DISTRICT COURT COUNTY OF GUNNISON COLORADO 200 E. Virginia Avenue Gunnison, CO 81230 (970) 642-8300	
Plaintiffs: JOHN BIRO an individual, and LAKE IRWIN COALITION, a Colorado nonprofit corporation v. Defendants: JONATHAN WHITACRE SMITH, UNITED STATES FOREST SERVICE, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, ANDERSON FAMILY TRUST, ERIC RICHARD ASLAKSON, JACK A & SANDRA E. BRILL TRUSTEES UDT DATED MARCH 24, 1981, RICHARD GILDERSLEEVE, ERIC W. JORDAN, LYPPS NICHOLAS J. TRUST, THOMAS MOORE, RUBY PEAK, LLC, SCARP RIDGE, LLC, CRAIG A. SCHOEPKE v. Third Party Defendant: DAVID J. GOTTORFF	▲ **COURT USE ONLY** ▲
Attorney for Plaintiffs and Third-Party Defendant: Joseph Coleman (#6856) Isaiah Quigley (#46621) COLEMAN & QUIGLEY, LLC 2454 Patterson Road, Suite 200 Grand Junction, CO 81505 Phone: (970) 242-3311 - Fax: (970) 242-1893 Email: Isaiah@cqlawfirm.net; joe@cqlawfirm.net	Case Number: 2017CV030060 Division:
SUMMONS - THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO	

To the above named Defendant: The Board of County Commissioners of The County of Gunnison, Colorado
200 E. Virginia
Gunnison, CO 81230

You are summoned and required to file with the clerk of this court an answer or other response to the attached Civil Case Cover Sheet, Second Amended Complaint and exhibits within twenty (21) days after this Summons is served on you in the State of Colorado, or within thirty (35) days after this Summons is served on you outside the State of Colorado.

The following documents are served with this Summons: Civil Case Cover Sheet, Second Amended Complaint and Exhibits.

If you fail to file your answer or other response to the Second Amended Complaint in writing within the applicable time period, judgment by default may be entered against you by the court for the relief demanded in the Amended Complaint, without any further notice to you.

Dated this 10th day of January 2019

Respectfully Submitted,
Coleman & Quigley, LLC

/s/ Isaiah Quigley
Isaiah Quigley, #46621
Joseph Coleman, #6856

This summons is issued pursuant to Rule 4, C.R.C.P. as amended. A copy of the complaint must be served with this summons.

DISTRICT COURT COUNTY OF GUNNISON COLORADO 200 E. Virginia Avenue Gunnison, CO 81230 (970) 642-8300	
Plaintiffs: JOHN BIRO an individual, and LAKE IRWIN COALITION, a Colorado nonprofit corporation v. Defendant: JONATHAN WHITACRE SMITH v. Third Party Defendant: DAVID J. GOTTORFF	**I. ▲ COURT USE ONLY ▲**
Attorney for Plaintiffs and Third-Party Defendant: Joseph Coleman (#6856) Isaiah Quigley (#46621) COLEMAN & QUIGLEY, LLC 2454 Patterson Road, Suite 200 Grand Junction, CO 81505 Phone: (970) 242-3311 - Fax: (970) 242-1893 Email: Isaiah@cqlawfirm.net; joe@cqlawfirm.net	**II.** Case Number: 2017CV030060 Division:
WAIVER AND ACCEPTANCE OF SERVICE FOR THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF GUNNISON COLORADO	

The undersigned, as attorney for The BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, ("Gunnison County"), hereby accepts service of process and waives formal service thereof in this lawsuit, and agrees that this acceptance is effective service of the District Court Civil Summons, Complaint (Second Amended) and appended exhibits, District Court Civil Cover Sheet, and Order requiring joinder of Gunnison County, as if Gunnison County had been personally served therewith by a private process server or Sheriff within the State of Colorado pursuant to C.R.C.P. 4.

Dated: January ___, 2019

_____

David Baumgarten (#6050)
Office of the Gunnison County Attorney
200 East Virginia Avenue, Ste 262
Gunnison, CO 81230
dbaumgarten@gunnisoncounty.org
Attorney for BOCC, Gunnison

DISTRICT COURT COUNTY OF GUNNISON COLORADO 200 E. Virginia Avenue Gunnison, CO 81230 (970) 642-8300	
Plaintiffs: JOHN BIRO an individual, and LAKE IRWIN COALITION, a Colorado nonprofit corporation v. Defendants: JONATHAN WHITACRE SMITH, UNITED STATES FOREST SERVICE, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, ANDERSON FAMILY TRUST, ERIC RICHARD ASLAKSON, JACK A & SANDRA E. BRILL TRUSTEES UDT DATED MARCH 24, 1981, RICHARD GILDERSLEEVE, ERIC W. JORDAN, LYPPS NICHOLAS J. TRUST, THOMAS MOORE, RUBY PEAK, LLC, SCARP RIDGE, LLC, CRAIG A. SCHOEPKE v. Third Party Defendant: DAVID J. GOTTORFF	▲ **COURT USE ONLY** ▲
Attorney for Plaintiffs and Third-Party Defendant: Joseph Coleman (#6856) Isaiah Quigley (#46621) COLEMAN & QUIGLEY, LLC 2454 Patterson Road, Suite 200 Grand Junction, CO 81505 Phone: (970) 242-3311 - Fax: (970) 242-1893 Email: Isaiah@cqlawfirm.net; joe@cqlawfirm.net	Case Number: 2017CV030060 Division:
CIVIL CASE COVER SHEET-SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF	

[ ] Simplified Procedure under C.R.C.P. 16.1 applies to this case because this party does not seek a monetary judgment in excess of $100,000 against another party, including any attorney fees, penalties or punitive damages but excluding interest and costs and because this case is not a class action or forcible entry and detainer, Rule 106, Rule 120, or other expedited proceeding.

[ ] Simplified Procedure under C.R.C.P. 16.1, does not apply to this case because:

[ ] This is a Rule 106 and equitable action seeking a preliminary and permanent injunction.

[ ] This party is seeking a monetary judgment for more than $100,000 against another party, including any attorney fees, penalties or punitive damages, but excluding interest and costs (see C.R.C.P 16.1(c)), or

[X] Another party has previously stated in its cover sheet at that C.R.C.P. 16.1 does not apply to this case.

Respectfully submitted,
COLEMAN & QUIGLEY, LLC

Dated: January 10, 2019

s/Isaiah Quigley
Isaiah Quigley (#46621)
Joseph Coleman (#6856)
Counsel for Plaintiffs and Third Party Defendant

CERTIFICATE OF MAILING

I certify that on January 10, 2019, the foregoing **CIVIL CASE COVER SHEET-SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF** was served to all counsel of record on Gunnison County Case 2017CV30060 via ICCES electronic service.

Rufus Wilderson
Rufus Wilderson, LLC
24441 Hwy 149
Powderhorn, CO 81243
T: 970-641-8807
rwilderson@wildersonlaw.com
Counsel for Jonathan W. Smith

s/Jackie Holton
Jackie Holton, Legal Assistant

DISTRICT COURT COUNTY OF GUNNISON COLORADO 200 E. Virginia Avenue Gunnison, CO 81230 (970) 642-8300	
Plaintiffs: JOHN BIRO an individual, and LAKE IRWIN COALITION, a Colorado nonprofit corporation v. Defendants: JONATHAN WHITACRE SMITH, UNITED STATES FOREST SERVICE, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, ANDERSON FAMILY TRUST, ERIC RICHARD ASLAKSON, JACK A & SANDRA E. BRILL TRUSTEES UDT DATED MARCH 24, 1981, RICHARD GILDERSLEEVE, ERIC W. JORDAN, LYPPS NICHOLAS J. TRUST, THOMAS MOORE, RUBY PEAK, LLC, SCARP RIDGE, LLC, CRAIG A. SCHOEPKE v. Third Party Defendant: DAVID J. GOTTORFF	▲ **COURT USE ONLY** ▲
Attorney for Plaintiffs and Third-Party Defendant: Joseph Coleman (#6856) Isaiah Quigley (#46621) COLEMAN & QUIGLEY, LLC 2454 Patterson Road, Suite 200 Grand Junction, CO 81505 Phone: (970) 242-3311 - Fax: (970) 242-1893 Email: Isaiah@cqlawfirm.net; joe@cqlawfirm.net	Case Number: 2017CV030060 Division:
SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF	

Plaintiffs, John Biro and Lake Irwin Coalition and Third Party Defendant, David J. Gottorff, by and through their attorneys, Coleman & Quigley, LLC., for its Second Amended Complaint, alleges and states as follows:

JURISDICTION AND VENUE

1. Plaintiff, John Biro is an individual residing at 787 County Road 826A, Lake Irwin Townsite, Crested Butte, CO 81224 in Gunnison county, State of Colorado.

2. Plaintiff, Lake Irwin Coalition is a duly organized non-profit corporation organized under the laws of the State of Colorado ("LIC"). The President of LIC is David J. Gottorff. Offices for LIC are located at PO Box 261, Crested Butte, CO 81224.

3. Defendant, The Board of County Commissioners of the County of Gunnison, Colorado, ("Gunnison County") is a duly created county board, exercising the powers granted to Gunnison County, a body corporate and politic, capable of suing and being sued in its own name.

4. Defendant, The United States Forest Service is an agency of the United States Department of Agriculture. The United States Forest Service is responsible for administering and managing lands under its jurisdiction in compliance with all pertinent law.

5. Defendant, John Whitacre Smith is an individual residing in Gunnison County, with an address of P.O. Box 2534, Crested Butte, CO 81224 ("J.W. Smith").

6. J.W. Smith holds title to property in Gunnison County bearing the common address of 1201 Forest Service Road 826.D1 , Irwin, CO 81224 and legally described as follows:

> Peggy Lode Mining Claim, U.S. Survey No. 1112 according to U.S. Patent thereof, Ruby Mining District.

7. The original survey of the Peggy Lode is dated July 3, 1883. The U.S. Patent was then issued on March 8, 1886 and recorded on July 8, 1890 at Book 99, Page 165 in the land records for Gunnison County.

8. Defendant, Anderson Family Trust ("Anderson"), is the owner of the property commonly addressed as Irwin, CO 81224 and legally described as follows:

> GEM #1109 RUBY MD SEC 28 13S87W #550852, GEM MS #1109 PATENT B90 P37

Anderson is judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

9. Defendant, Eric Richard Aslakson ("Aslakson"), is the owner of the property commonly addressed as Irwin, CO 81224 and legally described as follows:

> BEST #20024 RUBY MD SEC 28 13S87W #522361, PATENT B189 P377, EASEMENT B758 P699
> and

OLD SHEIK MS #1110, HOWARD EXTENSION OF OLD SHIEK MS#4409 SEC 28, 13S87W #518249, OLD SHIEK MS #1110 PATENT B90 P33, HOWARD EXTENSION OF THE OLD SHIEK MS#4409 PATENT B99 P169

Aslakson is judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

10. Defendants, Jack A & Sandra E. Brill Trustees UDT Dated March 24, 1981 ("Brill"), are the owners of the property commonly addressed as 1430 County Road 826.D1, Irwin, CO 81224 and legally described as follows:

OAKES #3082 RUBY MD SEC 28 13S87W (INC 50% INT IN MINERAL RIGHTS)

Brills are judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

11. Defendant, Richard Gildersleeve ("Gildersleeve"), is the owner of the property commonly addressed as Irwin, CO 81224 and legally described as follows:

BIRD #4445 RUBY MD SEC 33 13S87W B689 P406, PATENT B99 P161, EASEMENT B689 P407

Gildersleeve is judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

12. Defendant, Eric W. Jordan ("Jordan"), is the owner of the property commonly addressed as County Road 826, Irwin, CO 81224 and legally described as follows:

NUMBER 7 #20023 RUBY M.D. SEC 33 13S87W #491603 #491652, PATENT B189 P381

Jordan is judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

13. Defendant, Lypps Nicholas J. Trust ("Lypps"), is the owner of the property commonly addressed as Irwin, CO 81224 and legally described as follows:

RUBY CHIEF MS#2935 RUBY MD SEC 33 13S87W B676 P324 B783 P995, PATENT B90 P41

Lypps is judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

14. Defendant, Thomas Moore ("Moore"), is the owner of the property commonly addressed as Forest Service Road 826, Irwin, CO 81224 and legally described as follows:

PERHAPS #5870 RUBY MINING DISTRICT SEC 33 13S87W #620994, PATENT B450 P307

Moore is judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

15. Defendant, Ruby Peak, LLC ("Ruby Peak"), is the owner of the property commonly addressed as Irwin, CO 81224 and legally described as follows:

STATEN ISLAND #3716 & ADJ 2.19 AC RUBY MINING DISTRICT 13S87W SEC 33 #579846

Ruby Peak is judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

16. Defendant, Scarp Ridge, LLC ("Scarp"), is the owner of the property commonly addressed as 440 Forest Service Road 826, 1C, Irwin, CO 81224 and legally described as follows:

AUMEGO #2703, INC 8 ADDN CLAIIMS PLUS 2.460 AC ADJ TO VARIOUS CLAIMS; RUBY MD SEC 27,33,34 13S87W #578821

Scarp is judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

17. Defendant, Craig A. Schoepke ("Schoepke"), is the owner of the property commonly addressed as 1250 Forest Service Road 826 D1, Irwin, CO 81224 and legally described as follows:

ARAB #4446, CHLORIDE DEPOSIT #4448 RUBY MD SEC 28 13S87W #625884

Schoepke is judicially recognized as necessary party to this action whom shall be bound by the results of this litigation and who may raise claims and defenses to the extent deemed necessary to protect legal claims or interests associated with this action.

18. Jurisdiction and venue are proper in Gunnison County, State of Colorado because the property and rights in question related to the property situated in Gunnison County, Colorado; and the actions related to this matter arose in Gunnison County, Colorado.

19. The Court has jurisdiction to hear this matter pursuant to C.R.C.P. 98(a) and (c)(1) and C.R.S. 13-1-124(c).

GENERAL ALLEGATIONS.

20. J.W. Smith came into possession of the property is known as the Peggy Lode in 2001 by delivery of a Warranty Deed to J.W. Smith from Alan Bernholtz ("Peggy Lode").

21. J.W. Smith built a home on the Peggy Lode and later began contesting access by the public across Peggy Lode, specifically FS 826.1D, commonly known as Green Lake Road ("Green Lake Road"), beginning in the summer of 2014. In summer 2016, J.W. Smith took steps to restrict access across Peggy Lode by erecting a gate at his property line, thereby excluding hikers, bikers, and other public users across Peggy Lode.

22. Green Lake Road crosses the Peggy Lode and appears on many published maps and resources available to the public.

23. Upon information and belief, the Green Lake Road (likely prior to it being called Green Lake Road) existed before July 3, 1883. Photographs, maps, and other documentation depict and/or discuss the use of the Green Lake Road as early as 1977. Thus, a public dedication of the Green Lake Road existed prior to July 3, 1883. This evidence shall be presented as exhibits at trial.

24. The Green Lake Road can also be seen depicted on a United States Department of Interior Geological Survey map as early as 1888, which was the first Geological Survey map for the area. Such historic map is attached hereto as **Exhibit A** and incorporated by reference herein. Many other published maps also show Green Lake Road crossing the Peggy Lode, one of which is attached hereto as **Exhibit B** and incorporated by reference herein. Other maps shall be submitted as exhibits at trial.

25. The Green Lake Road is a popular hiking, biking, and motorized vehicle trail under the direction and control of the Forest Service, USDA. ("Forest Service").

26. The Forest Service has provided a numerical designation for such road (FSR826.1D) and the Forest Service has publicly stated that it considers the Green Lake Road open to the public where it crosses the Peggy Lode.

27. The Forest Service believes that the Road is public and under its jurisdiction.

28. Forest Service records establish a Forest Service System Road maintenance designation for the Green Lake Road.

29. Upon information and belief, the Forest Service has completed maintenance on the Green Lake Road in the past. Maintenance includes Drainage infrastructure along the Green Lake Road. Photographs of the drainage infrastructure are attached hereto as **Exhibit C**, which are incorporated by reference herein.

30. The Forest Service has also issued guide permits to private operations using the Road, including Irwin Backcountry Guides, LLC (the "Permit"). The Permit is attached hereto as **Exhibit D** and incorporated by reference. While a scrivener's error lists the Green Lake Road incorrectly as FSR 826.1E, the Forest Service is referencing the Green Lake Road, based on the peak use and hike locations authorized by the Permit.

31. John Biro, LIC members, and the public at-large have regularly traveled on the Green Lake Road in the non-winter seasons by foot, off-highway vehicle, and automobile for at least 40 years (collectively, the "Public Users"), including times prior to and during J.W. Smith's ownership of the Peggy Lode.

32. The Public Users believe they have both a private and public right to travel on the Green Lake Road to access Forest Service lands, conduct academic research, and/or pursue recreational opportunities. Affidavits confirming use by some Public Users are attached hereto as **Exhibit E** and incorporated by reference herein.

33. Upon information and belief, other private parties named as defendants in this action have used the road in the same manners as described in Exhibit E and have vested private and/or public right to travel on the on the Green Lake Road to access Forest Service lands and their personal property.

34. Upon information and belief, J.W. Smith has no right or claim to prohibit private and public access across the Peggy Lode because the Green Lake Road is subject to an easement and/or a public thoroughfare that crosses the Peggy Lode, which has been continually in existence for up to 140 and continually used by individual citizens in excess of 40 years (see Exhibit E).

35. J.W. Smith continues to restrict access across the Peggy Lode to Public Users by constructing a locked gate across the Green Lake Road where it begins at Peggy Lode and has posted signs keeping the public from accessing Forest Service lands and private property.

36. By continuing to deny private and public historic access across Peggy Lode via the Green Lake Road, J.W. Smith is improperly denying both private and Public Users a right of access to Forest Service and private lands without justification or right.

FIRST CLAIM OF RELIEF
(Declaratory Judgment — R.S. 2477)

37. Plaintiffs re-allege and incorporate herein each of the above allegations above as if set forth again.

38. Before being repealed by the Federal Land Policy and Management Act, 43. U.S.C. Sec. 1701 *et. seq.* in 1976, R.S. 2477 provided "The right of way for the construction of highways over public lands, not reserved for public purposes, is hereby granted."

39. On information and belief, the Green Lake Road was established and dedicated as a public thoroughfare as early as 1877 and before July 3, 1883. The patent for the Peggy Lode was first surveyed on July 3, 1883 and was later issued and recorded. Because the use of the Green Lake Road pre-dates the survey, issuance, and recordation of the Peggy Lode patent, the Green Lake Road should be declared a road pursuant to RS 2477.

40. Plaintiffs are entitled to judgment against J.W. Smith pursuant to C.R.C.P. 57, regarding Declaratory Judgments and C.R.S. Sec. 13-51-101 *et. seq.* the Uniform Declaratory Judgments Act, finding and declaring that the Green Lake Road is public by virtue of R.S. 2477 where it crosses the Peggy Lode because the Green Lake Road existed before July 3, 1883, prior to the survey, issuance, and recordation of the Peggy Lode patent.

SECOND CLAIM OF RELIEF
(Declaratory Judgment – C.R.S. Sec. 43-02-201(1)(c)

41. Plaintiffs re-allege and incorporate herein each of the above allegations noted above as if set forth again.

42. C.R.S. Sec. 43-2-201(1)(c) provides "The following are declared to be public highways:...(c) all roads over private lands that been used adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years."

43. In accordance with the holding in *Simon v. Petit*, 687 P.2d 1299 (Colo. 1984), the term "road" as used in 43-2-201(1)(c) does not exclude a trail or a footpath, such as the Green Lake

Road from the analysis necessary to determinate if a trail, footpath, or jeep trail is a road under the statute.

44. Upon information and belief, members of the public have used the Green Lake Road adversely, under a claim of right and without interruption or objection from J.W. Smith and the predecessors to J.W. Smith holding an interest in the Peggy Lode, at least 20 consecutive years.

45. Upon information and belief, Alan Bernholtz, the predecessor in interest to Peggy Lode, did not object to the public's use of Green Lake Road from 1982 to 2002.

46. Plaintiffs are entitled to judgment against J.W. Smith pursuant to C.R.C.P 57, Declaratory Judgments, and C.R.S. 13-51-101 *et. seq.* The Declaratory Judgments Act, finding and declaring that the Green Lake Road is public by virtue of C.R.S. sec. 43-2-201(1)(c) where it crosses J.W. Smith's property, the Peggy Lode.

THIRD CLAIM OF RELIEF
(Declaratory Judgment- Implied Easement)

47. Plaintiffs incorporate paragraphs 1 through 46 herein.

48. A controversy exists between Plaintiff and Defendants over the respective rights, use and enjoyment of Plaintiff's implied easement in light of Defendants' adverse actions. A declaration of the parties' rights will terminate the controversy.

49. Plaintiff requests a declaration of their easement rights against Defendants. Specifically, Plaintiff requests a declaration:

49.1. Pursuant to C.R.C.P. 105, Plaintiffs are the rightful owner of an access easement spanning the length and width of FSR 826.1 by way of implication from prior use and/or prescription; and

49.2. Defendants must cause for the immediate removal of any and all obstructions, including the gate, from the easement which unreasonably interferes with Plaintiffs' use and enjoyment of said easement;

49.3. The Defendants shall have no right in the future to erect any obstructions across the easement which unreasonably interferes with Plaintiffs' use and enjoyment of their easement or that limits free and reasonable ingress and egress over the easement.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiffs, John Biro, individually and Lake Irwin Coalition request that the Court enter judgment against the Defendants and declare the respective rights and obligations of the parties in accordance with the Claims for Relief set forth in this Second Amended Complaint, order that J.W. Smith pay Plaintiffs' court cost in this litigation and grant such further relief at law or in equity, as the Court deems just and proper as may be entitled.

Respectfully submitted,
COLEMAN & QUIGLEY, LLC

Dated: January 10, 2019

s/Isaiah Quigley
Isaiah Quigley (#46621)
Joseph Coleman (#6856)
Counsel for Plaintiffs and Third Party Defendant

Plaintiffs' Addresses:
Lake Irwin Coalition
PO Box 261,
Crested Butte, CO 81224

John Biro
787 County Road 826A
Lake Irwin Townsite
PO Box 1211
Crested Butte, CO 81224

Third Party Defendant's Address:
David J. Gottorff
P.O. Box 2061
Ridgway, CO 81432

CERTIFICATE OF MAILING

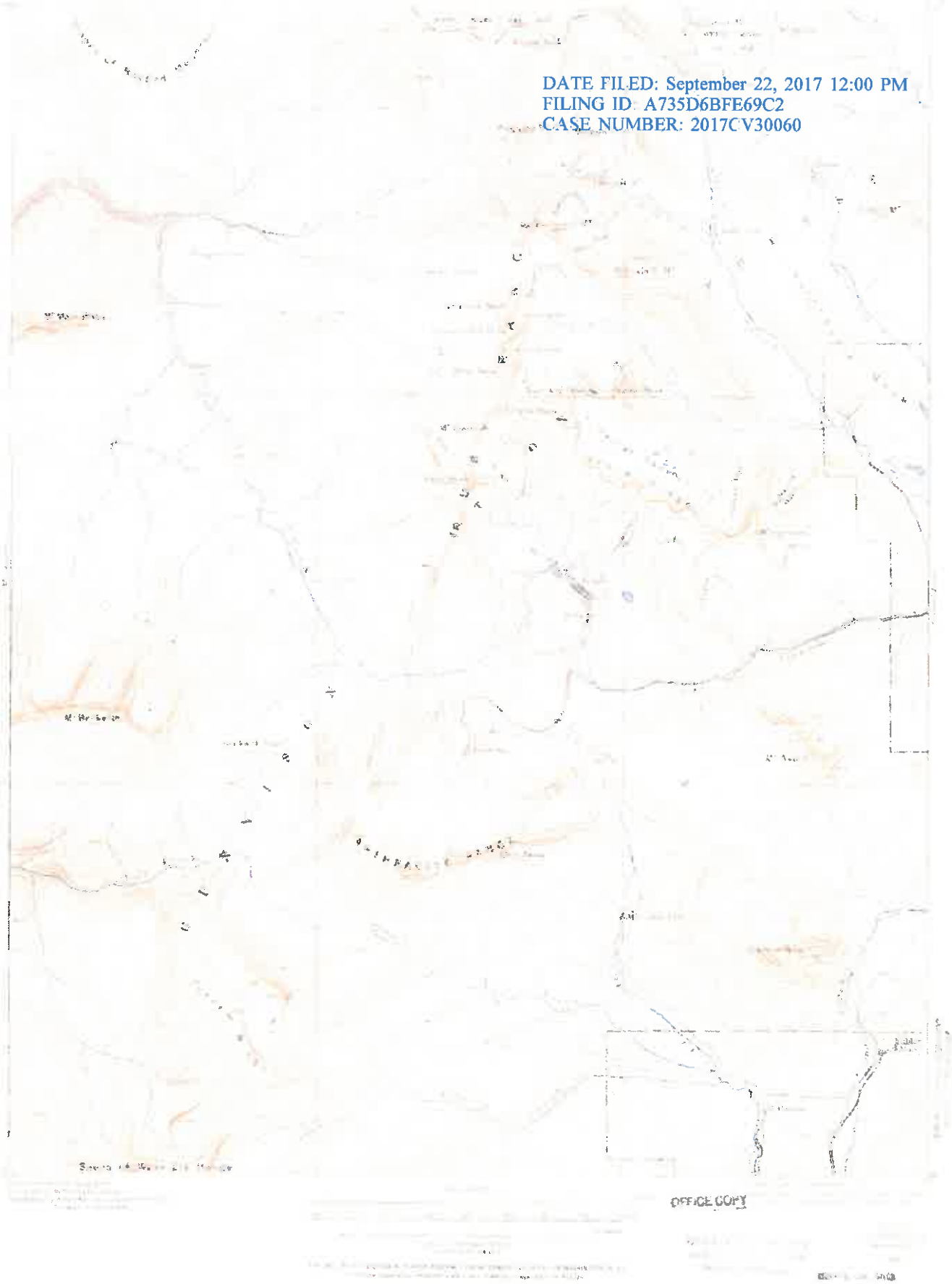
I certify that on January 10, 2019, the foregoing **SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF** was served to all counsel of record on Gunnison County Case 2017CV30060 via ICCES electronic service.

Rufus Wilderson
Rufus Wilderson, LLC
24441 Hwy 149
Powderhorn, CO 81243
T: 970-641-8807
rwilderson@wildersonlaw.com
Counsel for Jonathan W. Smith

s/Jackie Holton
Jackie Holton, Legal Assistant

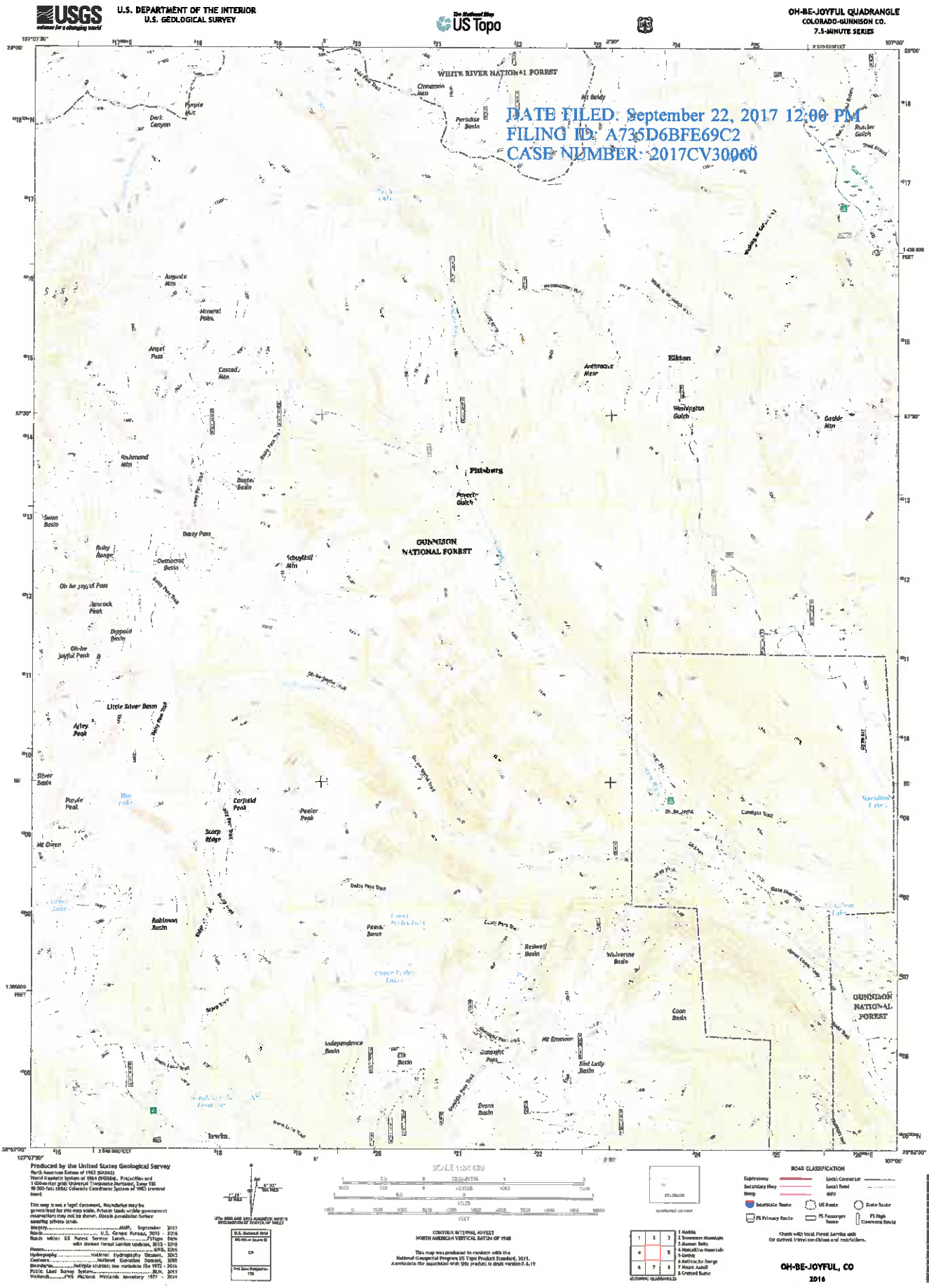
Exhibit A

DATE FILED: September 22, 2017 12:00 PM
FILING ID: A735D6BFE69C2
CASE NUMBER: 2017CV30060



OFFICE COPY

Exhibit B



DATE FILED: September 22, 2017 12:00 PM
FILING ID: A735D6BFE69C2
CASE NUMBER: 2017CV30060

Exhibit C

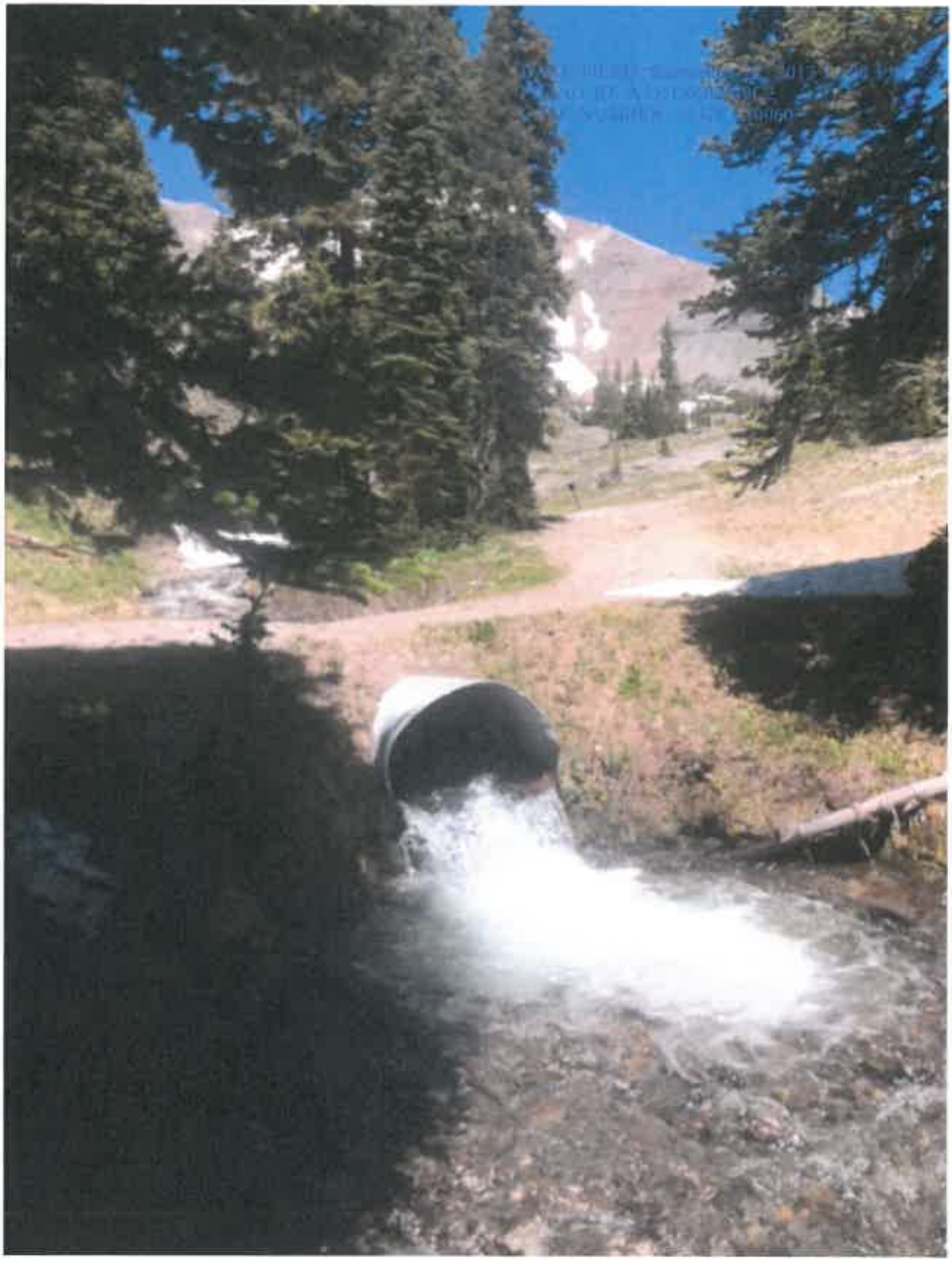


Exhibit D

William F Jackson/R2/USDAFS
11/16/2009 04:01 PM

To Ray Rossman/R2/USDAFS@FSNOTES, Jean Wisniewski/R2/USDAFS@FSNOTES
cc
bcc
Subject Irwin backcountry guides

DATE FILED: September 22, 2017 12:00 PM
FILING ID: A735D6BFE69C2
CASE NUMBER: 2017CV30060

Applicant: Irwin Backcountry Guides, LLC, Alan Bernholtz, Mountain Manager, PO BOX 1807, Crested Butte, CO 81224

Cell phone number: 970-901-9161
alanbernholtz@grassycreek.nl
Fax: 970-349-2088
Toll-free: 1-866-IRWIN77
Website: www.catskiingirwin.com

Purpose: offer outfitter/guide services for winter snowcat skiing and summer hiking activities in the Lake Irwin/Scarp Ridge area

Acres: 1,051 acres

Location: Township 13 South, Range 87 West, Sections 22, 26, 27, 34, and 35

Access to the permit area would follow Kebler Pass Road (Gunnison County Road 12), Lake Irwin Campground Road (Forest Service Road (FSR) 826), Green Lake Road (FSR 826.1E) up to the Irwin Lodge Road (FSR 826.1C).

Winter Operating Season: December 1 to April 30
2,000 service days for guided snowcat skiing
The winter permit boundaries include Scarp Ridge to the north, Lake Irwin to the south, Barkmarker Basin to the east, and Robinson Basin to the west
Map is attached

Summer Operating Season: June 1 to October 1
170 service days for guided hiking - broken down into the following:

20 total service days for summer peak climbing on the following peaks:

Owens/Purple Peak	10 service days
Ruby Peak	10 service days

150 total service days for summer hiking (would only authorize two trips per week/per trail; no more than 10 clients per trip):

Dyke Trail (Trail #837)	50 service days
Ridge 70 Trail (Trail #419)	50 service days
Scarp Ridge Trail (Trail #421)	50 service days

IBG Winter Operations Map.pdf

Bill Jackson
Recreation Staff Officer
Gunnison Ranger District
216 N. Colorado St., Gunnison, CO 81230

Exhibit E

DATE FILED: September 22, 2017 12:00 PM
FILING ID: A735D6BFE69C2
CASE NUMBER: 2017CV30060

AFFIDAVIT

STATE OF Colorado)
) ss.
COUNTY OF Gunnison)

I, Barbara A. Thomson, the Affiant herein, being of lawful age and first duly sworn upon oath, depose and state as follows:

WHEREAS, the Affiant has regularly traveled on Forest Service Road 826.1D also known as Green Lake Road (the "**Road**") since 1988, including portions of the Road that cross private property;

WHEREAS, during the period from 1988 to 2013, the Affiant drove or hiked along the Road with James D. Thomson on an average of 2.5 times per year;

WHEREAS, the Affiant never witnessed objections from any private property owners along the Road during the 25 years that she regularly traveled on the Road; and

WHEREAS, since 1988, the Affiant has witnessed dozens of members of the public traveling up the Road both by foot and/or vehicle. The Affiant has reviewed a summit notebook on the top of Ruby Peak, which provides the names of many individuals that presumably traveled the Road to access the trail to Ruby Peak.

NOW, THEREFORE, the Affiant does hereby submit this Affidavit and attests that, to Affiant's best knowledge, the statements set forth herein are true and correct.

Further Affiant sayeth naught.

By: Barbara A. Thomson
Barbara A. Thomson

The foregoing instrument was acknowledged before me this 26th day of August 2017, by Barbara A. Thomson.

My commission expires 05/2019.
Witness my hand and official Seal.

Notary Public

SAMANTHA SIEGFRIED
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20154017836
MY COMMISSION EXPIRES MAY 05, 2019

AFFIDAVIT

STATE OF Colorado)
) ss.
COUNTY OF Gunnison)

I, James D. Thomson, the Affiant herein, being of lawful age and first duly sworn upon oath, depose and state as follows:

WHEREAS, the Affiant has regularly traveled on Forest Service Road 826.1D also known as Green Lake Road (the "**Road**") since 1988, including portions of the Road that cross private property;

WHEREAS, during the period from 1988 to 2013, the Affiant drove or hiked along the Road with Barbara A. Thomson on an average of 2.5 times per year;

WHEREAS, the Affiant never witnessed objections from any private property owners along the Road during the 25 years that he regularly traveled on the Road; and

WHEREAS, since 1988, the Affiant has witnessed dozens of members of the public traveling up the Road both by foot and/or vehicle. The Affiant has reviewed a summit notebook on the top of Ruby Peak, which provides the names of many individuals that presumably traveled the Road to access the trail to Ruby Peak.

NOW, THEREFORE, the Affiant does hereby submit this Affidavit and attests that, to Affiant's best knowledge, the statements set forth herein are true and correct.

Further Affiant sayeth naught.

By: James D. Thomson
James D. Thomson

The foregoing instrument was acknowledged before me this 26th day of August 2017, by James D. Thomson.

My commission expires 05/2019.
Witness my hand and official Seal.

Notary Public

SAMANTHA SIEGFRIED
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20154017836
MY COMMISSION EXPIRES MAY 05, 2019

AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

I, John Biro, the Affiant herein, being of lawful age and first duly sworn upon oath, depose and state as follows:

WHEREAS, the Affiant has regularly traveled on Forest Service Road 826.1D also known as Green Lake Road (the "**Road**") since 1978, including portions of the Road that cross private property;

WHEREAS, during the period from 1978 until the gate was installed at the boundary of the Peggy Lode, the Affiant drove along the Road at least once a year, if not several times per year;

WHEREAS, the Affiant never witnessed objections from any private property owners along the Road during the almost 40 years that he regularly traveled on the Road;

WHEREAS, since 1978, the Affiant has witnessed hundreds, if not thousands, of recreationists traveling up the Road both by foot or vehicle; and

WHEREAS, the Affiant maintains that he had and has a right to travel on the Road both on foot and by vehicle during the non-winter months and he believes that he has had this right since 1978.

NOW, THEREFORE, the Affiant does hereby submit this Affidavit and attests that, to Affiant's best knowledge, the statements set forth herein are true and correct.

Further Affiant sayeth naught.

By: _____
John Biro

The foregoing instrument was acknowledged before me this 26th day of August 2017, by John Biro.

My commission expires 05/2019
Witness my hand and official Seal.

SAMANTHA SIEGFRIED
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20164017838
MY COMMISSION EXPIRES MAY 05, 2019

_____
Notary Public

AFFIDAVIT

STATE OF COLORADO)
) ss.
COUNTY OF Gunnison)

I, David Gottorff, the Affiant herein, being of lawful age and first duly sworn upon oath, depose and state as follows:

WHEREAS, the Affiant has regularly traveled on Forest Service Road 826.1D also known as Green Lake Road (the "**Road**") since 2002, including portions of the Road that cross private property;

WHEREAS, during the period from 2002 until the gate was installed at the boundary of the Peggy Lode, the Affiant drove or hiked along the Road between 12 to 15 times per year;

WHEREAS, until J.W. Smith blocked the Road, the Affiant never witnessed objections from any private property owners along the Road during the 15 years that he regularly traveled on the Road; and

WHEREAS, since 2002, the Affiant has witnessed hundreds, if not thousands, of recreationists traveling up the Road both by foot or vehicle.

NOW, THEREFORE, the Affiant does hereby submit this Affidavit and attests that, to Affiant's best knowledge, the statements set forth herein are true and correct.

Further Affiant sayeth naught.

By: _____
David Gottorff

The foregoing instrument was acknowledged before me this 16th day of August, 2017, by David Gottorff.

My commission expires 8/9/2020.
Witness my hand and official Seal.

Rebecca Dubbert
Notary Public

REBECCA DUBBERT
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification # 20004015666
My Commission Expires 8/9/2020

AFFIDAVIT

STATE OF Colorado)
) ss.
COUNTY OF Delta)

I, Kimberly Roberts, the Affiant herein, being of lawful age and first duly sworn upon oath, depose and state as follows:

WHEREAS, the Affiant has regularly traveled on Forest Service Road 826.1D also known as Green Lake Road (the "**Road**") for the past 30 years, including portions of the Road that cross private property;

WHEREAS, the Affiant has traveled on the Road both on foot and by vehicle about three times per year over the last 30 years;

WHEREAS, the Affiant was approached by Peggy Lode owner, J.W. Smith in the summer of 2017 while traveling on foot on the Road;

WHEREAS, J.W. Smith approached the Affiant aggressively with a guard dog and demanded that the Affiant not travel on the Road;

WHEREAS, the Affiant felt in danger and was forced to yield a can of bear spray to protect herself and her travel companion from Mr. Smith and his dog;

WHEREAS, Mr. Smith retreated before the Affiant was forced to take action to protect herself; and

WHEREAS, the Affiant maintains that she had and has a right to travel on the Road both on foot and by vehicle during the non-winter months and she believes that she has had this right over the past 30 years.

NOW, THEREFORE, the Affiant does hereby submit this Affidavit and attests that, to Affiant's best knowledge, the statements set forth herein are true and correct.

Further Affiant sayeth naught.

By: _____
Kimberly Roberts

The foregoing instrument was acknowledged before me this 15 day of August, 2017, by Kimberly Roberts.

My commission expires 1-09-2018.
Witness my hand and official Seal.

Angela Oates
Notary Public

ANGELA OATES
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20004047
MY COMMISSION EXPIRES 01/09/2018