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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA – GREAT FALLS DIVISION

RUSSELL COUNTRY SPORTSMEN;)
MONTANA TRAIL VEHICLE RIDERS ASS'N;)
GREAT FALLS TRAIL BIKE RIDERS ASS'N;)
MEAGHER COUNTY LITTLE BELTERS;)
GREAT FALLS SNOWMOBILE CLUB;)
TREASURE STATE ALLIANCE;)
MOTORCYCLE INDUSTRY COUNCIL;)
SPECIALTY VEHICLE INSTITUTE OF)
AMERICA; THE BLUERIBBON COALITION;)

CAUSE NO. 4:08-CV-64

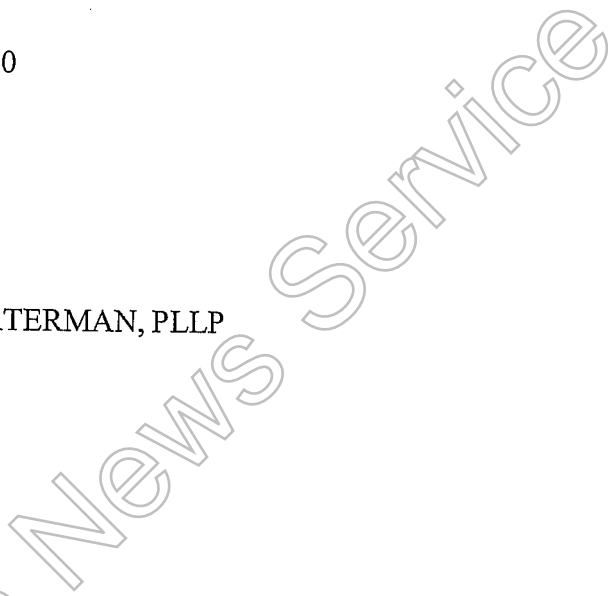
COMPLAINT

Plaintiffs,)

v.)

UNITED STATES FOREST SERVICE;)
LEWIS AND CLARK NATIONAL FOREST;)
LESLEY W. THOMPSON, Forest Supervisor,)

Defendants.)



NATURE OF ACTION

1. This action seeks declaratory and injunctive relief requiring Defendants United States Forest Service, Lewis and Clark National Forest, and Lesley W. Thompson (the “Forest Service”) to acknowledge and adhere to controlling law while managing access to the Lewis and Clark National Forest.

2. Plaintiffs specifically challenge the Forest’s 2007 Travel Management Plan for the Little Belt, Castle and North Half Crazy Mountains (the “Travel Plan”). The Travel Plan reflects a decision to designate roads, trails and areas for motorized vehicle use, and to prohibit such travel on roads, trails and areas not so designated, formally presented through the October, 2007 Record of Decision (“ROD”). The ROD prohibited motorized access on approximately 1,670 miles, or approximately 55 percent, of routes previously authorized for access by wheeled motor vehicles and prohibited snowmobile access on approximately 436,112 acres, or approximately 50 percent, of the area previously open to snowmobile access.

3. The ROD’s restrictions were drastic beyond their sheer volume. Organized recreation groups have expended hundreds, if not thousands, of man-hours constructing, reconstructing and maintaining trails over decades in the Forest, only to see them closed by the ROD. Entry level or intermediate single-track motorcycle trails have virtually been eliminated, making the Forest an expert-only location for this popular activity. Significant portions of the Woodchopper Ridge Trail (444) were closed, which were traveled by the public and private inholders in jeeps and other vehicles prior to the 1977 designation of the Middle Fork Judith Wilderness Study Area, and the suggested alternate access presents highly-technical sections not safely accessible by other than skilled riders on limited vehicle types. The Travel Plan and ROD

present a confusing and illogical bouillabaisse of route components rather than a logical and integrated recreation route network.

4. Plaintiffs and the recreating public were unable to inform the Forest of these shortcomings because the ROD adopted an array of restrictions never presented together in any alternative and allowing for less motorized access than analyzed in any alternative, including even the alternative formulated by the Montana Wilderness Association.

5. This action arises under the National Forest Management Act, 16 U.S.C. § 1600 et seq. (“NFMA”); the National Environmental Policy Act, 42 U.S.C. § 4331, et seq. (“NEPA”); the Montana Wilderness Study Act of 1977, Pub.L. No. 95-150, 91 Stat. 1243 (1977) (“MWSA”); the Administrative Procedure Act, 5 U.S.C. § 551, et seq. (the “APA”), and any implementing regulations for these statutes.

JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States. The conduct complained of creates an actual, justiciable controversy and is made reviewable under the APA.

7. Venue is proper in this Court under 28 U.S.C. § 1391(e) because a substantial number of the events or omissions giving rise to these claims occurred, or, a substantial part of the property that is the subject of these claims is situated, within the District of Montana. The ROD was issued from the Forest’s office in Great Falls, Montana.

PARTIES

8. Plaintiff Russell Country Sportsmen (“Sportsmen”) is a Montana unincorporated association comprised of approximately 95 members. Sportsmen are connected not through their interest in any particular activity or sociopolitical attribute, but through their common

appreciation of and love for the Upper Missouri River country stylized and made famous by Charles M. Russell. Sportsmen have enjoyed, and hope for themselves and future generations to enjoy, a variety of recreational, aesthetic, and commercial activities within Russell Country, which specifically includes the Lewis and Clark National Forest. These activities include sightseeing, hunting, fishing, camping, wildlife and plant viewing, photography, and travel associated with and necessary to such activities via motorized vehicles, horseback and on foot. Sportsmen have enjoyed in the past, and have concrete plans to enjoy in the future should they again be authorized, numerous activities prohibited by the ROD, specifically including access via motorized vehicle to the Deep Creek Park area, access and use of motorized vehicles and campers more than a “vehicle length plus trailer” away from designated routes for camping, and use of motorized vehicles one-time away from existing trails for retrieval of legally-harvested big game. Sportsmen, as an organization and through individual members, attended public meetings, submitted input to the Forest, and otherwise participated in the process that generated the Travel Plan and ROD.

9. Plaintiff Montana Trail Vehicle Riders Association (“MTVRA”) is a Montana nonprofit corporation with approximately 2,500 members representing over fifteen Montana clubs. MTVRA is also an organizing member of the Treasure State Alliance. MTVRA members use motorized and non-motorized means, including off-highway vehicles (motorcycles, all-terrain vehicles, jeeps/4 wheel drives), snowmobiles, horses, mountain bikes, boats, skiing and hiking, to access state and federally-managed lands throughout the United States and especially in Montana, including the Forest Service-managed lands in the Lewis and Clark National Forest at issue in this suit. MTVRA members have enjoyed motorized access to public lands in Montana for over five decades, and speak to the needs of Montana public land recreationists who

may not be organized or otherwise capable of expressing their interests during the travel planning and implementation. MTVRA and its members regularly assist federal land managers through volunteer assistance, pursuant to established procedures and any applicable agreements, on trail improvement and similar projects. These activities have included numerous areas in U.S. Forest Service and BLM-managed areas in Montana, including the Lewis and Clark National Forest. MTVRA members have enjoyed in the past, and have concrete plans to enjoy in the future should they again be authorized, numerous activities prohibited by the ROD, including motorized trail vehicle access to the Deep Creek Park/Smith River area, along historically-existing trails and roads in the Middle Fork Judith WSA, and along trails in the Pilgrim and Logging Creeks areas. MTVRA members attended public meetings, submitted input to the Forest, and otherwise participated in the process that generated the Travel Plan and ROD.

10. Plaintiff Great Falls Trail Bike Riders Association (“GFTBRA”) is a Montana nonprofit corporation with approximately 800 members, representing motorized recreationists from Great Falls and the surrounding communities. GFTBRA informs members, interest groups, the public and land management agencies about outdoor ethics and shared multiple use. GFTBRA is a chartered MTVRA club, and is an organizational member of the Treasure State Alliance and BlueRibbon Coalition. GFTBRA has long participated in land use issues and planning involving Montana public lands, specifically including those involving the Lewis and Clark National Forest and the process leading to generation of the Travel Plan and ROD. GFTBRA and its members are actively involved in “adopt-a-trail”, noxious weed control and similar volunteer projects with government agencies, including several on the Lewis and Clark National Forest featuring the Highwood Mountains Agreement signed in 1990. As part of this effort GFTBRA members include 11 sawyers and 21 individuals certified for first aid/CPR in

accordance with Forest Service requirements. GFTBRA's volunteer efforts have spanned many areas and interest groups, including local mountain biking groups and the Russell Backcountry Horsemen. GFTBRA members have enjoyed in the past, and have concrete plans to enjoy in the future should they again be authorized, numerous activities prohibited by the ROD, including motorized trail vehicle access to the Deep Creek Park/Smith River area, along historically-existing trails and roads in the Middle Fork Judith WSA, and along trails in the Pilgrim and Logging Creeks areas. GFTBRA members attended public meetings, submitted input to the Forest, and otherwise participated in the process that generated the Travel Plan and ROD.

11. Plaintiff Meagher County Little Belters ("MCLB") is a nonprofit organization with approximately 80 members generally organized to stimulate and advance the general welfare and safety of snowmobiling, while seeking unity with all outdoor recreationists. MCLB is based in White Sulphur Springs, Montana, and is a member-club of the Montana Snowmobile Association. MCLB works closely with the Forest Service and Montana Department of Fish, Wildlife and Parks in administering and operating the snowmobile trail grooming program for the Kings Hill Area of the Little Belt Mountains within the Lewis and Clark National Forest. MCLB also assists in other winter public services including Search and Rescue and law enforcement. MCLB members have enjoyed in the past, and have concrete plans to enjoy in the future should they again be authorized, numerous activities prohibited by the ROD, including off-trail snowmobile riding in the Kings Hill Area and in other areas of the Forest accessed by the groomed and ungroomed snowmobile trail network. MCLB and its members participated in the process that generated the Travel Plan and ROD.

12. Plaintiff Great Falls Snowmobile Club ("GFSC") is a nonprofit organization which has been active for over 30 years to enhance snowmobiling opportunities, safety and

public awareness about snowmobiling in the Great Falls area, Montana, and beyond. GFSC is based in Black Eagle, Montana, and is a member-club of the Montana Snowmobile Association. GFSC works along MCLB and the Kings Hill Grooming Committee to assist in the management and operation of the groomed trails in the Kings Hill Area within the Little Belt Mountains of the Lewis and Clark National Forest. GFSC members have enjoyed in the past, and have concrete plans to enjoy in the future should they again be authorized, numerous activities prohibited by the ROD, including off-trail snowmobile riding in the Kings Hill Area and in other areas of the Forest accessed by the groomed and ungroomed snowmobile trail network. GFSC and its members participated in the process that generated the Travel Plan and ROD.

13. Plaintiff Treasure State Alliance (“TSA”) is a Montana nonprofit corporation comprised of representatives from and seeking to unify the efforts of the following state and national organizations: The American Watercraft Association, Citizens for Balanced Use, Families for Outdoor Recreation, Montana 4x4 Association, Montanans for Multiple Use, Montana Trail Vehicle Riders Association, and Safari Club International, Great Falls Chapter. TSA members use motorized and non-motorized means, including off-highway vehicles, snowmobiles, horses, mountain bikes, boats, skiing and hiking, to access state and federally-managed lands throughout the United States and especially in Montana, including the Forest Service-managed lands in the Lewis and Clark National Forest at issue in this suit, specifically including in a manner and/or in areas now prohibited by the ROD. TSA supports multiple use of public lands, sharing of the privilege of access to these lands, environmental stewardship, safety in the backcountry, and overall accountability that contribute toward fun, mental, physical and social development. TSA members attended public meetings, submitted input to the Forest, and otherwise participated in the process that generated the Travel Plan and ROD.

14. Plaintiff Motorcycle Industry Council (“MIC”) is a New York nonprofit trade association. MIC has more than 300 members, including manufacturers and distributors of motorcycles and scooters, and parts and accessories for motorcycles, scooters and all-terrain vehicles (“ATVs”), as well as allied trades relating to motorcycles, scooters and ATVs, such as publishing, insurance and consultants. Motorcycles and ATVs are a type of off-highway vehicle (“OHV”). MIC’s purposes include promoting and preserving motorcycling and ATV use and the U.S. motorcycle industry. MIC promotes motorcycle and ATV use by, among other things, preparing and disseminating information to its members and through government relations and technical, aftermarket, and communications programs. MIC also serves as a resource for motorcycle and ATV research, statistics, and/or vehicle standards. MIC has members that manufacture, distribute, market - and are otherwise connected, largely by and through dealerships located in Montana, to commerce associated with - motorcycles, ATVs, or other OHVs that are used in the Lewis and Clark National Forest. These members derive income from the use of such vehicles on the Forest, with which they directly or indirectly support their employees, agents, and other businesses in and beyond their respective communities. The ROD greatly reduces the available opportunities for the use of such vehicles in the locale, threatening concrete adverse impacts to the above-described interests of these MIC members.

15. Plaintiff Specialty Vehicle Institute of America (“SVIA”) is a District of Columbia nonprofit trade association sponsored by Arctic Cat, BRP, CROSSRUNNER, Honda, John Deere, Kawasaki, KTM, KYMCO, Polaris, Suzuki, Tomberlin, and Yamaha, which each manufacture ATVs, as well as accessories and parts for ATVs, and rely on sales of their products to users of the National Forest System. Since 1983, SVIA has promoted the safe and responsible use of ATVs through rider training programs, public awareness campaigns, and state legislation,

among other initiatives. SVIA also serves as a resource for ATV research, statistics, and vehicle standards. SVIA has members that manufacture, distribute, market - and are otherwise connected, largely by and through dealerships located in Montana, to commerce associated with - ATVs or other OHVs that are used in the Lewis and Clark National Forest. These members derive income from the use of such vehicles on the Forest, with which they directly or indirectly support their employees, agents, and other businesses in and beyond their respective communities. The ROD greatly reduces the available opportunities for the use of such vehicles in the locale, threatening concrete adverse impacts to the above-described interests of these SVIA members.

16. The Blue Ribbon Coalition, Inc. ("BlueRibbon") is an Idaho nonprofit corporation representing over 10,000 individual members and 1,200 businesses and organizations with approximately 600,000 members nationwide. BlueRibbon members use motorized and nonmotorized means, including off-highway vehicles, horses, mountain bikes, and hiking, to access Forest Service and other public lands throughout the United States, including such lands in Montana. BlueRibbon has a long-standing interest in the protection of the values and natural resources addressed herein, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors. BlueRibbon members have visited the Forest via the above-described means of access and intend to do so in the future. BlueRibbon members attended public meetings, submitted input to the Forest, and otherwise participated in the process that generated the Travel Plan and ROD.

17. Defendant United States Forest Service is a federal agency within the United States Department of Agriculture. The Forest Service is charged with administering and overseeing United States Forest System lands in accordance with applicable law.

18. Defendant Lewis and Clark National Forest is a subunit of the United States Forest Service comprised of approximately 1,800,000 acres of land located in Montana. The Forest's main office is located in Great Falls.

19. Defendant Lesley W. Thompson is the Forest Supervisor for the Lewis and Clark National Forest. As his title implies, he is the supervisor for the Forest and is the ultimate authority for the actions, procedures and decisions of the Forest and is charged with ensuring the Forest complies with applicable law. He is sued solely in his official capacity.

LEGAL FRAMEWORK

20. The APA addresses and regulates the function of executive branch administrative agencies within our system of open government. Among such functions, the APA represents a waiver of sovereign immunity by the United States and outlines the circumstances in which "final agency action" may be subject to judicial review, as well as the standards of review to be applied in such challenges. Since many statutes and regulations do not provide for a private right of action, the APA provides the jurisdictional basis for judicial review of administrative decisions by federal land management agencies applying statutes like NEPA, NFMA, and the MWSA to public lands like the Forest.

21. NEPA represents "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1. NEPA's protections of the "environment" refer to the "human environment" which "shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment." 40 C.F.R. § 1508.14. Thus, the agency's duty to analyze impacts does not end with impacts to the physical environment, because "[w]hen an [EIS] is prepared and economic or social and natural or physical environmental effects are interrelated, then the [EIS] will discuss all of these effects on the human environment." *Id.*

Among its numerous purposes, NEPA procedures are designed to foster informed agency decisionmaking based upon informed public participation.

22. The MWSA established and provided substantive management direction for “wilderness study areas” (“WSAs”) throughout the National Forest System in Montana, including the Middle Fork Judith WSA in the Lewis and Clark National Forest. Section 3(a) of the MWSA provides that the Forest Service “shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain [the WSAs’] presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.” This Court has previously articulated its interpretation of the MWSA:

In short, the statute requires the Forest Service to strike—and maintain—a balance between wilderness character and motorized use. Because Congress did not require a “freeze,” it did not require that only those segments of the Wilderness Study Areas already open to motorized activity should remain so, or that those segments already closed should remain so Instead, Congress required that the Forest Service ensure continuing opportunities for enjoyment of the study areas by use of motorized vehicles, as well as continuing opportunities for enjoyment of the study areas’ character *qua* wilderness.

Montana Wilderness Ass’n v. U.S. Forest Serv., 146 F.Supp.2d 1118, 1124-1125 (D. Mont. 2001), *rev’d on other grounds*, 314 F.3d 1146 (9th Cir. 2003), *cert. granted and judgment vacated by, BlueRibbon Coalition v. Montana Wilderness Ass’n and Veneman v. Montana Wilderness Ass’n*, 124 S.Ct. 2870 (2004); *see also id.* (“To the extent the wilderness character was there, Congress wanted to maintain it. To the extent the wilderness character was lacking, Congress did not want to impose it.”).

23. NFMA establishes the statutory framework for management of the National Forest System. In NFMA and other statutes, “Congress has consistently acknowledged that the Forest Service must balance competing demands in managing National Forest System lands. Indeed, since Congress’ early regulation of the national forests, it has never been the case that

“the national forests were...to be ‘set aside for non-use.’”” *The Lands Council v. McNair*, ___F.3d___, 2008 WL 2640001 *6 (9th Cir. 2008) (citations omitted). Additional guidance, incorporated expressly within NFMA, is offered in the Multiple-Use Sustained Yield Act (“MUSYA”), which provides that the various surface resources be managed “so that they are utilized in the combination that will best meet the needs of the American people” and to “achieve[] and maintain[] in perpetuity [] a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.” 16 U.S.C. § 531(a) (definition of “multiple use”) and (b) (definition of “sustained yield”); 16 U.S.C. § 1604(g) (incorporating MUSYA provisions in NFMA).

24. NFMA procedurally requires the Forest to prepare and revise a “forest plan.” 16 U.S.C. § 1604. A forest plan lays out broad guidelines to advance numerous goals and objectives, including to “insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resource, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish....” *Id.* at (g)(3)(A). These plans contain desired conditions, objectives and guidance for project and activity decisionmaking, but do not approve or execute projects and activities. 36 C.F.R. § 219.3 (2007). The guidance in the Forest Plan is subject to change through plan amendment in site-specific or project-level planning, or through revision of the Forest Plan itself. 36 C.F.R. § 219.12 (2007). Additional guidance and criteria are presented in activity-specific rules, such as the Travel Management Rule provides for motorized access to the Forest System.

25. On November 9, 2005, the Forest Service published in the Federal Register a Final Rule entitled “Travel Management; Designated Routes and Areas for Motor Vehicle Use.”

70 Fed.Reg. 68264-68291 (Nov. 9, 2005) (the “Travel Management Rule”). The Travel Management Rule was issued following publication of, and receipt of public comment upon, a proposed rule and was otherwise promulgated in accordance with notice-and-comment rulemaking procedures of the APA. As such, the Travel Management Rule carries force and effect of law and the procedures and provisions therein are binding upon the Forest Service.

26. The Travel Management Rule generally “requires designation of those roads, trails and areas that are open to motor vehicle use...and will prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that is not consistent with the designations.” 70 Fed.Reg. 68264 (Nov. 9, 2005).

27. The Travel Management Rule requires the agency to apply “general criteria” when designating roads, trails and areas for vehicle use, which include effects on natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails and areas, and the availability of resources for maintenance and administration. 36 C.F.R. § 212.55(a). The Travel Management Rule further includes “specific criteria” which must be considered, “with the objective of minimizing” effects on specified resources including soils, watersheds, wildlife and associated habitats and conflicts between vehicle and other uses and within vehicle use types. *Id.* at (b).

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. Introduction to Project Area and Relation of Travel Plan to Prior Analyses

28. The Lewis and Clark National Forest lies in central and north central Montana within the upper Missouri River System. The Forest encompasses portions of thirteen (13) Montana counties and presently includes approximately 1,800,000 acres in seven different

mountain ranges. The Forest includes elevation ranges from 4,500 to 9,362 feet, and includes broad prairies to rugged ridges to mountain peaks. The Forest displays varied habitats and ecotypes ranging from sagebrush-steppe desert to grassy mountain parks surrounded by douglas fir/lodgepole pine forests.

29. The Forest has long included outstanding and diverse opportunities for both motorized and nonmotorized recreation. Nonmotorized uses are emphasized on more than half a million acres of the Forest including congressionally-designated wilderness, including the Bob Marshall-Scapegoat-Great Bear complex, and areas otherwise closed to motorized access. Multiple use including motorized travel has long occurred and been enjoyed by the public in many areas, specifically including trail vehicle access in the Logging Creek, Pilgrim Creek, Deep Creek Park, and jeep/4 wheel drive access in the Middle Fork Judith area. Snowmobile riding has long been enjoyed throughout the area, including trail riding on the carefully-administered groomed route network operated by the Forest, Montana Department of Fish, Wildlife and Parks and local snowmobile clubs, as well as “off-trail” riding in areas accessed via both groomed and ungroomed snowmobile trails. Aside from any intrinsic enjoyment associated with this access, motorized travel has long facilitated safe and efficient backcountry experiences for many different recreationists, ranging from Search and Rescue operations/training, dispersal of campers and hunters, ethical harvest and recovery of big game, and access for physically-challenged individuals. While many recreationists dream of a self-supported trip into the most remote of wilderness areas, far more are no longer capable of such a trip, cannot safely attempt one with their family/friends, lack the necessary time or equipment, or face other constraints making access/support through mechanized transport a logical necessity for their Forest experience.

30. The “project area” for the Travel Plan included approximately 1,050,110 acres of federally-managed lands within the Jefferson Division of the Forest, or 53 percent of the entire land area managed by the Forest. Specifically, these lands were all National Forest System lands within the Little Belt Mountains (900,310 acres), Castle Mountains (79,820 acres) and north half of the Crazy Mountains (69,980 acres).

31. The 2007 Travel Plan continues a long interrelated series of Forest planning activities. The governing land use plan for the Forest is the 1986 Land and Resource Management Plan (“LRMP” or “Forest Plan”). The Forest Plan reflects the broadest, programmatic planning direction, which outlines goals and objectives for multiple use resource management and identifies standards and guidelines which describe the sideboards within which specific activities will be conducted in accordance with more detailed project-level or site-specific planning.

32. In addition to above-described Forest-wide direction, the Forest Plan divides the Forest into specific “Management Areas”, which are essentially geographically-defined “zones” within the Forest with corresponding goals and standards. This direction addresses a variety of multiple uses, including vehicle access and motorized and nonmotorized recreation.

33. The 1986 Forest Plan generally established that the Forest would be “open” to vehicle travel except for those roads, trails or areas specifically restricted.

34. The broad direction of Forest Plans is necessarily augmented and/or amended by more detailed project and activity planning. This more detailed site-specific planning includes analysis of on-the-ground management options and associated effects to the human environment for each option. Such project level planning occurs for a broad spectrum of projects and activities within the Forest Service system, including vegetation management and timber

projects, mining plans of operation, ski area development and operations, special use management such as guiding and outfitting, and travel management. Prior to the current effort, the Forest issued three (3) separate travel plans in 1977, 1984 and 1988.

35. Despite the various plans, there has continued to be confusion about the extent of the Forest's transportation system and the various management prescriptions applicable to specific system components or other routes existing within the Forest. Some roads and trails have been laid out, constructed or engineered by the Forest Service or other public agency. These "planned" roads/trails encompass a variety of access modes, ranging from passenger-style automobiles to narrow trails for hiking-saddle stock use. Other routes pre-date creation of the Forest or have been created in conjunction with historical use of the Forest, including access in association with mining exploration/development, timbering, homesteading and private property access. Under the "open" Forest Plan, it has arguably been legal to travel "cross-country" unless specifically prohibited, and as a result numerous additional roads and trails have been created within the Forest. The nature and extent of public, private and administrative access along all of these various types of routes has been highly variable based on their location, physical attributes and resultant ease of travel, areas/destinations accessed via the route, nature of activities in the area, and various other factors.

36. In January, 2001 the Forest Service and Bureau of Land Management issued a joint decision commonly-referred to as the "Three State EIS" which generally prohibited cross-country vehicle travel on applicable federally-managed lands in Montana, South Dakota and North Dakota. The Three State EIS included the Forest, and restricted vehicle travel to "existing" roads and trails and provided language and illustrations intended to define an "existing" road or trail in varied circumstances and for various vehicle types. The Three State

EIS additionally directed Forest Service and BLM units to conduct more detailed project-level planning to specifically designate allowable activities and uses on specific routes.

37. On January 10, 2002, the Forest issued a project-level decision entitled Big Snowy Mountains Access & Travel Management Decision which addressed travel management in the Big Snowy Mountain Range. Numerous individuals and organizations filed administrative appeals from that decision. As part of the appeal resolution process under then-applicable regulations, winter and summer recreation management issues were separated, and discussions conducted between representatives of the Forest and participating appellants to evaluate the possibility of resolving the various appeals. In general terms, motorized and mechanized access proponents advocated continuing their historical access within the Forest subject to reasonable restrictions, while preservationist interests specifically including Montana Wilderness Association advocated restrictions on historical access and formal designation of “nonmotorized blocks” that would present new land areas closed to all motorized travel beyond the approximately 573,537 acres of already-existing congressionally-designated wilderness and other areas within the Forest otherwise closed to motorized travel.

38. Some winter recreation groups reached an agreement that addressed management of the Little Belt, Castle and Crazy Mountains within the Travel Plan project area. In part, those portions of the winter agreement reflect a joint proposal and agreement between the signatories concerning specific winter recreation management prescriptions. Specifically, the winter agreement was signed by representatives of the Montana Wilderness Association, the Island Range Chapter-Montana Wilderness Association, the Great Falls Cross-Country Club, the Montana Snowmobile Association, the Great Falls Snowmobile Club, the Little Belt Snowmobile Club, and the Lewis and Clark National Forest. The Forest committed in the

agreement to analyze in detail an alternative that would implement the parties' proposal. In the event the Forest, after completing legally-required public planning under NEPA and other applicable law, adopts the alternative embodying the parties' joint proposal, the agreement essentially provides that the parties would waive their rights to appeal and would jointly defend such decision.

39. Following completion of the winter recreation discussions, the summer recreation interests initiated similar discussions attended and facilitated by Forest representatives. Despite candid and sometimes productive dialogue, no agreement was reached and sometime in summer, 2004, the parties discontinued their discussions and the Forest concluded that summer recreational planning would be addressed in further planning.

40. Notwithstanding the various above-described layers of planning, there remained considerable confusion amongst Forest visitors and disagreement about the optimal mix of recreation opportunities on the Forest to justify further travel planning. Particularly upon promulgation of the Travel Management Rule, the Forest initiated a planning process to designate roads, trails and areas for vehicle use in the project area.

B. Chronology of Travel Planning Process

41. In 2000 the Forest conducted public outreach by sending letters and holding open houses to determine the level of public understanding of the 1988 Travel Plan and to assess the need to update and revise travel management restrictions.

42. In April, 2005 a "project initiation letter" directed an "interdisciplinary team" of Forest specialists to begin development of a "proposed action" for travel management in the project area. The formal public scoping period on this project began in September, 2005 with the publication of a Notice of Intent in the Federal Register. 70 Fed.Reg. 55815-55816 (September

23, 2005). The Forest issued news releases, mailed letters, and conducted open houses to inform and elicit input from affected agencies and interested publics. Forest personnel also initiated contact and held personal meetings with numerous organizations, including some of the Plaintiffs. The original September 20, 2005, scoping deadline was extended to November 25, 2005.

43. The Forest received a large number of comments prior to and after the scoping period deadline. The Forest analyzed each comment and formulated issue statements that were used to outline the project.

44. A Draft Environmental Impact Statement (“DEIS”) was prepared in accordance with NEPA and was circulated beginning on July 7, 2006, to agencies, organizations and individuals of record in the project file. A total of 1,783 comments to the DEIS were received, of which 626 were timely and provided original input, 1,036 were form letters or postcards, and 121 were late or otherwise deficient.

45. The DEIS presented a total of seven (7) distinct alternatives that were analyzed in detail. Winter and summer recreation were separated in the analysis, with four (4) summer recreation alternatives and three (3) winter recreation alternatives analyzed in detail. The summer alternatives would have designated as open varying mileages of “highway vehicle roads”, “high clearance (4x4) roads”, “ATV roads/trails”, “motorcycle roads/trails” and nonmotorized trails by alternative, with total motorized route mileages ranging from a high of 3,036 miles in Summer Alternative 1 to a low of 1,951 miles in Summer Alternative 4. The winter alternatives would have designated varying acreages and mileages of groomed snowmobile trails available for snowmobile use, ranging from a high of 95 percent of the project

area and 290 miles of groomed trails open in Winter Alternative 1 to 51 percent of the project area and 290 miles of groomed trails open in Winter Alternative 2.

46. The Record of Decision (“ROD”) and Final Environmental Impact Statement (“FEIS”) were released on approximately October 1, 2007, with the Forest Supervisor’s signature on the ROD bearing a date of October 11, 2007.

47. In addition to selecting a final decision that was not presented in any specific alternative, the FEIS contained a variety of other changes from the DEIS. These changes include modifying the specific open/restricted/prohibited route mileages in the varying categories, changing the allowable exception for cross-country travel associated with dispersed camping from 300 feet within an existing route in the DEIS to one vehicle plus associated trailer length, and further narrowing the winter snowmobiling period by changing the spring deadline from May 15 to May 1 in the ROD/FEIS.

48. Within the 45-day period provided by the regulations the Forest received a total of 66 appeals from the ROD under 36 C.F.R. part 215. Approximately 33 of the appeals were summarily dismissed for a variety of reasons, and the remaining 33 appeals were consolidated and processed in accordance with the regulations. On approximately December 11, 2007, the Forest Supervisor presented a “transmittal letter” summarizing and responding to the appeal points as consolidated by the Forest. That letter was received by the Appeal Reviewing Officer, who issued a recommendation on disposition of the appeals to the Regional Forester, who served as the Appeal Deciding Officer.

49. On January 10, 2008, the Appeal Deciding Officer, Acting Regional Forester Kathleen McAllister, issued a one-page decision on the appeals rejecting the various appeals and affirming the Travel Plan and ROD. The decision further stated “due to the large number of

appeals and issues raised by the appellants, documentation of the appeal points and the responses to each appeal point will be forth coming within 2 weeks.”

50. The Appeal Reviewing Officer provided the promised additional discussion through a document dated January 23, 2008. That recommendation affirmed the ROD, but provided “instructions” on specific areas where the Forest Supervisor might “clarify some of his rationale in his decision...as he believes appropriate.” Specifically, the recommendation discussed designation of existing roads within Inventoried Roadless Areas, clarification of the change of the “300 foot pull off distance” from the DEIS, and changes of the winter snowmobiling period.

51. On January 24, 2008 Appeal Deciding Officer/Acting Regional Forester McAllister adopted the recommendation of the Appeal Reviewing Officer and otherwise affirmed the ROD. That decision, by its own terms and under applicable regulation, constitutes the final administrative determination of the Forest Service/Department of Agriculture.

52. On March 3, 2008, the Forest Supervisor did issue clarification of the rationale behind designation of existing roads in Inventoried Roadless Areas and the changes to allowable “pull off” distance and the end of the snowmobile period.

C. Summary of Winter Use Decisions

53. For the winter recreation component of the decision, the ROD adopted “Winter Alternative 2 with a few minor changes....” ROD at 4. This decision authorized snowmobile travel on 440,348 acres, or 48 percent of the project area. Conversely, this decision prohibited snowmobile and other motorized travel on 483,242 acres, or 52 percent of the project area. The existing condition, as reflected by Winter Alternative 1, authorized snowmobile travel on 876,460 acres, or 95 percent of the project area. FEIS Table II-2 at 25.

54. The winter recreation decision prescriptions apply during the period from December 1 to May 1. The spring deadline was presented to the public during the DEIS as May 15, but was changed in the FEIS/ROD to May 1 to allegedly “balance snowmobile access with elk security” and to avoid “pit[ting] user groups against each other....” ROD at 8.

55. In addition to the cross-country snowmobile travel authorized on slightly less than half of the project area, the ROD authorizes snowmobile travel along the 290 miles of existing and previously-groomed routes. Additionally, the ROD indicates that about 14 miles of “new” routes will be added to the state-administered grooming program and authorized for snowmobile travel.

56. The ROD does not completely follow the winter use agreement, but is characterized by the Forest Supervisor as reflecting that agreement “with minor modifications.” ROD at 7. The ROD indicates that some areas identified as “open” in the agreement were closed by the ROD “to protect wolverine denning habitat in the Castle Mountains” and to “add[] protection for small areas of big game winter range on the southern edge of the Little Belt Mountains.” *Id.* The ROD also indicates that “a couple” of “snowmobile routes and play areas” were added that were not identified as “open” in the agreement in response to comments from snowmobile enthusiasts. *Id.*

D. Summary of Summer Use Decisions

57. For the summer recreation component of the decision, the ROD adopted “Summer Alternative 5 blended with parts of the other alternatives....” ROD at 4.

58. In terms of overall route mileage, the summer recreation decision designated less mileage for vehicle use than was presented in any of the alternatives analyzed in detail. The summer decision can be summarized by designated motorized route mileage as follows:

vehicle use and the remaining 18 for ATV/trail bike routes. *Id.* In terms of actual use, these routes reflect “one connected complex of trails (approximately 12 miles) and the road system that accesses the private land.” ROD at 16 (parentheses in original). Put differently, the ROD eliminated roughly two-thirds of the previously-available motorized routes from the Middle Fork Judith WSA.

61. With regard to access to Inventoried Roadless Areas, the summer decision designates as open 58 miles of highway vehicle roads and 35 miles of other vehicle routes. ROD Table 10 at 26. The existing condition as reflected by the “no action” alternative allegedly included 216 miles of highway vehicle roads and 418 miles of other vehicle routes. *Id.* Even the most restrictive alternative (Summer 4) would have designated as open 98 miles of highway vehicle roads and 88 miles of other vehicle routes. *Id.* Thus, for IRAs the ROD eliminates roughly 84 percent of the previously-available motorized routes and designates as open 50 percent fewer routes than were contained in any alternative presented during the public planning process.

62. With regard to creation of “nonmotorized blocks,” the summer decision “designates” a new “large” “non-motorized area (approximately 60,000 acres) and several smaller non-motorized areas.” ROD at 5. There is no statute or regulation that directs or specifically authorizes Forest Service designation of “nonmotorized blocks” or “nonmotorized areas” per se.

63. With regard to access to Deep Creek Park and the Smith River Corridor, the summer decision apparently favors nonmotorized use over motorized use based upon an implicit, but undocumented, finding that such uses are not compatible. Despite the fact that motorcycle access to the Smith River Canyon occurs at very few discrete locations, the summer decision is

<u>Mode of Travel</u>	<u>Miles Designated (Total/Open Yearlong/Seasonally Restricted)</u>	
Passenger Vehicle	741/584/157	
4x4 Vehicle	178/128/50	
ATV	222/121/101	
Motorcycle	225/37/188	(See ROD Table 1 at 5)

59. Against the range of alternatives, the summer decision compares to Summer Alternative 1 (the no action alternative) and Summer Alternative 4 (the most restrictive alternative) as follows:

<u>Alternative</u>	<u>Total Miles Designated by Vehicle Type</u>				<u>Total</u>
	<u>Pass. Vehicle</u>	<u>4x4 Vehicle</u>	<u>ATV</u>	<u>Motorcycle</u>	
Summer 1	1,523	514	260	739	3,036
Summer 4	955	397	262	337	1,951
Decision	741	178	222	225	1,366

(See ROD Table 1 at 5; FEIS Table II-1 at 24)

60. With regard to access within the Middle Fork Judith Wilderness Study Area, the summer decision reflects a conscious choice “to emphasize non-motorized recreation....” ROD at 8. In doing so, the summer decision eliminates motorized travel along numerous routes that existed on the ground and were historically travelled by motorized vehicles upon passage of the MWSA in 1977. In selecting those few routes within the WSA which were designated as open for some form of motorized vehicle travel, the summer decision apparently focused upon “retain[ing] legal historic motorized access by private landowners....” *Id.* The existing condition allegedly constituted 112 miles of roads comprised of 54 miles of highway vehicle roads and 58 miles of ATV/trail bike routes. ROD Table 10 at 26. The summer decision designates as open only 38 miles of routes for motor vehicle use, 20 of which are for highway

designed to continue a perceived “unique, world class floating experience in Montana” and apparently in response to some comments, including those by the State of Montana Department of Fish, Wildlife and Parks that the floating experienced could be “diminished by increased motorized use.” ROD at 9. The summer decision not only fails to increase motorized use, but eliminates existing motorized use and allows public motorized use only in the form of motorcycles via a single trail/road combination “after the floating season.” *Id.* Trail 311, which previously provided both public access to the Deep Creek Park/Smith River area as well as access to private property, is designated as a nonmotorized trail. ROD at 24.

64. With regard to off-route travel exceptions, the summer decision allows off-road or off-trail travel for specified purposes, including parking/passing/turning around and camping, only within the length of the vehicle and any attached trailer away from “the travel-way of designated system roads and off the constructed tread of designated system trails....” ROD at 12. This reflected a change from the management direction proposed in the DEIS, which would have allowed such activity within 300 feet of designated roads/trails.

65. With regard to a specific off-route travel exception for big game retrieval, the summer decision refused to consider in any alternative whether off-route travel would be authorized in any area or under any circumstances. The appeal transmittal letter contends that the Forest Supervisor for the Lewis and Clark or apparently any National Forest within Region 1 of the Forest Service, lacks such authority based upon a letter from the Regional Forest dated June 30, 2006.

**COUNT ONE: VIOLATION OF NFMA-TRAVEL MANAGEMENT RULE
(Illegal Application of Substantive Criteria)**

66. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

67. The ROD contains numerous prohibitions and restrictions on motorized vehicle which either fail to acknowledge or rationally apply the Travel Management Rule criteria.

68. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; short of statutory right; or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside by this Court.

69. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

70. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

**COUNT TWO: VIOLATION OF NEPA
(Failure to Issue Supplemental EIS)**

71. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

72. The Council on Environmental Quality ("CEQ") regulations regarding NEPA implementation provide that a supplement to a draft or final EIS is required if "(i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9.

73. The Forest made numerous changes to the management proposals presented in the DEIS which were relevant to environmental concerns or reflected significant new circumstances or information, but neglected to disclose any of those changes through a supplement to the DEIS.

74. The Forest ultimately issued a decision which included restrictions on motorized access that were beyond those presented in any of the alternatives analyzed in detail and made available for public comment. These decision options were not disclosed to the public and the public was precluded from meaningfully commenting upon these proposals, such as the ultimate combination of motorized route mileage that was lower than any of the summer alternatives analyzed in detail, as a result of the agencies failure to issue a supplemental EIS or otherwise formally present such an option to the public during the comment period.

75. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside by this Court.

76. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

77. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

**COUNT THREE: VIOLATION OF NEPA
(Failure to Identify Preferred Alternative)**

78. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

79. The CEQ regulations provide “that agencies shall identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.” 40 C.F.R. 1502.14(e).

80. The Forest expressly declined to identify a preferred alternative in either the DEIS or FEIS, and stated that the Forest Supervisor “may select any combination of travel management actions as presented and analyzed within this document” and that each of the alternatives analyzed in detail “involve a number of independent actions that are feasible to implement.” FEIS at 27. The Forest additionally stated “[i]n the FEIS, the Forest Service preferred alternative for wheeled vehicle management is a combination of Summer Alternatives 5, 4, 3, and 1. Likewise, the Forest Service preferred alternative for over-snow vehicle management is a combination of Winter Alternatives 2, 3, and 1.” FEIS at 28.

81. The apparent functions of the requirement of identifying a preferred alternative might include disclosure to the public of the agency’s preliminary course of action in order to focus public scrutiny of specific decision elements and to facilitate robust and thorough public input during the comment period. None of these functions were served here, and the failure to identify a preferred alternative limited, if not prevented, meaningful public input to the planning process as required by law.

82. This failure to identify a preferred alternative is uniquely problematic in the context of travel planning. There are thousands and thousands of different combinations of

potential decision elements, and many decision components interrelate to one another. Even a motivated and knowledgeable member of the recreating public could not present meaningful and informed comment during the process, because the Forest's range of options, let alone its intended option, was never identified to the public.

83. Further complicating the difficulty of commenting on this bewildering array of potential decision options, the FEIS added variations that were never disclosed in any fashion during the comment period, such as the "vehicle plus trailer length" pull-off standard.

84. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside by this Court.

85. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

86. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

**COUNT FOUR: VIOLATION OF NEPA
(Inadequate Range of Alternatives)**

87. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

88. NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives in an EIS. 40 C.F.R. § 1502.14. The alternatives section is

considered the “heart” of an EIS. *Id.* A NEPA analysis is invalidated by the existence of a viable but unexamined alternative.

89. The Forest excluded viable alternatives from the range of alternatives analyzed in detail and made available to public comment in the DEIS. In fact, the agency ultimately selected an “alternative” that not only combined decision elements in a fashion totally distinct from the identified alternatives, but did so in a manner that was completely outside of the range of options encompassed by the entire range of alternatives for many criteria, such as total motorized route mileage. Thus, the Forest not only failed to foster, but in fact precluded, informed public comment on the DEIS and Travel Plan because the Forest withheld its ultimate decision from public scrutiny during the planning process.

90. Defendants’ actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside by this Court.

91. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants’ actions addressed in this claim for relief.

92. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

**COUNT FIVE: VIOLATION OF NEPA
(Inadequate Disclosure of Technical Analysis)**

93. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

94. In applying NEPA “[a]gencies shall insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impacts statements.” 40 C.F.R. § 1502.24. This includes a requirement that agencies disclose the scientific methodologies used, references relied upon, and any hard data from scientific or technical analysis. *Id.*

95. The DEIS and FEIS in many instances fail to present the required information, relying instead upon conclusory and undocumented narrative for propositions central to decision elements.

96. Defendants’ actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; short of statutory right; or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside by this Court.

97. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants’ actions addressed in this claim for relief.

98. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

**COUNT SIX: VIOLATION OF MWSA
(Illegal Restrictions in Middle Fork Judith WSA)**

99. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

100. The MWSA requires the Forest Service to manage Wilderness Study Areas within Montana National Forests, including the Middle Fork Judith WSA, so as to maintain their wilderness character and potential for inclusion by Congress within the National Wilderness Preservation System as those attributes existed upon passage of the MWSA in 1977. The MWSA does not require such areas be managed as wilderness, and the legislative history and judicial interpretation of the MWSA recognize the validity of continuing motorized access to the WSAs so long as consistent with the agency's duty to maintain wilderness character and potential for inclusion as wilderness. The MWSA requires only that the agency maintain the relevant attributes upon passage of the MWSA, not that the agency create wilderness character or potential for inclusion where none existed or beyond that existing in 1977.

101. The ROD and Travel Plan dramatically restrict the miles of routes authorized for motorized access to the Middle Fork Judith WSA, significantly below not only the level authorized by the 1988 Travel Plan and existing at the time of the summer decision, but also significantly below the levels historically utilized upon passage of the MWSA in 1977. While the DEIS and FEIS reflect an analysis of the 1977 wilderness character of the Middle Fork Judith WSA, the two-pronged mandate of the MWSA is not relied upon as the primary basis for motorized route restrictions, but rather a desire "to emphasize non-motorized, quiet use." ROD at 16.

102. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right,

power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; short of statutory right; or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside by this Court.

103. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants' actions addressed in this claim for relief.

104. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

**COUNT SEVEN: VIOLATION OF NEPA-NFMA
(Illegal Restrictions in Roadless Areas)**

105. Plaintiffs hereby incorporate by reference each statement and allegation previously made.

106. For at least thirty years there has been tremendous interest in, and frequent disagreement over, management of "roadless areas" within the National Forest System. See, generally, *Kootenai Tribe v. Veneman*, 313 F.3d 1094 (9th Cir. 2002); *State of Wyoming v. U.S. Dept. of Agric.*, 277 F.Supp.2d 1197 (Wyo. 2003) *declared moot and vacated by*, 414 F.3d 1207 (10th Cir. 2005); *State of California ex rel Lockyer v. U.S. Dept. of Agric.*, 459 F.Supp.2d 874 (N.D.Cal. 2006) (appeals docketed). At the time the ROD was issued, the 2001 Roadless Rule was in effect, although that Rule had previously been declared illegal in 2003, was reinstated in 2006, and was recently declared illegal again on August 12, 2008, in *Wyoming v. U.S. Dept. of Agric.*, Case No. CV-07-17-CAB (D.Wyo.).

107. The ROD imposed significant restrictions on motorized access within “Inventoried Roadless Areas.” Neither the 2001 Roadless Rule nor any other law compelled such restrictions, however, the 2001 Roadless Rule was at least partially considered and relied upon by the Forest as a basis for ROD’s motorized access restrictions in IRAs.

108. The 2001 Roadless Rule is illegal and cannot form a basis for restrictions on projects or activities within IRAs or elsewhere on the Forest.

109. Defendants’ actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, or limitations; without observance of procedure required by law; short of statutory right; or otherwise in violation of the APA, 5 U.S.C. § 706 (2), and should therefore be declared unlawful and set aside by this Court.

110. Plaintiffs have exhausted all administrative remedies required by law in order to seek relief from Defendants’ actions addressed in this claim for relief.

111. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the Forest as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

REQUEST FOR RELIEF

Wherefore, having alleged the above-described violations of law, Plaintiffs respectfully request judgment in their favor on each and every claim alleged herein, and request that the Court rule, adjudge, and grant relief as follows:

1. Declare unlawful and set aside the ROD and Travel Plan;

2. Remand the matters addressed in the ROD and Travel Plan for further analysis and action in accordance with applicable law;
3. Award the Plaintiffs their reasonable fees, costs, and expenses of litigation as allowed by the Equal Access to Justice Act, 28 U.S.C. § 241 *et seq.* and other applicable law or rule of court; and
4. Grant such further and additional relief as the Court deems just and proper.

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