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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

BEAVERHEAD COUNTY
COMMISSIONERS—TOM RICE and
MIKE McGINLEY, ANACONDA
SNOWMOBILE CLUB,
BEAVERHEAD OUTDOORS
ASSOCIATION, BEAVERHEAD
WATER COMPANY, BITTERROOT
RIDGERUNNERS SNOWMOBILE
CLUB, BLUE RIBBON COALITION,
INC., CAPITAL TRAIL VEHICLE
RIDERS ASSOCIATION, CITIZENS
FOR BALANCED USE, CRAIG
TAYLOR, FAMILIES FOR OUTDOOR
RECREATION, MONTANA 4x4
ASSOCIATION, MONTANA MINING
ASSOCIATION—MISSOULA
CHAPTER, MONTANAN'S FOR
MULTIPLE USE, MONTANA TRAIL
VEHICLES RIDERS ASSOCIATION,
RAVALLI COUNTY OFF ROAD
USER ASSOCIATION, RICK
SANDRU, ROSS HANSEN RANCH
LIMITED PARTNERSHIP,
SNOWMOBILE ALLIANCE OF

Case No. CV-10-68-BU-SEH

**COMPLAINT—REQUEST FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

WESTERN STATES, STEVEN W.
JENNINGS and SOUTHWESTERN
MONTANA STOCKMAN'S
ASSOCIATION,

Plaintiffs,

v.

UNITED STATE FOREST SERVICE;
LESLIE WELDON, in her official
capacity as Region 1 Regional Forester;
DAVE MEYER, in his official capacity
as Beaverhead-Deerlodge National
Forest Supervisor,

Defendants.

INTRODUCTION

1. This case challenges the U.S. Forest Service's Record of Decision ("ROD") for the Beaverhead-Deerlodge National Forest Revised Land and Resource Management Plan ("Revised Forest Plan") for the Beaverhead-Deerlodge National Forest. The U.S. Forest Service ignored and otherwise failed to consider input from the cooperating agencies, including the Beaverhead County Commissioners, and unlawfully failed to include the meaningful participation and delegation of duties to the cooperating agency. The ROD and Revised Forest Plan Final Environmental Impact Statement ("FEIS") unlawfully adopts and implements a rule regarding the management of recommended wilderness that has not been subjected to the environmental review process under the National Environmental Policy Act ("NEPA"), and, in any event, was arbitrarily and capriciously applied

by the Forest Service in the FEIS and ROD. The Forest Service also failed to supplement its Draft Environmental Impact Statement (“DEIS”) following significant changes to the management proposals therein, denying the public meaningful participation in the Forest Plan revision process.

2. The Forest Service also failed to take a hard look at the consequences of prohibiting motorized recreation on vast portions of the Beaverhead-Deerlodge National Forest. The ROD’s and FEIS’s designation of Deadman Creek as eligible for inclusion in the National Wild and Scenic Rivers System was arbitrary, capricious and otherwise not in accordance with the law.

3. The Plaintiffs and the recreating public were unable to inform the Forest Service, or the Forest Service ignored, these shortcomings in the Defendants’ environmental review of the Revised Forest Plan revision process because, *inter alia*, the ROD presented an array of restrictions and wilderness recommendations never presented together in any alternative prior to release of the FEIS.

4. Defendant’s approval of the Revised Forest Plan violates the National Environmental Procedure Act (“NEPA”), 42 U.S.C. §§ 4331 *et seq.*; the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*; the National Forest Management Act (“NFMA”), 16 U.S.C. §§ 1600 *et seq.*; the National Wild and Scenic Rivers Act (“WSRA”), 16 U.S.C. §§ 1271 *et seq.*; and any implementing regulations for these statutes.

JURISDICTION, VENUE, AND ADMINISTRATIVE REMEDIES

5. Plaintiffs bring this action pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.*, which waives the Defendants’ sovereign immunity. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 1346 as this action presents a case and controversy under the laws of the United States, and this Court may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 705-706. The conduct complained of creates an actual, justiciable controversy and is reviewable under the APA.

6. Venue is proper in this Court under 28 U.S.C. § 1391(e) because a substantial part 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 Beaverhead-Deerlodge National Forest Supervisor’s Office is located in Dillon, Beaverhead County, Montana.

PARTIES

7. Plaintiff Beaverhead County Commissioners—Tom Rice and Mike McGinley—represent all of Beaverhead County, Montana with the County seat located in Dillon, Montana. Beaverhead County is the largest county in Montana and the fourth largest county in the U.S. The total acreage of Beaverhead County is approximately 3,549,870 acres, and approximately 69% of that land is owned by federal and state governments. There are more than 2,000,000 acres of range

providing excellent cattle and sheep forage, and over half of the 1,050,000 woodland acres are grazed. Beaverhead County boasts that it is home to the Red Rock Lakes National Wildlife Refuge, a wetlands preserve that provides a home for the rare Trumpeter Swan as well as more than 250 other bird species. Beaverhead County's economics are based on multiple use of the resource values of the entire County, and as such, Beaverhead County has a tremendous interest in the Beaverhead-Deerlodge Revised Forest Plan. Beaverhead County participated in all stages of the Beaverhead-Deerlodge National Forest Plan, including attending public scoping and informational meetings, submitting comments to the DEIS, and filing an administrative appeal of the FEIS and ROD, which was denied by the Forest Service. In addition, Beaverhead County had a representative on the Interdisciplinary Team ("ID Team") throughout the entire forest planning process, and was granted cooperating agency status by the Forest Service.

8. Plaintiff Anaconda Snowmobile Club ("ASC") is a membership-based organization founded in 1967 with the purpose of providing recreation opportunities to its members and members of the snowmobile community. The ASC is comprised primarily of members from Anaconda/Deer Lodge, Granite and Powell counties, but does have members outside of those areas. Riding areas for its membership and those using the trail system exist in the heart of the Beaverhead-Deerlodge National Forest, and the ASC actively participates in

community education promoting recreation safety, trail maintenance, respect for the environment, respect for multiple user groups, promotion of litter control and other outdoor recreation functions. The ASC prides its long standing history of participating with the surrounding communities working as an integral part of the communities in cooperation with other user groups. The ASC participated in the Beaverhead-Deerlodge Forest Plan revision process beginning in 2003 by participating in public meetings and commenting on the DEIS, Forest Plan FEIS and ROD.

9. Plaintiff Beaverhead Outdoors Association (“BOA”) is a membership organization comprised of outdoorsmen, outdoorswomen, farmers, ranchers and business interests in its community based in Dillon, Montana. BOA has approximately 130 individual members and is an organizational member of Plaintiff Citizens for Balanced Use. BOA’s mission is to preserve equal opportunities for all types of recreation and access to all public lands. In addition, BOA supports grazing, mining and reasonable forest management through timber harvest and other management practices. The BOA commented on the Forest Plan and submitted an appeal of the ROD.

10. Plaintiff Beaverhead Water Company (“BHCW”), by and through the West Bench Irrigation District, provide over 6,000 acres of land with water for irrigation. The sources of water for irrigation are generally Birch Creek, Willow Creek, and

their tributaries, which are dependant on the various associated reservoirs located in the East Pioneers. The Forest Plan will adversely affect BHWC's access to, inspection of, operation of, maintenance of, and repair of its water storage and water conveyance systems, in turn, adversely affecting the water rights and liability of BHWC, and the ability of its members to raise crops. BHWC participated in the scoping process, commented on the DEIS, and filed an administrative appeal of the Forest Plan FEIS and ROD.

11. Plaintiff Bitterroot Ridgerunners Snowmobile Club ("BRR") is a membership-based organization of about 250 individuals based in Hamilton, Montana. Its members advocate for responsible access to public land for snowmobile enthusiasts and backcountry skiers. BRR provides trail grooming and maintenance services in the Bitterroot and Beaverhead-Deerlodge National Forests for a network of trails that are shaped with cross country skiers, mushers, and other winter sports enthusiasts. BRR participated in the Beaverhead-Deerlodge Forest Plan planning process, including attending public meetings, submission of comments on the DEIS, and filing an administrative appeal of the FEIS and ROD.

12. Plaintiff Blue Ribbon Coalition, Inc. ("BlueRibbon") is an Idaho nonprofit corporation representing over 10,000 individual members and 1,200 businesses and organizations with approximately 600,000 members nationwide. BlueRibbon members use motorized and nonmotorized means, including off-highway vehicles,

horses, mountain bikes, and hiking, to access Forest Service and other public lands throughout the United States, including such lands in Montana. BlueRibbon has a long-standing interest in the protection of the values and natural resources addressed herein, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors. BlueRibbon members have visited the Forest via the above-described means of access and intend to do so in the future. BlueRibbon members attended public meetings, submitted input to the Forest, and otherwise participated in the process that generated the Forest Plan and Record of Decision. BlueRibbon commented on the DEIS and submitted an administrative appeal that was denied. BlueRibbon exhausted all of its administrative remedies and has standing to seek judicial review of the Forest Plan and ROD on behalf of its members.

13. Plaintiff Capital Trail Vehicle Riders Association (“CTVA”) is a non-profit organization headquartered in Helena, Montana, that provides educational and advocacy services for its members and the general public in support of recreation safety and access. It advocates multiple use management and access of public land. Its members enjoy recreating on the Beaverhead-Deerlodge National Forest and would like to continue to do so. CTVA commented on the DEIS and submitted an administrative appeal that was denied. CTVA exhausted all of its

administrative remedies and has standing to seek judicial review of the Forest Plan and ROD on behalf of its members.

14. Plaintiff Citizens for Balanced Use (“CBU”) is a membership organization based out of Bozeman, Montana. It has approximately 3,756 individual members and 60 organizational members in support of its mission. CBU was formed for the purpose of preserving and enhancing recreational access opportunities onto public lands for all forms of recreation, sustained yield of forest products, grazing, mining and other uses. Its members enjoy recreating on the Beaverhead-Deerlodge National Forest and would like to continue to do so. CBU commented on the DEIS and submitted an administrative appeal that was denied. CBU exhausted all of its administrative remedies and has standing to seek judicial review of the Forest Plan and ROD on behalf of its members.

15. Plaintiff Craig Taylor is an individual property owner, business owner and long-time resident of Beaverhead County. He enjoys the benefits of living in a county with natural resources that have been used responsibly and helped create a stable employment opportunity for the local economy. For many years he has enjoyed hunting, fishing, camping, hiking, snowmobiling, motorcycling and ATV riding on the Beaverhead-Deerlodge National Forest, and the Revised Forest Plan will adversely affect his ability to continue to enjoy the outdoors and his recreational pursuits. Taylor participated in the Forest Plan revision process by

commenting on the DEIS and Forest Plan FEIS, and submitting and administrative appeal to the ROD.

16. Plaintiff Families for Outdoor Recreation (“FFOR”) is an organization dedicated to preserving family oriented outdoor recreation. FFOR is based in Billings, Montana and has over 2,000 members. Its members recreate on the Beaverhead-Deerlodge National Forest and plan to continue to do so in the future. FFOR has been active in several federally managed public land agency decisions in Montana, and believes closing access adversely affects the elderly, physically challenged, and outdoor family recreation. FFOR was engaged in the Beaverhead-Deerlodge Forest Plan revision process, and commented on the DEIS. Its administrative appeal was denied, and FFOR exhausted all of its administrative remedies and has standing to seek judicial review of the Forest Plan and ROD on behalf of its members.

17. Plaintiff Montana 4x4 Association (“M4x4A”) is a recreational full-size four-wheel-drive recreation club with approximately 200 family memberships across Montana. M4x4A was in formed in 1975 to promote friendship and unity, responsible vehicle based recreation, and four wheel drive motorsports. It is a charter member of the international United Four Wheel Drive Association. Its members enjoy recreating on the Beaverhead-Deerlodge National Forest and would like to continue to do so. M4x4A commented on the DEIS and submitted

an administrative appeal that was denied. It exhausted all of its administrative remedies and has standing to seek judicial review of the Forest Plan and ROD on behalf of its members.

18. Plaintiff Montana Mining Association—Missoula Chapter (“MMA Missoula”) is a membership organization affiliated with the Montana Mining Association, Northwest Mining Association, and Western Environmental Trade Association. It is based out of Missoula, Montana and has approximately 50 geologists, miners, prospectors, and hobbyists who participate in its meetings and other activities. MMA Missoula commented on the DEIS and submitted an administrative appeal that was denied. It exhausted all of its administrative remedies and has standing to seek judicial review of the Forest Plan and ROD on behalf of its members.

19. Plaintiff Montanan’s for Multiple Use (“MMU”) is a non-profit organization headquartered in Kalispell, Montana, that provides educational and advocacy services for its members and the general public in support of recreation safety and access. It advocates multiple use management and access of public land. Its members enjoy recreating on the Beaverhead-Deerlodge National Forest and would like to continue to do so. MMU commented on the DEIS and submitted an administrative appeal that was denied. MMU exhausted all of its administrative

remedies and has standing to seek judicial review of the Forest Plan and ROD on behalf of its members.

20. Plaintiff Montana Trail Vehicle Riders Association (“MTVRA”) is a non-profit organization headquartered in Great Falls, Montana, that provides educational and advocacy services for its members and the general public in support of recreation safety and access. It advocates multiple use management and access of public land. Its members enjoy recreating on the Beaverhead-Deerlodge National Forest and would like to continue to do so. MTVRA commented on the DEIS and submitted an administrative appeal that was denied. MTVRA exhausted all of its administrative remedies and has standing to seek judicial review of the Forest Plan and ROD on behalf of its members.

21. Plaintiff Ravalli County Off Road User Association (“RCORUA”) is a membership-based group of about 400 individuals who advocate for responsible and sustainable access to public lands for all recreational visitors. RCORUA is based in Hamilton, Montana and its members routinely recreate in the adjacent Beaverhead-Deerlodge National Forest. RCORUA participated in the Beaverhead-Deerlodge National Forest Plan planning process, including attending public meetings, submission of comments on the DEIS, and filing an administrative appeal of the Forest Plan FEIS and ROD.

22. Plaintiff Rick Sandru owns and operates a family ranch headquartered north of Twin Bridges, Montana. Plaintiff Sandru's ranching operation relies on summer grazing for his cattle on the Beaverhead-Deerlodge National Forest, and will continue to rely on such use in the future. Plaintiff Sandru has been involved the forest planning revision process since 2005, commented on the DEIS, and appealed the ROD and FEIS. Plaintiff Sandru's interests in the Beaverhead-Deerlodge National Forest have been harmed by the ROD and FEIS. Plaintiff Sandru exhausted all of his administrative remedies and has standing to seek judicial review of the Forest Plan and ROD.

23. Plaintiff Ross Hansen Ranch Limited Partnership ("Ross Hansen Ranch") is a ranching operation located in Beaverhead County, Montana and is operated by Ross and Sandra Hansen. Upon information and belief, Ross Hansen Ranch has legally protected water rights from water sources on the Beaverhead-Deerlodge National Forest, including a diversion structure on or near Deadman Creek. Ross Hansen Ranch also has certain grazing allotments on the Beaverhead-Deerlodge National Forest that may be adversely impacted by the Revised Forest Plan, including but not limited to, the Four Eyes area, which is part of the Ross Hansen Ranch's Continental grazing allotment. Ross Hansen Ranch commented on the DEIS and submitted an administrative appeal that was denied. Ross Hansen Ranch

exhausted all of its administrative remedies and has standing to seek judicial review of the Forest Plan and ROD.

24. The Snowmobile Alliance of Western States (“SAWS”) is a membership-based organization formed in 2004 by snowmobilers throughout the western United States with the priority of working to keep riding areas open in support of multiple use recreation on national forest land. SAWS members participated in the Beaverhead-Deerlodge National Forest Plan revision process by submitting comments in the introductory phases of the plan development through the FEIS and appealed the ROD.

25. Plaintiff Steven W. Jennings is a Montana native that has lived in Dillon, Montana since approximately 1977. Jennings hunts, fishes and recreates on the lands of the Beaverhead-Deerlodge National Forest, and has done so since 1977. His interest is in preserving access to these lands via the existing road system for all the citizens to use for firewood harvest, hunting, fishing, and all forms of motorized recreation. Jennings commented on the DEIS, and also filed an appeal of the Forest Plan FEIS and ROD. Jennings is also the President of Plaintiff Beaverhead Outdoors Association.

26. Plaintiff Southwestern Montana Stockman’s Association (“SWMSA”) membership consists of hundreds of livestock producers, farmers, and ranchers, as private land managers, throughout Beaverhead, Madison, and Jefferson Counties,

many of which enjoy Forest Service grazing permits in the Beaverhead-Deerlodge National Forest, which are adversely affected by the Forest Plan challenged here. The Forest Plan adversely affects the SWMSA member's ability to graze livestock and the grazing permits will be negatively impacted by the Forest Plan. Moreover, the economic, cultural, and social needs of the counties and citizens within the Beaverhead-Deerlodge National Forest have been adversely affected by the Forest Plan. SWMSA participated in the Forest Plan revision process from the beginning, by attending meetings, commenting at every level of the planning process, including but not limited to, scoping, the DEIS, and filing an administrative appeal on the Forest Plan FEIS and ROD.

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

28. Defendant Beaverhead-Deerlodge National Forest is a subunit of the United States Forest Service comprised of approximately 3.35 million acres of land, and is the largest national forest in Montana. The Forest's main office is located in Dillon, Montana, but the forest itself lies in eight southwest Montana counties, including Granite, Powell, Jefferson, Deer Lodge, Silver Bow, Madison, Gallatin and Beaverhead counties.

29. Defendant Dave Meyer is the Forest Supervisor for the Beaverhead-Deerlodge National Forest. As his title indicates, he is the supervisor for the Forest and is the ultimate authority for the actions, procedures and decisions of the Forest and is charged with ensuring the Forest complies with applicable law. He is sued solely in his official capacity.

30. Defendant Leslie Weldon is the Regional Forester for the Northern Region of the U.S. Forest Service, and is charged with responsibility for ensuring that decisions made in the Northern Region of the Forest Service, including the Beaverhead-Deerlodge National Forest, are consistent with applicable laws, regulations, and official policies and procedures. Defendant Weldon replaced Regional Forester Tom Tidwell, who signed the ROD for the Beaverhead-Deerlodge National Forest Revised Forest Plan. Defendant Weldon is sued solely in the official capacity as the Regional Forester.

LEGAL FRAMEWORK

31. The Administrative Procedure Act provides for an individual's right to judicial review of government agency actions, 5 U.S.C. § 702, such as the Forest Service Action here. The federal district court reviewing the agency action shall "hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance

with law; or (D) without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

32. The National Environmental Policy Act (“NEPA”) represents “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. The “environment” contemplated under NEPA refers 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. Consequently, an 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.* The procedural requirements of NEPA are designed to, *inter alia*, foster informed agency decisionmaking based upon informed public participation.

33. NFMA establishes the statutory framework for management of the National Forest System. Moreover, the Multiple-Use Sustained Yield Act (“MUSYA”) 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).

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

35. The Wild and Scenic Rivers Act (“WSRA”) establishes the legal framework to preserve selected rivers or sections thereof that possess certain values in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes. 16 U.S.C. § 1271. A wild, scenic or

recreational area eligible to be included in the system is a free-flowing stream and the related adjacent area that possesses one or more of the values referred to in section 1271. 16 U.S.C. § 1273.

THE CHALLENGED DECISION

36. Defendants approved the Revised Forest Plan by signing the ROD on January 14, 2009. The Forest Plan Revision process was begun and completed under the 1982 planning regulations and establishes key decisions for the long-term management of the Beaverhead-Deerlodge National Forest. The ROD states that a forest plan must establish the following decisions: (1) Forestwide multiple-use goals and objectives including projections of goods and services that may be produced; (2) Forestwide management requirements (standards); (3) Management area direction and prescriptions, including management practices; (4) Suitability for timber and grazing; (5) Monitoring and evaluation requirements; and (6) Recommendation to Congress of areas eligible for wilderness designation and rivers eligible for inclusion in the National Wild and Scenic Rivers System. Land management plans represent decisions that are strategic in nature, and subsequent decisions will be designed to be consistent with strategic decisions made in the forest plan.

37. The efforts of certain citizen-led collaborative efforts played a role in dialogue about the Beaverhead-Deerlodge National Forest, and because not all

stakeholders participated in these collaborative efforts, their recommendations were taken into account along with the recommendations of other stakeholders.

38. Beaverhead and Madison Counties sought and were granted cooperating agency status in the Beaverhead-Deerlodge Forest Plan Revision process. Both counties invested heavily, bringing specialized expertise to the table as input to the interdisciplinary process. Although the ROD and FEIS do not specifically explain the “input” the cooperating agencies provided the Beaverhead-Deerlodge National Forest, the evidence before the agency indicates the cooperating agencies were disregarded by the Beaverhead-Deerlodge National Forest and were prevented from meaningfully participating and were not given a meaningful delegation of duties, despite their recognized special expertise and substantial investment in the process.

39. The Beaverhead-Deerlodge National Forest has adopted a Region-wide rule that prohibits motorized recreation in recommended wilderness areas, although such a rule regarding the management of recommended wilderness has never been subjected to public scrutiny or the environmental review process. Moreover, the Beaverhead-Deerlodge National Forest’s application of such rule is inconsistent, and the Forest Service arbitrarily recommended areas within the Beaverhead-Deerlodge for wilderness designation. The Forest Service’s recommendation of certain areas as wilderness were not properly subjected to public comment, and the

Plaintiffs and recreating public were not able to inform the Forest Service these recommendations were improper and inconsistent with the Forest Service's wilderness evaluation. The Plaintiffs and recreating public were unable to fully participate in the Forest Plan Revision process because the Forest Service presented a preferred alternative with restrictions and wilderness recommendations that were never presented to the public prior to the release of the FEIS.

40. The Revised Forest Plan purports to make broad, strategic decisions that identify goals, objectives, standards, and suitable uses for large areas of land. A non-motorized recreation allocation closes all routes within an area to motorized recreation. The winter and summer non-motorized allocations in the Revised Forest Plan depict specific areas where motorized recreation is not allowed as a result of adoption of the Revised Forest Plan. Thus, the Defendants designated specific areas of the Beaverhead-Deerlodge National Forest to non-motorized use without site specific analysis.

41. The Revised Forest Plan and FEIS also designates Deadman Creek as eligible for inclusion in the National Wild and Scenic Rivers System, although the Forest Service did not adequately analyze Deadman Creek to determine whether it meets the Wild & Scenic River Act ("WSRA") and Forest Service guidelines eligibility requirements. The Forest Service relied on outdated information and did not conduct an adequate analysis of Deadman Creek to determine its eligibility.

Thus, the public and specific water rights holders in Deadman Creek have been adversely impacted by the Forest Service's improper eligibility designation.

COUNT ONE: VIOLATION OF NEPA

(Failure to Meaningfully Include Cooperating Agencies in Decision-making Process)

42. Plaintiffs hereby reallege and incorporate by reference Paragraphs 1 through 41 as though fully set forth herein.

43. The purpose of cooperating agencies is to emphasize agency cooperation early in the NEPA process. 40 C.F.R. § 1501.6. The lead agency shall “[u]se the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.” *Id.*

44. The lead agency also shall “invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons” Where the federal agency “is required to invite the participation of other governmental entities and allocate responsibilities to those governmental entities, that participation and delegation of duty must be meaningful.” *Intl. Snowmobile Mfr. Assn. v. Norton*, 340 F.Supp.2d 1249, 1262 (D. Wyo. 2004).

45. Beaverhead County sought and was granted cooperating agency status in the revised forest planning process. Revised Forest Plan FEIS at 8; *see also* Revised

Forest Plan ROD at 31. As a result, Beaverhead County, Madison County and the Beaverhead-Deerlodge Forest established a Memorandum of Understanding (“MOU”) outlining the special expertise the counties could bring to the planning process. *Id.*

46. The Forest Service failed to give the cooperating agency Beaverhead County any meaningful delegation of duties during the revised forest planning process. The Forest Service failed to meet its obligation to involve and seriously consider the comments and expertise of cooperating agency Beaverhead County.

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

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

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

COUNT TWO: VIOLATION OF NEPA

(Failure to Conduct Environmental Review for Region 1 Rule Adopted by the Forest that Excludes Motorized/Mechanized Use in Areas Recommended as Wilderness/RWAs)

50. Plaintiffs hereby re-allege and incorporate by reference Paragraphs 1 through 49 as though fully set forth herein.

51. NEPA requires that an environmental impact statement be prepared by federal agencies on proposals and other major federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(c).

52. Upon information and belief, the Region One Leadership Team of the Northern Region of the Forest Service, Region One, developed and adopted recommended wilderness management standards and rules that determine whether an area is managed as recommended wilderness and requires all RWAs to be managed as wilderness. The recommended wilderness management rule changes the management and/or use of public land within Region 1, including the Beaverhead-Deerlodge National Forest. The recommended wilderness management rule also makes an analysis that motorized and mechanized uses are automatically incompatible with RWAs.

53. The Region One criterion for the management of recommended wilderness was not subject to public comment and an environmental impact statement was not

prepared prior to its implementation and subsequent use in Region One forest plan revision planning, and in particular, on the Beaverhead-Deerlodge National Forest.

54. As applied to the forest plan revision process mentioned herein, the Beaverhead-Deerlodge National Forest's implementation of the Region One recommended wilderness management rule violates NEPA's requirement to prepare an environmental impact statement for major federal actions significantly affecting the quality of the human environment.

55. Despite its failure to subject the recommended wilderness management rule to the NEPA process, the Beaverhead-Deerlodge National Forest's application of the Region One recommended wilderness management rule to the management areas recommended for wilderness in the FEIS and ROD is inconsistent with the evaluation criterion in the recommended wilderness management rule, and was applied in a manner that is arbitrary, capricious, and otherwise not in accordance with the law.

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

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

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

COUNT THREE: VIOLATION OF NEPA

(Failure to Issue Supplemental EIS)

59. Plaintiffs hereby re-allege and incorporate by reference Paragraphs 1 through 58 as though fully set forth herein.

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

61. The Forest Service made numerous changes to the management proposals presented in the DEIS, including the management areas recommended for wilderness, which were relevant to environmental concerns or reflected significant

new circumstances or information, but neglected to disclose any of those changes through a supplement to the DEIS.

62. The Forest Service issued a final decision that included the recommendation of certain management areas as wilderness that were beyond those presented in any of the alternatives analyzed in detail and made available for public comment.

These decision options were not disclosed to the public and the public was precluded from meaningfully commenting upon these wilderness recommendations as a result of the agency's failure to issue a supplemental EIS or otherwise formally present such an option to the public during the comment period.

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

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

65. Plaintiffs have suffered, and will continue to suffer, harm and injury to their legal interests arising from and associated with their use and enjoyment of the

Forest as a result of the allegations contained in this claim for relief, and these injuries will go un-redressed absent judicial relief.

COUNT FOUR: VIOLATION OF NEPA

(Failure to Conduct Site-Specific Analyses Regarding Motorized Closures)

66. Plaintiffs hereby re-allege and incorporate by reference Paragraphs 1 through 65 as though fully set forth herein.

67. NEPA requires the agency to take a hard look at all of the environmental consequences on recreation of its decision to prohibit motorized recreation on vast portions of the forest.

68. The Forest Service's failure to address the specific issues raised in the Plaintiffs' appeals and administrative comments, which directed the Forest Service to deficiencies in its NEPA analysis, is a failure to consider relevant factors as required under NEPA.

69. The Forest Service's failure to analyze the direct and cumulative impacts of its vast closures of motorized recreation on the entire forest and at the site-specific level violates NEPA's mandate to analyze environmental impacts to the "fullest extent possible."

70. The Forest Service's conclusion that cumulative impacts on motorized recreation will vary is cursory and violates NEPA's hard look requirement.

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

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

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

COUNT FIVE: VIOLATION OF NEPA/WSRA

(Failure to Adequately Analyze Eligibility of Deadman Creek Under WSRA)

74. Plaintiffs hereby re-allege and incorporate by reference Paragraphs 1 through 73 as though fully set forth herein.

75. The Forest Service's classification of Deadman Creek as eligible for inclusion under the National Wild and Scenic Rivers System was not conducted in a manner consistent with the WSRA and agency policy. The Forest Service failed

adequately to analyze Deadman Creek in determining its eligibility and potential classification under the WSRA.

76. The Forest Service failed to take a hard look at all of the environmental consequences on recreation and individual water rights holders of its decision to identify Deadman Creek as eligible under the WSRA in violation of the WSRA and NEPA.

77. The Forest Service's failure to analyze the direct and cumulative impacts of its improper designation of Deadman Creek as eligible for inclusion in the National Wild and Scenic Rivers System violates NEPA's mandate to analyze environmental impacts to the "fullest extent possible."

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

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

80. 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

Beaverhead-Deerlodge National Forest as a result of the allegations contained in this claim for relief, and these injuries will go un-redressed absent judicial relief.

PRAYER FOR RELIEF

THEREFORE, Plaintiffs respectfully pray that this Court:

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

Respectfully submitted this 23rd day of December, 2010.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/ Kyle Nelson
Catherine A. Laughner
Kyle W. Nelson
Attorneys for Plaintiffs