

BULL MOOSE SPORTSMENS ALLIANCE/COLORADO BACKCOUNTRY HUNTERS AND ANGLERS/COLORADO TROUT UNLIMITED/COLORADO WILDLIFE FEDERATION/NATIONAL WILDLIFE FEDERATION/THEODORE ROOSEVELT CONSERVATION PARTNERSHIP/TROUT UNLIMITED/WESTERN NATIVE TROUT INITIATIVE

Sportsmen's Recommendations for Supporting the Proposed Colorado Roadless Rule

Problem 1: At 562,000 acres, the upper tier category in the preferred alternative is too small and fails to include much of the most important fish and wildlife habitat.

Solution: After further upper tier areas are included by the agency for the Pike-San Isabel and Rio Grande national forests, the acreage of upper tier lands in the preferred alternative should increase to a total of at least 1.4 million acres (33% of Colorado's roadless acres) using the prioritized list of roadless areas below. Upper tier lands bordering Community Protection Zones may be cut back in acreage so the bordering areas are not included in the upper tier (the overlap is roughly 22,000 acres total). All Alternative 2 lands already placed in upper tier should remain there.

Rationale: The upper tier category has been created to balance narrowly defined exceptions in the CO rule such as coal mining, ski area development, and community protection zone logging. This is very similar to the "Primitive" and "Wild Land Recreation" categories used to balance development allowances in the Idaho roadless rule. While important, the preferred alternative (alt. 2) acres are limited to areas where forest plans already prohibit road building. Using these acres as upper tier does not address key fish and wildlife habitat nor does it illustrate a commitment by the Forest Service to go beyond their current plans and create a truly protective rule.

As drafted, about 14% of the overall acreage in the proposed Colorado rule is upper tier while Idaho upper tier areas represent about 33% of the overall acreage. In order for the Colorado rule to be a similar success to the Idaho rule, the final upper tier category must be expanded and include the Colorado roadless areas with key fish and wildlife habitat and high quality hunting and fishing.

CRA	Forest	Acreage
All South San Juan Wilderness adjacent	San Juan	34,900
Mount Lamborn	Grand Mesa, Uncompahgre and Gunnison	22,600
Lower Piney	White River	13,500
Sugarloaf South	Routt	23,200
Spanish Peaks	Pike-San Isabel	7,400
Crosier Mountain	Arapaho-Roosevelt	7,300
Bristol Head	Rio Grande	46,100
Turkey Creek	San Juan	25,300
Mendicant	Grand Mesa, Uncompahgre and Gunnison	19,100
Mamm Peak	White River	25,300
Purgatoire	Pike-San Isabel	16,800
Sugarloaf North	Routt	15,000
Antora Meadows/Bear Creek	Rio Grande	22,800
All Comanche Peak Adjacent	Arapaho-Roosevelt	44,200
Graham Park	San Juan	17,800
Clear Fork	Grand Mesa, Uncompahgre and Gunnison	24,500
Elk Creek B	White River	7,200
All Greenhorn Mountain Wilderness Adjacent	Pike-San Isabel	14,400
Troublesome North	Routt	31,700
Deep Creek/Boot Mountain	Rio Grande	27,600
White Pine Mountain	Arapaho-Roosevelt	10,400
Hermosa	San Juan	148,100
Woods Lake	White River	9,500
Huntsman Ridge	Grand Mesa, Uncompahgre and Gunnison	10,600
Troublesome South	Routt	47,400
Wason Park	Rio Grande	20,500
Highline	Pike-San Isabel	22,700
Treasure Mountain	San Juan	22,500
Thompson Creek	White River	18,500
Beckwiths	Grand Mesa, Uncompahgre and Gunnison	18,400
Dome Peak	Routt	35,700
Chama Basin	Rio Grande	21,600
Jefferson	Pike-San Isabel	10,900
		843,500

Problem 2: Linear Construction Zones are allowed in upper tier areas, threatening the highest value CRAs with transmission corridors, water projects, and oil and gas pipelines.

Solution: Linear Construction Zones should be prohibited in areas designated as upper tier. To correct this problem, § 294.44 should be changed to the following:

§ 294.44 Prohibition on linear construction zones.

- (a) *General.* A linear construction zone may not be constructed or reconstructed in Colorado Roadless Areas except as provided in paragraphs (b) and (c) of this section.
- (b) *Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, a linear construction zone may only be constructed or reconstructed in Colorado Roadless Area upper tier acres if the Responsible Official determines that:
 - (1) A linear construction zone is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty.
- (c) *Non-Upper Tier Acres.* Notwithstanding the prohibition in paragraph (a) of this section, the Regional Forester may authorize a linear construction zone within a Colorado Roadless Area outside upper tier acres for:

Rationale: The upper tier category will not truly conserve the highest value roadless areas as long as the linear construction zone loophole exists for this category of lands. The LCZ loophole must be closed.

Problem 3: The proposed CO rule does not require NSO stipulations for oil and gas development in areas designated as upper tier, jeopardizing the characteristics of high value roadless areas.

Solution: The following language should be included in the CO rule:

§ 294.46 Other Activities.

For mineral leases, contracts, permits, and other associated activities authorized after the effective date of this subpart the Forest Service will not recommend, authorize, or consent to road construction, road reconstruction, linear construction zones, or surface occupancy associated with mineral leases in Colorado Roadless Areas designated as upper tier.

Rationale: Colorado roadless areas designated as upper tier should receive maximum safeguards from surface developments that would jeopardize their primitive character. Further, upper tier areas in the Idaho roadless rule received NSO protections and the Colorado roadless rule must do the same in order to replicate this success.

Problem 4: Language to safeguard cutthroat trout populations should be improved and included for both upper and lower tier.

Following recommendations from the Colorado petition, the draft rule contains provisions to protect native cutthroat trout catchments by including a standard of review for construction of roads and linear construction zones. However, these provisions include the phrase “over the long term.” Most native cutthroat recovery waters are relatively small stream reaches, and the isolated cutthroat populations found in these waters are vulnerable to both long- and short-term impacts. As written, the draft rule could allow shorter-duration impacts that could lead to extirpation of small distinct cutthroat populations because there is no prohibition on impacting the trout populations, only a requirement to avoid diminished habitat conditions over the long term. The standard must be strengthened to ensure that cutthroat populations themselves are maintained – not just their “long term” habitat.

Solution: Remove the language “over the long term” and add language stating that “activities cannot alter, damage, or destroy native cutthroat trout populations” at § 294.43(b)(2)(iii), § 294.43(c)(2)(iv), and § 294.44(b)(4)(iii).

Rationale: The final Colorado roadless rule petition required that activities within native cutthroat catchments not diminish watershed conditions while the recently proposed rule includes the added language, “over the long term.” Sportsmen believe this could lead to extirpation of small distinct cutthroat populations during activities because there is no prohibition on impacting trout populations, only that they retain watershed conditions over the long term. Even if conditions are restored over the long term, there are no requirements that sustainable native trout populations are retained during a project. Further, “over the long term” is ambiguous. Does this mean 5 years, 20 years, or 100? If this language is to remain, the long term should be defined and additional language should be added requiring the sustainability of native trout populations.

In addition, language regarding determination of whether activities will diminish conditions for native cutthroat trout is problematic at §294.43(b)(2)(iii). The rule makes no mention of what would occur if it was determined the project would diminish conditions.

Solution: Add the following to the regulatory language:

“if it is determined that a non-discretionary project would diminish conditions in the water influence zone and/or in native cutthroat habitat, the Regional Forester will require a plan for protecting native cutthroat populations and their habitat during project activities that insures activities will not alter, damage, or destroy native cutthroat trout populations”.

Rationale: Without adding language for how to proceed in the event a project diminishes conditions in the water influence zone and/or in native cutthroat habitat, there is no assurance that a project would not drastically damage or even destroy a cutthroat population. This omission leaves the Forest Service legally vulnerable and does not adequately protect native trout populations.

Problem 5: Gap leases should be resolved

Solution: The Colorado rule should state explicitly that the Forest Service will allow no new road construction or reconstruction on roadless lands subject to mineral leases issued subsequent to the 2001 Roadless Area Conservation Rule and prior to the effective date of the Colorado Rule, and that it will, where necessary, amend those leases to clarify such surface use restrictions.

Rationale: The proposed Colorado roadless rule has the potential to allow road building for the development of 70,000 acres of gap leases that were sold after the promulgation of the 2001 Roadless Area Conservation Rule.

As stated in the Nov. 29, 2006, 9th District Court relief order and upheld in the 9th Circuit Court of Appeals, these gap leases were issued without the required stipulations and the court ordered that surface use in roadless areas for the development of gap leases be restricted.

The 2001 Roadless Rule applies to activities commenced hereafter with respect to any and all mineral leases in IRAs in National Forest lands not affected by the Tongass Amendment that issued after January 12, 2001. The Forest Service is enjoined from approving or allowing any surface use of a mineral lease issued after January 12, 2001, that has not already commenced on the ground and which would violate the Roadless Rule...

However, because these surface use restrictions aren't included in the stipulations for each lease parcel, the language provided in § 294.43 (c) (1) (viii) of the proposed Colorado roadless rule could eliminate the requirement that these parcels be developed in accordance with the RACR.

Problem 6: Currant Creek

Solution: Currant Creek should be excluded from the coal exceptions in the final Colorado roadless rule.

Rationale: We appreciate the removal of the 10,800 acre Currant Creek roadless area from the N. Fork coal mining exceptions. This area provides high value elk winter and summer range, elk and mule deer migration corridors, key breeding habitat for elk and wild turkey, and prime black bear habitat. Currant Creek is not close to any other coal operations nor have the mineral rights been leased – it is inappropriate for the N. Fork coal mining exceptions.

Allowing Restoration While Maintaining Roadless Characteristics

Many sportsmen and fish and wildlife groups conduct on-the-ground restoration projects, such as aspen regeneration, to maintain habitat diversity that benefits fish and game and many other species of fish and wildlife that require early successional habitat. We recognize the importance of this work for our fish and wildlife resources and believe it can be achieved in CRAs using carefully planned projects under the following language in the rule:

“(3)The cutting, sale, or removal of generally small diameter timber is needed for one of the following purposes and will maintain or improve one or more of the roadless area characteristics as defined in §294.41. Projects are expected to be infrequent, and will be developed in coordination with the Colorado Division of Parks and Wildlife.”

- (i) To improve threatened, endangered, proposed, or sensitive species habitat; or
- (ii) To maintain or restore the characteristics of ecosystem composition and structure.

This language should replace §294.42(c) (3) and be added to 294.42(b).

Gap Leases

We recommend that the USFS change the Proposed Colorado Roadless Rule to clarify that the Forest Service intends to recognize valid existing rights under oil and gas leases issued as of the effective date of the rule, but does not intend the Rule to establish the validity or invalidity of pre-existing rights, including the gap leases. To do so, we recommend that § 294.43 (c) (viii) be changed to read as follows:

§ 294.43 (c) (viii) A temporary road is needed within a Colorado Roadless Area pursuant to **valid existing rights associated with** the exploration or development of an existing, **lawfully issued** oil and gas lease that does not prohibit road construction or reconstruction, including the construction of infrastructure necessary to transport the product, on National Forest System lands that are under lease **lawfully** issued by the Secretary of the Interior as of [final rule effective date]. The Forest Service shall not authorize the Bureau of Land Management to grant any request for a waiver, exception, or modification to any oil or gas lease if doing so would result in any road construction or tree cutting within a Colorado Roadless Area beyond that which was **lawfully** authorized by the terms and conditions of the lease at the time of issuance;