

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:19-cv-1449

WILDERNESS WATCH,
SAN JUAN CITIZENS ALLIANCE, and
GREAT OLD BROADS FOR WILDERNESS,

Plaintiffs,

v.

BRIAN FEREBEE, in his official capacity as Regional Forester, and
UNITED STATES FOREST SERVICE, a Federal Agency within the U.S. Department of
Agriculture,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Brian Ferebee, Regional Forester of the Rocky Mountain Region of the United States Forest Service (collectively, “Forest Service” or “Agency”), authorized the unprecedented use of chainsaws throughout two designated wilderness areas in Colorado on May 7, 2019 (“Decision”). Congress, in the Wilderness Act, expressly prohibited the use of motorized equipment in wilderness areas. Mr. Ferebee’s authorization disregards the plain language and purpose of the Wilderness Act and will inflict noise, pollution, and motorized disruption on the untrammelled landscape and quiet solitude Congress mandated. Equally troubling, Mr. Ferebee made the Decision without public involvement or analysis of impacts and alternatives mandated by Congress in the National Environmental Policy Act. His Decision was made in the abstract, without interdisciplinary study, planning, or communication of the impacts, locations, and extent

of chainsaw use in the context of Wilderness Act protections and limitations on agency actions in wilderness areas. If his Decision stands, the wilderness character of these areas, as well as the interests of Plaintiffs, Plaintiffs' members, and other visitors, will be injured irreparably for decades. The Decision is unlawful under the Wilderness Act and National Environmental Policy Act and is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law under the Administrative Procedure Act. The Decision, therefore, must be set aside and its implementation enjoined to ensure the matter can be remanded to the agency for compliance with the law.¹

JURISDICTION AND VENUE

1. An actual, justiciable controversy exists between Plaintiffs and Defendants. Each challenged agency action is final and subject to judicial review under 5 U.S.C. §§ 702, 704, and 706. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331, 1346 and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-2202, 2412 and 5 U.S.C. §§ 705, 706.

2. Venue is proper under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. The designated wilderness areas affected by the Decision, the Weminuche Wilderness and South San

¹ The Forest Service also made the Decision without considering its impact to occupied habitat of the Canada Lynx and without consulting with the U.S. Fish and Wildlife Service even though that species, and potentially others that may be affected, is listed as threatened with extinction under the Endangered Species Act. Plaintiffs will be sending the required notification to the Forest Service concerning that violation and, should this dispute not be resolved sooner, anticipate amending this Complaint to add claims pursuant to that Act.

Further, it is unclear whether the Forest Service will timely respond to a records request of Plaintiff Wilderness Watch submitted April 26 under the Freedom of Information Act.

Juan Wilderness (collectively, “Wildernesses”), are located in the San Juan Mountains of southwest Colorado, within Conejos, Rio Grande, Mineral, San Juan, Archuleta, La Plata, and Hinsdale counties. Two Plaintiff organizations are headquartered in Colorado, and many of Plaintiffs’ members reside within Colorado. Defendants administer the Wildernesses through two national forest offices in Colorado, the San Juan National Forest and the Rio Grande National Forest.

PARTIES

3. Plaintiff WILDERNESS WATCH is a non-profit conservation organization whose sole mission is the preservation and proper stewardship of lands and rivers in the National Wilderness Preservation System and the National Wild and Scenic Rivers System. Since 1989 Wilderness Watch has engaged in public policy advocacy, congressional and agency oversight, public education, and litigation to promote sound stewardship of federal wilderness areas and Wild and Scenic River corridors. Wilderness Watch is headquartered in Missoula, Montana, and has offices in Idaho and Minnesota. Wilderness Watch advocates for the preservation of wilderness character nation-wide, including for the designated wildernesses of Colorado. Wilderness Watch members use and will continue to use the Weminuche and South San Juan Wildernesses for various personal and professional pursuits, including seeking solitude, hiking, wildlife viewing, and wildlife study. Peace, quiet, and the opportunity to enjoy pristine, wild natural settings are key values to those who enjoy designated wilderness. The Forest Service’s Decision to authorize the use of motorized equipment in the Wildernesses adversely affects Wilderness Watch’s organizational interests, as well as its members’ use and enjoyment of these Wildernesses. Wilderness Watch brings this action on its own behalf and on behalf of its adversely affected members.

4. Plaintiff SAN JUAN CITIZENS ALLIANCE (“SJCA”) is a non-profit organization with over 1,000 members in the Four Corners region. SJCA is headquartered in Durango, Colorado and is actively involved in monitoring and scrutinizing National Forest management, overseeing government decision-making and compliance with environmental laws, advocating for cleaner air quality and better stewardship of natural systems, promoting reduced energy consumption, energy efficiency and renewable energy, and working for improvements to community health. SJCA members in the Four Corners region use and plan to use the Weminuche and South San Juan Wildernesses. SJCA members are adversely affected by authorized motorized equipment use in these Wildernesses. SJCA brings this action on its own behalf and on behalf of its adversely affected members.

5. Plaintiff GREAT OLD BROADS FOR WILDERNESS (“Great Old Broads”) is a national, non-profit organization, led by women, that engages and inspires activism to preserve and protect wilderness and wild lands. The organization is headquartered in Durango, Colorado. Formed in 1989, Great Old Broads now has over 8,500 members and advocates in all 50 states who believe that wild places are valuable in their own right, who value the spirit and intent of national conservation legislation such as the Wilderness Act and the National Environmental Policy Act, and who support sound science as a basis for informed decisions. A primary goal of Great Old Broads is to ensure that there will still be remote, untrammeled places left not just for our own grandchildren, but for those of all species. Great Old Broads’ local chapter, called the South San Juan Broadband, emphasizes protecting designated wilderness and other public lands in southwestern Colorado. Great Old Broads members in the Four Corners region use and plan to use the Weminuche and South San Juan Wildernesses and are adversely affected by authorized

motorized equipment use in these Wildernesses. Great Old Broads brings this action on its own behalf and on behalf of its adversely affected members.

6. Each Plaintiff and their members use, enjoy, and plan to continue to use and enjoy on a regular basis, the Weminuche and South San Juan Wildernesses, including trailheads and trails where chainsaw use is authorized by the Decision. Their use and enjoyment involves many health, recreational, moral, scientific, spiritual, professional, educational, aesthetic and other pursuits that will be degraded by the Decision.

7. The Decision causes direct, immediate, and irreparable informational and procedural injury to Plaintiffs' interests by denying them and their members the right to informed decision making and full disclosure required by NEPA.

8. Unless the relief prayed for herein is granted, Plaintiffs and their members will continue to suffer ongoing, concrete, particularized, and irreparable harm and injury to their interests, including their current and future use and enjoyment of the Weminuche and South San Juan Wildernesses.

9. A favorable decision that grants some or all the relief requested in this Complaint is likely to remedy the harms the Decision causes to the wilderness values and character, and therefore Plaintiffs' use and enjoyment of the Wildernesses, by ensuring informed decisionmaking required by NEPA and ensuring the agency complies with the substantive standards imposed by the Wilderness Act and other law.

10. Defendant BRIAN FEREBEE is the Regional Forester for Region 2 a/k/a the "Rocky Mountain Region" of the United States Forest Service. Defendant Ferebee, as Regional Forester, is delegated authority to authorize motorized equipment use in wilderness under certain circumstances. Defendant Ferebee executed a May 7, 2019 memorandum documenting the

Decision to authorize the use of chainsaws in the Weminuche and South San Juan Wildernesses. Defendant Ferebee is sued in his official capacity.

11. Defendant UNITED STATES FOREST SERVICE is a federal agency operating as part of the U.S. Department of Agriculture. The Forest Service is responsible for activities on National Forest System lands, including designated wilderness within the National Forest System. The Forest Service is responsible for overseeing and administering the Weminuche and South San Juan Wildernesses, including controlling use and access by the public.

STATUTORY FRAMEWORK

12. The Forest Service's Decision violated the Wilderness Act 16 U.S.C. § 1131, *et seq.*, the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701, *et seq.* The Decision is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law. Plaintiffs seek to have the Decision set aside and request the Court grant whatever additional declaratory and injunctive relief is required to protect their interests, the interests of their members, and the wilderness character of the Weminuche and South San Juan Wildernesses.

The Wilderness Act

13. Congress enacted the Wilderness Act, 16 U.S.C. §§ 1131-1136, "to secure for the American people of present and future generations the benefits of an enduring resource of wilderness." 16 U.S.C. § 1131(a). To that end, the Wilderness Act provides for the establishment of a National Wilderness Preservation System with the explicit statutory purpose "to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition." 16 U.S.C. § 1131(a).

Congress defined “wilderness” as an area “in contrast with those areas where man and his own works dominate the landscape” and “where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” 16 U.S.C. § 1131(c). A wilderness is “an area of undeveloped federal land retaining its primeval character and influence” with the “imprint of man’s work substantially unnoticeable.” *Id.* Accordingly, wilderness provides “outstanding opportunities for solitude or a primitive and unconfined type of recreation.” *Id.*

14. While the Wilderness Act recognizes recreation as an appropriate use of wilderness, the Act makes the mandate of wilderness preservation paramount:

[E]ach agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.

16 U.S.C. § 1133(b). Recreation is encouraged “[e]xcept as otherwise provided in [the Act].” *Id.* Congress established the Wilderness Act, among other reasons, to ensure “growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition....” 16 U.S.C. § 1131(a).

15. The Act prohibits the Forest Service from authorizing specific actions in wilderness that Congress determined are antithetical to wilderness character—including motorized uses such as chainsaw use—unless those actions are “necessary to meet minimum requirements for the administration of the area” as wilderness. 16 U.S.C. § 1133(c); *see also* 36 C.F.R. § 261.18(c) (Forest Service regulations prohibiting “possessing or using ... motorized equipment” in wilderness); 36 C.F.R. § 293.6 (prohibiting “motorized equipment” in wilderness except as provided by the Wilderness Act).

16. The Wilderness Act charges the Forest Service, as steward of the Weminuche and South San Juan Wildernesses, with a duty to preserve their wilderness character recognized by Congress. *Id.* § 1133(b). The Act prohibits the Forest Service from conducting or authorizing activities in wilderness areas that Congress determined are antithetical to preserving the area as wilderness — expressly including motorized chainsaw use to clear trails. The Forest Service made the Decision not to protect or improve wilderness character, but instead to facilitate access for recreational and commercial users. The Decision contravenes the basic tenets and premise of the Wilderness Act, its express statutory prohibitions, and the Forest Service’s wilderness stewardship duty.

The National Environmental Policy Act

17. Congress enacted the National Environmental Policy Act (“NEPA”) to “promote efforts which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4331. NEPA requires federal agencies to analyze the environmental impacts of a particular action before the proposed action may proceed. 42 U.S.C. § 4332(2)(C). Federal agencies must notify the public of proposed actions and allow the public to comment on the fully disclosed environmental impacts of the proposed project.

18. The NEPA process requires production of an Environmental Impact Statement (“EIS”) for all “major Federal actions significantly affecting the quality of the human environment. . . .” 42 U.S.C. §4332(C). The trigger for NEPA compliance and use of the NEPA process to “prevent or eliminate damage” to the environment is a “federal action.” 42 U.S.C. § 4332(2)(C). “Major Federal Actions” include, among other things, “adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based,” 40 C.F.R. §1508.18(b)(2);

and “actions with effects that may be major and which are potentially subject to Federal control and responsibility” and “include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies. . . .” 40 C.F.R. § 1508.18.

19. A proposal for a “Federal action,” whether submitted by a private party or agency staff, triggers NEPA duties early in the decisionmaking process. *Id.* A proposal “exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. [...] A proposal may exist in fact as well as by agency declaration that one exists.” 40 C.F.R. § 1508.23. NEPA procedures must 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).

20. The EA or EIS should assess: (1) the environmental impact of the proposed action; (2) any adverse environmental effects which cannot be avoided should the proposal be implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and, (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. 42 U.S.C. § 4332(C).

21. NEPA and its implementing regulations, including well-settled NEPA caselaw, require federal agencies to take a “hard look” at environmental impacts of proposed projects, measures to mitigate these environmental impacts, the purpose and need for the proposed action, alternatives to a proposal, including a “no action alternative,” and the environmental and social impacts of a reasonable range of alternatives, including no action. Accordingly, they must take a

hard look at the direct, indirect, and cumulative effects of their actions on the environment and disclose those effects for informed public comment. *See* 40 C.F.R. §§ 1508.7, 1508.8, 1508.25.

22. The Forest Service authorized unprecedented motorized chainsaw use in the Weminuche and South San Juan Wildernesses—federally protected wilderness areas where chainsaw use is statutorily prohibited absent narrow exception—without public notice or participation in that Decision. The Forest Service decided to take the challenged action without preparing an environmental assessment and finding of no significant impact or an environmental impact statement. The Forest Service did not document the determination to forego NEPA analysis in any NEPA document.

23. NEPA requires the Forest Service to analyze the environmental impacts of a particular action before proceeding with that action. 42 U.S.C. § 4332(2)(c); 40 C.F.R. § 1500.1(b). In addition, federal agencies must notify the public of a proposed action and allow the public to comment on the fully-disclosed environmental impacts of a proposed action and alternatives. The agency analysis must be contained in an “environmental document.” 40 C.F.R. § 1508.10. The Decision is not eligible for any Categorical Exclusion that the agency has promulgated in its regulations. 40 C.F.R. § 1508.4; *see also* 40 C.F.R. § 1500.4(p). The Forest Service failed to provide a full and open analysis and determination of its impacts in accordance with NEPA.

FACTS

Setting

24. The Weminuche Wilderness (“Weminuche”), at nearly half a million acres, is the largest Wilderness in Colorado. To protect the solitude and character of much of the heart of the San Juan Mountains, the Weminuche was designated as part of the National Wilderness Preservation System by Congress in 1975 and expanded twice in 1980 and 1993. The Weminuche includes

many of the archetypal “fourteeners” of the San Juan Mountains and spans the Continental Divide, its waters flowing to the Gulf of Mexico and Pacific Ocean. The Weminuche encompasses ecosystems ranging from ponderosa pine forests at 8,000 feet in elevation to alpine tundra, and the wilderness contains hundreds of thousands of acres of forested landscapes, including large tracts of Engelmann spruce and subalpine fir.

25. The South San Juan Wilderness (“South San Juan”), at 158,790 acres, preserves much of southeastern portion of the San Juan Mountains. Designated by Congress in 1980 and expanded in 1993, its terrain is remote and rugged, characterized by high peaks and cliffs, jagged pinnacles, and ragged ridges. The South San Juan also straddles the Continental Divide and includes secluded peaks reaching 13,300 feet, thirty-two lakes, and the headwaters of the Conejos, San Juan, and Blanco rivers. The South San Juan’s lowest elevations are at 8,200 feet and the wilderness contains thousands of acres of ponderosa pine, mixed conifer, and Engelmann spruce-subalpine fir forests.

26. Both Wildernesses are located within and administered by two national forests within the Rocky Mountain Region of the Forest Service: the San Juan National Forest and Rio Grande National Forest.

The Decision

27. In April 2019, Plaintiffs learned from their members that the Regional Forester for the Rocky Mountain Region of the Forest Service was evaluating a proposed action to authorize the use of chainsaws by Forest Service personnel, commercial outfitters, and volunteers to clear dead and downed wood on trails within wilderness areas throughout the Rocky Mountain Region and specifically on trails leading to permitted outfitter and guide camps and known hunting camps.

28. On April 26, 2019 counsel for Wilderness Watch submitted a letter to Mr. Ferebee requesting (a) “all records related to any recent or pending proposal or analysis to authorize the use of chainsaws in designated Wilderness to clear downed trees from trails or campsites;” and (b) that the Forest Service disclose its “anticipated timeline for undertaking a NEPA review process, issuing a scoping letter, requesting public input, and preparing an environmental analysis for any such proposal.”

29. Wilderness Watch’s April 26, 2019 request for records was made pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

30. In its April 26, 2019 letter, Wilderness Watch also offered to meet with Mr. Ferebee should he or his staff be interested in discussing any such proposal under consideration and hearing the concerns and perspective of Wilderness Watch and its members about the use of motorized equipment in wilderness for administrative purposes.

31. Wilderness Watch received an immediate acknowledgement that its request had been received by the Forest Service on April 26, 2019.

32. On May 3, 2019, Jason Robertson, Deputy Director for Recreation, Lands, and Minerals for the Rocky Mountain Region, wrote by email to the Executive Director of Wilderness Watch that the letter had been received and that the Forest Service “will be working on preparing a response.”

33. Mr. Robertson is the Project Lead for the Decision.

34. On May 6, 2019, the FOIA Officer for the Rocky Mountain Region emailed counsel for Wilderness Watch acknowledging receipt of the April 26 FOIA request and stated that she was “working with Wilderness staff to determine if the request is clear enough to gather the necessary information.”

35. On May 7, 2019, before the Forest Service responded to Plaintiffs' request for information and public participation, Mr. Ferebee executed a memorandum to the Forest Supervisors of the San Juan and Rio Grande national forests titled "Approval for Limited Chainsaw Use to Clear Trails in Wilderness" in the Weminuche and South San Juan, documenting the Decision.

36. On May 7, 2019, the same day the Decision was signed, Wilderness Watch received a response to its April 26 FOIA request stating that "[a]fter careful review of your FOIA request, the Forest Service has determined that your request does not specifically identify the records which you are seeking" and requesting that Wilderness Watch "resubmit" its request "containing a reasonable description of the records you are seeking" because "we are unable to determine what you seek and we would not be certain we would construe the scope of your request as you expect."

37. On May 8, 2019, Plaintiffs and their members learned that the Forest Service had already made a decision to authorize the use of chainsaws in wilderness.

38. Late in the day on May 10, 2019, following several requests for copies of the Decision and supporting documentation from Agency personnel, Plaintiffs were provided a copy of the Decision and an unsigned "Minimum Requirements Decision Guide Workbook" ("Workbook").

39. The Decision authorized the use of chainsaws in both Wildernesses to clear trail obstructions for up to six weeks between June 1 and August 17, 2019.

Issues, Impacts, and Alternatives not Studied

40. The Decision is the most extensive authorization of chainsaw use ever permitted in the National Wilderness Preservation System, yet the Forest Service authorized it without notifying the public, without providing an opportunity for the public to comment on the proposed action,

and without analyzing the proposal in an environmental assessment or environmental impact statement under NEPA.

41. Mr. Ferebee concluded that chainsaw use in wilderness can be authorized because, otherwise, clearing trails cannot be accomplished “within reason” through the use of non-motorized methods and that clearing trails was an “essential activity” that would be “impossible to accomplish by non-motorized means.”

42. Mr. Ferebee did not explicate or document what he means by “within reason” or why clearing trails in the Weminuche and South San Juan Wildernesses is “essential” or “impossible” without motorized equipment; he and the Workbook did not explain how it evaluated its policy criteria and reached those conclusions.

43. The Forest Service did not make the Decision to protect or improve wilderness character, but instead to improve access for recreational and commercial users.

44. The Forest Service admits that the use of motorized equipment is prohibited by the Wilderness Act absent certain exceptions it does not cite or analyze.

45. The Forest Service determined that there is no “provision in wilderness legislation that specifically addresses the need to clear downfall from wilderness trails” or that “explicitly requires the agency to provide unobstructed trail access.”

46. The Forest Service, in the Workbook, admits that, in the absence of the Decision, the San Juan and Rio Grande national forests may choose to temporarily close or relocate some trails or segments for safety and resource protection purposes during the normal course of project work.

47. The Forest Service determined that chainsaw use would degrade the undeveloped quality of wilderness because it is part of “growing mechanization” that “adds to man’s ability to master or alter the environment in ways usually not associated with non-motorized equipment.”

48. The Forest Service concluded that chainsaw use will have “a greater effect on the visitor’s experience, especially due to the sounds of the chainsaw,” because visitors “come to wilderness with the expectation of hearing the sounds of nature, not the sounds of motorized equipment.”

49. The Forest Service determined that tree felling and removal of trees under the Decision “is a trammeling and will have a negative effect, no matter whether chainsaws or crosscut saws are used,” but did not analyze the magnitude of trammeling and negative affects by chainsaws or crosscut saws.

50. The Forest Service concluded that “[c]lean-cut stumps and ends are clearly identifiable as the imprint of human influence on the wilderness and will diminish its contrast with other areas of growing mechanization.”

51. The Forest Service concluded that, in the absence of chainsaw use authorization, “there will be additional funding and crews employed so that more work can be done using additional crosscut sawyers and trail crew members to fell, buck and remove trees from the trail” and that the Forest Service “provided some additional funding to the forests in April 2019 for this work.”

52. The Forest Service determined that, in the absence of authorizing chainsaw use in the Wildernesses, “[a] greater effort will be made to enlist the help of certified crosscut sawyers from volunteer groups such as Friends of Wilderness, Poudre Wilderness Volunteers, Volunteers for Outdoor Colorado and many more as well as Forest Service fire crews.”

53. The Forest Service determined that the use and development of a crosscut strike team in 2020 is a possibility.

54. The Forest Service admits that when crosscut saws are used “there is little effect on the visitor’s experience, especially from the sounds of the cutting with crosscut saws versus the sounds of chainsaws.”

55. The Forest Service Workbook alleges that “[t]he beetle kill is pervasive, and the magnitude is significant and wilderness-wide.”

56. There are many areas of the Wildernesses where beetle kill is not pervasive or significant.

57. The Workbook cites a report concerning Colorado forests state-wide with statistics concerning tree mortality and blowdown, but does not include any data on blowdown in the Wildernesses and notes that acreage affected by Spruce Beetle has declined annually for the four years prior to publication of the statewide report in 2017.

58. The Forest Service did not disclose or analyze the impacts of its Decision from having to use and transport heavier motorized equipment, gasoline, and oil and other lubricants in the Wildernesses.

59. The Decision authorizes volunteer groups, permittees, and contractors to carry and use chainsaws, fuel, and lubricants in the Wildernesses.

60. The Agency’s National Saw Policy as stated in the Forest Service Manual requires Forest Service personnel and cooperators using motorized and non-motorized saws to achieve one or more of six skill level certifications, which may be obtained upon successful completion of required sawyer training, including a field proficiency evaluation. The National Saw Policy requires certified sawyers to follow extensive safety procedures and stipulations.

61. Volunteer groups, permittees, and contractors are not subject to the National Saw Policy.

62. The Forest Service, in the Workbook considered, but did not analyze, closing affected trails.

63. The Forest Service considered, but did not analyze, the use of “crosscut strike teams” to clear trails in the Wildernesses, but owing to factors such as lost time due to the 2019 government furlough and arranging travel to southwest Colorado, this “seemed impractical.”

64. The Forest Service determined that “[t]ransportation of personnel and equipment will have no effect on the natural character” of the Wilderness, even though chainsaw use requires transporting heavy equipment, fuel, lubricants, and spare mechanical parts into the Wildernesses.

65. The Forest Service did not analyze or plan what public outreach would occur or how it would occur prior to making the Decision, and its first internal meeting to discuss public outreach occurred on May 13, 2019.

66. The Decision requires public outreach in advance of chainsaw work in the Wildernesses, but does not specify how, when, by whom, or what the public outreach message will be.

67. As of May 22, 2019, ten days before chainsaw use is authorized to begin, the Forest Service has not completed any public outreach concerning the Decision and its implementation, other than an announcement the week it was made.

68. On May 14, 2019, Mr. Robertson told Plaintiffs that the Forest Service does not know how much chainsaw use will occur in the Wildernesses, where it will occur, who will use chainsaws, or the extent to which Forest Service personnel will be available to plan and supervise chainsaw use by its personnel or by outfitters, volunteers, and contractors.

69. The Workbook concluded that “[i]t is difficult to estimate the quantity of chainsaws that will be needed or used.”

70. The Workbook stated that the majority of chainsaw use would occur before hunting season and that work would be reduced to “minimize noise impacts at the onset of hunting season.”

71. The Forest Service stated prior to issuing the Decision it will prioritize work based on, among other things, “the public’s need to have access to the wilderness from July to November 2019, especially to outfitter and guide camps and for hunter’s during the Fall hunting season.”

72. The Forest Service states that the 2019 hunting season begins August 31, 2019.

73. The Forest Service did not provide any public notification concerning its proposal to authorize the use of chainsaws in the Wildernesses.

74. The Forest Service did not prepare an environmental assessment, an environmental impact statement, or any other environmental document to study the impacts of the Decision and failed to complete a NEPA process for the Decision.

75. The Forest Service did not consult its legal counsel about the lawfulness of the Decision prior to making it.

76. The Forest Service did not evaluate whether the Decision complies with the Wilderness Act, NEPA, or the Endangered Species Act.

77. The Forest Service only evaluated whether it could attempt to justify the Decision based on internal Agency policies and guidance.

78. The Forest Service Manual and Forest Service Handbook were not promulgated by notice and comment rulemaking procedures.

79. The Decision is not supported by any reliable data or analysis demonstrating that the use of chainsaws to clear trails in the Wildernesses will be more efficient than traditional tools.

80. Clearing downed trees from trails involves considerable preparation, coordination, and work to move and secure logs and rehabilitate trail; sawing logs is just one task of many and only one component of the time it takes to clear downed trees from trails.

81. A hand crosscut saw is the traditional, minimum tool used to clear downed wood where necessary in wilderness.

82. The distinct marks left by chainsaws on cut logs are evident for decades after a chainsaw is used.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

The Decision violates the Wilderness Act, Wilderness Act Implementing Regulations, and the Administrative Procedure Act.

83. Plaintiffs repeat and incorporate by reference the allegations in all paragraphs of this Complaint.

84. The Wilderness Act requires the U.S. Forest Service to administer designated wilderness in a manner that preserves its wilderness character. 16 U.S.C. § 1133(b).

85. The Wilderness Act expressly prohibits use that is not consistent with this mandate and provides that “except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act there *shall be no [...] use of motor vehicles, motorized equipment or motorboats*” within designated wilderness. 16 U.S.C. § 1133(c) (emphasis added).

86. The Forest Service’s Decision to authorize chainsaws to clear trails in the Weminuche and South San Juan Wildernesses violates the Wilderness Act and its implementing regulations because the use of motorized equipment is not necessary to meet minimum requirements for administering the Weminuche and South San Juan Wildernesses.

87. The Forest Service’s stated justification for the Decision, which authorized chainsaws “for the purposes of clearing trail obstructions and creating safe refuges for administrative use and trail users,” violates the requirement that Forest Service management decisions may not

elevate recreational and commercial activity over preservation of wilderness character. 16 U.S.C. § 1131(a) (recreational and scientific uses of wilderness permitted only insofar as activities do not impair wilderness character); 36 C.F.R. § 293.2(b), (c) (human uses of wilderness are allowed only where use is consistent with maintaining primitive conditions; management decisions must prioritize wilderness values over other considerations).

88. Even had the Decision been tailored to the preservation of wilderness character instead of easing recreational access and perceived convenience of Agency personnel and outfitters, it is still not the minimum administrative action necessary to achieve that end. The Forest Service did not meaningfully consider and analyze non-motorized alternatives that could achieve the Service's minimum administration requirements through methods compatible by the Wilderness Act, including increasing crosscut saw teams; completing planning to focus on priority trails; educating the public on trail conditions, travel practices, and alternative routes; implementing temporary trail closures or use restrictions; or any combination of these and other methods.

89. The Forest Service's challenged authorization violates the Wilderness Act and its implementing regulations because the agency has not rationally demonstrated that providing unobstructed trail access is necessary to meet minimum requirements for administration of the area for the purpose of the Wilderness Act, and that there is no alternative to otherwise-prohibited uses that would achieve that end. *See* 16 U.S.C. § 1133(c). The justifications advanced purporting to support the Decision do not satisfy this stringent standard and implementing the Decision would violate the Forest Service's legal duty to administer the Weminuche and South San Juan Wildernesses in a manner that preserves their wilderness character. *See* 16 U.S.C. § 1133(b).

SECOND CLAIM FOR RELIEF

The Decision violates the National Environmental Policy Act, National Environmental Policy Act Implementing Regulations, and the Administrative Procedure Act.

90. Plaintiffs repeat and incorporate by reference the allegations in all paragraphs of this Complaint.

91. The Forest Service acted arbitrarily and capriciously by issuing the Decision and failing to conduct a NEPA process that takes a hard look at the direct, indirect and cumulative impacts of authorizing motorized use (chainsaws) in the Weminuche and South San Juan Wildernesses. 40 C.F.R. § 1508.21 (“ ‘NEPA process’ means all measures necessary for compliance with the requirements of section 2 and title I of NEPA.”).

92. The Forest Service issued the Decision without adhering to requirements for public participation and informed decision making required by NEPA and its implementing regulations.

93. The Forest Service issued the Decision without public notice and comment and in the absence of environmental analysis, including an EA and/or EIS, as required by NEPA and its implementing regulations.

94. The Forest Service failed to take a hard look at the environmental impacts of the Decision, measures to mitigate these environmental impacts, the purpose and need for the Decision, alternatives to the Decision, including a “no action alternative,” and the environmental and social impacts of a reasonable range of alternatives, including no action.

95. The Forest Service, by authorizing chainsaw use by commercial outfitters, expanded the authorized uses and impacts permitted by the Agency for commercial outfitters under their special use permits to operate within the Wildernesses without any NEPA process to inform the decision to authorize such expansion.

96. As a result of the Forest Service’s failure to conduct an environmental analysis and take a hard look at the direct, indirect, and cumulative impacts of its Decision, the Forest Service violated NEPA and its implementing regulations, acted arbitrarily and capriciously, abused their discretion, failed to act in accordance with law, and, therefore, violated the APA, 5 U.S.C. § 706(2)(A).

THIRD CLAIM FOR RELIEF

The Decision violated the National Environmental Policy Act and Administrative Procedure Act because the NEPA significance threshold is met but the Forest Service failed to prepare an Environmental Impact Statement.

97. Plaintiffs repeat and incorporate by reference the allegations in all paragraphs of this Complaint.

98. NEPA requires agencies to prepare an Environmental Impact Statement when a federal action involves significant impacts. 42 U.S.C. § 4332(2)(c); 40 C.F.R. § 1501.4. The Decision, when considered in context of the direct, indirect, and cumulative impacts of this and other actions is a major federal action significantly impacting the environment. *See id.*

99. When an EIS is not prepared, or the agency is uncertain whether or not the significance threshold has been met, an Environmental Assessment is the NEPA process that must be used. 40 C.F.R. § 1508.27. This inquiry must include an analysis “in several contexts, such as a whole (human, national), the affected region, the affected interests and the locality.” 40 C.F.R. § 1508.27(a). In addition, the agency must analyze the severity of the action, such as whether impacts “may be both beneficial and adverse,” “the degree to which the proposed action affects public health or safety,” “unique characteristics of the geographic area,” and “the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. § 1508.27(b)(1)-(5).

100. In deciding to approve chainsaw use in the Wildernesses, the Forest Service unlawfully circumvented the required NEPA process and did not prepare an EA or EIS. The impacts to the Wildernesses, alone and in combination with the other allegations herein, such as impacts to wilderness character, solitude, water quality, air quality, soil, wildlife and habitat (including listed threatened and endangered species and designated critical habitat), opportunities for a primitive and unconfined type of recreation in an area that appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable, and other important values, satisfy the significance criteria and preclude the use of non-NEPA procedures, a Categorical Exclusion, or a Finding of No Significant Impact. *See* 40 C.F.R. §§ 1508.4, 1508.27.

101. The Forest Service acted arbitrarily and capriciously by authorizing a proposal for federal action without determining whether NEPA's significance criteria were met.

102. Impacts not analyzed confirm significant impacts that require analysis in an EIS including, but not limited to, the impacts to wilderness character, solitude, water quality, air quality, soil, wildlife and habitat (including listed threatened and endangered species and designated critical habitat), opportunities for a primitive and unconfined type of recreation in an area that appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable, and other important values. Agency attempts to avoid disclosure and analysis of impacts and the alternative means to avoid and minimize such impacts by using the Workbook instead of the NEPA process is unlawful.

103. The Decision, Workbook, and as-yet undisclosed administrative record confirm that the facts and circumstances require the Forest Service to prepare an EIS.

104. As a result, the Forest Service's failure to conduct a lawful NEPA process based on the significant impacts of the Decision violated NEPA and its implementing regulations, was arbitrary and capricious, an abuse of discretion, and a failure to act in accordance with the law, and, therefore, violated the APA, 5 U.S.C. § 706(2).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment for Plaintiffs and against Defendants as follows:

- A. Declare that Defendants' Decision violates the Wilderness Act by authorizing motorized use even though such use is expressly prohibited by the Act, that the use of motorized equipment to clear trails is not necessary to meet minimum requirements for administering the Weminuche and South San Juan Wildernesses, and that in adopting the Decision the Forest Service unlawfully elevated recreational and commercial activities over the preservation of the wilderness character in the Weminuche and South San Juan Wildernesses.
- B. Declare that Defendants violated the National Environmental Policy Act ("NEPA") and Administrative Procedures Act ("APA") by failing to conduct the NEPA process, prepare NEPA documentation, and take a "hard look" at the Decision to authorize chainsaw use in the Weminuche and South San Juan Wildernesses.
- C. Void Defendants' Decision, including its actions, authorizing the use of chainsaws in the Weminuche and South San Juan Wildernesses to clear trail obstructions for up to six weeks between June 1 and August 17, 2019.
- D. Remand the Decision to Defendants with directions and order Defendants to comply with the requirements of NEPA, APA, and the Wilderness Act and their respective

implementing regulations by performing Defendants' mandatory procedural duties when considering whether or not to authorize motorized use in designated wilderness.

- E. Enter a temporary restraining order, a preliminary injunction, and a permanent injunction that immediately and permanently enjoins Defendants from acting on this Decision and any future motorized use proposal in designated wilderness that does not first comply with NEPA, APA, and the Wilderness Act.
- F. Grant the Plaintiffs' costs of litigation, including reasonable attorney fees, as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- G. Grant Plaintiffs such additional and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on May 22, 2019.

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