

1 Matthew K. Bishop
2 Western Environmental Law Center
3 103 Reeder's Alley
4 Helena, MT 59601
5 (406) 324-8011 (tel.)
6 bishop@westernlaw.org

7 Sarah K. McMillan
8 Western Environmental Law Center
9 Post Office Box 7435
10 Missoula, MT 59807
11 mcmillan@westernlaw.org

12 Attorneys for Plaintiffs

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF MONTANA
15 MISSOULA DIVISION

16 THE PRYORS COALITION, a coalition of)
17 non-profit organizations and individuals;)
18 WILDLANDS CPR, a non-profit organization;)
19 EASTERN WILDLANDS CHAPTER OF THE)
20 MONTANA WILDERNESS ASSOCIATION, a)
21 non-profit organization, YELLOWSTONE)
22 VALLEY AUDUBON SOCIETY, a non-profit)
23 organization; THE FRONTIER HERITAGE)
24 ALLIANCE, a non-profit organization; THE)
25 BEARTOOTH BACKCOUNTRY HORSEMEN, a)
26 non-profit organization; RICHARD WALTON, an)
27 individual; SUSAN W. NEWELL, an individual;)
28 and PHIL JAQUITH, an individual,)

Plaintiffs,
vs.

LESLIE WELDON, in her official capacity as)
Regional Forester for the United States Forest)
Service, Region One; MARY ERICKSON, in her)
official capacity as Acting Forest Supervisor of the)
Custer National Forest; and the UNITED STATES)
FOREST SERVICE, an agency of the United)
States Department of Agriculture;)

Federal-Defendants.

CV-10-14-M-DWM

COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE
RELIEF

INTRODUCTION

1
2 1. Plaintiffs bring this civil action for declaratory and injunctive relief
3 against the above named Federal-Defendants (“U.S. Forest Service” or “USFS”)
4 pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq., for
5 violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321
6 et seq., the National Forest Management Act (“NFMA”), 16 U.S.C. §1600 et seq.,
7 the 2005 Travel Management Rule (“TMR”), 36 C.F.R. § 212 et seq., and
8 Executive Order 11644, as amended.
9

10 2. This civil action arises from USFS’s June 2, 2008 Record of Decision
11 (“ROD”) approving a new travel management plan for the Custer National
12 Forest’s Beartooth Ranger District which includes the Beartooth and Pryor
13 Mountains.

14 3. South-central Montana’s Pryor Mountains are unlike any other landscape
15 in Montana. Considered an ornithological and botanical “hot spot,” the Pryors are
16 home to more than 200 species of birds and nearly a 1,000 species of native plants
17 some of which are rare. The Pryors are also sacred mountains to the Crow as
18 evidenced by the number of teepee rings, vision quest sites (both ancient and
19 recent), pictographs and other cultural sites strewn throughout the area.
20

21 4. Despite the Pryor’s ecological and culturally uniqueness, USFS’s new
22 travel plan treats the area as a motorized playground – a sacrifice zone open to
23 wide-spread and virtually unlimited use by 4x4 vehicles, all-terrain vehicles
24 (ATVs), and motorcycles.

25 5. Under the new travel plan, approximately 99% of system roads and trails
26 in the Pryor Mountains will be open for motorized use. This includes almost every
27 trail up Big Pryor Mountain. For the first time, USFS’s new travel plan also
28

1 converts unauthorized user-created two-tracks into motorized system roads and
2 trails. These user-created routes will now be signed, included on vehicle-use
3 maps, and open to motorized use. USFS even creates 600 foot dispersed vehicle
4 camping corridors (nearly the length of two football fields) along every motorized
5 route. Motorized users will now be allowed to travel cross-country, off designated
6 routes and across the Pryor's sensitive soils and rare plants (even during the early
7 spring thaw period due to inadequate Season of Use restrictions) to set up camp
8 wherever they choose.
9

10 6. Wherefore, Plaintiffs – a coalition of organizations and individuals
11 dedicated to protecting and restoring the biological and cultural integrity of the
12 Pryor Mountains and ensuring USFS makes fully informed decisions about travel
13 planning in the Pryors – are hereby compelled to bring this civil action.

14 JURISDICTION AND VENUE

15 7. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331
16 (Federal Question).

17 8. The Court has the authority to review USFS's action and/or inaction
18 complained of herein, and grant the relief requested, pursuant to the APA, 5
19 U.S.C. § 701 et seq. Plaintiffs are challenging a final agency action and have
20 exhausted all available administrative remedies.
21

22 9. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory
23 Judgment), 28 U.S.C. § 2202 (Injunctive Relief), and 5 U.S.C. § 706 (APA).

24 10. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e).

25 11. There is a present and actual controversy between the Parties.

26 PARTIES

27 12. Plaintiff, THE PRYORS COALITION, is a coalition of individuals and
28

1 organizations who use, cherish, and are working to protect and restore the peaceful
2 and quiet beauty of the Pryor Mountains. The Pryors Coalition's goal is to work
3 together with all Montanans to pass along our cherished traditions and unique
4 public lands to future generations. Members of the Pryors Coalition use the Pryor
5 Mountains for hiking, skiing, bird watching, wildflower observation, horse-back
6 riding, and hunting. Members of the Pryors Coalition also use and support
7 responsible motorized uses in the Pryor Mountains.
8

9 13. Plaintiff, WILDLANDS CPR ("Wildlands"), is a non-profit
10 advocacy organization based in Missoula, Montana dedicated to reviving and
11 protecting wild places through road removal, preventing new road construction,
12 stopping motorized vehicle abuse, and promoting sound motorized vehicle use
13 management on our public lands. Wildlands has a long record of working in the
14 public interest on matters regarding National Forest management, including but
15 not limited to work specifically related to travel planning on public lands.
16 Wildlands acts as a national clearinghouse for legal, scientific, and technical
17 information relating to road, ORV, and snowmobile impacts.
18

19 14. Plaintiff, EASTERN WILDLANDS CHAPTER OF THE MONTANA
20 WILDERNESS ASSOCIATION, is the eastern Montana chapter of the Montana
21 Wilderness Association (MWA), a state-wide non-profit organization
22 headquartered in Helena, Montana. The Eastern Wildlands Chapter of MWA is
23 committed to protecting the natural resources, wilderness character, wildlife
24 habitat, and traditional recreational opportunities in eastern Montana, including
25 the Pryor Mountains. The group proposes the establishment of quiet hiking and
26 riding areas in the Pryor Mountains that provide secure wildlife habitat.
27

28 15. Plaintiff, YELLOWSTONE VALLEY AUDUBON SOCIETY, is a non-

1 profit group organized to promote and the enjoyment and protection of the natural
2 environment through education, activism, and conservation of bird habitats in the
3 Yellowstone Valley. A major focus area of the Yellowstone Valley Audubon
4 Society is the conservation of native bird habitat in the Pryor Mountains.

5 16. Plaintiff, THE FRONTIER HERITAGE ALLIANCE, is a non-profit
6 organization dedicated to theme-based research, education, preservation,
7 interpretation, development, and promotion of our region's historical legacy. The
8 Alliance has a keen interest in the Pryor Mountains. The Pryors and the
9 surrounding region have archeologically valuable cultural resources. Ancient trails
10 used by first Americans, habitation sites where these people lived, rock art sites
11 where they expressed their spiritual roots and stories are found through out the
12 area. The Alliance has spent much time locating these sites and has a concern
13 about the long term conservation and preservation of these irreplaceable resources.
14 The area's history of homesteaders, grazing, wild horses, and outlaws has much
15 interpretive and educational potential.

16 17. Plaintiffs, THE BEARTOOTH BACKCOUNTRY HORSEMEN, is a
17 non-profit organization dedicated to perpetuating and promoting the use and
18 enjoyment of horses in America's back country and wilderness. The Horsemen
19 work to ensure that public lands remain open for safe recreational stock use, assist
20 various agencies responsible for the maintenance and management of public lands,
21 and educate, encourage, and solicit active participation in the wise and sustained
22 use of the back country by horsemen and the general public.

23 18. Plaintiff, RICHARD WALTON is a resident of Billings, Montana who
24 has explored the Pryor Mountains frequently and extensively for over forty years
25 traveling by foot, mountain bike, skis, and 4WD to camp, watch birds and
26
27
28

1 wildflowers, explore caves, and especially to enjoy the spectacular landscape and
2 quiet solitude. Mr. Walton is particularly interested in the unique ecological,
3 geological and cultural value of the Pryor Mountains. He is deeply concerned
4 about protecting and preserving this area so that our successors, both recreationists
5 and scientists, can continue to enjoy and study this area as he has.

6 19. Plaintiff, SUSAN W. NEWELL resides in Billings, Montana and has
7 been a visitor to, worked to protect and appreciated the Pryor Mountains since
8 1972. Ms. Newell was a Custer National Forest employee from 1987-2006. As an
9 active participant in the public involvement process for the current travel plan at
10 issue in this case, Ms. Newell is deeply concerned about protecting the complex
11 and unique ecosystems of the Pryor Mountains.

12 21. Plaintiff, PHIL JAQUITH lives in Red Lodge, Montana. Mr. Jaquith
13 was the District Ranger for the Custer National Forest's Beartooth Ranger District
14 (which includes the Pryor and Beartooth Mountains) from 1978 to 1990. As
15 District Ranger, Mr. Jaquith oversaw and helped develop the 1987 travel plan for
16 the Beartooth Ranger District.

17 22. Plaintiffs value the ways that humans benefit from protecting native
18 biological diversity, including protecting clean water and fresh air, native wildlife
19 species, habitat, and travel corridors, healthy human communities, sources of
20 medicines and foods, and recreational opportunities. Plaintiffs' members and staff
21 use the best available science to accomplish their mission through participation in
22 policy formation, administrative processes, legal action (if necessary), public
23 outreach and organizing, and education.

24 23. Plaintiffs have a specific, concrete interest in protecting and restoring
25 the biological and cultural integrity of the Custer National Forest's Pryor and
26
27
28

1 Beartooth Mountains that are affected by USFS's Record of Decision (ROD).
2 Protecting and restoring the biological and cultural integrity of the Pryor and
3 Beartooth Mountains is a major focus for Plaintiffs. Plaintiffs participated in
4 numerous public meetings and prepared and submitted comment letters and
5 appeals on various USFS projects, activities, and/or plans (when given the
6 opportunity) that may impact the Custer National Forest's resources and the Pryor
7 and Beartooth Mountains.
8

9 24. Plaintiffs frequently communicate with various USFS officials,
10 including biologists and other staff members, about public lands and travel
11 management issues on the Custer. Plaintiffs frequently raise concerns to the
12 Custer National Forest about the direct, indirect, and cumulative impacts of
13 various land management actions – such as travel planning – on native wildlife,
14 wildlife habitat, and recreational opportunities.
15

16 25. Plaintiffs regularly and repeatedly use the Pryor and Beartooth
17 Mountains which are affected by the Record of Decision and new travel plan, and
18 will continue to do so. Plaintiffs use the Pryor and Beartooth Mountains
19 (including Big Pryor Mountain) for wildflower and native plant observation, bird
20 watching, research, horseback riding, photography, nordic skiing, snowshoeing,
21 aesthetic enjoyment, and other scientific, educational, and quiet recreational
22 activities. Plaintiffs derive scientific, recreational, conservation, and aesthetic
23 benefits from using the Pryor and Beartooth Mountains. Plaintiffs also work and
24 volunteer to protect and restore the area's biological integrity. For Plaintiffs,
25 using the Pryors and Beartooths in conjunction with working to restore the
26 biological, cultural and natural integrity of the Pryors and Beartooths is a key
27 component of their enjoyment of their visits to the area. Plaintiffs will continue to
28

1 fight for the protection and restoration of the Pryor and Beartooth Mountains and
2 natural resources of the Custer National Forest. Filing this civil action is part of
3 this effort.

4 26. USFS's failure to comply with the law as alleged in this complaint,
5 results in uninformed decisions and creates an increased risk of actual, threatened,
6 and imminent harm to Plaintiffs' concrete interests. USFS's failure to comply
7 with NEPA, NFMA, the 2005 TMR, and Executive Order 11644, as alleged in this
8 complaint, significantly increases the risk of an unnecessary and avoidable harm to
9 wildlife species, wildlife habitat, soils, rare and native plant species, quiet
10 recreational opportunities, and Plaintiffs' concrete interests. USFS's failure to
11 comply with the law adversely affects and continues to adversely affect the
12 interests of Plaintiffs and their respective staffs and members. Plaintiffs bring this
13 action on behalf of themselves and their adversely affected members and staff. If
14 the Court orders the USFS to comply with NEPA, NFMA, the 2005 TMR, and
15 Executive Order 11644, as requested in this complaint, then the harm to Plaintiffs'
16 interests would be alleviated.
17

18 27. Defendant LESLIE WELDON, is named in her official capacity as the
19 Regional Forester for Region One (Northern Rockies) of the USFS. As the
20 Regional Forester, Ms. Weldon is the federal official with responsibility for all
21 USFS officials' inactions or actions in the Custer National Forest challenged in
22 this civil action.
23

24 28. Defendant, MARY ERICKSON, is named in her official capacity as the
25 Acting Forest Supervisor for the Custer National Forest. As the Forest Supervisor,
26 Ms. Erickson is the federal official with responsibility for all USFS officials'
27 actions or inactions in the Custer National Forest challenged in this civil action.
28

1 29. Defendant UNITED STATES FOREST SERVICE (USFS) is an
2 agency within the U.S. Department of Agriculture that is responsible for applying
3 and implementing the federal laws and regulations challenged in this civil action.

4 BACKGROUND

5 30. On June, 2008 USFS signed a Record of Decision (ROD) adopting a
6 new travel management plan for the Beartooth Ranger District on the Custer
7 National Forest.

8 31. The Beartooth Ranger District on the Custer National Forest is
9 composed of two separate and unique geographic units: (1) The Beartooth Unit
10 which consists of approximately 512,943 acres of Custer National Forest lands
11 including parts of the Absaroka-Beartooth Wilderness and the Greater
12 Yellowstone Ecosystem; and (2) the Pryor Unit which consists of approximately
13 74,932 acres of Custer National Forest lands. Any references in this complaint to
14 the “Pryor Mountains” or “Pryors” refers to the Pryors Unit. Any references in
15 this complaint to the “Beartooth Mountains” or “Beartooths” refers to the
16 Beartooth Unit.

17 The Pryor Mountains

18 32. The Pryor Mountains, just 40 miles south of Billings - Montana’s
19 largest metropolitan area – are comprised of two long parallel ridges. The east
20 face of each ridge is very steep, while the west slope is more gentle, but cut deeply
21 by numerous rugged canyons.

22 33. The Pryors are unlike any other landscape in Montana, and utterly
23 different from the Beartooths only 40 miles to the west. They are geologically,
24 ecologically, meteorologically, and culturally unique – an island of mountains
25 rising from the prairie that were formed by erosion of uplifted limestone instead of
26
27
28

1 glacier carved granite. The Pryors' numerous and rugged limestone canyons
2 provide spectacular views of the region and an escape for those visitors searching
3 for solitude.

4 34. Within a distance of ten miles as the raven flies, you can travel from
5 Montana's most arid red desert in the double rain shadow of the Beartooths and
6 the Pryors (this area receives less than 5 inches of precipitation per year) to high
7 Douglas fir forests and subalpine meadows in the Pryors. The rich variety of
8 habitats in between include sagebrush, riparian cottonwood, limber pine, mountain
9 mahogany, and up to 500 year old juniper trees.

10 35. The Pryors are home to nearly a 1,000 species of plants. This is 40% of
11 the plant species that grow in all of Montana. Among these are many rare and
12 sensitive species several of which grow almost nowhere else, including Shoshone
13 Carrot (*Shoshonea pulvinata*) and Pryor Mountain Bladderpod (*Lesquerella*
14 *lesicii*) first discovered in 1991 and only found in the Pryors.

15 36. The Pryor are considered a botanical hot spot and thus a unique and
16 valuable scientific and educational treasure. The spectacular and colorful displays
17 of spring and summer wildflowers make the area a favorite for amateur wildflower
18 watchers, professional botanists, and photographers.

19 37. The diverse habitats in the Pryors are home to a similar diversity of
20 birds and other wildlife ranging from bighorn sheep and mountain lion, to
21 peregrine falcons, blue-gray gnatcatchers and calliope hummingbirds and
22 butterflies. Audubon groups and other birders make frequent trips to the Pryors for
23 the opportunity to observe the more than 200 resident bird species.

24 38. Several small and isolated streams in the Pryors also contain genetically
25 pure strains of Yellowstone cutthroat trout.

1 39. Teepee rings, vision quest sites (both ancient and recent), pictographs
2 and other cultural sites show evidence of human use of the Pryors for at least
3 10,000 years. Some of this evidence is in numerous caves in the limestone
4 canyons which also provide habitat for ten different species of bats.

5 USFS's Travel Plan for the Pryor Mountains

6 40. USFS's ROD approving a new travel plan for the Pryor Mountains
7 emphasizes motorized use of the area.

8 41. USFS's ROD designates approximately 99% of the total miles of
9 system roads and trails (approximately 129.35 miles) in the Pryor Mountains for
10 motorized uses.

11 42. USFS's ROD designates approximately 1% of the total miles of roads
12 and trails (approximately 1.37 miles) in the Pryor Mountains for non-motorized
13 uses.

14 43. USFS's ROD authorizes motorized use on every one of the
15 approximately eight system routes up Big Pryor Mountain.

16 44. There are no non-motorized routes up Big Pryor Mountain except the
17 1.25 mile switchback trail from Tie Flat to Crater Ice Cave.

18 45. USFS's ROD converts unauthorized user-created or "non-system"
19 routes into motorized system routes.

20 46. USFS's ROD authorizes cross-country travel within 300 feet of every
21 motorized route in the Pryor Mountains to allow for dispersed vehicle camping.

22 47. USFS's ROD authorizes motorized use of Meyers Creek (trail # 27) and
23 Lodgepole (trail # 22) in the Beartooth Unit.
24
25
26
27
28

COUNT I

NEPA VIOLATION

(Converting User-Created Routes Into Motorized System Routes)

48. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

49. USFS has violated, and continues to violate, NEPA and NEPA's implementing regulations by failing to assess the impacts of converting unauthorized user-created routes ("non-system" routes) into motorized system routes.

50. Pursuant to NEPA and NEPA's implementing regulations, USFS must take a hard look at the direct, indirect, and cumulative impacts of its ROD approving a new travel plan for the Pryor Mountains.

51. In approving a new travel plan for the Pryor Mountains, USFS converted unauthorized user-created, non-system routes into motorized system routes by: (1) including the user-created routes in the ROD; or (2) including the user-created routes in the "no action" alternative and treating them as part of the system of roads.

52. USFS's ROD converts user-created, non-system routes into motorized system routes, including: Routes 20852, 20855, 20856, 20972, 20182, 20918, 24923, 24922, 24961, 209113, 209114, 28503, 2085AA, 2850D, 23081, 230811, 2308C, and 2308K. Additional routes are known, or should be known, to USFS and are included in this civil action.

53. USFS converts user-created, non-system routes into motorized system routes by including them in the "no-action" alternative and thus part of the travel system, including: Routes 2002, 2002A, 2002A1, 2013, 2073H, 2091A, 2091F, 2091G, 2092C, 2095A, 2102, 2104, 2104A, 2144D, 2144E, 2144G, 2144G2,

1 2144H, 2144M, 2144Z, 2500, 2501, 2503, 2814, 2096 and part of Route 2088
2 (west of Crater Ice Cave). Additional routes are known, or should be known, to
3 USFS and are included in this civil action.

4 54. The 1987 travel plan for the Custer National Forest lists all authorized
5 system routes existing in the Pryor Mountains prior to USFS's June 2, 2008 ROD
6 approving a new travel plan.

7 55. The 1987 travel plan states that "[t]here are may sets of wheel tracks
8 which are not Forest Transportation System roads or trails. Unless these wheel
9 tracks are identified as system roads/trails with the appropriate system numbers
10 and sign, the tracks are not part of the system."

11 56. Routes 20852, 20855, 20856, 20972, 20182, 20918, 24923, 24922,
12 24961, 209113, 209114, 28503, 2085AA, 2850D, 23081, 230811, 2308C, 2308K,
13 2002, 2002A, 2002A1, 2013, 2073H, 2091A, 2091F, 2091G, 2092C, 2095A,
14 2102, 2104, 2104A, 2144D, 2144E, 2144G, 2144G2, 2144H, 2144M, 2144Z,
15 2500, 2501, 2503, 2814, 2096 and part of Route 2088 (west of Crater Ice Cave)
16 are not listed as system routes in the Custer National Forest's 1987 travel plan.
17

18 57. Prior to USFS's June 2, 2008 ROD approving a new travel plan for the
19 Pryor Mountains, Routes 20852, 20855, 20856, 20972, 20182, 20918, 24923,
20 24922, 24961, 209113, 209114, 28503, 2085AA, 2850D, 23081, 230811, 2308C,
21 2308K, 2002, 2002A, 2002A1, 2013, 2073H, 2091A, 2091F, 2091G, 2092C,
22 2095A, 2102, 2104, 2104A, 2144D, 2144E, 2144G, 2144G2, 2144H, 2144M,
23 2144Z, 2500, 2501, 2503, 2814, 2096 and part of Route 2088 (west of Crater Ice
24 Cave) were non-system routes.
25
26
27
28

1 58. USFS never took a hard look at the direct, indirect, or cumulative
2 impacts of converting these non-system routes into motorized system routes
3 (either via the ROD or “no action alternative) as required by NEPA.

4 59. USFS never took a hard look at the direct, indirect, or cumulative
5 impacts of authorizing motorized uses on non-system routes as required by NEPA.
6 USFS also did not take a hard look at the direct, indirect, or cumulative impacts of
7 authorizing motorized use of Meyers Creek (trail # 27) and Lodgepole (trail # 22)
8 in the Beartooth Unit.
9

10 60. USFS’s failure to take a hard look at the direct, indirect, and cumulative
11 impacts of converting these user-created, non-system routes into motorized system
12 routes (via the ROD or “no action” alternative) and authorizing motorized use of
13 Meyers Creek and Lodgepole (in the Beartooth Unit) as required by NEPA is
14 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
15 law.” 5 U.S.C. § 706 (2)(A).
16

17 COUNT II
18 NEPA VIOLATION
19 (Alternatives)

20 61. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

21 62. USFS has violated, and continues to violate, NEPA and NEPA’s
22 implementing regulations by failing to consider a reasonable range of alternatives
23 and failing to include appropriate mitigation measures in each alternative.

24 63. Pursuant to NEPA and NEPA’s implementing regulations USFS must
25 consider a reasonable range of alternatives to the proposed action and include
26 appropriate mitigation measures.
27
28

1 64. USFS’s environmental impact statement (EIS) – both draft and final –
2 failed to consider a reasonable range of alternatives and failed to include the
3 appropriate mitigation measures.

4 65. USFS’s EIS never considered an alternative that would increase the
5 number and mileage of non-motorized trails or otherwise provide more non-
6 motorized recreational opportunities in the Pryor Mountains.

7 66. USFS’s EIS never considered appropriate mitigation measures for the
8 alternatives that would help avoid or minimize the impacts of motorized uses in
9 the Pryor Mountains.

10 67. USFS’s failure to consider a reasonable range of alternatives and
11 include appropriate mitigation measures, as required by NEPA, is “arbitrary,
12 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5
13 U.S.C. § 706 (2)(A).

14
15 **COUNT III**

16 **NEPA VIOLATION**

17 **(Dispersed Vehicle Camping)**

18 68. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

19 69. USFS has violated, and continues to violate, NEPA and NEPA’s
20 implementing regulations by failing to assess the impacts of authorizing dispersed
21 vehicle camping within 300 feet of both sides every motorized route in the Pryor
22 Mountains.

23 70. Pursuant to NEPA and NEPA’s implementing regulations, USFS must
24 take a hard look at the direct, indirect, and cumulative impacts of its ROD
25 approving a new travel plan for the Pryor Mountains.
26
27
28

1 71. USFS's ROD authorizes dispersed vehicle camping within 300 feet of
2 both sides every motorized route in the Pryor Mountains and on motorized trails in
3 the Lodgepole/Meyers Creek area of the Beartooth Unit. This translates into a 600
4 foot corridor open to dispersed vehicle camping along every motorized route in the
5 Pryor Mountains and the Lodgepole/Meyers Creek area of the Beartooth Unit.

6 72. USFS's ROD also authorizes a season of use in the Pryor Mountains
7 that will allow dispersed vehicle camping during the spring thaw when forest
8 resources (i.e., soils and plant communities) are the most vulnerable to cross-
9 country travel.

10 73. Dispersed vehicle camping will have direct, indirect, and cumulative
11 impacts on the Pryor Mountain's natural resources, including wildlife habitat.

12 74. Dispersed vehicle camping results in the loss of vegetation and native
13 plant communities.

14 75. Dispersed vehicle camping, especially near or adjacent to water bodies,
15 impacts water quality and habitat for native trout.

16 76. Dispersed vehicle camping results in the spread of noxious weeds.

17 77. Dispersed vehicle camping results in detrimental soil conditions
18 including, but not limited to compaction, displacement, rutting, surface erosion,
19 loss of surface organic matter, and soil mass movement.

20 78. Dispersed vehicle camping results in the accumulation of litter and
21 human waste and the development of fire rings which degrade the scenic and
22 aesthetic qualities of the Pryor Mountains.

23 79. In authorizing dispersed vehicle camping within 300 feet of both sides
24 of every motorized route in the Pryor Mountains and on motorized trails in the
25 Lodgepole/Meyers Creek area of the Beartooth Unit, USFS never took a hard look
26
27
28

1 at the direct, indirect, and cumulative impacts of authorizing such activity on the
2 forest's resources, including but not limited to, vegetation and plant communities,
3 soil quality (including but not limited compaction, productivity, erosion, and
4 runoff), water quality, native trout, the spread of noxious weeds, and wildlife
5 habitat.

6 80. In authorizing dispersed vehicle camping within 300 feet of both sides
7 of every motorized route in the Pryor Mountains and on motorized trails in the
8 Lodgepole/Meyers Creek area of the Beartooth Unit, USFS never prepared a soil
9 specialists report, conducted soil surveys, consulted the Region One Soil Quality
10 Standards, or collected even one soil sample from the Pryor Mountains.

11 81. USFS's failure to analyze the impacts of authorizing dispersed vehicle
12 camping as required by NEPA is "arbitrary, capricious, an abuse of discretion, or
13 otherwise not in accordance with law." 5 U.S.C. § 706 (2)(A).
14

15 COUNT IV

16 TRAVEL MANAGEMENT RULE VIOLATIONS

17 82. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

18 83. Pursuant to the 2005 Travel Management Rule (TMR), USFS must
19 consider the effects of authorizing motor vehicle use on roads and trails on natural
20 and cultural resources, public safety, recreational opportunities, access needs,
21 conflicts among uses, and the need for maintenance and administration.
22

23 84. Pursuant to the TMR, USFS must consider the effects on the following,
24 with the objective of minimizing: (1) damage to soil, watershed, vegetation, and
25 other forest resources; (2) harassment of wildlife and significant disruptions of
26 wildlife habitats; and (3) conflicts between motor vehicle use and existing or
27 proposed recreational uses of National Forest lands.
28

1 85. Pursuant to the TMR, USFS may authorize the limited use of dispersed
2 vehicle camping within a specified distance of certain designated routes. USFS is
3 to authorize dispersed vehicle camping sparingly, in order to avoid undermining
4 the purpose of the TMR.

5 86. USFS's final EIS and ROD adopting a new travel plan for the Pryor
6 Mountains and USFS's ROD authorizing motorized use of Meyers Creek (trail #
7 27) and Lodgepole (trail # 22) in the Beartooth Unit: (1) fails to consider the
8 effects of this decision on conflicts among uses, recreational opportunities, need
9 for maintenance and administration, and the natural and cultural resources; (2)
10 does not minimize impacts to soils, watersheds, vegetation, wildlife habitat, or use
11 conflicts; and (3) does not limit dispersed vehicle camping to certain routes or use
12 the prescription sparingly.

13 87. USFS's failure to consider the effects, minimize impacts, and limit the
14 use of dispersed vehicle camping as required by the TMR is "arbitrary, capricious,
15 an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706
16 (2)(A).
17

18
19
20
21
22
23
24
25
26
27
28
COUNT V

VIOLATION OF EXECUTIVE ORDER 11644

88. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

89. Pursuant to Executive Order 11644, as amended by Executive Order
11989 (hereinafter "E.O. 11644), areas open to motorized use shall be located to
minimize damage to soil, watershed, vegetation, and other public land resources.

90. Pursuant to E.O. 11644, areas open to motorized use shall be located to
minimize harassment of wildlife or significant disruption of wildlife habitats.

1 91. Pursuant to E.O. 11644, areas open to motorized use shall be located to
2 minimize conflicts between off-road vehicle use and other existing or proposed
3 recreational uses of the same or neighboring public lands.

4 92. Pursuant to E.O. 11644, as amended USFS is to immediately close areas
5 to motorized uses whenever such uses cause considerable adverse effects on the
6 soil, vegetation, wildlife habitat, or cultural or historic resources.

7 93. USFS's ROD adopting a new travel plan for the Pryor Mountains and
8 USFS's ROD authorizing motorized use of Meyers Creek (trail # 27) and
9 Lodgepole (trail # 22) in the Beartooth Unit does not minimize damage to soils,
10 watersheds, vegetation, conflicts between uses, and does not close areas that USFS
11 knows to be experiencing considerable adverse effects to motorized use as
12 required by E.O. 11644.

13 94. USFS's failure to minimize impacts and close areas to motorized use
14 that have adverse impacts, as required by E.O. 11644, is "arbitrary, capricious, an
15 abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706
16 (2)(A).

17
18
19
20
21
22
23
24
25
26
27
28
COUNT VI

NFMA VIOLATION

(Region 1 Soil Quality Standards)

95. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

96. USFS's ROD adopting a new travel plan for the Pryor Mountains has
violated, and continues to violate, the National Forest Management Act (NFMA).

97. Pursuant to NFMA, all travel plans must be consistent with the Custer
Land and Resource Management Plan ("Custer Forest Plan").

1 98. Pursuant to NFMA, USFS must manage the Pryor Mountains without
2 permanent impairment of land productivity and to maintain or improve soil
3 quality.

4 99. Region One of USFS adopted the Region One Soil Quality Standards
5 (“R1-SQS”) in order to meet NFMA’s direction that there is no permanent
6 impairment of land productivity and that soil quality is maintained or improved.

7 100. The R1-SQS also ensure USFS compliance with the Custer Forest
8 Plan’s standards and objectives designed to maintain soil quality.

9 101. Pursuant to the R1-SQS, at least 85 percent of an activity area must
10 have soil that is in satisfactory condition.

11 102. Pursuant to the R1-SQS, USFS cannot allow an activity that would
12 create detrimental soil conditions in 15 percent of a activity area. If 15 percent or
13 more of the project area already has detrimental soil conditions, then the project
14 will not be permitted to make it worse.

15 103. Detrimental conditions include compaction, rutting, displacement,
16 severely burned soil, surface erosion, and soil mass movement.

17 104. Compliance with the R1-SQS is the only way to ensure compliance
18 with NFMA’s requirement that soil productivity on National Forest System lands
19 be maintained.

20 105. Compliance with the R1-SQS is the only way to ensure compliance
21 with the Custer Forest Plan’s soil standards and objectives.

22 106. In authorizing dispersed vehicle camping within 300 feet of every
23 motorized route in the Pryor Mountains, USFS has never evaluated or ensured
24 compliance with the R1-SQS.
25
26
27
28

1 107. The USFS's decision to authorize dispersed vehicle camping within
2 300 feet of every motorized route without first evaluating or ensuring compliance
3 with the R1-SQS, as required by NFMA and the Custer Forest Plan is "arbitrary,
4 capricious, an abuse of discretion, or otherwise not in accordance with law." 5
5 U.S.C. §§ 706 (2)(A).

6 PRAYER FOR RELIEF

7
8 108. Plaintiffs repeat and incorporate by reference the allegations of all
9 foregoing paragraphs.

10 109. WHEREFORE, Plaintiffs respectfully request that this Court grant the
11 following relief:

12 A. Issue a declaratory judgment that USFS's actions and/or inactions have
13 violated, and continue to violate, NEPA, NFMA, the TMR, and E.O. 11644, as
14 alleged in this complaint;

15 B. Issue declaratory judgment that USFS's violation of NEPA, NFMA, the
16 TMR, and E.O. 11644 is arbitrary, capricious, an abuse of discretion, or otherwise
17 not in accordance with law under the APA;

18 C. Issue a mandatory injunction remanding this matter to USFS to prepare a
19 new EIS and issue a new travel plan (or parts of a travel plan) that complies with
20 applicable law;

21
22 E. Issue a mandatory injunction enjoining USFS authorizing motorized uses
23 on non-system routes (as depicted in the 1987 travel plan) in the Pryor and
24 Beartooth Mountains unless and until the legal violations alleged herein are
25 remedied;

26 F. Issue such injunctive relief as Plaintiffs may subsequently request;
27
28

1 G. Retain continuing jurisdiction of this matter until USFS fully remedies
2 the violations of law complained of herein;

3 H. Grant Plaintiffs their costs and expenses of litigation, including
4 reasonable attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"),
5 28 U.S.C § 2412; and

6 I. Grant such other relief as this Court deems just and proper.

7 Respectfully submitted this 19th day of February, 2010.
8

9 /s/ Matthew Bishop

10 Matthew K. Bishop
11 Western Environmental Law Center
12 103 Reeder's Alley
13 Helena, MT 59601
14 (406) 324-8011 (tel.)
15 (406) 443-6305 (fax)

16 /s/ Sarah McMillan

17 Sarah K. McMillan
18 Western Environmental Law Center
19 Post Office Box 7435
20 Missoula, MT 59807
21 (406) 728-5096 (tel.)
22 (406) 443-6305 (fax)

23
24
25
26
27
28
Attorneys for Plaintiffs