

Rocky Mountain Regional Office

Attn: Reviewing Officer

P.O. Box 18980

Golden, CO 80402

*Sent via U.S. mail and electronic mail: r02admin-review@usda.gov.*

Unique ID: 3171

Date: December 18, 2020

Name: Patrick Schilken

**Objections to DRAFT Record of Decision for the Pike and San Isabel National Forests Motorized Travel Management (“MVUM”) Analysis and Final Environmental Impact Statement (“FEIS”)**

The following objections are being submitted regarding the Record of Decision (“ROD”) for implementing the selected alternative (“Alternative C”) for the Pike and San Isabel National Forests (“PSINF”) Public Motor Vehicle Use Final Environmental Impact Statement (“FEIS”).

1. Forest Service Access Across Private Lands

In a Briefing Paper prepared by United States Department of Agriculture, United States Forest Service dated August 2002 concerning “*National Forest System Trails across Private Land*” for the Gallatin National Forest, stated in the **Purpose and Need** section”

“Many of the long-standing National Forest System (“NFS”) trail segments that cross private lands lack recorded easements. In other words, rights to most existing trail segments across private lands have not been perfected by acquiring written (“deeded”) easements, or through legal (“adjudicative”) procedures.”

To date, there is no recorded easement, valid existing right, or adjudicated access on any of my properties. The Forest Service lacks the jurisdiction to control and manage access across my private land.

2. Draft Record of Decision Pike and San Isabel National Forests Motorized Travel Management (MVUM) Analysis dated November 2020.

a. Section 5. Decision and Rationale, Page 23, *Valid Existing Rights*, states that “All action alternatives would provide for continued access in accordance with valid existing rights.” This section

only addresses the valid rights of those owning private parcels within the forest service area and providing access through forest service lands by special use permit or otherwise. The MVUM does not address or acknowledge the agency's authority through an existing right to classify, charge a fee and require a special use permit access across private property. Furthermore, unless a valid existing right does exist, the Forest Service has no authority to "decommission" or change to "administrative use only" or more importantly designate as "open to all vehicles" trails or roads that cross private lands. Such an action is arbitrary and capricious and an abuse of discretion to designate, control and manage access across private lands when no valid right exists.

b. PSINFTrav Travel Management Screening Criteria dated 11/7/2020 matrix. Above all, the screening criteria fails to identify trails that pass through private lands. Such input from these specific private landowners needed to be a part of the criteria from the beginning. According to 40 CFR § 1503.1 - *Inviting comments and requesting information and analyses*, more specifically 40 CFR 1503.1 (2) (v), identifies that the agency shall request the comments of "The public, *affirmatively* soliciting comments in a manner designed to inform *those persons or organizations* who may be *interested in or affected* by the proposed action." Given that every road or trail has been identified by number and name on the spreadsheet, why was the private landowner with a trail or road crossing through their private property not identified and made part of this matrix? Once the alternatives and maps are completed, private landowners with this specific issue are easily identifiable through public records. County assessors can breakdown and provide the agency with names and addresses of those affected persons. As simple as this affirmative effort appears to be, NONE has been undertaken by the agency. The failure to solicit and incorporate these comments violates this requirement and appears to be unlawful under NEPA.

### 3. Federal Liability Protection of Private Landowners

A majority of those that have commented on the MVUM are individuals interested in access for recreational purposes on public lands. This activity includes, but is not limited to, motorized or non-motorized activity. The increase in road and trail use by the public has far exceeded the initial intent of road management, and even with the proposed changes in the MVUM, does not begin to address the liability exposure private landowners face. Where those trails and access points cross private land, there is nothing in the MVUM to protect private landowners from the liability of those activities. Private landowners are left with inadequate protections under Colorado law and no protection under Federal Law.