

Screening Criteria for Litigation Requests

USFS Rocky Mtn Region Approval for Limited Chainsaw Use in Two Wilderness Areas, CO

5-14-19

On May 7, 2019, Rocky Mountain Regional Forester Brian Ferebee approved limited chainsaw use in the Weminuche and South San Juan Wilderness from June 1 – August 17, 2019 to “clear trail obstructions and create safe refuge for administrative use and trail users.” The Minimum Resources Decision Guide specifies that the need addressed is to clear beetle-killed trees obstructing trails. This request is for Broads to join in a targeted and simple complaint to be filed the week of May 20, with hopes that it may lead to withdrawal of the approval. A preliminary injunction would also be filed if needed. Of critical concern is the precedent this “emergency” approval of chainsaw use would set for other forests or regions. It’s our understanding that Wyoming forests are already considering a similar process to approve chainsaw use following this approval.

1. What are the goals of the action? The goals are to file a very targeted complaint, narrow in scope, and without seeking an injunction with the hope that if DOJ gets involved that they may help the USFS see reason (long shot, yes, but PI can be filed and attorneys are ready to do this if necessary).
2. What are the bases for potential litigation success, i.e., what law(s) or regulation(s) are being violated? The claims will be NEPA, Wilderness Act and possibly eventually an ESA claim if the facts are there regarding Canada lynx (complaint could be amended later).
3. What outcome is being sought via the litigation? We are seeking complete reversal of the decision to allow chainsaw use on a temporary basis on all trails in the Weminuche and South San Juan Wilderness areas.
4. What is the affected geographic area? Please name the specific public lands [e.g. name of National Forest or BLM Lands, etc., including district) and the appropriate counties/state(s)] San Juan National Forest and Rio Grande National Forests – Weminuche and South San Juan Wilderness areas, in southwestern Colorado
5. Approximately how many acres will be affected? (if applicable)
Weminuche Wilderness is 500,000 acres; South San Juan Wilderness is 159,000 acres.
The project request is for the all National Forest System trails in both wilderness areas.
6. What are the affected environmental values or public processes?
This approval was made as an “emergency” with no NEPA/public input process. A Minimum Resource Decision Guide was completed, but the project objective was not specifically to preserve wilderness character as would be required by the Wilderness Act, but was for the purpose of responding to public interests to access trails, use of trails during the hunting season, and minimizing resource damage from users going around obstructions on blocked trails. The decision will impact wilderness character and may impact the endangered Canada lynx.

7. What are the deadlines for GOBW to make a decision? Is the deadline soft or hard?
The attorneys want to file this soon, hopefully early week of May 20 at the latest but possibly sooner if we get a decent draft complaint together. This is necessary because chainsaw use could start on June 1.
8. What Broadband or Broads are making this request? Who is the contact person for the Broadband in regards to this issue?
Anne Dal Vera, member of South San Juan Broadband in Durango, CO, and former wilderness ranger for the Weminuche in San Juan National Forest informed us of the issue initially and send two letters to the regional forester, in which she discussed being a member of Broads and of Broads possible involvement in helping to get funding or volunteers to clear trails with cross cut saws. Anne offers to serve as standing declarant for Broads and for Wilderness Watch.
9. What is their relationship to the issue? Have Broads been involved with this issue or land before? How will GOBW add value to this action?
As a retired wilderness ranger on the Weminuche with 30 years of experience in using a crosscut saw and with experience on these trails, Anne will contribute essential background for this litigation. Broads has been involved in commenting on Forest Plans and other management decisions on both national forests.
10. Other groups involved and who are their legal representatives?
Other groups so far are Wilderness Watch and San Juan Citizens Alliance. The attorneys will be Jeff Kane (lead), Travis Stills, Maya Kane (representing Broads and SJCA) and Dana Johnson (of Wilderness Watch). Jeff, Maya, and Travis would do the work pro bono and seek fees later under the Equal Access to Justice Act.
11. What is Broads relationship to any other groups involved in this issue?
Broads has worked in partnership with Wilderness Watch in the past, and is a current partner with SJCA on the CORE Act (Colorado wilderness), oil and gas, and other issues.
12. What role are those groups taking in this litigation?
These groups (including Shelley and Lauren) met in a phone conference today and held an hour and a half call with Jason Robertson, Deputy Director of Recreation, Lands and Minerals, Rocky Mountain region.
13. In what venue (state or federal court, and location if known) will this be litigated?
To be filed in District Court of Colorado.
14. Financial costs and risks?
It's expected that all three groups would share costs (filing fees and hopefully minimal travel costs to get to a hearing), but discussion and final joint decision on this has not yet been made. It's possible we'd get charged for the costs of putting together the record.

15. How will decisions be made during the litigation? Decisions would be made by all three groups, with a designated representative from each group in meetings.