, both for elk and other big game species, which are critical to ensuring Colorado[rsquo]s wildlife populations continue to thrive.

B. Intensity

The CEQ regulations specify factors an agency should consider when evaluating intensity: (1) the scale of beneficial or adverse impacts; (2) the degree to which the proposed action affects public health or safety; (3) unique characteristics of the geographic area; (4) the degree to which the proposed action is highly controversial; (5) the degree to which the proposed action poses unknown risks; (6) the degree to which the proposed action is precedential; (7) whether the action is related to other actions with individually insignificant but cumulatively significant impacts; (8) the degree to which the action may adversely affect scientific, cultural, or historical resources; (9) the degree to which the action may adversely affect endangered species; and (10) whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment. 40 C.F.R. [sect] 1508.27(b). Many of the factors are present here.

First, the scale of adverse impact to elk and elk habitat is significant. Although the purpose of the SSTA Proposal is to increase recreational opportunities and tourism, the Forest Service has not conducted a traffic analysis; rather, as discussed, above, KRW performed such an analysis, which estimated an incremental 1,740 users per day in the Mad Rabbit Trails Project area during the summer. These visitor numbers will fundamentally degrade a multitude of forest values including habitat for elk and other species and opportunities for solitude or quiet enjoyment by visitors, and the increased visitation represents a significant adverse impact. Moreover, the Forest Service has proposed to approve many high-volume trails which traverse species habitat. For example, the trails along the north of U.S. Highway 40 total over 14 miles in length and will not be seasonally closed. Trail 7 is particularly concerning because it creates two loops along the CDT that may prevent the significant area within and around them from being a suitable habitat for wildlife because the areas will have human disturbance on all sides.

Second, the area has many unique characteristics, including the centrality of the Project area to the E-2 Bear[rsquo]s Ear elk herd, as discussed above.

Third, the Project is highly controversial on both, a public opinion and science basis. This is evident on the basis of public comment alone, where over 700 comments have been submitted to the Forest Service on Mad Rabbit. Moreover, community opinion in the City of Steamboat Springs and Routt County has shifted decidedly against this project. A recent survey of Routt County residents showed overwhelming support for a balanced approach to recreation and conservation (>70%). The least-chosen option ([ldquo]recreation is more important than conservation[rdquo]) gathered only 3% of the respondents. Similarly, since the DEA was published, the City of

Steamboat Springs has initiated a public survey regarding how its residents desire the accommodations tax be spent. Only 18% of the residents chose [ldquo]Keep Accommodations Tax asis to fund new tourist and resident amenities.[rdquo] This choice was the most similar to the current way Mad Rabbit is proposed to be funded, and shows a major erosion of support for funding trails to attract tourists. Even more recently, the Routt County Commissioners unanimously voted to submit an objection letter to the Forest Service on this Project requesting the development of an EIS to properly analyze the cumulative impacts of the Project. On a science basis, KRW objections in this document and the comments from the Colorado Division of Natural Resources in response to the DEA dated November 23, 2022 (DNR Comments) show how controversial the assumptions in the FEA are. Both documents bring up the FEA[rsquo]s outdated methodologies for assessing habitat effectiveness. (DNR comments at 3). Both address the inappropriate use of a 1-mile buffer from open roads (DNR comments at 6). Both bring up the issue of assessing whether the proposal violates the numerical criterion for encounter frequency for semi-primitive recreation (DNR Comments at 5). Both agree that it would be inappropriate [ldquo]to offset the potential [ldquo]deficit[rdquo] environmental effects from new trail development with the [ldquo]benefit[rdquo] of implementing already-authorized trail rehabilitation[rdquo] (DNR Comments at 8).

Fourth, this Project is precedential. The Forest Service[rsquo]s failure to enforce against the creation of unauthorized trails in the project area over the past several decades has led to a number of non-system trails. As discussed above, the Forest Service can decommission illegal trails without building new trails in sensitive areas. Yet, the FEA conflates these separate actions. By skewing the baseline this way, the DEA essentially credits the remediation of non-system trails against the impacts associated with new trail construction in efforts to justify a FONSI. In addition, this Project is precedential because of the Forest Service[rsquo]s failure to conduct an EIS when this type of analysis is clearly required under the Colorado Roadless Rule. And the Forest Service wholly failed to respond to comments raising this issue. Finally, the Project is precedential in that the Forest Service aggregated its impacts analysis across multiple CRAs, instead of independently evaluating the impacts (adverse or beneficial) within each CRA, as required.

Fifth, approval of the Project violates environmental laws, including the Colorado Roadless Rule and NEPA, as described herein.

Because of the context and intensity of the proposed Project, the Forest Service must withdraw the FEA and draft FONSI and conduct an EIS.

VIII. The Forest Plan upon which the Final EA and Draft FONSI Rely is Outdated.

The FEA anchors its planning and analytic framework, its management area direction, and forest planning standards on the 1998 Routt National Forest Land and Resource Management Plan (Forest Plan). See, e.g., FEA at 5. However, the National Forest

Management Act makes clear that the Forest Plan is woefully outdated, see 16 U.S.C.

[sect] 1604(f)(5) (stating that forest plans shall be [ldquo]revised . . . at least every fifteen years[rdquo]), and the Council on Environmental Quality (CEQ) has called into question the utility of proceeding under dated environmental plans of this sort. See CEQ, Forty Most Asked Questions on NEPA, No. 32 (stating that for ongoing plans and programs, [ldquo]EISs that are more than 5 years old should be carefully reexamined to determine if[rdquo] supplemental analysis is necessary).

The outdated Forest Plan is out of step with current science; new planning and impact methodologies; our ecological knowledge of species, habitat, and recreational impacts; and current considerations related to the sustainability of forest resources. Accordingly, consistency with the Forest Plan is insufficient evidence for

determining whether to prepare an EIS or FONSI. The Forest Service must first update the relevant Forest Plan, bringing its science and standards up to contemporary levels of understanding, before authorizing yet more projects under it.

In addition, the context in which the Project will occur has changed significantly since the Forest Plan[rsquo]s development. Steamboat Springs and the surrounding Forest Service lands experience significant pressures, including development pressures, that were not present over 25 years ago. As a result, the baseline conditions, the context, and the appropriate uses of different areas of the Forest have all changed significantly since the Forest Plan was last approved. KRW has also learned from discussions at the Routt County Recreation and Conservation Roundtable that the Forest Service is planning to undertake an update of the Forest Plan, though the timeline was not specified. In addition to the statutory requirement, this demonstrates that the current Forest Plan is outdated and stale. Because this new planning effort is upcoming, and will incorporate the latest and most-up-to-date scientific understandings and planning methodologies, as well as the current context, the Forest Service should either defer a decision on the Project until such Forest Plan is complete or conduct an EIS, which will provide greater detail on the impacts and context of the Project.

IX. Conclusion

As explained throughout this objection letter, the FEA and draft FONSI do not meet the requirements of NEPA, the Colorado Roadless Rule, and the Forest Service[rsquo]s own authorities. Because the FEA and draft FONSI do not meet the statutory requirements, do not rely on best scientific information, draw erroneous conclusions from scientific studies, and rely on an outdated Forest Plan, KRW respectfully requests that the Forest Service withdraw the draft FONSI and instead conduct an EIS to properly evaluate and analyze the Project[rsquo]s impacts on the human environment. In light of this, KRW respectfully requests an opportunity to discuss the issues raised in this Objection and ways to resolve them with the Forest Service.

Sincerely,

Bob Randall

Sarah Judkins

Attorneys for Keep Routt Wild

[1] Ltr. from B. Randall and B. Rattiner, on behalf of KRW, re: Opposition to Proposed Action for Mad Rabbit Trails Project #50917, to B. Kelly, USFS (Nov. 23, 2022) ([ldquo]DEA Comments[rdquo]). 2See id. at 13-15.

[2]See id. at 25-28.

[3]See id. at 6-10.

[4]See id. at 2-7.

[5]See id. at 20-21.

[6]See id. at 2.

[7]See DEA Comments at 18; the numbers included in this Objection Letter have been updated to account for the removal of Trail 24.