

Robert T. Bell
REEP, BELL, LAIRD, SIMPSON & JASPER
2955 Stockyard Road
Missoula, MT 59808
Tel: 406-541-4100
Fax: 406-541-4101
bell@westernmontanalaw.com

Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION

BITTERROOT RIDGE RUNNERS SNOWMOBILE)
CLUB; RAVALLI COUNTY OFF-ROAD USER)
ASSOCIATION; BITTERROOT BACKCOUNTRY)
CYCLISTS; MONTANA TRAIL VEHICLE RIDERS)
ASSOCIATION; MONTANA SNOWMOBILE)
ASSOCIATION; CITIZENS FOR BALANCED USE;)
and BACKCOUNTRY SLED PATRIOTS;)

Case No. _____

COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE RELIEF

Plaintiffs,

v.

UNITED STATES FOREST SERVICE; U.S. FOREST)
SERVICE, Northern Region; BITTERROOT)
NATIONAL FOREST; LEANNE MARTEN; Regional)
Forester, Northern Region; JULIE KING, Forest)
Supervisor, Bitterroot National Forest;)

Defendants.

NATURE OF ACTION

1. This action seeks declaratory and injunctive relief requiring Defendants United States Forest Service; U.S. Forest Service, Northern Region; Bitterroot National Forest; Leanne Marten, Regional Forester, Northern Region; and Julie King, Forest Supervisor, Bitterroot

National Forest (the “Forest Service”) to comply with controlling law while managing the Bitterroot National Forest (the “Bitterroot”).

2. Plaintiffs specifically challenge the Bitterroot Travel Management Planning Project, as presented through the Final Record of Decision (“Final ROD”) dated May 11, 2016, the Final Environmental Impact Statement (“FEIS”), and related findings or conclusions in associated documents such as the Errata to the FEIS, Objection Response, Draft Record of Decision, and Draft Environmental Impact Statement (“DEIS”) (collectively the “Travel Plan”).

3. The Travel Plan imposes significant restrictions on long-existing recreational access to the Bitterroot. These restrictions span both “summer” access by wheeled motorized vehicles and “winter” access by over-snow vehicles like snowmobiles. The Travel Plan generally reduces motorized access, in terms of route mileage for wheeled vehicles or area available for snowmobiles, by about 30 percent.

4. The Travel Plan goes beyond motorized vehicle restrictions to further prohibit all mountain bike travel throughout the recommended wilderness areas (“RWA’s”) and Wilderness Study Areas (“WSA’s”) on the Bitterroot. This inflexible prohibition reflects an admitted “desire” to manage these areas according to Wilderness standards, despite the absence of any finding of a tangible impact to “wilderness character” and in sharp divergence from prior practice and interpretation of binding law and agency guidance.

5. These flaws necessitate judicial action to set aside and declare unlawful at least certain aspects of the Travel Plan, and to determine the appropriate remedy, guidance and/or interim management direction for the Bitterroot on remand.

6. This action arises under the National Forest Management Act, 16 U.S.C. § 1600 et seq. (“NFMA”); the Montana Wilderness Study Act of 1977, Pub.L. No. 95-150, 91 Stat. 1243

(1977) (“MWSA”); the Wilderness Act, 16 U.S.C. § 1131 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4331, et seq. (“NEPA”); the Administrative Procedure Act, 5 U.S.C. § 551, et seq. (the “APA”), and any implementing regulations for these statutes.

JURISDICTION AND VENUE

7. 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.

8. 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 Bitterroot includes lands primarily within Ravalli County, but also lands within Missoula County and Idaho County, Idaho. Ravalli and Missoula Counties are within the Missoula Division of the Court. The Final ROD was issued from the Bitterroot’s office in Hamilton, Montana.

PARTIES

9. Plaintiff Bitterroot Ridge Runners Snowmobile Club (“BRR”) is a nonprofit, Montana public benefit corporation with approximately 135 members. BRR’s mission is to promote, protect, and represent snowmobiling in a positive, safe manner and to bring people together who have a common interest and enjoy exciting and constructive snowmobile activities. BRR members have visited the Bitterroot primarily by snowmobile but also by other or associated forms of motorized transport, and have concrete plans to do so in the future to the extent authorized by the agency. These past and planned future uses include riding snowmobiles in portions of the Bitterroot RWA’s and WSA’s, which was authorized under prior management direction or could be reinstated through this action. BRR, including through its members,

attended public and personal meetings with the Forest Service and other interested persons and entities, submitted written correspondence and comments, filed objections and otherwise fully participated in the process leading to the Travel Plan.

10. Plaintiff Ravalli County Off-Road User Association (“RCORUA”) is nonprofit, Montana public benefit corporation with approximately 400 members. RCORUA’s mission is to bring together on- and off-road recreation enthusiasts to enjoy, promote and protect responsible OHV and other recreational activities. RCORUA 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 Bitterroot Forest at issue in this suit. RCORUA and its members participated in the administrative process culminating in the Travel Plan, and RCORUA members have concrete plans to enjoy future off-highway vehicle, mountain bike, hiking and/or other recreational access to the Bitterroot affected by the agency decisions at issue in this suit.

11. Plaintiff Bitterroot Backcountry Cyclists (“BBC”) is a nonprofit, Montana public benefit corporation with approximately 51 members. BBC has existed unofficially for years, but was formally organized in 2012 after realizing the need for an organized mountain bike voice to improve communication with governmental agencies and other similarly focused user groups and to improve riding opportunities for mountain bikers while minimizing conflicts with other trail users. BBC is a chapter of the International Mountain Bicycling Association. BBC members use various means to access state and federally-managed lands throughout the United States and especially in Montana, including the Forest Service-managed lands in the Bitterroot at issue in this suit. BBC members’ focus is primarily on mountain bike access to single track

trails, but they also enjoy or require other forms of access, including motorized vehicle, hiking/running, horseback and snowmobile for access or to facilitate other recreation like camping, nature study, hunting, fishing, photography and similar activities. BBC and its members participated in the administrative process culminating in the Travel Plan, including filing an objection. BBC members have concrete plans to enjoy future access and recreation as described above in the Bitterroot, specifically including mountain bike riding along previously open trails in Bitterroot RWA's and the Blue Joint and Sapphire WSA's, to the extent such access is available to the public.

12. Plaintiff Montana Trail Vehicle Riders Association ("MTVRA") is a nonprofit, Montana public benefit corporation with approximately 2,500 members representing over fifteen Montana clubs. MTVRA's mission is to create a positive future for Montana off-highway vehicle recreation by creating an ongoing communications forum through which OHV enthusiasts and organizations can share information and experiences; participate in educational opportunities; build partnerships with land managers, land owners, and supporters; and become partners in protecting, promoting and creating a positive image of OHV recreation. 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 Bitterroot at issue in this suit. MTVRA members have enjoyed motorized access to public lands in Montana for over six 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 Bitterroot. 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 Final ROD, including motorized trail vehicle access to lands within Bitterroot WSA's and RWA's. MTVRA members attended public meetings, submitted input to the Forest, filed an objection, and otherwise participated in the process that generated the Travel Plan.

13. Plaintiff Montana Snowmobile Association ("MSA") is nonprofit, Montana public benefit corporation with about 6,500 members, which include individuals, families, businesses and organizations such as the Bitterroot Ridge Runners Snowmobile Club. MSA's membership consists largely of outdoor recreators from Montana, but includes members from throughout North America. MSA members utilize snowmobiles as a primary means of access to private and public lands, including the Bitterroot. MSA members also utilize other means of access, including automobile, four-wheel drive vehicles, all-terrain or utility vehicles, horseback, and hiking. These means of access are intrinsically entertaining and rewarding to MSA members, but also facilitate other outdoor pursuits such as hunting, camping, photography, wildlife viewing, and similar interests. MSA members have concrete plans to continue the aforementioned access and activities on Bitterroot lands at issue in this action. MSA, through its members, participated in the administrative process that generated in the Travel Plan.

14. Plaintiff Citizens for Balanced Use ("CBU") is a nonprofit, Montana public benefit corporation with approximately 1,800 individual and 25 organizational members. CBU was formed for the purpose of preserving and enhancing recreational access opportunities onto

public lands for all forms of recreation, and sustained yield of forest products, grazing, mining and other uses. CBU 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 Bitterroot at issue in this suit. CBU and its members participated in the administrative process culminating in the Travel Plan, and CBU members have concrete plans to enjoy future off-highway vehicle, mountain bike, hiking and/or other recreational access to the Bitterroot affected by the agency decisions at issue in this suit.

15. Plaintiff Backcountry Sled Patriots (“BSP”) is a Montana nonprofit organization created in 2013 to unite and offer strategic assistance to snowmobile clubs, associations, and individuals in order to retain historic riding areas for the snowmobile community. BSP has approximately 1,400 members. BSP, through its members, attended public and personal meetings with the Forest Service and other interested persons and entities, submitted written correspondence and comments, filed an objection, and otherwise fully participated in the process leading to the Travel Plan.

16. 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 National Forest System lands in accordance with applicable law.

17. Defendant U.S. Forest Service, Northern Region, sometimes referred to as Region 1, is a subunit of the Forest Service which oversees and administers about 25 million acres of the National Forest System located within northeastern Washington, northern Idaho, and Montana, and the National Grasslands in North Dakota and northwestern South Dakota. Included within this area and administered by the Northern Region is the Bitterroot National Forest.

18. Defendant Bitterroot National Forest is a subunit of the United States Forest Service within the Northern Region comprised of approximately 1.6 million acres of land located primarily in west central Montana. The Forest's main office is located in Hamilton.

19. Defendant Leanne Marten is the Regional Forester for the United States Forest Service, Northern Region. The Regional Forester oversees and is ultimately responsible for the actions, procedures and decisions of the Forest Service within the Northern Region and is charged with ensuring the Service complies with applicable law. Ms. Marten is sued solely in her official capacity.

20. Defendant Julie King is the Forest Supervisor for the Bitterroot National Forest. She is the supervisor for the Forest and is the ultimate authority for the procedures, actions and decisions of the Forest and is ultimately charged with ensuring the Forest complies with applicable law. Ms. King signed the Final Record of Decision and is responsible for interpreting and implementing the Travel Plan's prescriptions on the Bitterroot. She is sued solely in her official capacity.

LEGAL FRAMEWORK

21. 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 NFMA, MWSA, NEPA and the Wilderness Act to public lands like the Bitterroot.

22. NFMA provides 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*, 537 F.3d 981, 989 (9th Cir. 2008) (en banc) (citations omitted). Additional guidance, incorporated expressly within NFMA, is found 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).

23. MUSYA further directs “that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” 16 U.S.C. § 528.

24. NFMA requires each Forest to prepare and revise a Land and Resource Management Plan (“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 decision

making, but do not approve or execute projects and activities. 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.

25. A Forest Plan is the governing land use plan for an individual National Forest. A Forest Plan is strategic in nature, and does not make commitments to selection or specifications of any particular project or daily activities. The Forest Plan also identifies standards and guidelines to govern specific activities subject to more detailed project-level or site-specific planning.

26. 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. This more detailed site-specific planning includes analysis of on-the-ground management options and associated effects to the human environment for each specified option.

27. An example of project-level planning affecting Plaintiffs occurs in “travel planning” when a Forest implements the agency’s Travel Management Rule. See, “Travel Management; Designated Routes and Areas for Motor Vehicle Use.” 70 Fed.Reg. 68264-68291 (Nov. 9, 2005). 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.” *Id.* at 68264. The Travel Plan applies and implements the Travel Management Rule on the Bitterroot.

28. The Wilderness Act was ultimately signed into law by President Lyndon B. Johnson on September 3, 1964 (P.L. 88-577). The Act was the product of over eight years' struggle and evolved through more than 60 distinct drafts in the legislative process. The Wilderness Act is codified at 16 U.S.C. §§ 1131-1136.

29. Central to the Act is the definition of "Wilderness" as:

[A]n area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic or historical value.

16 U.S.C. § 1131(c) (1965).

30. In the Act Congress prohibits certain uses in wilderness, stating that "there shall be no commercial enterprise and no permanent road with any wilderness area...." 16 U.S.C. § 1134(c). The same section provides "except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area." *Id.*

31. The Wilderness Act itself identifies a series of exceptions through "special provisions" which reflect legislative compromises for things like continuation of pre-existing use of aircraft or motorboats the Secretary "deems desirable", any activity for the purpose of

“gathering information” about minerals if “carried on in a manner compatible with the preservation of the wilderness environment”, similar continuation of water development and even power projects and transmission lines “needed in the public interest”, and continuation of livestock grazing and commercial services “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” 16 U.S.C. § 1134(d).

32. The Wilderness Act as passed in 1964 included an initial designation of about 9 million acres of Wilderness areas. Through subsequent additions by Congress, as recently as August 7, 2015, the National Wilderness Preservation System now comprises over 109 million acres.

33. Many of the initial or larger Wilderness designations reflected pure adherence to the 1964 Act, but now even the most fundamental principles of the Act are routinely sidestepped by Congressional creativity. Congress has designated Wilderness in which the full gamut of uses prohibited the 1964 Act are explicitly authorized, indeed mandated, via legislative fiat. Examples include motorized access and road maintenance to municipal watershed facilities (P.L. 98-428 (Utah Wilderness Act of 1984)), continued “historic uses of the Bulls Eye Mine Road...” (P.L. 106-456 (Spanish Peaks [Colorado] Wilderness Act of 2000)), continued motorized access in conjunction with permitted livestock grazing activities “in the same manner and degree in which such access was occurring as of the date of enactment” (P.L. 98-425 (California Wilderness Act of 1984)), continuation of military aircraft training, including low-level overflights (12 statutes including P.L. 110-229 (Title I, Subtitle F Owyhee [Idaho] Public Land Management of Consolidated Natural Resources Act of 2008)). Examples of otherwise prohibited motorized recreation exist, including continuing use of aircraft “where this use has become

established prior to the date of enactment” (P.L. 96-312 (Central Idaho Wilderness Act of 1980)), motorboats (P.L. 95-495 (Boundary Waters Canoe Area Wilderness) and snowmobiles (*Id.* and P.L. 108-447 (Wisconsin))).

34. The Montana Wilderness Study Act of 1977, Pub.L. No. 95-150, 91 Stat. 1243 (1977) (“MWSA”) addresses certain lands in nine (9) specified areas in Montana. The MWSA was first introduced in 1976, and passed on a voice vote in the Senate, but “pocket vetoed” when the 94th Congress adjourned. See, generally, *Montana Wilderness Ass’n v. U.S. Forest Service*, 146 F.Supp.2d 1118, 1121 (D. Mont. 2001) (*MWA I*); *aff’d in part, rev’d in part and remanded*, 314 F.3d 1146 (9th Cir. 2003); *vacated and remanded, Veneman/Blue Ribbon Coalition v. Montana Wilderness Ass’n*, 542 U.S. 917 (2004). The MWSA, as passed by the 95th Congress in 1977, directs the Secretary of Agriculture to review the specified lands as to their suitability for preservation as Wilderness, and report those findings to the President.

35. The MWSA provides the identified Montana WSA’s, including the Bitterroot’s Blue Joint and Sapphire WSA’s, “shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.” MWSA, Pub.L. No. 95-150, 91 Stat. 1243 at § 3(a) (1977).

36. NEPA represents “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. NEPA does not impose substantive requirements, but creates a series of “look before leaping” procedures which are designed to disclose and analyze potential effects of proposed federal actions. Central among these is the requirement to prepare a written environmental assessment or environmental impact statement (“EIS”) for public review and comment. The agency “shall ensure the professional integrity, including scientific integrity, of

the discussions and analyses” in an EIS. 40 C.F.R. § 1502.24. 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 decision making based upon meaningful public participation.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. The Project Area and Forest Planning Background.

37. The Bitterroot includes about 1.6 million acres located in west central Montana and a small portion of east central Idaho. It features the Bitterroot River Valley surrounded by the Bitterroot Mountains on the west and the Sapphire Mountains on the east. The Bitterroot exemplifies the Forest Service’s driving principles of multiple use and ecosystem management, supporting a range of goods, services, values and opportunities including recreation, wildlife, fisheries, water, cultural resources, timber, minerals and grazing.

38. Recreation is especially important on the Bitterroot and an important contributor to the local community and economy, and a draw to visitors from the region and beyond. Popular recreation activities include boating, fishing, hunting, gathering forest products, skiing, hiking, mountain biking, riding wheeled off highway vehicles (“OHV”) and snowmobiling. Indeed, recreation has become the dominant use of the National Forest System. See, Laitos & Reiss, *Recreation Wars for Our Natural Resources*, 34 *Envtl. L.* 1091 (2004).

39. Many visitors to the Bitterroot, including Plaintiffs, find unique enjoyment in the maintenance, navigation, operation or riding experience associated with motor vehicle and mountain bike oriented recreation. Motor vehicle access is additionally the basis for nearly all forms of recreation on the Forest, as even "nonmotorized" forms of recreation such as hiking, horseback riding, backcountry hunting, mountain biking, or backcountry skiing, rely on vehicle access to a staging area or trailhead that facilitates enjoyment of the targeted activity and destination(s). Visitors demonstrate unusually high rates of satisfaction with their targeted experiences on the Bitterroot.

40. The governing plan for the Bitterroot is the 1987 Forest Plan. The Plan includes Forest-wide Management Objectives for Recreation, which “[p]rovide for the current mix of dispersed recreation by maintaining about 50 percent of the Forest in wilderness, about 20 percent in semiprimitive motorized recreation and about 30 percent in roaded areas.” 1987 Forest Plan at II-4.

41. The 1987 Forest Plan includes predictions about future recreation use, stating that at the end of the first decade following adoption of the Forest Plan there will be an anticipated 6 percent increase “in demand for quality experiences” and that this will be distributed with 25 percent of recreation use in the 52 percent of the Forest that is Wilderness, 10 percent in the 20 percent of the Forest in semiprimitive settings, and 47 percent in the 28 percent of the Forest that is “roaded.” 1987 Forest Plan at II-13.

42. The 1987 Forest Plan contains similar predictions for recreation use “at the End of the Fifth Decade” which predicts 23 percent of recreation use will be in the 52 percent of the Forest that is wilderness, 8 percent in the 15 percent of the Forest that is semiprimitive settings, and 53 percent in the 33 percent of the Forest that is roaded. 1987 Forest Plan at II-15.

43. The above-cited language indicates that the Forest Service predicted, in 1987, that the amount of formally designated Wilderness would remain static for a 50 year timeframe, that recreation use of that Wilderness would slightly decline over time, while there would be an increase in recreation demand and the portion of the Bitterroot in a “roaded” condition.

44. The 1987 Forest Plans allocates portions of the Bitterroot to different “zones” referred to as “Management Areas.” For example, formally designated Wilderness is Management Area 7. There are eleven (11) total Management Area categories, with several of them containing subcategories.

45. In addition to the formally recognized Wilderness areas, the 1987 Plan includes “recommended additions” to the National Wilderness Preservation System consisting of 48,305 acres adjacent to the Selway-Bitterroot Wilderness, and 28,500 acres within the Blue Joint “roadless” area. These represent areas where the Forest Service has evaluated potential suitability for designation as Wilderness, and determined do meet established criteria and are suitable for inclusion in the NWPS. These RWA’s are delineated as Management Area 6 (“MA 6”) by the 1987 Forest Plan.

46. The 1987 Forest Plan MA 6 “goals” state the Forest, “[p]ending action by Congress, [shall] manage to maintain the presently existing wilderness characteristics and potential for inclusion in the wilderness system.” 1987 Forest Plan at III-41 (emphasis added).

47. The 1987 Forest Plan MA 6 “standards” include direction for recreation, which includes the direction to “[c]ontinue current uses which do not detract from wilderness values. Transitory uses such as chainsaws, trailbikes and snowmobiles are appropriate if permitted by the Forest’s Travel Plan.” *Id.*

48. The Bitterroot has on several occasions conducted efforts, both internally and through community meetings in 2004 and 2005, geared toward revision of the Forest Plan. For various reasons tangentially related, if at all, to this lawsuit, the revision process for the Bitterroot Forest Plan has not formally developed. The 1987 Forest Plan remains the governing land use plan for the Bitterroot.

B. Chronology of the Travel Plan Process.

49. The Travel Management Rule was formally adopted on November 9, 2005. Public involvement for the Travel Plan project began in the Fall of 2006, with various meetings to collect input from user groups on the Bitterroot.

50. In Summer, 2007, the Travel Plan project was included on the Bitterroot “schedule of proposed actions.” A “scoping letter” dated September 24, 2007 was mailed to about 800 recipients, and a Notice of Intent to publish an Environmental Impact Statement was published in the Federal Register on October 1, 2007. Initially, the scoping comment period was set at 60 days, but it was extended an additional 60 days to end on January 31, 2008.

51. Following input in writing and at various meetings, the Bitterroot Travel Management Planning Project Draft Environmental Impact Statement (“DEIS”) was released on August 5, 2009. Notice of Availability of the DEIS was published in the Federal Register on August 7, 2009. The comment period on the DEIS was initially set at 45 days, but it was extended an additional 45 days to end on November 9, 2009. Numerous meetings and open houses were held to receive feedback on the DEIS.

52. The DEIS outlined four (4) alternatives to be considered in detail. In general terms, Alternative 1 was the Preferred Alternative, which was developed to reflect the agency’s interpretation of the outcome most appropriately meeting the project’s purpose and need.

Alternative 2 was the legally-required “no action” alternative intended to outline the pre-decisional existing condition. Alternative 3 was entitled “motorized emphasis” and provided different and additional motorized travel opportunities as requested by some commenters. Alternative 4 was entitled “nonmotorized emphasis” which provided the most aggressive restrictions on existing motorized travel and greater “nonmotorized opportunities.”

53. A total of 3,426 comments to the DEIS were received. Many were duplicative form letters, but at least 540 were original responses. The agency, with the assistance of a contractor, catalogued and considered the comments.

54. A Draft Record of Decision (“Draft ROD”) and initial Final Environmental Impact Statement (“Initial FEIS”) were issued in April, 2015. The Draft ROD proposed adoption of Alternative 1, with meaningful restrictions on motorized and mechanized access from the existing condition.

55. Under applicable regulations, the Draft ROD is subject to a “predecisional administrative review” which allows specified forms of “objection” within 45 days.

56. Twenty-three (23) objections were presented to the Draft ROD. These objections were considered by an Objection Reviewing Officer within the Forest Service Northern Region office, who presided over a “resolution meeting” and otherwise considered the objections. The Objection Reviewing Officer issued a formal response to the objections dated July 14, 2015 (“Objection Response”), which instructed the Bitterroot to respond to ten different issues.

57. The July 14, 2015, Objection Response constitutes the final administrative determination of the Department of Agriculture. No further administrative review of the Travel Plan from any other Forest Service or Department of Agriculture official is available.

58. Following the aforementioned Objection Response, the Bitterroot issued a revised Final Environmental Impact Statement in March, 2016 (“FEIS”). The FEIS was not subject to formal public comment. The Final Record of Decision was dated May 11, 2016 (“Final ROD”).

C. General Overview of Travel Plan Restrictions.

59. The DEIS outlined significant restrictions on existing recreation use of the Bitterroot. For summer use, the “no action” Alternative 2 was portrayed to include 2,605 miles of routes designated for some type of motorized travel. The DEIS “action alternatives” ranged from 1,910 to 2,498 total miles of motorized routes. DEIS at 2-18 (Table 2-14).

60. None of the DEIS action alternatives allowed for motorized equipment or mechanical transport in RWA’s. These RWA prescriptions were the same as for Designated Wilderness. DEIS at 2-7.

61. For WSA’s, the “no action” alternative was portrayed as including 4.8 miles of motorized roads and 92.4 miles of motorized trails. The “motorized emphasis” Alternative 3 provided 4.8 miles of motorized road and 63.4 miles of motorized trail in WSA’s. The “proposed action” Alternative 1 provided 1.5 miles of motorized road and 37.4 miles of motorized trail in WSA’s. DEIS at 2-20 (Table 2-16).

62. For winter access, the DEIS alternatives were organized by acres open to snowmobiles, portrayed as 759,189 in the “no action” Alternative 2 to 543,215 acres in Alternative 4. DEIS at 2-18 (Table 2-15).

63. Every winter action alternative prohibited snowmobile use in RWA’s, which is the same prohibition as exists in Designated Wilderness. DEIS at 2-12.

64. For WSA’s, the DEIS “no action” alternative would have designated 107,262 WSA acres as “open” to snowmobiling. Alternatives 1 and 3 would have each designated

81,616 WSA acres as “open” to snowmobiling, while Alternative 4 would have prohibited snowmobile travel in WSA’s. DEIS at 2-28 (Table 2-17).

65. The Final ROD adopted Alternative 1, with some modifications, as the final decision of the Bitterroot on the Travel Management project. Components of this decision include:

- (a) reducing roads designated as open to highway-legal vehicles from 1,456 miles to 1,405 miles;
- (b) reducing double-track trails designated as open yearlong to vehicles 50 inches or less in width from 110 miles to 36 miles, provided that 20 of those 36 miles cannot be immediately traveled, but are contingent upon further analysis;
- (c) reducing single-track trails designated as open yearlong to motorcycles from 330 miles to 39 miles, but providing that trails allowing seasonal motorcycle travel would increase from 78 to 121 miles;
- (d) establishing that “utility vehicles” which are greater than 50 inches in width will not have any routes designated for their exclusive use, but will be allowed on roads open to full size vehicles;
- (e) reducing areas designated open for snowmobile use from 748,981 acres to 543,840 acres;
- (f) prohibiting all motorized or mechanized transport, including bicycles, for both summer and winter uses, in RWA’s;
- (g) prohibiting all motorized or mechanized transport, including bicycles, for both summer and winter uses, in the entire Blue Joint and Sapphire WSA’s.

66. The aforementioned restrictions and closures reflect various rationales, which are individually or collectively flawed. These rationales include restrictions based RWA, WSA, and inventoried roadless area status; erosion, sedimentation or water quality concerns; impacts to wildlife or wildlife habitat most notably focusing on wolverine, elk or mountain goat; and an

ideological goal couched as avoiding “conflicts of use and to provide additional opportunities for quiet recreation.”

D. Treatment of Blue Joint and Sapphire WSAs.

67. The Bitterroot contains the Blue Joint and Sapphire WSA’s, which present unique management challenges under the MWSA, which directs that these areas “shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.” MWSA, 91 Stat. 1243 (1977) at § 3(a).

68. The MWSA legislative history recognizes motorized vehicle use within the designated WSA’s and endorses continuation of that use. For example, while reintroducing the bill in the 95th Congress, Senator Metcalf explained:

[t]his language regarding wilderness character and potential was added by the committee last Congress (and retained in this year’s version) to assure continued enjoyment of the areas by those recreationists whose pursuits will not, in the judgment of the Secretary, preclude potential wilderness designation for the areas.

MWA I, 146 F.Supp.2d at 1121 (citing S. Rep. No. 95-163 at 2).

69. The House of Representatives similarly recognized of the validity of continuing motorized recreation in WSA’s, stating:

The use of off-road vehicles, while generally prohibited in designated wilderness areas, is entirely appropriate in wilderness study areas...Nothing in S. 393 will prohibit the use of off-road vehicles, unless the normal Forest Service planning process...determines off-road vehicle use to be inappropriate in a given area...It is the intention of the committee that the areas in S. 393 remain open to off-road vehicle use unless and until they are formally designated as wilderness.

Id. (citing H.R. Rep. No. 95-620 at 4) (ellipses in *MWA I*, underlining added).

70. This Court initially interpreted the language and legislative history of the MWSA in *MWA I*, and has revisited this analysis on multiple occasions. That initial analysis concluded

that “[t]o 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.” *Id.* at 1124.

Thus, Congress:

...contemplated that use levels might fluctuate and that types of motorized vehicles might change. Congress intended that existing and new or different uses should be accommodated, so long as they did not undermine an area’s potential for Wilderness designation and so long as they did not undermine the area’s presently existing wilderness character.

Id.

71. The Blue Joint WSA contains approximately 65,860 acres, ranging from 4,900 to 8,600 feet in elevation, with roughly half of the area being relatively high mountainous terrain over 7,000 feet.

72. The Blue Joint WSA is derived from a larger “roadless area” that was delineated in 1977, to include area within the Bitterroot as well as adjacent area in the Salmon Forest in Idaho. The 1977 Roadless Area totaled 146,405 acres, with 19,905 acres in the Salmon Forest and 126,500 acres in the Bitterroot. In 1980, Congress passed legislation which formally designated as Wilderness 19,415 acres in the Salmon Forest and 65,100 acres in the Bitterroot, or a total Wilderness designation of 85,005, or 58 percent of the “roadless area.” The remaining 65,860 acres are what is now the Blue Joint WSA.

73. As directed by Congress in the 1977 MWSA, the Forest Service in 1985 released a report and draft environmental impact statement addressing the Blue Joint WSA. The “current resource situation” in the 1985 reports generally describes outstanding opportunities for primitive recreation in the Blue Joint WSA, and quantifies the following “recreation visitor days:”

Semiprimitive nonmotorized 0

Semiprimitive motorized 1,300

Roaded natural 300

74. The 1985 reports indicate there were 72 miles of trails in the Blue Joint WSA. The Travel Plan FEIS states that in 1977 the Blue Joint WSA contained 7.8 miles of “open road” and 81.3 miles of single-track trail.

75. The Bitterroot presumably considered the 1985 reports in adopting its 1987 Forest Plan. About 75 percent of the Blue Joint WSA was recommended as wilderness, thus overlaid with RWA status.

76. The Blue Joint WSA received relatively light visitation in 1977, and has continued to the present day to receive light visitation. The Forest Service estimates that in 2003, single-track trail mileage in the Blue Joint WSA decreased, to a total of 64.3 miles. A 2008 monitoring report found “no evidence of any motor vehicles” on two trails receiving historical motor vehicle use. A 2009 monitoring reporting team encountered three groups in the Blue Joint WSA with two people each, consisting of a total of four hikers and two mountain bikers.

77. The aforementioned monitoring teams apparently did not attempt monitoring of winter use.

78. The Sapphire WSA is described in the 1985 reports as containing 117,030 acres, with over 72,000 acres being located on the adjacent Beaverhead-Deerlodge National Forest. The FEIS indicates that the Bitterroot portion of the Sapphire WSA consists of 44,116 “net acres.” The Sapphire WSA has elevations ranging from 5,000 to 9,000 feet, with about sixty percent of the area being over 7,000 feet in elevation.

79. The Sapphire WSA has a different use history than the Blue Joint WSA, with significantly greater and different use patterns, even in 1977. The FEIS states that “[b]y 1977,

both summer and winter recreational use of the Sapphire area was well established. This included both motorized and nonmotorized activities.” FEIS at 3.3-42. The FEIS states that in 1977 the Sapphire WSA contained 47.1 miles of single-track trail, and 19.7 miles of two-track trail.

80. The 1985 reports address the “current resource situation” for the Sapphire WSA, and quantify the following “recreation visitor days:”

Semiprimitive nonmotorized	6,300
Semiprimitive motorized	4,500
Roaded natural	700

81. The 1985 reports do not recommend that any portion of the Sapphire WSA meets Wilderness designation criteria. The 1987 Bitterroot Forest Plan does not include any lands in the Sapphire WSA within the RWA management area.

82. The FEIS indicates that the 2013 “existing condition” in the Sapphire WSA consists of 10.3 miles of “open” two-track trail (down from 19.7 miles in 1977) and 21.4 miles of “open” single-track trail (down from 47.1 miles in 1977), with 26.2 miles of single-track trail described as “restricted.”

83. The FEIS mentions 2008 monitoring, indicating that “[w]hile some routes historically see heavy use, others are less popular and see little to no motorized activity” and outlines a number of trails showing no evidence of motorized use. FEIS at 3.3-47.

84. The FEIS mentions 2009 monitoring, which states that “[e]vidence of motorized use was evident on less than 1% of the single track trails and 2.2 miles of double track trails. Of the non-system trails recorded, 81% were created by foot travel, 6% by ATV use and 3% by horse travel.” *Id.*

85. Again, the aforementioned reports do not describe any efforts at monitoring winter use.

86. The aforementioned monitoring reports are consistent with other monitoring or analysis. The Forest Service has never found that the Sapphire WSA's wilderness character or potential for inclusion in the NWPS has diminished since 1977.

87. The FEIS refers to various guidance in addressing MWSA issues, including a 2008 Region 1 supplement to the Forest Service Manual. This Supplement focuses on maintaining wilderness character existing in 1977 and the potential for inclusion of the area in the National Wilderness Preservation System ("NWPS"). Section 1.b of the Supplement directs "[i]f wilderness characteristics have been degraded; restore the area to 1977 conditions" and provides examples such as restoring a two-track trail to an historical single-track status, or separating conflicting uses into identified areas for each use. See, e.g., FEIS at 3.3-14.

88. The FEIS discussion of the Supplement addresses the continuation of 1977 uses, saying that uses that existed in 1977 can be allowed to continue, subject to general agency monitoring procedures. The discussion further counsels that where increases in amount of use occur, "the line officer should consider how the increases affect wilderness character and the area's potential for inclusion in the NWPS." *Id.*

89. The discussion of the Supplement goes on to address "new uses or activities" stating that "[a]ll-terrain vehicles (ATVs) and motor bikes may be allowed on roads that had jeep use in 1977 (two tracks)" and "[m]ountain bikes may be allowed on trails that had established motor-bike use in 1977, or on non-motorized trails so long as the aggregate amount of mountain bike and motorcycle use maintains the wilderness character of the WSA as it existed in 1977 and the area's potential for inclusion in the [NWPS]." *Id.* at 14-15.

90. The Final ROD discusses and summarizes these considerations, which appears dictated largely by the Forest Supervisor's "finding" that "[t]he lack of data regarding the volume of historic and current use limits my decision space related to motorized/mechanized transport use in the Sapphire and Blue Joint WSAs." Final ROD at 24. However, the Forest Supervisor concludes "it is clear that the current amount of use has far surpassed the 1977 levels." *Id.* at 25.

91. The Final ROD focuses on the numbers of users and levels of use, rather than wilderness character or potential for designation as Wilderness, as required by the MWSA and/or the Supplement. Without any factual support the Final ROD states that "[b]ecause mountain biking (mechanical transport) is prohibited in Designated Wilderness, current use in the Sapphire and Blue Joint WSAs detracts from the wilderness character that was present in 1977...." *Id.*

92. The Final ROD concludes by prohibiting all winter/summer motorized vehicle use, and all bicycle use, for the Blue Joint and Sapphire WSA's. The Forest Supervisor states "I believe we have an obligation to manage WSAs for those social and ecological characteristics to preserve wilderness character. These actions assure that Congress' intent for these areas will be honored while preserving their potential for inclusion in the [NWPS]." *Id.*

E. Changes to Recommended Wilderness Management.

93. While the Montana WSA's have unique statutory history and guidance, management of similar "wilderness-like" lands such as "roadless areas" and RWA's has similarly been a topic of focus and controversy involving diverse, sometimes polarized interests. See, generally, Nie and Barns, The Fiftieth Anniversary of the Wilderness Act: The Next Chapter in Wilderness Designation, Politics, and Management, 5 Ariz. J. Envtl. L. & Policy 237 (2014).

94. There is no direct statutory guidance governing management of RWA's. The Wilderness Act itself addresses only those lands formally designated by Congress as Wilderness. The Wilderness Act does not address other lands, even those with "wilderness character." Nor does NFMA provide guidance for RWA's, aside from the statement that Forest Plans shall "provide for outdoor recreation (including wilderness)..." 16 U.S.C. § 1604(g)((3)(A).

95. The Bitterroot contains two RWA's, referred to as "additions to the Selway-Bitterroot Wilderness" and "Blue Joint Creek." The Blue Joint Creek RWA consists of that portion of the Blue Joint WSA deemed to meet wilderness designation criteria. Together, these RWA's total 76,365 acres.

96. The 1987 Forest Plan outlines legal guidance for management of the Bitterroot RWA's which states "[p]ending action by Congress, manage to maintain the presently existing wilderness characteristics and potential for inclusion in the wilderness system." 1987 Forest Plan at III-41.

97. The 1987 Forest Plan "standards" address recreation in RWA's which states "[c]ontinue current uses which do not detract from wilderness values. Transitory uses such as chainsaws, trailbikes and snowmobiles are appropriate if permitted by the Forest's Travel Plan." *Id.*

98. The Forest Service Manual contains legal authorities, objectives, policies, and guidance needed on a continuing basis by Forest Service line officers and staff to plan and execute assigned programs and activities. For RWA's, the Forest Service Manual provides:

A roadless area being evaluated and ultimately recommended for wilderness or wilderness study is not available for any use or activity that may reduce the area's wilderness potential. Activities currently permitted may continue, pending designation, if the activities do not compromise wilderness values of the roadless area.

Forest Service Manual 1923.03.

99. Under a combination of site-specific decisions or historical practices, which presumably considered and interpreted the above-cited guidance, certain portions or routes within RWA's have received use by motorized vehicles, and more recently by mountain bikes. These uses are not allowed in formally designated Wilderness, but can and do occur in RWA's.

100. At some point existing agency guidance on RWA's was apparently deemed lacking or inadequate. The Northern Region Office began to evaluate a new policy to guide management actions involving RWA's in forests within the Northern Region.

101. Plaintiffs, their members and partners have long interacted with Forest Service personnel within the Northern Region regarding Forest management, as Forest visitors and users, in project planning, and in appeals and litigation, most often as co-defendants seeking to uphold a challenged agency authorization of continued motorized access. Beginning around 2000, agency personnel have periodically described or intimated the existence of some overarching Regional guidance for RWA management.

102. In these discussions Plaintiffs were repeatedly informed that it was the Northern Region policy to manage RWA's as Wilderness.

103. No formal recognition or written copy of any such Northern Region RWA policy was provided, until October, 2007, when then-Regional Forester Tom Tidwell provided documents to a representative from the Idaho State Snowmobile Association. These included a two-page memo entitled "Consistency in Land and Resource Management Plans" identifying the "Topic: Management of recommended wilderness." The footer of that document says "Mgmt of Recommended Wilderness" and is dated "9/24/2007." The "guidance" section states:

If it is determined that the area is best suited to motorized or mechanized recreation, the area should not be recommended for wilderness. If it is

determined that the best future use is inclusion in the National Wilderness Preservation System, the desired condition (dc) should reflect that. If there are established uses that are incompatible with that dc, such as motorized or mechanized recreation, forest should choose to implement one of the following actions:

1. Pursue a non-motorized/non-mechanized approach to management of the area through travel planning
2. Adjust management area boundary to eliminate the area with established uses
3. Not recommend the area for wilderness designation.

Management of Recommended Wilderness dated Sept. 24, 2007.

104. This guidance and related circumstances were addressed in a challenge to the Northern Region's Clearwater National Forest 2011 travel management plan, in *Idaho State Snowmobile Association v. U.S. Forest Service*, Case No. CV-12-447-BLW (D.Idaho) ("ISSA"). That case was filed on August 29, 2012. On October 3, 2014, Defendants filed a Motion for Entry of Stipulated Settlement and Proposed Order of Dismissal. On February 26, 2015, the Court entered a Memorandum Decision and Order conditionally approving the settlement, and a final Judgment was entered on April 8, 2015.

105. In support of the Stipulated Settlement in *ISSA*, then-Regional Forester Faye Krueger filed a declaration which reaffirmed that RWA management direction is established in the relevant Forest Plan and Forest Service Manual section 1923.03. Declaration of Faye Krueger, *ISSA* Doc. No. 48-3 at ¶ 3.

106. Ms. Krueger further stated, "[i]n an attempt to provide more consistent analysis and consideration of the issue of RWA management, the regional office for the Northern Region prepared guidance regarding analysis and management of RWA's. This "consistency" guidance was never intended to establish new policy or binding direction but rather provide for more

consistent analysis and consideration of the issues surrounding RWA management....” *Id.* at ¶ 5.

107. Ms. Krueger acknowledged, “[i]t has recently come to my attention, however, that there is some confusion regarding the guidance document with some Forests misinterpreting the guidance as providing management direction for RWA’s. Indeed, some public comments on proposed forest plan revisions regarding RWA’s for the Kootenai National Forest and the Idaho Panhandle National Forest evidenced a similar misunderstanding. This was never the intent of the guidance and the applicable management direction for RWA’s was, and remains, the applicable Forest Plan and the direction of the Forest Service Manual.” *Id.* at ¶ 6.

108. The Bitterroot Travel Plan DEIS did not include any action alternative that would allow for motorized or mechanized transport within RWA’s. As a result, the Bitterroot did not allow public comment on a viable alternative that would have allowed continuing motorized or bicycle use in Bitterroot RWA’s.

109. The Bitterroot’s choice to foreclose any motorized/mechanized use of RWA’s was discussed in a conference call between Northern Region representatives on November 4, 2009. The notes from that call are entitled “Regional Conference Call for Travel Planning Consistency – Recommended Wilderness.” The introductory notes refer to a “2006 consistency paper” that was “started in 2003.”

110. The conference call notes lay the foundation of management direction and outline Forest Service Manual 1923.03 and the 2006 consistency paper, and then state “[m]ake sure each forest is consistent with regional consistency paper. Also we need to say we are following [Washington Office] directi[o]n and policy in managing [RWA’s].”

111. Representatives from nearly every Northern Region Forest were present on the aforementioned conference call. As part of a “forest by forest” discussion the Bitterroot representative indicated that in the Travel Plan DEIS “all alt[ernative]s don’t allow motorized equipment or mechanical transport” in RWA’s. The notes reflect some discussion, including a question “what’s the rationale that they’re all the same across the board?”

112. Various comments to the DEIS and objections to the Draft ROD questioned the prohibition of all motorized and bicycle use in RWA’s. These objections raised various issues, including questioning the influence of the Regional guidance, asserting that existing use was not diminishing wilderness character, or asserting that some level/type of use could be allowed which would maintain wilderness character and comply with governing management direction.

113. The Objection Response deflects any assertions of influence from the “Regional consistency paper” by stating “[t]he Forest did not apply or use guidance from an earlier Regional consistency paper. The draft ROD includes the rationale for closing RWAs to mechanized transport, and the FEIS discloses the analysis of effects for RWAs (FEIS Appendix F response to comment pp. 206 and 216).” Objection Response at 9-10.

114. Aside from the foregoing, the Objection Response does not address or clarify the role to be served by a “consistency paper” that is not expected to be considered and does not create “policy” nor does the Objection Response address the fact that the Travel Plan decision to eliminate motorized and bicycle use in RWA’s precisely tracks the “consistency paper.” On multiple occasions Plaintiffs have learned of statements by agency personnel that “regional direction is to eliminate” motorized and bicycle travel in RWA’s.

115. The Objection Response states, “[t]he Forest Service has an affirmative obligation to manage RWAs and WSAs for the social and ecological characteristics that form the basis for

that recommendation, until congress decides whether or not to designate the areas as Wilderness.” Objection Response at 13, 10 (same language for WSA’s).

116. The Final ROD formalizes the decision to prohibit all motorized and bicycle travel within Bitterroot RWA’s.

117. The rationale focuses on existing motorized/bicycle use, stating “[i]f the level of such use is permitted to continue or increase, the suitability of the areas to be recommended as wilderness may change.” Final ROD at 26 (emphasis added).

118. The rationale further states that management needs “to address resource conditions and social values, including the loss of solitude, noise, and isolation from others. If the long term desire for the areas is wilderness designation, it makes sense to me to manage them in a manner consistent with the Forest’s recommendation.” *Id.* (emphasis added).

119. The rationale continues:

Additionally, allowing uses that do not conform to wilderness character creates a constituency that will have a strong propensity to oppose recommendation and any subsequent designation legislation. Management actions that create this operating environment will complicate the decision process for Forest Service managers and members of Congress. It is important that when the wilderness recommendations are made to Congress that they be unencumbered with issues that are exclusive to the wilderness allocation decision.

Id.

120. The rationale specifically addresses comments from the mountain biking community and states “prohibiting bicycles and other types of mechanical transport acknowledges there are impacts on the social and biotic environment that do not show as physical ‘scars’ on the land, but which are inconsistent with the wilderness character I am responsible for maintaining.” *Id.*

121. The rationale ends by parroting the Objection Response's misstatement of applicable law that "[t]he Forest Service has an affirmative obligation to manage RWA's for the social and ecological characteristics that form the bases for that recommendation, until congress decides whether or not to designate the areas as Wilderness." *Id.*

F. Rationale for Further Restrictions on Existing Travel.

122. Various other issues were cited as the bases for other Travel Plan restrictions. These include "resource concerns" such as effects on wildlife, fisheries, soils, or water resources. Final ROD at 6.

123. Additional route designation "considerations" were described as conflicts of use between motorized and nonmotorized uses, legal rulings and changes in agency policy. *Id.* at 6-7.

124. The Travel Management Rule prescribes "general" criteria for designation of roads, trails and areas for motorized access (36 C.F.R. § 212.55(a)) and "specific" criteria for designation of trails/areas (b) and roads (c).

125. The Travel Management Rule criteria do not include "legal rulings" or "changes in agency policy."

126. Some of the route-by-route evaluations are summarized in the public project record, but many decisions are not. Even where discussions exist, they generally reflect conclusions, not discussions or analysis. In virtually no instance is data presented. For instance, the documents reflect conclusions that certain routes be closed to reduce sedimentation, address erosion concerns, alleviate conflicts of use and create quiet recreation opportunities, or address wintering wildlife impacts. None of these discussions cite data, identify a specific site(s) of

concern, or establish that motorized travel is a meaningful cause of the alleged impact. See, generally, FEIS Appx. H (“Route Changes between DEIS and FEIS”).

127. In addition to the aforementioned criteria, the Final ROD apparently reflects choices made through application of the “minimization criteria.” These changes are largely made in generalized terms and do not identify application of the minimization criteria on a route-by-route or area-by-area basis. See, Final ROD at 16-22.

128. The narrative and conclusory nature of the Final ROD/FEIS analysis and disclosure prevents the engaged public from understanding or responding to the agency’s analysis on a route-by-route basis.

COUNT ONE: SAPPHIRE WSA TRAVEL RESTRICTIONS

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

130. The MWSA directs that the Montana WSA’s, including the Sapphire WSA, “shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.” Montana Wilderness Study Act of 1977, § 3(a), Pub.L. No. 95-150, 91 Stat. 1243 (1977).

131. The Sapphire WSA had meaningful motorized access in 1977.

132. The Forest Service determined, through the analysis mandated by the MWSA and published in 1985, that the Sapphire WSA did not meet Wilderness designation criteria and should not be recommended as wilderness.

133. The Forest Service determined in the 1987 Forest Plan that the Sapphire WSA should not be recommended as wilderness.

134. There is no finding, in the Travel Plan documents, 1985 reports/EIS, monitoring reports, or otherwise, that the wilderness character of the Sapphire WSA has diminished since 1977.

135. Notwithstanding the Forest Service determinations that the Sapphire WSA is unsuitable for wilderness recommendation, the Forest Service has instituted various management changes to restrict motorized travel in the WSA, such as reducing the mileage of routes available for motorized use.

136. The Travel Plan prohibits all motorized or bicycle travel or means of mechanized transport in the Sapphire WSA.

137. The Travel Plan enhances wilderness character of the Sapphire WSA, or creates wilderness character that did not exist in 1977.

138. The inflexible elimination of snowmobile access in the Bitterroot portion of the WSA interferes with historical access to some portions of the Sapphire WSA that are located in the adjacent Beaverhead-Deer Lodge National Forest. Unlike the Bitterroot, the Beaverhead-Deer Lodge Forest has not prohibited snowmobile use in its portion of the Sapphire WSA.

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

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

141. 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 Bitterroot as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT TWO: BLUE JOINT WSA TRAVEL RESTRICTIONS

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

143. The MWSA directs that the Montana WSA's, including the Blue Joint WSA, "shall, until Congress determines otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System." Montana Wilderness Study Act of 1977, § 3(a), Pub.L. No. 95-150, 91 Stat. 1243 (1977).

144. The Blue Joint WSA had motorized access in 1977.

145. The Forest Service determined, through the analysis mandated by the MWSA and published in 1985, that a portion of the Blue Joint WSA should be recommended for wilderness, while another portion did not meet Wilderness designation criteria and should not be recommended as wilderness.

146. The Forest Service similarly determined in the 1987 Forest Plan that a portion, 27,501 acres, of the Blue Joint WSA should be recommended as wilderness, while the remainder, 36,667 acres, should not be recommended as wilderness.

147. There is no finding, in the Travel Plan documents, 1985 reports/EIS, monitoring reports, or otherwise, that the wilderness character of the Blue Joint WSA has diminished since 1977.

148. Notwithstanding these Forest Service determinations, the Forest Service has instituted various management changes to restrict motorized travel in the Blue Joint WSA, such as reducing the mileage of routes available for motorized use.

149. The Travel Plan prohibits all motorized and bicycle travel and mechanized means of transport in the Blue Joint WSA.

150. The Travel Plan enhances wilderness character of the Blue Joint WSA or creates wilderness character that did not exist in 1977.

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

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

153. 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 Bitterroot as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT THREE: RWA TRAVEL RESTRICTIONS

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

155. The Wilderness Act provides the exclusive means by which Federal lands can be designated and managed as Wilderness.

156. Congress has not delegated to the Forest Service, through the Wilderness Act, NFMA, or otherwise, the power to impose Wilderness management prescriptions or proscriptions in RWA's or elsewhere through administrative regulation, decision, or final agency action.

157. Applicable guidance outlines the process and standards by which RWA's will be managed, which allows for continuation of existing uses, such as motorized/bicycle travel, that might be prohibited under the Wilderness Act but permissible in an RWA. Since the agency is empowered to allow specified uses to continue, the agency is required to determine the impacts of these existing/historical uses, if any, on wilderness character.

158. The Forest Service did not conduct the prescribed analysis in the Travel Plan, but rather made an ideological choice based on a perceived "affirmative obligation" to move RWA's toward a "desired" outcome of Wilderness. Final ROD at 26.

159. The Final ROD and Travel Plan similarly reflect an inappropriate belief that RWA's should be managed as Wilderness "until Congress decides whether or not to designate the areas as Wilderness." *Id.*

160. There exist designated Wilderness units in the National Forest System where visitor use quotas, permit systems, equipment restrictions, and other measures are implemented to maintain Wilderness attributes or otherwise ensure that continuing use conforms to the requirements of the Wilderness Act or applicable management direction. There is no motorized or bicycle travel in these units – nonmotorized/nonmechanized and otherwise "Wilderness compliant" uses can cause impacts that diminish wilderness character.

161. The Final ROD and Travel Plan fixate on the purported inability to quantify earlier use and the conclusion that use has substantially increased since 1977 (for WSA's) or

1987 (for RWA's), but entirely fail to consider whether any associated increase in use has occurred for nonmotorized visitation.

162. The Bitterroot's fixation on quantifying amounts, types and locations of use in 1977 distracted from the proper focus, required by applicable law, on wilderness character. Use can increase, or change by type or location, while maintaining wilderness character.

163. The Bitterroot also improperly focused on undocumented, intangible and/or subjective "social" impacts to wilderness character, in the apparent mistaken conclusion that a theoretical "non-wilderness" moment, whether having any permanent impact or actually being perceived by any person, might diminish wilderness character.

164. Temporary or ephemeral moments with RWA's or elsewhere on the National Forest System do not constitute "impacts" and do not diminish wilderness character. A defining Congressional act to designate Wilderness will remove such past or future moments, and define the Wilderness that will exist in the future.

165. The Final ROD and Travel Plan represent an illegal attempt to arbitrarily consider and impose restrictions solely on motorized and bicycle travel without considering potential adverse impacts to wilderness characteristics attributable to other uses or other factors.

166. The Final ROD and Travel Plan represents an illegal attempt by Defendants to designate and manage lands as Wilderness in the absence of suitable action or authorization by Congress.

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

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

169. 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 Bitterroot as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT FOUR: ILLEGAL RESTRICTIONS ON SNOWMOBILE TRAVEL

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

171. NFMA, its implementing regulations, the Travel Management Rule, Subpart C, and other guidance, establishes the procedures and standards the Forest Service must follow in making management decisions affecting snowmobile access to the National Forest System and the Bitterroot National Forest.

172. Snowmobile impacts and travel management considerations are unique and distinct from other vehicle types. The Bitterroot failed to appropriately incorporate procedures to account for and evaluate these distinctions.

173. Some snowmobile use occurs on groomed trails or specified routes in forested environments, but a significant focus of snowmobile recreation on the Bitterroot is on off-trail riding in alpine environments. These areas are infrequently visited by nonmotorized winter recreationists and are inaccessible to all but the most intrepid individuals, or those relying on snowmobiles for transport.

174. In light of the foregoing practical considerations, the “user conflicts” and even transient, subjective diminution of “wilderness character” in Bitterroot RWA’s and WSA’s is virtually zero.

175. The Bitterroot has virtually no meaningful winter use monitoring data to address user conflicts, wilderness character, or other relevant criteria.

176. The Final ROD indicate that some snowmobile closures are dictated by wolverine or wintering wildlife concerns. The record fails to demonstrate a rational basis for these conclusions. The ungulates of concern, elk and mountain goat, are at or exceeding management objectives, and no adverse impacts uniquely attributable to snowmobiles has been demonstrated. For wolverine, the agency has long assumed that winter recreational use might displace wolverine travel or denning, but a robust and growing body of science, performed with cooperation and meaningful support from the organized snowmobile community, is showing that snowmobile-caused displacement of wolverine is far less than previously hypothesized.

177. The Final ROD and Travel Plan impose arbitrary and inflexible restrictions on over-snow vehicle travel, in entire areas like WSA’s and RWA’s, as well as along individual routes or other areas, which are arbitrary and capricious, contrary to available information, not supported by substantial evidence, or otherwise not in accordance with law.

178. Defendants’ actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; 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.

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

180. 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 Bitterroot as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT FIVE: ILLEGAL RESTRICTIONS ON BICYCLE TRAVEL

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

182. The Travel Management Rule provides authorization for the Forest Service to designate roads, trails, and areas for use by motorized vehicles. The Travel Management Rule does not authorize or address a means by which the Forest Service can regulate or designate use of bicycles.

183. There is no specific planning procedure or direction for analysis and designation of routes and areas for bicycle use.

184. The Objection Response states that non-motorized uses may be analyzed and designated, or apparently prohibited, though an order issued under 36 CFR 261, subpart B. Objection Response at 9.

185. All human use and visitation of the National Forest System can have impacts, including bicycle use. The impacts of bicycle use are not synonymous to motorized vehicle use, equestrian use, foot travel, or any other use. The impacts of bicycle use, and different forms of bicycle use, are unique and require individual and specialized assessment.

186. The Travel Plan fails to analyze site-specific impacts attributable to bicycle use on specific routes.

187. Rather than reasoned site-specific analysis, the Final ROD and Travel Plan create an inflexible prohibition of all bicycle use in WSA's and RWA's.

188. Given the framing of the Travel Plan within the procedures and standards of the Travel Management Rule, the lack of meaningful management direction for management of non-motorized recreation, including bicycling, the prioritization of eliminating "non-conforming" uses from RWA's and WSA's, and the practical difficulty or unwillingness of Forest Service specialists to analyze impacts specifically attributable to bicycling, the Final ROD and Travel Plan have illegally aggregated bicycle and motorized impact under the rubric of "mechanized transport" and erred on the side of equally attributing adverse impacts associated with existence/use of roads and trails to both. In other words, bicycles were arbitrarily thrown into, and improperly restricted by, a motorized vehicle management process.

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

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

191. 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 Bitterroot as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

**COUNT SIX: LACK OF SITE-SPECIFIC ANALYSIS
TO SUPPORT TRAVEL RESTRICTIONS**

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

193. NFMA and its implementing regulations, including the Travel Management Rule, require the Forest Service to act in accordance with specified procedures and guiding principles in making management decisions affecting access to the National Forest System and the Bitterroot.

194. These procedures and guidance are further specified in the Travel Management Rule, and other applicable law which requires supportable findings on a variety of site-specific criteria in making road, trail and area designations.

195. The Final ROD and Travel Plan impose arbitrary and inflexible restrictions on motorized and bicycle travel, in entire areas like WSA's and RWA's, as well as along individual routes, which are arbitrary and capricious, contrary to available information, not supported by substantial evidence, or otherwise not in accordance with law.

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

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

198. 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 Bitterroot as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT SEVEN: INADEQUATE RANGE OF ALTERNATIVES

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

200. 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.

201. The Travel Plans DEIS considered in detail four (4) alternatives, denominated Alternatives “1” through “4.”

202. Every one of the DEIS action alternatives prohibited motorized vehicles, bicycles and mechanized transport in RWA’s and WSA’s.

203. The predecisional status quo included motorized vehicle and bicycle travel in at least some parts of RWA’s and WSA’s.

204. Binding agency guidance allows for the possibility that existing motorized vehicle and bicycle travel might continue in RWA’s and WSA’s so long as the continuation of such use(s) does not compromise wilderness values in the relevant area.

205. No DEIS alternative allowed for the possibility that existing motorized vehicle or bicycle use might continue that has not compromised and does not compromise wilderness values in any RWA(s) and/or WSA(s).

206. In the FEIS, apparently as a result of the objection review process, the Forest Service modified the range of alternatives, and made changes, such as in Alternative 3 allowing for an “open” designation for over-snow motorized vehicle access in RWA’s. However, these alternatives were not subject to public comment, were not realistically considered as viable

decision components, and were likely just included as an after-the-fact effort to attempt to legitimize and add purported balance to the ideologically driven effort to eliminate “non-conforming” travel in RWA’s and WSA’s.

207. The 1987 Forest Plan also established a target that at least 20 percent of the Bitterroot provide for semiprimitive motorized recreation. 1987 Forest Plan at II-4.

208. The range of alternatives in either the DEIS or FEIS do not provide for at least 20 percent of the Bitterroot in a semiprimitive motorized recreation setting, regardless of how that allocation is calculated.

209. Defendants’ actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; 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.

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

211. 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 Bitterroot as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT EIGHT: PROGRAMMATIC CLOSURE OF AREAS

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

213. The Travel Management Rule prescribes a method by which roads, trails and areas may be designated for motorized travel.

214. The Travel Management Rule requires and outlines the site-specific analysis implicit in such designations. The Travel Management Rule is a project-level decisionmaking process whereby the Forest Service can determine and formalize the suitability of specified motorized travel on specific sites in a project area.

215. The aforementioned project-level analysis is contrasted to a program-level “zoning” type designation, typically made in a Forest Plan, where broad areas are prescribed for certain types of uses.

216. Contrary to these principles and the Travel Management Rule, the Travel Plan purports to impose prohibitions on motorized, and in some instances mechanized, travel across entire areas of the Bitterroot.

217. Defendants’ actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; 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.

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

219. 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 Bitterroot as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT NINE: ACTIONS INCONSISTENT WITH THE BNF FOREST PLAN

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

221. Under NFMA, Forest Service actions must be consistent with the governing Forest Plan. 16 U.S.C. § 1604(i).

222. The governing 1987 Bitterroot Forest Plan allows for continuation of existing uses in RWA's, even if such uses might be prohibited under a strict interpretation of the 1964 Wilderness Act. Specifically, the Plan provides that in RWA's the Forest may "[c]ontinue current uses which do not detract from wilderness values. Transitory uses such as chainsaws, trailbikes and snowmobiles are appropriate if permitted by the Forest's Travel Plan." 1987 Forest Plan at III-41.

223. The 1987 Forest Plan's Forest-wide Management Objectives for Recreation further "[p]rovide for the current mix of dispersed recreation by maintaining about 50 percent of the Forest in wilderness, about 20 percent in semiprimitive motorized recreation and about 30 percent in roaded areas." 1987 Forest Plan at II-4.

224. The Final ROD and Travel Plan do not conform to either of these Forest Plan provisions, and inflexibly prohibit all "transitory" uses like "trailbikes and snowmobiles" or mountain bikes from RWA's, and fail to leave at least 20 percent of the Forest in a semiprimitive motorized recreation and/or 30 percent roaded area allocations.

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

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

227. 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 Bitterroot as a result of the allegations contained in this claim for relief, and these injuries will go unredressed absent judicial relief.

COUNT TEN: VIOLATION OF THE APA

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

229. Defendants' failure(s) described above to comply with the Wilderness Act, MWSA, NFMA and the APA 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.

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

231. 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 Bitterroot 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 Final ROD and/or Travel Plan;
2. Declare unlawful and set aside the Northern Region RWA Policy;
3. Remand the applicable matters inadequately addressed in the ROD and Travel Plan for further analysis and action in accordance with applicable law;
4. 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
5. Grant such further and additional relief as the Court deems just and proper.

DATED this 28th day of December, 2016.

REEP, BELL, LAIRD, SIMPSON & JASPER, P.C.

/s/ Robert T. Bell

Robert T. Bell
Reep, Bell, Laird, Simpson & Jasper
2955 Stockyard Road
Missoula, Montana 59808
Telephone: 406-541-4100
Facsimile: 406-541-4101
bell@westernmontanalaw.com

Of Attorneys for Plaintiffs