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Posted to: https://cara.ecosystem-management.org/Public//CommentInput?Project=57877

RE: Objection (36 C.F.R. [sect] 218.8 ) to the Draft Decision to the Purgatory Resort Ice Creek Project Environmental Assessment

Objection Reviewing Officer and San Juan National Forest Staff,

This letter serves as San Juan Citizens Alliance's (SJCA) Objection to the Final Environmental Assessment with Finding of No Significant Impact carried by the Draft Draft Decision Notice for the Purgatory Resort Ice Creek Project (57877). I am the Lead Objector for SJCA.

Our Objection and associated comments represent the concerns and input of the San Juan Citizens Alliance's staff and board, our 1,000+ members, an additional 5,000 supporters, and members of the public including residents of Southwest Colorado and public land owners and users across the United States who are committed to scientifically-based and legal stewardship of our national forest lands.

Introduction to Objection
It is clear from the Draft Decision Notice (DDN) and supporting project documents that the San Juan National Forest in conjunction with the USFS Region 2 Mountain Resort Team has a predetermined interest in approving Purgatory's Ice Creek Pod expansion as it was presented to the agency by the project proponent. The expressed reasoning behind the DDN's approval, the diminishment of the severity of the probably adverse resource impacts that would be triggered by the project, the disinterest in following the direction of the 2013 San Juan National Forest (SJNF) Land and Resource Management Plan (LRMP) as well as numerous other indicators (including

the visual appearance of the DDN cover page)1 are all indicators that the agency had fully intended to "get across the finish line as is" Purgatory's desired plan for additional lift- supported skiing terrain as soon as possible. While the SJNF has professed that they have been unable to complete numerous and important other NEPA processes (such as Winter Travel Planning and the Weminuche Grazing EIS) due to an expressed "lack of capacity", the San Juan was able to procure additional capacity through the Region 2 office to pursue a relatively fast approval process to the benefit of this corporate project sponsor, Purgatory resort.

We note the DDN includes numerous misleading, unsubstantiated, and/or erroneous statements that we believe indicates the disinterest by the Forest Service to pursue a robust, in-depth and open-minded NEPA process to examine this ski resort development scheme.

Numerous aspects of the project's elements were either minimized or ignored as important decision points per a project that would result in impacts to hundreds of acres of public land - well beyond the description given by the agency of 36 acres. Several aspects of the Draft Decision Notice underscore what appears to be a pre-determined and ongoing pro-proponent bias to the review and approval of the expansion project including these indicators:

1. "The purpose of the proposed action is to respond to a proposal by Purgatory that aims to increase ski terrain for skiers of low/intermediate ability at Purgatory, addressing guest demand." (DDDN, Page 1)

* We can find no market survey information within the DDN, other project documents, nor in Purgatory's 2008 Improvement Plan that provides a foundation for implementing the proposed action based on "guest demand". From the information provided, there appears to be no substantiated demographic and/or market-based reason to build the Ice Creek pod.

In commenting on the reasoning behind the project approval the DDN states Supervisor Chadwick's viewpoint that "After thoroughly considering the purpose and need for action, issues, range of alternatives and analysis presented in the EA[hellip]. I am approving the selected alternative." (DDN, Page 2)

1. In reality there was no range of alternatives presented in this NEPA process and therefore no assemblage of alternatives to review, differentiate or choose between - there was only the proposed action. It was made clear to the public that the only the project proponent could provide alternatives (for example, the alternative that SJCA offered in our scoping comments was fully ignored due to

[Foot note: 1 Why is it that a USFS NEPA process cover page prominently displays the project proponent's logo for Purgatory when there is no such corporate recognition on SJNF NEPA documents for Kinder Morgan, Petrox, Tri-State and Catamount Energy? Our in-depth, though not thoroughly comprehensive, review of the NEPA log and archive revealed that only Purgatory's NEPA documents were given the specific recognition of being anointed with their corporate logo.]

its submission by an outside interest) and Purgatory offered only one alternative. It is disingenuous to note a range of alternative were considered when there was only one offered, review and approved. While there were some small "tweaks" made to the proposed action alternative it is clear from text with the DDN (Page 8) that the original alternative "was not altered."

1. Much of the Ice Creek Pod proposal is predicated on an area referred to in the project documents as the Ice Creek Pod, Ice Creek watershed, Ice Creek expansion area, etc. The USGS Board of Geographic Names does not recognize an "Ice Creek" in Colorado, whereas (as comparisons) it does recognize both Purgatory and Pasture Creeks which are indicated on USGS and most other maps derived from this original source. Some maps (not all) provided in the project documents note an "Ice Creek" and a couple maps indicate an "Ice Creek

Watershed" with a dashed line indicating what may possibly be the watershed boundary, however, the public's ability to fully understand and review the NEPA process documents is hampered by the lack of any type of specificity per this watershed - we can no adequate description in the EA.

The project documents neither provide a HUC number nor an acreage size for this postulated watershed. Further, The DDN (nor can we find it elsewhere) fails to mention that what we understand to be "Ice Creek" is actually an element of the East Fork of Hermosa Creek watershed which is a central tributary of Hermosa Creek. Hermosa Creek was the first stream in the state without a Wilderness Area headwaters to be designated as Outstanding Waters by the state of Colorado. From our point of view, the use and description of "Ice Creek" might very well be used to disassociate the proposed Ice Creek expansion project with the realities that the East Fork of Hermosa Creek is a priority location for the reintroduction of the Colorado River Cutthroat Trout (a USFS Region 2 Sensitive Species), a tributary to Hermosa Creek with its Outstanding Waters designation and a watershed that merits specific protections due to the 2014 Hermosa Creek Special Management Area legislation. We frankly wonder whether Ice Creek's seemingly internal naming was an effort to minimize the awareness that it appears (from the maps provided) to actually be an element of East Fork of Hermosa Creek rather a creek with its own name and HUC designation.

1. The Draft Decision Notice makes a remarkably confident, and very likely unsubstantiated statement, on page 5 where it exhorts, "Ski area development has not influenced the condition of these headwaters streams." This acclamation, which is apparently an attempt to negate or diminish concerns about utilizing the forest plan's Desired Conditions as a "fit to follow" resource management direction is contradictory to other statements with the DDN.

We find the "has not influenced" statement to be completely contradictory to this statement in the Watershed section of the EA, "Stream channels within the Ice Creek project area have experienced a marked decline in health over the past fifteen years due to historic logging, open roads, and active livestock grazing (USDA Forest Service

2020)." on Page 20 of the Draft EA. If "open roads" is one of the culprits in "a marked decline in health" of the "stream channels within the Ice Creek project area" as stated, then how could it possibly follow that "ski area development has not influenced the conditions" of the watershed? Does not the ski area's "backside", the East Fork watershed, consist of a network of gravel and dirt roads, some of which are open to the public and some of which are supposedly open only to Purgatory for maintenance and operation activities?

Clearly ML 1 and ML2 road surfaces and their use by vehicles contribute to the diminished water quality of the watershed, that is the East Fork of Hermosa Creek, a priority CRCT reintroduction stream reach and a headwaters area to Hermosa Creek whose fine water quality characteristics are honored, and to be preserved as detailed in the 2014 Hermosa Creek Special Management Area legislation and it's formulated 2018 Resource Management Plan.

We find the Forest Service's disinterest to reckon with the water quality findings noted in the EA a clear exhibit of the arbitrary and capricious nature of the agency's action to approve this proposed ski area expansion.

1. In the DDN (page 8) the agency outlines the number of comment letters (32) received on the Draft EA and notes they extracted "52 substantive comments." The next sentence states, "Input received during the comment period for the EA was considered in the decision making process and resulted in language being incorporated into this DDN and supporting documents; however, the EA has not been altered."

In summation, it appears that the agency is sharing in the DDN that despite the dozens of letters from a diversity

of stakeholders that voluntarily involved themselves in the NEPA process and offered a total of 52 substantive comments (the agency's assessment of "substantive") the agency found absolutely no value in this input to modify thedecision. We frankly find that outcome to be astonishing, and a clear endorsement to us that while the agency might have made some changes of language in the DDN in response to the 52 substantive comments, the agency found absolutely nothing in thestakeholder comments that gave consideration to modifying some aspect of the projectdesign. This outcome of a non-altered EA despite dozens of substantive public comments makes a charade of the NEPA process and reinforces our viewpoint that the outcome of the process was certainly biased towards the project proponent's interests. From the scoping notice language, the impression that this was intended to a NEPA process with adequate public input opportunities, but with the noted complete dismissal of public input as in "the EA has not been altered" the NEPA process looksmore like a rubber-stamping of a corporate proposal for permanent development onpublicly owned lands.

1. Another example of the "look away first" approach the SJNF is taking in approving the expansion plan and allowing Purgatory to move ahead and "be off the hook" for

previous deviations from their commitments made to the agency and the public is highlighted on page 13 of the DDN. As detailed within the EA, Purgatory has failed to complete the work on numerous work projects related to resource protection of which they previously assented. Despite this very poor track record (and seemingly concomitant poor oversight by the SJNF) the agency is intending to approve the project with the stipulation that "any incomplete restoration projects associated with previously implemented projects from the 2008 ROD" be completed before the Ice Creek project work begins. We would strongly suggest that the agency's priority should be resource protection primarily rather than the "greenlighting" of permanent development projects on public lands. If the agency were to take this responsibility seriously (as well as to take their ethical and legal responsibilities seriously), the SJNF would require all of the so-called restoration projects that were required for completion by Purgatory be completed before any further project approval, not as a stipulation for a possibleadditional project. Purgatory has apparently not fulfilled prior commitments made to the SJNF and while some of the onus of this lack of fulfillment "falls into the lap" of the San Juan NF, we would suggest that approving a new project while prior commitments are left unfinished simply rewards poor corporate behavior as well as failing to protect the public's interest in the agency managing their public lands responsibly.

1. The SJNF again exhibits it's seeming inability to enforce resource protection measures as required elements of the possible approval of this project in one of the Project-specific Design Criteria (PDC) elements. Criteria #9 (DDN - page 13) states "Final design of the access road and bottom terminal of the Ice Creek lift shall avoid the WIZ to the degree practicable." This PDC criteria fails to mention whether it's the SJNF or Purgatory who determines there the WIS avoidance is "practicable" (or not) leaving, once again, the status and degree of resource protection unknown. Certainly, it can be inferred that the agency would allow the project developer to make this determination, a bias towards Purgatory in the project design that we - and the agency, should find unacceptable. Our understanding is that PDC criteria must be specific criteria including the detailing of who is responsible for the implementation of the each of criteria. We are seeing this with the PDC as now composed which again displays a bias towards the project proponents interests rather than prioritizing the public's interest in robust resource protection.

Objection #1

The decision to approve the Ice Creek Pod Expansion is an arbitrary and capricious decision made by the deciding officer Kara Chadwick, Supervisor of the SJNF. The supervisor's decision (also referred to as "the agency's decision" and "SJNF's decision") is predicated on the arbitrary and capricious decision to utilize and enforce some of the direction from the SJNF LRMP 2013 while willfully ignoring other direction. (From DDN - Page 242

[foot note: 2 In addition, as stated in response to comment 3.2, the commenter accurately reiterates the desired

term. Collectively, specific projects implemented subsequent to this [Land and Resource Management Plan] should contribute to maintaining and/or achieving desired conditions, but no single project should be expected to contribute to meeting all desired conditions."]....]

conditions for Terrestrial Ecosystems and Plant Species from the Forest Plan in their scoping comment. However, page 6 of the Forest Plan states that "Desired conditions are aspirations; they may only be achievable over the long

The SJNF can not legally and ethically decide and state that because the Desired Conditions of the LRMP are only "aspirations" that any of the Desired Conditions detailed in the LRMP may be overlooked and not become elements of a project's design requirement as is detailed in the Draft Decision Notice (pages 24 and 42), whether those Desired Conditions are either detailed in the LRMP as Objectives, Standards or Guidelines in the LRMP.

In Section 1.4.1 of the 2013 LRMP, "LRMP Components: Desired Conditions" the SJNF very clearly states that the Desired Conditions are the foundation of their management plan (emphasis mine): "Desired conditions encompass the overarching goals of land and resource management. They are statements of the social, economic, and ecological attributes and values toward which management strives to achieve and characterize or exemplify the desired outcomes of land management. They describe how the area is expected to look and function in the future. Some desired conditions are general, while others are quite specific. (LRMP Volume 2, Page 5)

This lead passage from the LRMP's Desired Conditions introduction fully elucidates the SJNF interest and commitment to meeting the Desired Conditions and underscores the point that Deciding Officer Chadwick's approach of the utilizing the Desired Conditions as only an "aspirational" contradicts the overall intent of the LRMP. The "aspirations" only approach is fundamentally illogical and sets the stage for the slippery slope of which Desired Conditions should be set forth with a Draft Decision Notice to be explicitly met and which are only aspirational. NEPA decisions have been overturned in appeal, objection and legal processes when the USFS failed to follow the conditions stipulated in the relevant forest plan.

The "aspirations" only assertion is further undercut by the concluding statement in the LRMP's explanation of Desired Conditions, "Identifying and establishing desired conditions is the central focus of this LRMP." (LRMP Volume 2, Page 6). We note that the DDN outlines Project- Specific Design Criteria that are an apparent effort to mitigate (rather than prevent) an array of resource degradation, most of which relates to water quality issues of the East Fork of Hermosa Creek (aka East Fork), however, some of these postulated mitigation efforts are not yet defined as key project implement projects are not completed and shared with the public, such as the drainage management plan.

Listed below are several examples from the PDC (DN pages 12 -15) listing that highlight the agency's unacceptable, arbitrary and capricious approach to project approval. It is evident that key resource-protective elements are still to be designed by Purgatory and approved by the SJNF subsequent to project approval:

1. Though the issue of the water quality of the East Fork of Hermosa Creek is a priority resource management issue for the proposed project expansion, the SJNF is not requiring that the drainage management plan (DMP) be completed, submitted, reviewed and approved at this point in time, that is, at the time of the overall project approval. Without the completion and possible approval of the DMP the public is not able to review and understand the possible measures being proposed to protect the East Fork.

The public, including SJCA and its members, therefore is not able to determine if the DMP design will only be "aspirational" in the application of the twelve elements listed in the Desired Conditions for 2.4 Riparian Area and Wetland Ecosystems (SJNF LRMP Volume 2, pages 47-49) or whether a DMP will only be approved that will meet the Desired Conditions detailed in the forest plan. Issuing a DDN that does provide sufficient information as

to project design as related to the LRMP's Desired Conditions, especially within the context of the agency's emphasis that DC's are only "aspirational" in nature is an arbitrary administrative action.

1. Similar to the concerns regarding the agency's unknown approach to addressing the Desired Conditions for Riparian Area and Wetland Ecosystems, the lack of existence of a DMP for review by the public prior to the finalizing of the project approval applies to the LRMP's section 2.5 Aquatic Ecosystems and Fisheries list of thirteen Desired Conditions (LRMP Volume 2, Page 54). We are amazed, but not surprised, that the agency is "on the brink" of approving a plan with an unknown Drainage Management Plan for extensive development activities in the East Fork of Hermosa Creek with its high priority Colorado cutthroat reintroduction effort. This extensive, long and expensive restoration effort could very well be harmed by the approval of this lift expansion proposal, but the public is left in the dark without knowing the details of how the East Fork's water quality standard will be protected.

Water quality concerns for the East Fork of Hermosa Creek watershed should be "front and center" for the agency, especially considering the findings in the Purgatory Resort Ice Creek Project Hydrology Report (PRICPHR) that is a "supporting document" for this NEPA process. This report "concluded that stream health of the surveyed project area reaches has generally declined over the past fifteen years." (PRICPHR, page 12) Despite these findings, which most interested persons would find alarming, the DDN shows the agency's clear intent to approve a project that will very likely diminish the East Fork's water quality because the ongoing resort operations are quite likely the cause of some percentage of the "generally declined" condition of the watershed's water quality. It is simply non-sensical for the agency to ignore this finding of concern from the PRICPHR - there is a significant water quality issue at this time, yet with this DDN the SJNF would sanction further watershed disruption activities, for decades to come.

The Forest Service, Colorado Parks and Wildlife, Trout Unlimited and volunteers have expanded thousands of person-work-hours as well as what we understand to be hundreds of thousands of dollars to support the restoration of cutthroat trout, yet the DDN fails to provide details as to how the lift expansion construction and operation (including associated infrastructure) will guarantee that this enormous investment in aquatic species restoration will not be wasted. Once again, will the thirteen Desired Conditions within Aquatic Ecosystems and Fisheries be followed as only "aspirational" or as required-to-meet Desired Conditions, along with their associated Objectives and Standards ((LRMP Volume 2, Page 54-56)? Even though the draft Draft Decision Notice has been signed we still don't know the agency's intentions and specific actions per the necessary protection of this ecological important aquatic resource.

Suggested Remedy

As we have explained above, the Draft Decision Notice includes numerous details regarding the known flaws within the project approval, the numerous unknown or detail-lacking design elements, the deficiency of clarity as to the San Juan's interest and possible intent in meeting the Desired Conditions of the 2013 LRMP and because of these reasons, the arbitrary and capricious standing of this draft decision.

Our experience with the NEPA process, in conjunction with our involvement in every phase of this NEPA process and our understanding of USDA, USFS, NEPA and CEQs' statutes, regulations, policies and practices indicates that the SJNF/USFS should set aside this Draft Decision Notice to approve the Purgatory proposal. We recommend that the agency take "two steps back" in the NEPA process to clarify the project details (such as those within the PDC and the as-yet-to-be written DMP), review public input, and to reassess the required legal commitments to adherence to the SJNF LRMP specifically as well as to other federal regulations, handbooks and other documents.

The SJNF's current thinking to approve this project as now designed is incredibly short-sighted in vision and contradictory to the 8-year-old SJNF LRMP. The approval of the project as is would set in motion the permanent

development of a project involving hundreds of acres in a sensitive and priority watershed - the SJNF can and must do better to meet the expectations of the public and the agency's own guidance.

Sincerely,

Jimbo Buickerood, Program Manager

Lands and Forest Protection www.sanjuancitizens.org

Cc: Mark Lambert, SJNF Staff Officer - Planning

Jed Botsford, SJNF Columbine District Recreation