Nos. 09-8075 & 08-8061 (consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STATE OF WYOMING,
Plaintiff-Appellee,

And COLORADO MINING ASSOCIATION,
Intervenor-Plaintiff-Appellee,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; UNITED STATES FOREST SERVICE; TOM VILSACK, SECRETARY, DEPARTMENT OF AGRICULTURE; TOM TIDWELL, CHIEF FORESTER, UNITED STATES FOREST SERVICE
Defendants-Appellants,

BIODIVERSITY CONSERVATION ALLIANCE; DEFENDERS OF WILDLIFE; NATIONAL AUDOBON SOCIETY; NATURAL RESOURCES DEFENSE COUNCIL; PACIFIC RIVERS COUNCIL; SIERRA CLUB; WILDERNESS SOCIETY; AND WYOMING OUTDOOR COUNCIL,
Defendants-Intervenors-Appellees

On Appeal from the United States District Court for the District of Wyoming
United States District Judge Clarence A. Brimmer (No. 2:07-cv-00017)

JOINT PETITION FOR REHEARING EN BANC

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STATEMENT REGARDING QUESTIONS OF EXCEPTIONAL IMPORTANCE

The State of Wyoming ("Wyoming") and the Colorado Mining Association ("CMA") respectfully request rehearing by the Court *en banc* of the Panel decision upholding the Roadless Area Conservation Rule ("Roadless Rule"). *Wyoming v. USDA*, --- F.3d ---, 2011 WL 5022755 (10th Cir. 2011) (Slip Opinion attached pursuant to 10th Cir. R. 35.2(B)). This case raises several legal questions of exceptional importance, including:

1. Whether the United States Forest Service ("Forest Service") violated the Wilderness Act, 16 U.S.C. §§ 1131 through 1136, when it created *de facto* wilderness areas across 58.5 million acres of National Forest lands?

2. Whether the Roadless Rule, 66 Fed. Reg. 3244 (Jan. 12, 2001); Aplt.App. Vol 3, p. 394, was promulgated in compliance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 through 4370, where the Forest Service radically altered the scope of the rule without preparing a supplemental environmental impact statement (EIS)?

3. Whether the Forest Service can circumvent the provisions of the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600 through 1614, under the guise of nationwide rulemaking?

4. Whether the Forest Service can disregard the provisions of NEPA, NFMA, and the Multiple Use and Sustained Yield Act ("MUSYA"), 16 U.S.C. §§ 528 through 531, that require the Forest Service to evaluate forest use on a forest-by-forest basis rather than with national rules that disregard individual forest characteristics?

5. Whether the Forest Service predetermined the outcome of the Roadless Rule to satisfy a Presidential edict in contravention of its statutory duties under NEPA?

These significant legal questions are made all the more important by virtue of the amount of federal land that will be permanently affected. The Roadless Rule generally prohibits all road construction, road reconstruction, and timber extraction on 58.5 million

acres of land, which amounts to approximately one-third of all Forest Service lands and approximately 2% of the land in the continental United States. 66 Fed. Reg. at 3245; Aplt.App. Vol. 3, p. 396. Over 13 million acres of land in the forests within the Tenth Circuit are affected by the Roadless Rule. The sheer magnitude of the Roadless Rule and its unprecedented impact on the National Forests, the states, and the public warrants review of the Panel decision by the full Court.

More important than the immense scope of the Roadless Rule, however, is the fact that the Panel decision is fundamentally flawed. The Panel turned a blind eye to the real effects of the Roadless Rule on the forests in favor of technical, but illusory, differences between roadless areas and wilderness. In reality, areas covered by the Roadless Rule are indistinguishable from wilderness, since without roads activities specifically prohibited in wilderness areas are effectively prohibited in roadless areas even though the activity is technically authorized. In promulgating the Roadless Rule, the Forest Service relied on technical but meaningless distinctions to achieve the fundamental equivalent of wilderness thereby circumventing Congress's exclusive authority to designate wilderness. The full Court should rehear this matter to correct the Panel's decision.

In addition, the Panel decision endorsed the Forest Service's complete failure to abide by the laws governing the management of the National Forests. For example, the Panel excused the Forest Service's eleventh hour restructuring of the Roadless Rule to include roaded areas and additional lands in an amount larger than the State of Connecticut. The Forest Service added these millions of acres of roaded lands to the list of roadless areas without evaluating the consequences of these actions or giving the

public a meaningful opportunity to comment on these changes. Moreover, while acknowledging that the Roadless Rule immediately changed numerous specific forest plans, the Panel decision exempted the Roadless Rule from compliance with the very statute promulgated by Congress to direct the development of such plans. Similarly, the Panel excused the Forest Service from actually analyzing the effects of the Roadless Rule on the lands it covers despite clear Congressional mandates for such detailed consideration. Finally, despite acknowledgment that the Roadless Rule was foreordained, making the entire NEPA process a sham, the Panel cursorily dismissed the Forest Service's *pro forma* compliance NEPA.

Unless corrected the Panel's decision will result in significant harm to the States, the public, and the holders of mineral interests on federal lands by permitting the Forest Service to wrest from Congress its exclusive authority to designate wilderness areas. Accordingly, rehearing by the full Court is necessary to remedy these and other fundamental errors in the Panel decision.

ARGUMENT

I. The Panel failed to consider the real effects of the Roadless Rule when it determined that the rule did not create *de facto* wilderness areas.

The Panel concluded that mere superficial differences between the Wilderness Act and the Roadless Rule were enough to find that the Forest Service did not impermissibly designate *de facto* wilderness areas. The Panel's decision is wrong and ignores the fact that the transparent purpose and ultimate effect of the Roadless Rule was to create wilderness areas without complying with the Wilderness Act. Only Congress has the

power to designate wilderness, and therefore, the full Court should reconsider the Panel's decision to elevate the form of the Roadless Rule over the substance of its effects.

While acknowledging that the Wilderness Act and the Roadless Rule overlap in many ways, the Panel incorrectly determined that there were meaningful differences between the two. (Slip Op. at 27-28). For example, the Panel concluded that because the Roadless Rule does not expressly prohibit the construction of permanent or temporary structures or installations, such structures could be built in roadless areas without the construction of a new road. (Slip Op. at 28). However**,** the Panel gave no examples of the type of structures that could be erected without roads, which is not surprising since significant structures cannot feasibly be erected without roads. While minor structures such as a shed could in theory be built in roadless areas, if the materials were brought in on horseback or by some other means not requiring use of a road, no structure of significance could be built without having a road in place to accommodate the movement of vehicles, materials, and workers to the site. Just as the Wilderness Act prohibits the construction of structures on Wilderness lands, the Roadless Rule effectively arrives at the same practical result**.**

Similarly, the Panel determined that because the Roadless Rule does not contain an explicit prohibition on the use of motorized vehicles, the scope of the Roadless Rule is different from the Wilderness Act**.** (Slip Op. at 28). The practical reality, however, is that most vehicles can only access and operate in roadless areas by way of a road. Further, when one takes into consideration that vehicle access is generally further restricted, and in many areas prohibited by the Forest Service, the rule has the practical

effect of prohibiting motorized travel in the 55.7 million unroaded acres covered by the Roadless Rule.

The Panel also noted that some areas covered by the Roadless Rule do contain roads, whereas wilderness areas do not, and these existing roads can be maintained. (Slip Op. at 29-30). All but 2.8 million acres of the 58.5 million acres covered by the rule contain no roads, will get no new roads, and therefore, are currently indistinguishable from wilderness areas. The remaining 2.8 million acres covered by the rule that do have roads will gradually become more and more roadless over time. Since roads cannot be constructed or reconstructed in these areas, only maintained, the only change that can conceivably occur in these areas is road closure and loss. Each road lost in these areas makes them more and more like the remaining roadless/wilderness areas.

The Panel also concluded that the exceptions to the Roadless Rule will allow for construction of roads in roadless areas. First, the Panel noted that roads can be constructed as provided for by statute or treaty. (Slip Op. at 30). However, the Panel cites no examples of existing statutes or treaties requiring the construction of roads in roadless areas, and it is highly unlikely that any future treaties or federal statutes will require the construction of a road in a roadless area of a national forest. Second, the Panel noted that a road could be constructed to conduct response actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or to conduct natural resource restoration under CERCLA, the Clean Water Act or the Oil Pollution Act. (Slip Op. at 30). Given that roadless areas do not have significant commercial or industrial development and are generally upstream from existing

development, the likelihood of constructing a road for these purposes is highly improbable. Third, the Panel noted that a road could be constructed if the Secretary of Agriculture determined that a federal aid highway project should be located through a roadless area. (Slip Op. at 30-31) Because roadless areas are often at the highest altitudes and rough terrain, the probability of such a determination by the Secretary is exceedingly low. Fourth, the Panel acknowledged that as it related to road construction to address emergent situations like fire, insects and disease, the Roadless Rule is even more restrictive than the Wilderness Act. (Slip Op. at 34). Thus, although new road construction is technically authorized in roadless areas, it is no more likely to actually occur there than in wilderness areas where it is explicitly prohibited.

Finally, the Panel concluded that some commercial activities such as mineral development and grazing could occur in roadless areas, either where roads currently exist, or where they can be conducted without roads. (Slip Op. at 31-33). Contrary to the Panel's conclusion, even the Forest Service recognized that the Roadless Rule's ban on road construction would result in the effective ban on future mineral development.[1] The final EIS acknowledges that "[t]he prohibition on road construction or reconstruction would restrict or preclude the opportunity for exploration or development of presently undiscovered leasable mineral resources in inventoried roadless areas." (Aplt.App. Vol. 5, p. 868). In Colorado alone, the Forest Service predicts that between 308 and 1,371

[1] The Rule provides that no road construction (temporary or otherwise) is permissible in connection with the development of minerals leased after the January 21, 2001, the effective date of the Rule. 66 Fed. Reg. at 3272-73; Aplt.App. Vol. 3, pp. 423-24.

million tons of coal resources could be unavailable for future development.[2] 66 Fed. Reg. at 3268; Aplt.App. Vol. 3, p. 419. Similarly, the Panel acknowledges in its decision that new grazing opportunities do not exist in roadless areas in the absence of new roads. (Slip Op. at 31). Thus, the Roadless Rule effectively prohibits commercial activities such as grazing and mineral development in areas where they do not currently exist, and those opportunities that do exist will only decrease over time as existing roads are removed.

The Panel, like the Forest Service before it, struggled to rationally differentiate roadless areas from wilderness with semantics and "exceptions" that are unlikely to ever be invoked. In fact, at various points in the decision, the Panel itself conceded that the Roadless Rule generally prohibits "nonwilderness" uses (Slip Op. at 84, n. 34), and recognized that the areas subject to the Roadless Rule were "pristine wilderness." (Slip Op. at 16 quoting *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1106 (9th Cir. 2002)).[3] As the Panel concedes, roadless areas are indistinguishable from wilderness areas, and accordingly, the Forest Service violated the Wilderness Act when it

[2] Withdrawal of these lands conflicts with the purpose of the Mineral Leasing Act of 1920, 30 U.S.C. §§ 22 through 42 ("MLA"). The MLA was enacted to "promote wise development" of resources and generate a reasonable return on those public assets. *Mountain States Legal Found. v. Andrus*, 499 F. Supp. 383, 392 (D. Wyo. 1980). The withdrawal of large tracts of land from mineral development "for the purpose of wilderness preservation is, to withdraw and withhold the lands from the purposes and operation of the [MLA]." *Id*.

[3] In its decision, the Panel gave considerable weight to the Ninth Circuit's decision in *Kootenai Tribe*. (Slip Op. at pp. 16 n.9, 37, 50, 60, 63, 83 n.34, 99 n.39, and 118). *Kootenai Tribe* involved an appeal from a district court decision granting a preliminary injunction, and therefore, its persuasive value is limited. *See University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Only the District Court below reviewed the entire administrative record, and that Court concluded that the Roadless Rule was unlawful.

promulgated the Roadless Rule without Congress. The full Court should hear this matter of significant public import to correct the Panel's erroneous decision.

II. The Panel erroneously determined that the Forest Service's radical expansion of the scope of the rule did not require a supplemental EIS.

The Panel determined that the addition of 2.8 million acres of roaded areas and 4.4 million acres of new roadless areas within the provisions of the Rule between the publication of the draft EIS and the final EIS did not warrant the preparation of a supplemental EIS. (Slip Op. at 86-99). This conclusion is troubling given the sheer amount of land added to the Roadless Rule after the opportunity for public comment had passed, but the conclusion is truly astonishing given that roaded areas are qualitatively different than the roadless areas contemplated by the draft EIS. The Panel's conclusion in this regard is fundamentally at odds with this Court's NEPA decisions including *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683 (10th Cir. 2009), and therefore, should be reheard by the full Court.

The Panel recognized that "[a]n agency must prepare a supplemental assessment if '[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns.' " (Slip Op. at 87 quoting 40 C.F.R. § 1502.9(c)(1)(i)). The Panel also noted the converse that an agency need not prepare a supplemental EIS if " 'the relevant environmental impacts have already been considered[.]' " (Slip Op. at 88, quoting *Friends of Marolt Park v. U.S. Dept. of Transp.*, 382 F.3d 1088, 1097 (10th Cir. 2004)). However, a supplemental EIS is required unless the " 'new alternative is

qualitatively within the spectrum of alternatives that were discussed in the [DEIS].' " (Slip Op. at 93, quoting *New Mexico ex rel. Richardson*, 565 F.3d at 705).

The inclusion of roaded areas in the final EIS and in the final rule rendered those final actions fundamentally different than the original alternative shown to the public in the draft EIS. The original alternative sought to protect areas from the incursion of roads while the new alternative sought to preserve the status quo in areas where roads already existed. The change was clearly qualitative because it extended the Roadless Rule to lands that are in a fundamentally different condition than the lands considered in the draft EIS.[4] The Forest Service's change without a supplemental EIS in this case is considerably more significant than the change this Court found warranted a supplemental EIS in *New Mexico ex rel. Richardson*. *Id.* at 706-7. *See also California v. Block*, 690 F.2d 753, 769-72 (9th Cir. 1982) (requiring the preparation of a supplemental EIS where the final method of land allocation could not be fairly anticipated by reviewing the draft alternatives).

Similarly, the inclusion of substantial additional acreage within the provisions of the rule warranted a supplemental EIS. The Panel dismissed Wyoming and CMA's concerns about the inclusion of over 4 million acres of additional lands after the conclusion of the public comment process, because the new lands were of similar quality and quantity to those discussed in the draft EIS and the Forest Service noted that it might

[4] The draft EIS specifically informed the public that it did not apply to the 2.8 million acres of land that had been roaded since the preparation of the 1979 Roadless Area Review and Evaluation ("RARE II"). (Aplt.App. Vol. 3, p. 438 indicating that the draft EIS only addresses the unroaded portions of inventoried roadless areas).

make map adjustments prior to issuing the final EIS. (Slip Op. at 94-95). Adding an area larger than the State of Connecticut cannot be seriously characterized as mere "map adjustments." Nor could the draft EIS fairly alert citizens and States that their interests in these 4.4 million acres were at risk. Similarly, it strains credulity for the Forest Service to suggest that over an expanse of 4.4 million acres all the lands contained therein are of similar quality and quantity as the lands inventoried in the draft EIS.

These changes between the draft EIS and the final EIS warranted the preparation of a supplemental EIS. At a minimum, the public should have been given an opportunity to comment on these changes, and the Panel's willingness to condone the Forest Service's failure to accurately inform the public should be corrected.

III. The Panel erroneously determined that the Roadless Rule is not subject to NFMA.

While acknowledging that the Roadless Rule alters forest plans, the Panel decided that the Roadless Rule was not subject to the requirements of NFMA, and that the Forest Service was permitted to rely on its rulemaking authority under its Organic Act, 16 U.S.C. §§ 473 through 482 and 551, to promulgate this nationwide rule. (Slip Op. at 109, 113-19). In reaching this decision, the Panel erroneously characterized the Roadless Rule as a rule of general applicability (Slip Op. at 115-16), when instead, it consists of a host of forest planning and land management decisions for specific individual forests bundled together for administrative convenience. Administrative convenience does not relieve the Forest Service of its obligation to comply with the forest planning process set forth by Congress in NFMA, and the full Court should correct this significant error.

The Panel also relied on the uncontested fact that NFMA did not repeal the authority provided to the Forest Service in its Organic Act. (Slip Op. at 117-19). The Panel concluded that Congress did not intend for the Forest Service to follow the process set forth in NFMA when it considered how to manage the lands at issue in this litigation, because Congress did not repeal the Organic Act when it enacted NFMA. This conclusion is unsound. Congress had no need to repeal the Organic Act since it passed NFMA to direct the process by which the Forest Service would exercise its authority under the Organic Act. Specifically, Congress used NFMA to dictate to the Forest Service the process by which it would exercise its broad rulemaking authority under the Organic Act. If allowed to stand, the Panel decision would allow the Forest Service, and other federal agencies, to circumvent whole statutory regimes under the guise of national rulemaking. This conclusion should be revisited by the full Court.[5]

IV. The Panel erroneously determined that the Forest Service is not obligated to consider the site specific impacts of the Roadless Rule.

The Panel erroneously concluded in its discussion of NEPA, NFMA, and MUYSA that the Forest Service was not required to consider the site specific impacts of the Roadless Rule or manage areas of the forests based on their particular characteristics. (Slip Op. at 80-86, 116, and 109). For example, NEPA requires "*a detailed statement* by the responsible official" on the "environmental impacts" of the proposed action and the

[5] In addition, the Panel mistakenly asserts that the Forest Service can develop new rules for roadless areas during the NFMA planning process. (Slip Op. at 109). In fact, under the Roadless Rule, no lands designated as 'Roadless' may be reconsidered, revised or rescinded through future forest management plans or otherwise. *See* 66 Fed. Reg. at 3273; Aplt.App. Vol. 3, p. 424. Thus, roadless areas, like wilderness areas, completely escape consideration during the forest planning process in perpetuity.

"adverse environmental effects which cannot be avoided[.]" 42 U.S.C. § 4332(C) (italics added). MUSYA requires that the Forest Service, in its administration of national forests, give "due consideration" to "the relative values of the various resources *in particular areas*." 16 U.S.C. § 529 (italics added). NFMA requires the Secretary of Agriculture to "develop, maintain, and, as appropriate, revise land and resources management plans *for units of the National Forest System*, coordinated with the land and resource management planning process of State and local governments and other Federal agencies." 16 U.S.C. § 1604 (italics added).

In this case, the Forest Service made no meaningful attempt to provide a site-specific analysis of the environmental impacts of the Roadless Rule. Instead the final EIS assumes that all roadless areas have essentially the same ecological and social attributes and values. As a result, the final EIS is woefully superficial and contains none of the relevant details that typically inform decisions that "significantly affect[] the quality of the human environment[.]" 42 U.S.C. § 4332(C). Rather than a "detailed statement," it gives no consideration to "various resources" in "particular areas" or "units of the National Forest System." This one-size-fits-all approach to the management of 58 million acres of federal forest lands plainly violates NEPA, NFMA, and MUSYA.

In all meaningful respects, this case is identical to *California v. Block* where the Ninth Circuit required the Forest Service to conduct a site specific analysis to justify the RARE II program. 690 F.2d at 761-65. The Ninth Circuit found that the Forest Service's action in that case resulted in the allocation of certain lands for nonwilderness purposes thereby irreversibly and irretrievably committing resources without conducting the

analysis required by NEPA. *Id.* The Panel found the instant case to be distinguishable from *California v. Block* on the grounds that the Roadless Rule allocates certain lands for wilderness purposes, and therefore, no resources were irreversibly and irretrievably committed by the rule. (Slip Op. at 84, n. 34). However, this distinction does not warrant a different result in this case. Wilderness allocation is a change from the full range of multiple uses currently available that does commit forest resources to a particular purpose. Moreover, in this case those resources are indefinitely committed to wilderness purposes and will forever escape a site-specific evaluation by the Forest Service because the provisions of the Roadless Rule cannot be changed through the forest planning process. *See* 66 Fed. Reg. at 3273; Aplt.App. Vol. 3, p. 424.

In attempting to distinguish *California v. Block*, the Panel also relied on a provision in the regulations promulgated by the Council on Environmental Quality ("CEQ") that permits agencies to generically evaluate broad actions. 40 C.F.R. § 1502.4(c)(2). Of course, "generically" does not mean not at all. The ability to evaluate a broad action generically does not alleviate the other burdens imposed by NEPA. In fact, the CEQ regulations, which actually formed the basis for the court's conclusion in *California v. Block* that a site specific analysis was necessary, generally remain in force. 690 F.2d at 763-65. Thus, the obligation to conduct a meaningful site-specific analysis carried through the change in regulations cited by the Panel. This is true even though such an analysis will be burdensome for an action as sweeping as the Roadless Rule. *Id.* at 765.

The superficiality of the Forest Service's analysis in the draft and final EIS is glaring, and must be corrected before 58.5 million acres of the public's land is forever withdrawn from the full panoply of multiple uses. The full Court therefore must correct the Panel's failure to require the Forest Service to conduct a meaningful NEPA process.

V. The Panel erroneously concluded that the Roadless Rule was not preordained in violation of NEPA.

The record in this case clearly establishes that the Roadless Rule was foreordained from the moment President Clinton ordered the Forest Service to develop what would become the Roadless Rule. (Aplt.App. Vol. 8, p. 1524). In conformity with this command from the President, the Forest Service developed a set of alternatives with no meaningful differences. (Aplt.App. Vol., 3, p. 433-36). All of the action alternatives prohibited road construction and reconstruction in order to effectively prohibit nonwilderness uses in roadless areas. The NEPA process that followed was never intended to inform the agency's decision or involve the public in the decision making process. For instance, at critical stages, the Forest Service failed to include information on the scope of the proposed rule, including maps identifying where the roadless areas were to be located. *Wyoming v. USDA*, 570 F. Supp. 2d 1309, 1322-23 (D. Wyo. 2008).[6] The decision to implement the Roadless Rule was made long before the public was

[6] Many participants in the scoping process requested an extension of the 60-day comment period until maps could be released by the FS identifying where the Roadless areas would be located. *Wyoming*, 570 F. Supp. 2d at 1323. CMA member Arch Coal, Inc. made such a request, asking that it be given geographical data identifying in detail the areas that would be impacted by the Rule. All requests to extend the scoping period were denied.

brought into the process and without any of the information revealed through the NEPA process.

Accordingly, the District Court perceptively concluded:

> In its rush to give President Clinton lasting notoriety in the annals of environmentalism, the Forest Service's shortcuts and bypassing of the procedural requirements of NEPA has done lasting damage to our very laws designed to protect the environment. What was meant to be a rigorous and objective evaluation of alternatives to the proposed action was given only a once-over lightly. In sum, there is no gainsaying the fact that the Roadless Rule was driven through the administrative process and adopted by the Forest Service for the political capital of the Clinton administration without taking the "hard look" that NEPA required.

570 F. Supp. 2d at 1345.

The Panel decision gives short shrift to the District Court's well founded conclusion.[7] The full Court should rehear this matter to consider the Panel's failure to correct a process dictated by politics in derogation of the nation's environmental laws.

CONCLUSION

Roadless lands are the key to establishing and maintaining wilderness. The Roadless Rule was the product of a sham process calculated to create wilderness without Congress. The Panel decision allows the Forest Service to unlawfully circumvent Congress and thwart many of the laws designed to ensure the proper management and conservation of the National Forests. The full Court should correct this result.

[7] The Panel incorrectly indicates that Wyoming did not specifically argue that the Roadless Rule was the product of political pressure from the Clinton Administration. *See* Slip Op. at 104, n. 41 and Br. of Appellee at pp. 37-39.

WHEREFORE the State of Wyoming and the Colorado Mining Association request that the Court rehear this matter *en banc*.

DATED this 5th day of December, 2011.

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CERTIFICATE OF DIGITAL SUBMISSIONS

The undersigned certifies that: (1) all required privacy redactions have been made and, with the exception of those redactions, every document submitted in digital form or scanned PDF format is an exact copy of the written document filed with the Clerk, and (2) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program (Symantec Endpoint Protection) and according to the program, are free of viruses.

/s/ James Kaste
Wyoming Attorney General's Office

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of December, 2011 a true and correct copy of the foregoing was filed with Clerk of Court using the CM/ECF system which will send notification to the following e-mail addresses:

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