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Attorneys for Plaintiff

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

MOUNTAIN PURSUIT;)	
)	CASE NO. Case No. 1:19-cv-199-NDF
Plaintiff,)	
)	
v.)	
)	
U.S. FOREST SERVICE;)	AMENDED COMPLAINT
TRICIA O'CONNOR, SUPERVISOR)	
BRIDGER TETON NATIONAL FOREST)	
MEL BOLLING, SUPERVISOR)	
CARIBOU TARGHEE NATIONAL)	
FOREST,)	
)	
Defendants.)	

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Mountain Pursuit, by and through their attorneys, state their claims for relief as follows:

INTRODUCTION

1. Plaintiff, Mountain Pursuit, brings this action against the United States Forest Service (USFS) for violations under federal statutes arising from USFS actions authorizing impermissible uses and use intensity levels within specific trails and trail corridors in the Palisades Wilderness Study Area (Palisades Roadless Area under the Targhee National Forest Revised Plan) and the Shoal Creek Wilderness Study Area (collectively WSAs); and, seeks a Court Order requiring USFS to comply with the Bridger Teton (BTNF) Land and Resource Management Plan (1990), the Targhee National Forest (TNF) Revised Plan (1997) (hereafter collectively LRMPs), federal statutes, National Environmental Policy Act (NEPA) decisional documents, and agency guidance as related to the management, designation, and protection of trails and trail corridors, and the protection of wilderness characteristics of the WSAs from motorized uses that exceed permissible usage rates and illegal mountain bike encroachment.

2. Plaintiff seeks judicial review of the USFS denial of the Plaintiff's 2019 Letter requesting USFS to take action to manage and protect the WSAs according to applicable LRMPs and federal statutes.

3. Plaintiff alleges USFS decisions and failure to implement nondiscretionary language in the LRMPs is arbitrary, capricious, and contrary to law, because they allow illegal uses and designations on hiking/equestrian trails in the WSAs. USFS management decisions authorizing mechanized uses and mountain bike uses within both WSAs and high levels of OHV/ATV use in Shoal Creek impermissibly tier site-based decisions to faulty programmatic or broader documents is arbitrary, capricious and contrary law, and must be held unlawful and set aside.

4. Plaintiff seeks vacatur of USFS's actions that are arbitrary, capricious, and contrary to law and a remand to the agency to engage in supplemental NEPA planning. USFS decisions to publish maps authorizing illegal uses within the WSAs, adopt incompatible use designations within the WSAs, ratified illegal trail construction and trail maintenance by non-governmental organizations, and failure to manage and monitor the WSAs in accordance with the LRMPS is arbitrary, capricious, and contrary to NEPA, the Administrative Procedure Act (APA), the National Forest Management Act (NFMA), the Wyoming Wilderness Act (WWA), and the Travel Management Rule.

5. Plaintiff seeks vacatur of the arbitrary and capricious actions of USFS's failure to follow the Endangered Species Act (ESA) procedural and substantive requirements, and a remand to USFS to obtain a site-specific biological opinions for ongoing trail usage, trail maintenance, and trail construction within the WSAs project areas to include an analysis of how motorized and mechanized uses impact critical, threatened, and endangered species; and, for the USFS must determine how to proceed pursuant to 50 C.F.R. § 402.15.

6. Plaintiff seeks a Court Order to remand to the USFS to resolve contradictory nondiscretionary language in the BTNF LRMP (1990) and TNF Revised Plan (1997) allowing each forest to manage the Palisades Roadless Area/Palisades WSA under contradictory management practices and use designations, which is arbitrary, capricious, and contrary to law.

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, including the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; National Forest Management Act, 16 U.S.C. § 1600 *et seq.*; National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*; the Forest Service Travel Management Rule, 36

C.F.R. Part 212 (2015); the Wyoming Wilderness Act, Pub. L. No. 98-550, 98 Stat. 2807 (1984); Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. § 2214 *et seq.* An actual, justiciable controversy now exists between Plaintiffs and Defendant, and the requested relief is therefore proper under 5 U.S.C. §§ 701–06 and 28 U.S.C. §§ 2201–02.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, Defendant U.S. Forest Service and Plaintiff Mountain Pursuit reside in this district, and the public lands and resources in question are located in this district.

9. The Federal Government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

10. Plaintiff, Mountain Pursuit, is a Wyoming-based non-profit organization, and western states hunting advocacy organization dedicated to ethical hunting, priority license allocation for state residents, subsistence hunting, hunter education, healthy wildlife populations, ecosystem conservation, and educational outreach.

11. Plaintiff is dedicated to promoting and preserving wilderness values on eligible public lands in Wyoming and across the Rocky Mountain West, including management for solitude, quiet recreation, and non-mechanized recreation.

12. Mountain Pursuit has approximately 112 members and supporters, including members who live and recreate in the WSAs at issue. Mountain Pursuit members have been visiting and recreating on these WSAs for over 30 years. Over this time period, members have observed increasing levels and intensity of mountain bike and ATV/OHV use within the WSAs. These increases in recreational use have corresponded to declines in the ability to observe wildlife by

quiet recreational users (hikers and equestrians) of the WSAs.

13. Mountain Pursuit's members are deeply dedicated to the preservation of wilderness values consistent with the Congressional vision of the Wyoming Wilderness Act. Mountain Pursuit recognizes that protection of wilderness values requires eternal vigilance by wilderness supporters, lest these values and the unique wilderness experiences on federal public lands be lost or diminished. Similarly, protecting healthy wildlife habitat and populations, including big game, requires sustained engagement by wildlife advocates, in order to prevent habitat and wildlife from being significantly impacted or displaced by recreational uses of these WSAs. Wildlife have no voice of their own.

14. Plaintiff's members' enjoyment of their non-mechanized hunting, angling, wildlife viewing and study, and recreational activities and interests in enjoying serene, healthy, natural environments within the WSAs are impaired by illegal mechanized and motorized recreation on trails and within trail corridors in these WSAs. Mountain Pursuit's members and leadership have a longstanding interest in the management of the WSAs involved in this case and the conservation of game and non-game wildlife species and wildlife habitat.

15. Mountain Pursuit has participated in Forest Service decision-making on these forests including decision making for the WSAs to protect these interests.

16. Plaintiff's members visit the WSAs for solitude, quiet and primitive recreation purposes, nature appreciation, scientific study, wildlife observation, to hike, scout for wildlife and game, hunt and fish in season, ride horses, and backpack. Plaintiff's members and staff enjoy observing, attempting to observe, and studying wildlife in the wild, especially big game species within the WSAs.

17. Mountain Pursuit members and leaders derive aesthetic, recreational, health, food, inspirational and other benefits from their non-mechanized recreational activities on the WSAs on

a regular and continuing basis. They intend to continue visiting frequently in the immediate future, including during the fall big game hunting season of 2019 and 2020, and throughout all four seasons in upcoming years.

18. Mountain Pursuit is actively engaged in preserving wilderness values and wildlife resources on the WSAs and adjacent lands on the Bridger-Teton and Targhee National Forests through agency proceedings, public education, scientific studies, and legal advocacy, and has participated in decision-making processes related to recreation management, wildlife management, management designations, and related issues for these WSAs and these National Forests.

19. Mountain Pursuit's members have suffered a procedural injury by the USFS's failure to initiate consultation with the U.S. Fish and Wildlife Service and State of Wyoming Fish and Game Department regarding the impacts motorized uses, trail and corridor construction and maintenance, and mountain bikes have endangered and threatened species and their critical habitat within the WSAs.

20. Mountain Pursuit Founder and Executive Director Rob Shaul participated as a member of the Teton County, Wyoming Public Lands Initiative (WPLI) Committee, which was specifically commissioned to make recommendations to the Teton County Commissioners concerning the ultimate designation of the Palisades and Shoal Creek WSAs.

21. Three wildlife species that Mountain Pursuit is especially concerned about are popular game species: elk, deer, and moose. Healthy populations for the species depend on successful elk calving, deer fawning, and moose calving in the spring months. Mechanized and motorized uses are increasingly impacting these species during the spring reproductive cycle and other critical periods for wildlife. *See* A Technical Guide for Monitoring Wildlife Habitat, detailing the factors associated with disturbances from motorized uses, Table 7.1 page 7-5.

https://www.fs.fed.us/research/publications/gtr/gtr_wo89/gtr_wo89.pdf

22. 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.

23. Defendant Bridger-Teton National Forest is a forest unit within the Intermountain Region of the U.S. Forest Service comprised of more than 3.4 million acres of public lands. The BTNF is part of the Greater Yellowstone Ecosystem, which the agency recognizes as the largest intact ecosystem in the lower 48 states. The forest is headquartered in Jackson, Wyoming.

24. Defendant Caribou-Targhee National Forest is a forest unit within the Intermountain Region, U.S. Forest Service, and is comprised of approximately 3 million acres of public lands that range across southeastern Idaho, and parts of Montana, Utah, and Wyoming. The forest borders Yellowstone National Park, Grand Teton National Park, and the BTNF, and most of the forest is a part of the Greater Yellowstone Ecosystem. The forest is headquartered in Idaho Falls, Idaho.

25. Defendant Tricia O'Connor is the Forest Supervisor for the BTNF, and she is ultimately charged with ensuring that the management of this National Forest complies with applicable law. She is sued solely in her official capacity.

26. Defendant Mel Bolling is the Forest Supervisor for the Caribou-Targhee National Forest. He is the ultimately charged with ensuring that management of this National Forest complies with applicable law. He is sued solely in his official capacity.

27. Defendant Jay Pence is the District Ranger for the Teton Basin Ranger District. Mr. Pence oversees the actions within this ranger district, including protecting the natural, primitive, and undeveloped characteristics of the Wilderness Study Area. Mr. Pence is responsible for implementing all laws, policies, and regulations within the district and ensuring the district

complies with applicable law. He is sued solely in his official capacity.

LEGAL STANDARDS

The Wilderness Act

28. Congress passed The Wilderness Act “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” 16 U.S.C. § 1131(a).

29. In the Act, Congress “established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as “wilderness areas”, and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness[.]” *Id.*

30. The Act defines wilderness: “as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” *Id.* at § 1131(c). Wilderness is “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.” *Id.*

31. These principles are important to both Congressional designated wilderness areas within the National Forest System, and Congressionally established wilderness study areas which the

USFS is required to manage for potential inclusion into the National Wilderness Preservation System.

The Wyoming Wilderness Act

32. The Wyoming Wilderness Act established eight Wilderness areas, five Wilderness area expansions, and three Wilderness Study Areas (WSAs) within the state of Wyoming. Pub. L. No. 98-550, 98 Stat. 2807, §§ 201, 301. *See* attached as *Exhibit 1*.

33. The three WSAs managed by USFS in Wyoming are the Palisades WSA, Shoal Creek WSA, and High Creeks WSA. *Id.* § 301(a). The Act requires USFS to administer WSAs to maintain presently existing Wilderness character and potential for inclusion in the NWPS.

34. The Act provides snowmobiling could continue in the WSAs only “in the same manner and degree as was occurring prior to the date of enactment of this Act.” *Id.* § 301(c). Congress states the purpose of the Act as to “(1) designate certain National Forest System lands in Wyoming for inclusion in the National Wilderness Preservation System in order to preserve the wilderness character of the land and to protect watersheds and wildlife habitat, preserve scenic and historic resources, and promote scientific research, primitive recreation, solitude, physical and mental challenge...” *Id.* § 102(b)(1). (underlining emphasis added).

35. For all of the newly designated NWPS lands, Section 203 of the Act provides that “[s]ubject to valid existing rights, each wilderness area designed by this Act shall be administered by the Secretary [of Agriculture] in accordance with the provisions of this Act and the [1964] Wilderness Act, except that any reference in the provisions of the [1964] Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.”

36. Title III of the Wyoming Wilderness Act designated the Palisades and Shoal Creek WSAs

under Sections 301(a)(1) and (2). The Act provides that “[s]ubject to valid existing rights and reasonable access to exercise such rights, until Congress determines otherwise, the Palisades, High Lakes and Shoal Creek Wilderness Study Areas shall 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[.]” (underlining emphasis added).

37. The Wyoming Wilderness Act repeatedly emphasizes the importance of 1964 Act wilderness characteristics, wildlife resources and the protection of wildlife habitat as a purpose of the Act. Specifically, Congress finds that “review and evaluation of roadless and undeveloped lands in the National Forest System of Wyoming have identified those areas which, on the basis of their landform, ecosystem, associated wildlife, and location, will help to fulfill the National Forest System’s share of a quality National Wilderness Preservation System[.]” Act at Section 102(a)(2).

National Forest Management Act

38. In 1976, Congress enacted NFMA, 16 U.S.C. § 1600 *et seq.*, which governs the Forest Service’s management of the National Forests. USFS must formally revise forest plans, at least once every 15-years. *Id.* § 1604(f).

39. NFMA establishes a two-step process for forest planning. First, NFMA requires the Forest Service to develop, maintain, and revise Land and Resource Management Plans (“LRMP” or “Forest Plan”) for each national forest. 16 U.S.C. § 1604(a). The Forest Plan guides natural resource management activities forest-wide, setting standards, management goals and objectives, and monitoring and evaluation requirements. Second, once a forest plan is in place, site-specific actions are planned and evaluated by the Forest Service. All site-specific decisions must be consistent with the broader Forest Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15.

40. USFS regulations require that standards identified in the forest plans are binding

obligations on the forests and are utilized to meet legal obligations. 36 C.F.R. § 219(e)(1)(iii). Any action taken by a forest supervisor's officer or district ranger office must be consistent with the forest plan. 16 U.S.C. § 1604(i).

Multiple Use and Sustained Yield Act

41. Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528 *et seq*, requires the USFS to manage its resources for “outdoor recreation, range, timber, watershed, and wildlife and fish purposes” that go beyond the watershed and timber uses established in the Organic Act. 16 U.S.C. § 528-529.

42. Pursuant to the Act, USFS must give “due consideration” in all management decisions to the “relative value” of a planning areas resource value through planning. Management of the resources must be for multiple uses of the various resources, but not necessarily based on maximizing dollar returns or requiring one particular area be managed for all or even most uses; and managing forest lands for sustained yield, or otherwise maintaining a high level of resource outputs in perpetuity without impairing the productivity of the land. *Id.* §528.

National Environmental Policy Act

43. Congress enacted NEPA in 1969, directing all federal agencies to assess the environmental impact of proposed actions that significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). NEPA's primary goals are two-fold: (1) to ensure that the agency has carefully and fully contemplated the environmental effects of its action, and (2) to ensure that the public has sufficient information to participate in the decision- making process.

44. NEPA emphasizes the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that ‘the agency will not act on incomplete information, only to regret its decision after it is too late to correct.’” *Blue Mountains Biodiversity*

Project v. Blackwood, 161 F.3d 1208, 1216 (9th Cir. 1998) (citation omitted).

45. NEPA requires agencies to disclose and consider all the expected environmental impacts of a proposed agency action. *See Mont. Wilderness Ass'n v. McAllister*, 666 F.3d 549, 560 (9th Cir. 2011) (concluding that agency violated NEPA where it failed “to consider the impact of increased” motorized use on the wilderness character of a wilderness study area).

46. NEPA requires federal agencies to prepare, consider, and approve an Environmental Impact Statement (“EIS”) for “any major federal action significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4(a)(1). To determine whether an action requires an EIS under NEPA, an action agency may prepare an Environmental Assessment (“EA”). 40 C.F.R. § 1501.4(b).

47. NEPA requires that an environmental analysis be supplemented if the action agency makes substantial changes to the proposed action or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. *Id.* § 1502.9(c)(1)(i)-(ii).

48. NEPA allows for tiering NEPA documents to “broader NEPA document” 43 CFR § 46.140. A subsequent document that tiers to earlier in time document “must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid or address any exceptions.” *Id.* § 46.140(a). If analysis in the broader NEPA document “is not sufficiently comprehensive or adequate to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis.” *Id.*

49. An agency may tier a EA, FONSI, and CE to a programmatic or broader scope EIS only when the programmatic/broader-scope document full analyzed “significant effects, whether direct, indirect, or cumulative” and any previously unanalyzed effects are found to be not

significant 43 CFR § 46.140 (c). A finding of no significant impact must disclose previously disclosed and analyzed effects. *Id.*

Endangered Species Act

50. The ESA was enacted to provide a “means whereby the ecosystems upon which endangered species and threatened species depend may be conserved,” 16 U.S.C. § 1531(b), and “a program for the conservation of such endangered species and threatened species.” *Id.*

51. Section 7 of the ESA requires that any federal agency investigates and ensures that actions they authorize or carry out are not likely to jeopardize listed species or destroy or adversely modify critical habitat designated for such species. 16 U.S.C. § 1536(a)(2).

52. An agency action “jeopardizes” a protected species if it “reasonably would be expected, directly or indirectly,” to reduce appreciably the species’ likelihood of survival or recovery “by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02, 16 U.S.C. § 1536(a)(2).

53. Before undertaking or authorizing an action that may affect an ESA listed species or their critical habitat, the agency must consult with the appropriate experts and U.S. Fish and Wildlife Service (USFWS). 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.01(b).

54. The formal consultation process culminates in USFWS’s issuance of a biological opinion. 16 U.S.C. § 1536(a)(2), (b)(3)(A); see 50 C.F.R. § 402.14. The consulting agency is required to provide “a written statement setting forth the Secretary’s opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat.” *Id.* § 1536(b)(3)(A).

55. This written statement prepared by the consulting agency is known as a Biological Opinion, and if USFWS concludes a proposed action is likely to jeopardize a listed species, the

action may not proceed. 16 U.S.C. § 1536(a)(2)

56. The ESA consultation regulations also require reinitiation of formal consultation by the acting federal agency and by the Fish and Wildlife Service as consulting agency, “where discretionary Federal involvement or control over the action has been retained or is authorized by law and: . . . (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; [or] (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion.” 50 C.F.R. § 402.16 (2015).

57. Violation of ESA section 7’s procedural requirements is a violation of the ESA’s substantive provisions. *See Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985) (“If a project is allowed to proceed without substantial compliance with those procedural requirements, there can be no assurance that a violation of the ESA’s substantive provisions will not result.”), abrogated on other grounds in *Cottonwood Envtl. Law Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075 (9th Cir. 2015).

58. Individual citizens may enforce ESA violations in order “to enjoin any person, including the United States and any other governmental instrumentality or agency . . . who is alleged . . . to be in violation of any provision of [the ESA] or regulation issued under the authority thereof.” 16 U.S.C. § 1540(g)(1)(A).

Administrative Procedure Act

59. Section 706(1) of the APA provides that a reviewing court “shall . . . compel agency action unlawfully withheld or unreasonably delayed[.]” 5 U.S.C. § 706. This provision applies to all discrete actions an agency is required to make.

60. The APA provides that courts shall “hold unlawful and set aside” any agency action that is

“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

61. “Agency action” includes “the whole or part of an agency rule, order, license, sanction, relief, or the equivalent denial thereof, or failure to act.” 5 U.S.C. § 551 (13). A “rule” is an “agency statement of . . . future effect designed to implement, interpret, or prescribe law or policy;” an “order” is defined as “a final disposition . . . in a matter other than rule making.” *Id.* §§ 551(4), (6).

Executive Order 11644 and Forest Service Travel Management Rule

62. In 1972, President Nixon issued Executive Order 11644 requiring the Forest Service to “establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands...” E.O. 11644, § 1.

63. The Executive Order was a response to the expanding number of off-road recreational vehicles on public lands that were “in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity.” *Id.* The EO recognized a “unified Federal policy” was needed to manage ORV on the public lands.” *Id.*

64. The Executive Order called for the Forest Service to issue regulations requiring designation of specific areas and trails open to off-road vehicle use and areas closed to use. *Id.* § 3(a). The designations must be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands; and the designations must be located to minimize damage to soil, watershed, vegetation, and other resources, minimize harassment to wildlife or significant disruption of wildlife habitat, and minimize conflicts between off-road vehicle use and other

existing or proposed recreational uses of the same or neighboring lands. *Id.*

65. The 2015 Travel Management Rule is the current regulation implementing the requirements of Executive Order 11644. 36 C.F.R. Part 212. It mandates travel planning for both summer and winter motorized use on National Forest System lands. *Id.* §§ 212.50-57, 212.80-81. Summer travel planning requires the designation of roads, trails, and areas on National Forest System lands open to wheeled motor vehicle use, and any use of those designated roads and trails and outside designated areas is prohibited. *Id.* § 212.50. This approach is referred to as the “closed unless designated open” approach.

66. The 2015 Travel Management Rule also imposes minimization criteria on travel plan designations to protect environmental and recreational values. When making the trail and area designations in a travel plan, the Forest Service must minimize: (1) damage to soil, watershed, vegetation, and other forest resources; (2) harassment of wildlife and significant disruption of wildlife habitat; (3) conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and (4) conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands. It also must consider compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors. *Id.* § 212.55(b).

67. Summer travel planning requires public involvement, coordination with other governmental entities and tribes, and publication of a motor vehicle use map to identify the designations. *Id.* §§ 212.52, 212.53, 212.55.

Forest Service Handbook

68. The Forest Service Handbook defines wilderness capability with regard to suitability and wilderness characteristics. “The capability of a potential wilderness is the degree to which that

area contains the basic characteristics that make it suitable for wilderness recommendation without regard to its availability for or need as wilderness. The principal wilderness characteristics, as identified in the Wilderness Act, that follow are generally, but not necessarily, listed in order of importance or desirability.” Forest Service Handbook - FSH § 1909.12 Land Management Planning Handbook, Chapter 70 Wilderness Evaluation, section 72.1.

69. The Handbook directs managers to consider several “characteristics in analyzing the quality of the wilderness resource of a potential wilderness area.” Under the Handbook, these are natural, undeveloped, outstanding opportunities for solitude or primitive and unconfined recreation, special features and values, and manageability.

70. The Forest Service Handbook establishes that all wheeled mountain bikes (including Fat Tire and e-bikes) qualify as mechanized recreation. “(a) Mechanical transport, as herein used, shall include any contrivance which travels over ground, snow, or water on wheels, tracks, skids, or by floatation and is propelled by a nonliving power source contained or carried on or within the device.” § 293.6(a) (underlining emphasis added).

STATEMENT OF FACTS

USFS Land Management Planning and Decisions

71. Plaintiff’s incorporates by reference Exhibit 1 which outlines the history, characteristics, and use ongoing in the WSAs.

72. The USFS promised for over 30 years to implement mandatory nondiscretionary language in LRMPs and Congressional Statutes to limit motorized uses in the WSAs to a time, place, and intensity of use in existence in 1984.

73. USFS has never performed an environmental baseline, recreational use baseline, or biological assessment to guide current management actions on trails and trail corridors within the

WSAs. Despite this, USFS continues to make planning decisions that tier site-specific actions to faulty programmatic NEPA planning documents that do not account for any site-specific information. This reflects agency action that is unlawfully withheld or unreasonably delayed.

74. USFS has tried to assuage user groups by promising to amend the LRMPs as required by the National Forest Management Act in 1997, 2010, 2015, 2017, 2019, and now 2021. USFS continues to take management actions in contradiction of the LRMPs and refused to engage in any site specific or supplemental planning when faced with new information and circumstances showing the negative impacts of motorized uses and mountain bikes have in the WSAs.

75. Despite this fraught history, USFS continues to reiterate its nondiscretionary mandate to manage and protect the WSAs in accordance with the Multiple Use and Sustained Yield Act of 1960 (Public Law 86-517), the Wilderness Act of 1964, 16 U.S.C. ch. 23 § 1131 *et seq.*, National Environmental Policy Act of 1969 (Pub.L. 91-190), the Wyoming Wilderness Act of 1984 (Public Law 98-550), the Endangered Species Act of 1973 (16 U.S.C. ch. 35 § 1531 *et seq.*), the National Forest Management Act of 1974 (P.L. 94-588), in the Bridger-Teton National Forest Land Management Resource Plan (1990), the Targhee National Forest Revised Forest Plan (1997) as amended by the 2007 Northern Rockies Lynx Management Direction, Targhee National Forest Motorized Road and Trail Travel Plan (1998), a 2004 BTNF Decisional Memo designating unauthorized trail construction as federally recognized mountain bike trails, the North Zone (Jackson Ranger District) Travel Management Plan (2009), Wild and Scenic Snake River Headwaters Forest Plan Amendment Environmental Assessment (2013), Caribou-Targhee Travel Analysis Report and Appendices (2014), Targhee National Forest Monitoring Plan Final (2016), National Forest Monitoring Plan (BTNF 2016), and Bridger Teton Travel Analysis Process Final (2016) that led to the publication of the Over Snow Vehicle Use Map (2016) and Winter Travel

Map (2017) Update, Teton to Snake Fuels Management FEIS (2017), Targhee Zone Monitoring and Evaluation Report (2018), Targhee National Forest Lynx Analysis Units FEIS (2018), the Motor Vehicle Use Map (BTNF), Biennial Monitoring Evaluation Report (BTNF 2019 and CTNF), Management, Planning, and Outreach, Situation Report (BTNF 2019), the 2019 Decision Memo rejecting Plaintiff's request for the agency to investigate ongoing illegal uses within the WSAs now at issue. Despite these discrete actions, USFS failed to take any management action to enforce its nondiscretionary obligations or provide supplemental analysis as required by NEPA.

76. Mountain biking is a mechanized form of recreation inconsistent with the agency's management requirements under the LRMPs, Travel Management Plans, and applicable federal statutes. Mountain biking diminishes the potential of both WSAs for future inclusion in the National Wilderness Preservation System ("NWPS"). This use is contrary to applicable law and applicable LRMPs.

77. The BTNF has not compiled an inventory of mountain bike or ATV trails in Shoal Creek WSA; analyzed the number and mileage of trails or use levels against 1984 levels; or specifically analyzed threats to wilderness uses, users, and wilderness characteristics from motorized and mechanized uses despite stating in LRMPs and NEPA programmatic documents that it has or will complete its nondiscretionary obligations.

78. The BTNF 2002 National Visitor Use Monitoring Study acknowledged "[e]xisting motorized and mechanized recreation in the WSA includes mountain biking, OHV use, and snowmobiling...(and) there has been increasing use of 4WD vehicles within the WSA." *See* https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_063011.pdf at page 7.

79. The BTNF Travel Analysis Report (2015) acknowledges that, like wilderness, WSAs should be non-motorized. "The Bridger-Teton National Forest is a mixture of roaded areas and

unroaded areas, containing wilderness, wilderness study areas and other non- motorized areas.”
See p. 8, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd530142.pdf. The Report acknowledges management concerns stemming from unauthorized routes: “The Forest, in general, seeks a reduction in unauthorized routes to reduce erosion, wildlife disturbance, and other resource damage. These routes generally were never part of the legal transportation system.” *Id.* at 8. However, this current condition is not reflected in NEPA decisional documents impacting WSA management, nor have they informed a comprehensive analysis of WSA recreation uses.

80. BTNF in the Evaluation and Monitoring Report (2019) states the forest plan objectives for trail maintenance “may not be adequately met” and recreation management activities “warrant change to better meet Forest plan objectives.” USFS determined 28 “indicators for which changes to the monitoring program are warranted, including changing indicators and methodologies.” *See*, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd628284.pdf.

81. The Targhee Revised Forest Plan (1997) recognizes management actions should not diminish the Palisades WSA potential for inclusion in the NWPS, but still allows for mountain bikes and motorized uses in the Idaho portion of the WSA. *See* Targhee Revised Plan 111-74 to 111-77.

82. The National Forest Travel Management Rule (36 CFR Part 261.13) and LRMPs require motorized and mechanized uses to occur on designated routes shown on district Motor Vehicle Use Maps. The USFS decision to ignore this nondiscretionary language is a discrete agency action reviewable under *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 72 (2004).

83. All-terrain vehicle (“ATV”) and off-highway vehicle (“OHV”) are motorized uses that diminish the potential of the Shoal Creek WSA for future inclusion in the NWPS. The uses adversely impact quiet uses allowed on wilderness lands and favored in WSAs and significantly

impacts wilderness values that are identified in the LMRPs and NEPA decisional documents as values that should not be diminished.

84. NEPA regulations, 43 CFR § 46.140, and judicial opinions make clear a subsequent document that tiers to earlier in time document “must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid or address any exceptions.” *Id.* § 46.140(a). Tying to an outdated or faulty NEPA documents, biological opinions for site-specific actions is an agency decision was "without observance of procedure required by law," 5 U.S.C.A. § 706(2)(D), and "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" *Id.* at § 706(2)(A). This makes each decisional action referenced *infra* arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

85. USFS has a legal duty to manage the WSAs for solitude, quiet or primitive recreation, non-mechanized uses, or wildlife – and progressively allowed mechanized and motorized uses to become dominant uses on the majority of trails and large swathes of the WSAs.

86. USFS designated numerous trails within the WSAs for mechanized and mountain bike uses, despite no trails being so designated in 1984. USFS has allowed, fostered, and affirmatively permitted heavy levels of motorized ATV/OHV use in the Shoal Creek WSA, including usage levels and a geographical footprint that far exceeds any use that may have existed in 1984. The trail designations are discrete actions that allow for current USFS management actions to tier from. This is a violation of the APA, LMRPs, NEPA, ESA, Travel Management Rule, and the WWA.

87. In the Wild and Scenic Snake River Headwaters Forest Plan Amendment Environmental Assessment (2013), USFS expressly recognized the potential “impact of increased winter

motorized use on wilderness character within the Palisades Wilderness Study Area accessed along this (Wolf) creek” and stated “[t]his site will be monitored so that the threshold can be assessed in the winter as well as during the snow-free seasons.” EA, 4-17

https://www.fs.usda.gov/nfs/11558/www/nepa/75434_FSPLT3_1391120.pdf. However, as evidenced by the 2019 Monitoring Report, USFS has not conducted monitoring or user group analysis as required by the EA.

88. USFS continues to rely on a 2004 Decisional Memo, prepared in conjunction with a “Categorical Exclusion”, to justify a management action that grandfathered into its trail management plan an illegally built mountain bike trail within the WSAs. This sixteen-year-old is so outdated in the face of scientific, ecosystem, and sociological evidence presented to the agency that it has little value. Moreover, this CE is not the type of programmatic NEPA document that courts allow agencies to tie future management and planning decisions to.

89. NEPA requires supplemental analysis when "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" emerge. 40 C.F.R. § 1502.9(c)(1)(ii). Since the prior designations, significant changes have occurred on each National Forest. Advances in mountain bike and ATV/OHV technology have resulted in the expansion of these nonconforming uses into previously inaccessible or little used WSA trails and areas. The geographic expansion and increase in use levels is resulting in increased impacts to WSA and wilderness resources and uses. The number of trails, the total amount of trail miles, and heavy levels of these non-conforming uses are harming wilderness resources, interfering with quiet recreational uses, and jeopardizing the potential for Congressional wilderness designation.

90. The Wyoming Wilderness Act (WWA) demonstrates that Congress knew how to make newly designated WSA lands available “for uses other than wilderness” or uses inconsistent with

wilderness designation under the 1964 Act. For the Palisade and Shoal Creek WSAs, there were only two exceptions for inconsistent uses. First, three provisions concern to oil and gas leasing, exploration, or development in subsections (1), (2) and (3) Section 301(c) of the Act.

91. The WWA is silent on mountain bikes in the WSAs or anywhere else, it should not be interpreted to extend the provision allowing snowmobiling to continue “in the same manner and degree as was occurring prior to” 1984 to mountain biking. Arguing in the alternative, under an interpretation of the Act that applies the snowmobiling provision to mountain biking, such an interpretation would limit mountain biking to levels existing in or prior to 1984.

92. USFS included official recognition and designation of user-created trails for mechanized recreation. USFS decisions resulted in only 25% of the trails in the most popular recreational portion of Palisades WSA limited to hiking and horse uses allowed under the LRMPs and WWA.

93. Through impermissibly tiering, USFS in the Bridger Teton Travel Analysis Process Final (2016), the Over Snow Vehicle Use Map (2016), Winter Travel Map (2017), and annually published Summer Travel Maps Update allow mountain bike usage in the WSAs to expand geographically and on trails far beyond any use that existed in 1984. These decisions also allow for an intensity of use that goes far beyond any limited use that may have existed in 1984.

94. Rather than complying with nondiscretionary language, USFS recognized and designated user-created mountain bike trails within the WSAs and allowed uses on hiking and equestrian trails. By comparison with levels and locations of mountain bike usage on WSA trails in 1984, subsequent Forest Service decisions and designations have resulted in significantly higher numbers of trails designated open to mountain bikes, significantly greater total trail mileage being open to mountain bikes, a significantly greater percentage of trails and total trail mileage in the WSAs being open to mountain bikes, and a significantly greater intensity and geographic footprint

of mountain bike use in the WSAs. These designations and current management violate the LRMPs, NFMA, NEPA, ESA, and ESA.

95. Comprehensive analysis of recreation in Shoal Creek WSA is similarly important to assess increasing mountain bike and motorized recreation (ATV/OHV) usage and trends that could jeopardize the agency's ability to comply with Congressional direction for this WSA. As for Palisades, current designations and trail levels have not been analyzed in compliance with NFMA, NEPA, or WWA. Motorized vehicle usage in Shoal Creek is a significant and growing threat to wilderness characteristics, wilderness uses, and big game, especially during hunting season.

96. For both Palisades and Shoal Creek WSA, the Forest Service must analyze whether existing uses, impacts, and trends are inconsistent with the Wyoming Wilderness Act and to comply with the planning, informational, procedural, public participation, and substantive provisions of NFMA and NEPA.

97. In reliance on faulty tiering and outdated NEPA documents, USFS has allowed, fostered, and affirmatively managed for heavy levels of motorized ATV/OHV and mechanized uses that far exceeds any use that may have existed in 1984. The trail designations and current use management violate NFMA, NEPA, and the Forest Service's Travel Management Rule, in addition to the Wyoming Wilderness Act.

98. The ESA mandates that agencies to consult with the U.S. Fish and Wildlife Service (USFWS) and State of Wyoming on critical, threatened, and endangered species and their habitat, but the USFS has failed to take any action to satisfy its statutory mandate or fulfill its obligations as related to these WSAs. The threatened Canada Lynx and Grizzly Bear are present in the WSAs, and the wolverine, sensitive listing, is presents in the WSAs.

99. The Grizzly bear is a threatened species and management actions must follow the Recovery Plan (USFWS 1993) and Conservation Strategy Final Plan (2007). USFS has provided no analysis for either WSA regarding impacts on grizzly bear individuals, populations, and critical habitat as related to increased motorized and mechanized uses.

100. The Wolverine is listed as a sensitive species in the Targhee National Forest Revised Plan (1997) and Bridger Teton NF LRMP, however, there is no biological assessment published by either forest analysis impacts on wolverine populations, individuals, and critical habitat within the Palisades Roadless Area/Palisades WSA and Shoal Creek WSA.

101. USFS published the Targhee National Forest Lynx Analysis Units FEIS (2018), but this analysis provides no information for the Palisades Roadless Area/Palisades WSA to guide site-specific proposals and actions.

102. USFS stated in planning documents and the LMRPs that threatened and endangered species and their critical habitat are found within the WSAs. However, there is no evidence showing USFS has followed the Northern Rockies Lynx Management Direction in either WSA.

103. While the National Park Service consulted with USFWS regarding wolverines in the Grand Teton National Park and boundary with the Bridger Teton National Forest, the USFS has failed to consult with the USFWS regarding the wolverine and its habitat in the WSAs. *See e.g.* Spread Creek EA and BO (NPS 2016). USFS failure to complete its obligations under ESA Section 7 and a procedural violation.

104. The Council on Environmental Quality regulations require a federal agency to consider "the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973." 40 C.F.R. § 1508.27(b)(9).

105. An agency must reinitiate consultation when the agency subsequently modifies an action or new information reveals the action may have effects not previously considered. 50 C.F.R. 402.16 (2015). Neither USFS or USFWS have reinitiated consultation during or after planning actions have allowed increased motorized uses and impacts in the WSAs.

106. Despite ongoing violations from motorized and mechanized uses in the Palisades WSA, the Targhee National Forest still relies on a 23-year old Biological Evaluation (BE) and Biological Assessment (BA) done as part of the 1997 Forest Plan Revision to guide its management decisions under NEPA. For its part, it appears the BTNF does not even bother to refer to a biological evaluation, biological assessment, or biological opinion for the Shoal Creek WSA and Palisades WSA to inform ongoing trail use and trail maintenance, and site specific NEPA planning.

USFS DENIAL OF MOUNTAIN PURSUIT REQUEST FOR ACTION

107. As recently as 2019, USFS rejected Plaintiff's request to act on its nondiscretionary functions under the LRMPSs, and enforce management decisions to limit motorized and mechanized use and intensity impacts to the wildlife and wilderness characteristics within the WSAs.

108. On April 11, 2019, Mountain Pursuit wrote the Supervisor of the Bridger-Teton National Forests regarding "the use of mechanized vehicles, specifically mountain bikes, in the Palisades Wilderness Study Area, and both motorized (ATV/UTV) and mechanized (mountain bikes) in the Shoal Creek Wilderness Study Area[.]" Mountain Pursuit's letter noted that both WSAs were established by the Wyoming Wilderness Act, "which requires the Forest Service to maintain the 'presently existing character' of both the Palisades and Shoal WSAs." Mountain Pursuit stated that the Act does not mention either ATV/UTV use or mountain biking. The Mountain Pursuit

letter is attached as Exhibit 2.

109. Mountain Pursuit's letter further stated that the Act requires that the Forest Service cannot legally allow activities such as ATV/UTV use and mountain biking to adversely affect the wilderness character that existed in Palisades and Shoal in 1984, nor the potential to designate the WSAs as Wilderness. *Id.*

110. The letter noted that mountain bike use in the Palisades WSA has exploded in recent years. Mountain Pursuit stated that the Forest Service had "approved new trail construction for the extensive and growing system accessed off of Teton Pass". *Letter* at 1. Concerns going to direct, indirect, and cumulative impacts encompassing the growing "bike packing" activity (overnight mountain bike use equivalent to backpacking by pedestrians), hard-to-detect electric mountain bikes, rapidly increasing population in Jackson Hole, and social media marketing that is "continually pushing mountain biking deeper into the Palisades interior and down to the Shoal WSA, in direct violation of the '84 act." *Id.*

111. Mountain Pursuit noted that "the improving technology of ATV/UTVs has significantly increased their motorized use in the Shoal WSA above and beyond what was likely occurring in 1984." *Id.*

112. Mountain Pursuit stated that "[t]he impacts of motorized and mechanized travel on big game, specifically elk and deer, is significant." It cited to the Starkey Experimental Forest study, *supra* at ¶¶ 148-155, establishing that "ATVs and mountain bikes caused a greater flight response amongst deer and elk than horseback riding and hiking, and that the impact to wildlife from ATVs and mountain bikes was similar, despite mountain bikes being quieter." *Letter* at 1.

113. The Forest Service responded to Mountain Pursuit's petition in a communication dated June 14, 2019. The agency response is attached as Exhibit 3.

114. The Forest Service response acknowledges “the effects of motorized recreation on wildlife,” referencing the Starkey study. However, the agency response does not acknowledge the study’s findings regarding mountain bikes. Instead, the agency generally acknowledged that “all types of recreation have the potential to disturb wildlife.” *Response* at page 2.

115. In discussing the Wyoming Wilderness Act, the response acknowledges that it is silent on mountain biking. *Id.* at 2. However, the response fails to acknowledge court decisions interpreting wilderness acts for the Northern Rockies as requiring that WSAs designated by such acts be managed to protect the wilderness experience existing on the date Congress designated the WSA, that such management extends to mountain biking and ATV use, and that subsequent management decisions must be informed by thorough analysis of the impacts of such uses not allowed in wilderness to wilderness-compatible uses of the WSAs. *See Mountain Wilderness Assn, supra* at 205, and *Greater Yellowstone Coalition, supra* at 196.

116. The agency response conflates the Forest Service’s specific legal duties in managing Congressionally designated WSAs with the assertion that “[t]he presence of mountain bike use in a roadless area does not preclude the potential of the area from being considered for inclusion in the NWPS[.]” *Id.* at 2. Roadless area management mandates differ from Congressionally designated WSAs, and the BTNF alone has more than 1.3 million acres of roadless lands with wilderness characteristics not subject to the special Congressional protections imposed by the Act. Further, the assertion that some roadless areas in other states that had mountain bike use were designated for inclusion in the NWPS is neither relevant nor dispositive regarding WSA management.

117. The agency response (at page 2) cites to the 1990 BTNF Forest Plan provision on Management Emphasis for the WSAs:

Management Emphasis - The Wyoming Wilderness Act designated two areas on the Bridger-Teton National Forest for wilderness study: Shoal Creek and Palisade. The Wilderness Study Areas (WSAs) will be managed to protect long - term wilderness attributes. No activities will be allowed that will jeopardize the eligibility of the WSAs for future Congressional designation as Wilderness. Existing uses of the WSAs, such as snowmobiling and mountain biking, will be allowed to continue.

118. The Forest Plan and the agency response fail to recognize the agency's duty to manage WSAs to maintain the wilderness-quality recreational experience available to users in 1984, rather than continuing usage levels allowed following the explosion after passage of the Act. The last sentence above impermissibly allows continued mechanized and motorized uses at 2019, not 1984 levels.

119. The agency response acknowledges Forest Service guidance that: "With publication of the National Forest Planning Rule in 2012 (36 CFR Part 219), the 1923.03 directives were updated effective January 30, 2015, with the following language: '*Any area recommended for wilderness or wilderness study area designation is not available for any use or activity that may reduce the wilderness potential of the area.*'" Response at 3 (italics original).

120. The agency response acknowledges that it "became aware of increasing mountain bike activity in the Teton Pass area with associated unauthorized trail construction" in 2002. Response at 3. That led to the 2004 Decision Memo for which "the focus was on maintaining the physical characteristics of the WSA" and "preventing unauthorized trail construction." *Id.* The agency response omits that it failed to seek to maintain the wilderness experience available in 1984, or that the 2004 decision rewarded past unauthorized trail construction by officially recognizing and designating such trails for mountain bike use in the WSA.

121. The agency's assertion that "[o]verall, the Palisades WSA receives light recreation use except for the easily accessed Teton Pass area" is unsupported by any published monitoring data, user analysis, and site specific data gathered in the WSAs.

122. The agency response included one quantitative source purporting to depict use levels for either ATVs or mountain bikes, a chart compiling monitoring data of people encountered on certain trails in the more remote section of Palisades WSA for the years 2010-18. Given the absence of any quantitative data or analysis for the heavily used mountain bike trails accessible from Teton Pass, it appears that the Forest Service has failed to compile any such data. The agency response acknowledges evidence that mountain bike use has significantly increased for Black Canyon and Lithium trail near Teton Pass, but it described these two trails as the exceptions regarding significant increases.

123. The agency response seeks to leave the impression that few trails are available for mountain bike use in Palisades WSA, and these trails receive light use. "The two trails with regular mountain bike use that remain in the WSA are Black Canyon and Lithium." The table at page 3 of the FS letter makes it seem that only light mountain bike use is occurring. But it only applied to "Snake River Range" trails in the WSA. That's contradicted by the FS mountain bike trail pages for "Teton Pass Area" for which all but one trail denotes "Trail Use: Heavy.". The exceptions are Lithium and Snotel, both "Moderate".

124. For Shoal Creek WSA, the agency response states that "observations from field personnel suggest mountain bike use rarely occurs." *Id.* at 3. This is contradicted by the Plaintiff's experience and observations. The response is largely silent on ATV/OHV impacts in Shoal Creek, the effect on solitude and quiet recreation, impacts to hunters accessing the WSA on foot or horseback, and impacts to big game during hunting season, calving season, and other times of year

when the herds are vulnerable and especially susceptible to disturbance. The agency is also silent concerning the resource impacts to the WSAs by ATV/ORVs including new trails, and destruction/expansion of existing roads/trails during the busy and often wet and muddy fall rifle hunting seasons.

125. Finally, the agency response states that, “[p]er the Wyoming Wilderness Act, the Forest Service must make a recommendation as part of Forest Plan Revision regarding whether or not the entire area or a portion of the area should be recommended for wilderness designation.

FIRST CLAIM FOR RELIEF

The Forest Service violated the Wyoming Wilderness Act by failing to manage the WSAs consistent with Congressional direction or court decisions interpreting the Act and similar acts.

128. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

129. This first claim for relief challenges the Forest Service’s decisions to designate and authorize construction, maintenance and use of mountain bike trails in Palisades WSA without complying with the Wyoming Wilderness Act as being arbitrary, capricious, an abuse of discretion, and contrary to the NEPA, NFMA, and the Travel Management Rule. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

130. USFS failed to implement the nondiscretionary language in the LRMPs, statutory law, NEPA decisional documents, and management documents tiering site-specific actions to faulty or non-existence NEPA and ESA BO documents. In doing do USFS has authorized uses that diminish the wilderness character or the wilderness experience available to users in 1984.

131. The Wilderness Act and Wyoming Wilderness Act requires USFS to guard against “growing mechanization”, which applies to both mountain bike and ATV/OHV uses. Despite

nondiscretionary language in LRMPs and NEPA decisional documents that state otherwise the USFS allows for management actions that sacrifice or compromise wilderness uses and resources in the WSAs due to mechanized or motorized recreation in the WSA.

132. Contrary to law the USFS has allowed, fostered, encouraged, and affirmatively managed for heavy levels of mechanized mountain bike use in the WSAs, including usage levels and a geographical footprint across the WSAs that far exceeds any use that may have existed in 1984.

133. The trail designations and current Forest Service management violate NFMA, NEPA and WWA.

134. Litigation of heli-skiing use levels in Palisades WSA resulted in a federal court opinion affirming the agency's duty to limit uses not allowed in wilderness to levels existing in 1984, and a remand that significantly decreased winter heli-skiing usage. Litigation in Montana under an analogous act designating WSAs resulted in a remand of Forest Service decisions to better analyze degradation of wilderness resources from high levels of mechanized and motorized uses that exceeded those in the year the WSA was designated by Congress. Plaintiffs are entitled to the same relief in this case because mountain bike usage in both WSAs and ATV usage in Shoal Creek WSA significantly exceed the levels existing in 1984.

WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CLAIM FOR RELIEF

The Forest Service failed to comply with NEPA, NFMA, and ESA in designating trails open to mechanized uses in the Palisades and Shoal Creek WSAs and by allowing mountain bike use that significantly impacts other wilderness users and characteristics absent required analysis, planning, or public participation opportunities.

135. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

136. This second claim for relief challenges the Forest Service's decisions allowing mountain

bike use that significantly exceeds the volume and locations of uses in 1984 as being arbitrary, capricious, an abuse of discretion, and contrary to the Travel Management Rule, NFMA, ESA, and NEPA. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

137. After passage of the Act, USFS ignored the explosion of mountain bike use in the Palisades and Shoal Creek WSAs for two decades. The 1990 Bridger Teton Forest Plan nondiscretionary language was abdicated in site specific planning and instead of recognizing and analyzing the burgeoning explosion in mountain bike use, the Forest Service simply recognized that mountain biking was occurring in the WSAs.

138. In 2004, the Forest Service finally issued a Decision Memo. The Decision Memo failed to comply with NEPA, ESA, NFMA, or the WWA. The USFS has relied on this DO to guide management actions during summer and winter months from 2004 to current date. The agency is required to “acknowledge the relevance of the missing information and comply with § 1502.22(b)'s instructions for assessing reasonably foreseeable adverse impacts despite gaps in the relevant data.”

139. The winter snowmobile closure of the Teton Pass area establishes the viability of a mountain bike closure for the WSAs in the same area, WSA-wide, or in other areas of either WSA to be informed by the required but missing analysis of current usage and impacts compared to 1984 levels.

140. Under NEPA, failed to take a hard look at mechanized use in the WSAs, from analyzing alternatives that would eliminate or minimize these use, or applying the best available science and engaging the public in decisions addressing this major threat to the WSA, including the effects of evolving use levels on the potential of the WSAs for inclusion in the NWPS.

141. Under NEPA, USFS has not provided the requisite analysis to allow tiering to programmatic or broader documents. Accordingly, the Forest Service's current management decisions allowing heavy levels of mechanized mountain bike use on the majority of WSA trails and over the majority of WSA geography accessible by the trail system over most or all of the year is arbitrary, capricious, an abuse of discretion, and not in accordance with NFMA, NEPA, or the Forest Plan, and therefore is unlawful and must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

142. On remand USFS analysis should include the availability of designated mountain bike trails in the vicinity of the WSAs, or the ability to increase mountain bike opportunities outside the WSAs. In some cases, parallel downhill routes for mountain bikes adjacent to existing trails could significantly increase mountain bike opportunities without significantly increasing fragmentation or displacement of wildlife, while alleviating user conflicts of speeding downhill mountain bikers on shared-use trails.

143. Plaintiffs additionally seek injunctive relief to redress the injuries caused by these violations of the law.

WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CLAIM FOR RELIEF

The Forest Service failed to comply with NEPA, NFMA, and ESA in designating trails open to motorized ATV and OHV uses in Shoal Creek WSA and by allowing motorized use that significantly impacts other wilderness users and characteristics absent required analysis, planning, or public participation opportunities.

144. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

145. This third claim for relief challenges the Forest Service's decisions in the 1990 Forest Plan, as amended and updated in 2015, and the Travel Management Maps covering Shoal Creek

WSA pertaining to recreational use and failure to protect wilderness resources and wilderness recreational experiences.

146. After passage of the Act, the Forest Service ignored significant increases in ATV and OHV use in the Shoal Creek WSA, including required analysis and compliance in the forest planning and NEPA context. The 1990 Bridger Teton Forest Plan abdicated the Forest Service's duty to manage the WSAs consistent with the direction prescribed by Congress or to analyze such management consistent with NEPA and NFMA. Instead of recognizing and analyzing increasing motorized use and impacts compared to negligible levels the WSA in 1984, the Forest Service allowed use at unprecedented levels in violation of its legal obligations.

147. Under NEPA, the Forest Service failed to take a hard look at motorized use in the WSA, from analyzing alternatives that would eliminate or minimize motorized use or applying the best available science and engaging the public in decisions addressing this major threat to the WSA.

148. The winter snowmobile closure of the Teton Pass area (*supra* paragraph 39) establishes the viability of motorized use closures across Shoal Creek WSA, or in areas where recreational conflicts, big game impacts, or other impacts indicate that such a closure is appropriate.

149. Accordingly, the Forest Service's current management decisions allowing heavy motorized use on a substantial number of WSA trails over most or all of the year is arbitrary, capricious, an abuse of discretion, and not in accordance with NFMA, NEPA, or the Forest Plan, and therefore is unlawful and must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

WHEREFORE, Plaintiffs pray for relief as set forth below.

Fourth Claim for Relief

Failure to Reinitiate and Complete ESA Section 7 Consultation to Ensure Ongoing Motorized Uses, Expanded timing and intensity of motorized uses, and ongoing mountain bike uses Does Not Jeopardize Listed Species or Destroy or Adversely Modify Critical Habitat, and Impermissibly Tiering Management Actions to a Biological Assessment that

Does Not Address the Palisades WSA and Shoal Creek WSA in Violation of ESA 16 U.C.S. § 1536(a)(2) and 50 C.F.R. § 402.16

150. Plaintiff incorporates all preceding paragraphs by reference.

151. USFS is in ongoing violation of the ESA for allowing impressible levels of motorized uses, illegal mountain bike uses, illegal trail construction and maintenance, and ongoing failure to take effective actions to exclude or limit these uses in the WSAs

152. USFS is in ongoing violation of the substantive ESA §7(a)(2) requirements and the procedural requirements of §7(a)(2), which collectively, require federal agencies to ensure their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat.

153. Plaintiff and its membership are injured the USFS ongoing violations of ESA §7(a)(2) and failure to reinitiate and complete consultation.

154. An Order from this Court directing compliance with 50 C.F.R. §402.16 and ESA § 7 will redress Plaintiff's substantive and procedural injuries.

Fifth Claim for Relief

ESA Violations (Against the U.S. Forest Service Targhee National Forest) Reliance Upon a Flawed Biological Opinion; 16 U.S.C. § 1536(a)(2), (d)

154. Plaintiff hereby incorporates by reference all of the preceding paragraphs.

155. The ESA imposes a duty on USFS to ensure that federal actions are not likely to jeopardize listed species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(a)(2).

156. In meeting the duty to prevent jeopardy, each agency is required to use the "best scientific and commercial data available." *Id.*

157. As set forth above, the BiOp relied on is legally flawed and does not meet the consultation

requirements under the ESA. As a result, the Forest Service has not met its legal requirement under the ESA to complete consultation and ensure its actions do not jeopardize listed species or result in the destruction or adverse modification of critical habitat. Id.

158. Reliance by the Forest Service on the legally flawed 2013 BiOp for the Forest Plan violates the ESA. Id.

159. The USFS's failure to complete adequate consultation under section 7 of the ESA prior to implementing the USFS also constitutes the irretrievable commitment of resources through its implementation of the Forest Plan in violation of section 7(d) of the ESA. Id. § 1536(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that the Forest Service's existing decisions allowing mountain bike and ATV/OHV usage far in excess of 1984 levels at the expense of wilderness resources and quiet, non-mechanized, non-motorized WSA users seeking solitude and a wilderness experience as intended by Congress were arbitrary, capricious, an abuse of discretion, and/or violated the Wyoming Wilderness Act, NEPA, NFMA, ESA and the Travel Management Rule, and thus were unlawful under the judicial review standards of the APA, 5 U.S.C. § 706(2)(A);
- B. Remand for the Forest Service to conduct comprehensive planning on mechanized and motorized usage in the WSAs and the impacts on resource management for quiet recreation and resources including wildlife, as required pursuant to legal obligations under WWA, ESA, NEPA, NFMA and applicable court decisions.
- C. Suspend and enjoin mountain bike use in both WSAs and ATV/OHV use in Shoal Creek WSA pending compliance with applicable law regarding existing unlawful and unanalyzed or under-analyzed uses.

- D. Vacate and set aside the existing recreational decisions and trail management designations governing mountain bike and ATV/OHV usage in the WSAs for the BTNF and CTNF;
- E. Order the Forest Service to ensure that future recreational use management and travel management planning for these forests comply with the MUSYA, WWA, ESA, NFMA, NEPA, and the Travel Management Rule,
- F. Issue such temporary, preliminary, and/or permanent injunctive relief as may specifically be requested hereafter by Plaintiff;
- G. Award Plaintiffs their reasonable attorney fees, costs, and litigation expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412, and/or any other applicable law; and grant such further and additional relief as the Court deems just and proper in order to remedy the violations of law alleged herein and to protect the interests of Plaintiff, the public, and the lands at issue.

Respectfully submitted on April 6th, 2020

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Exhibit 1

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**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

MOUNTAIN PURSUIT;)	
)	CASE NO. Case No. 1:19-cv-199-NDF
Plaintiff,)	
)	
v.)	
)	
U.S. FOREST SERVICE;)	AMENDED COMPLAINT
TRICIA O'CONNOR, SUPERVISOR)	
BRIDGER TETON NATIONAL FOREST)	
MEL BOLLING, SUPERVISOR)	
CARIBOU TARGHEE NATIONAL)	
FOREST,)	
)	
Defendants.)	

SUPPLEMENTAL STATEMENT ON THE HISTORY OF THE WILDERNESS STUDY

AREAS AND ILLEGAL MOTORIZED AND MECHANIZED USES THEREIN

Designation of the Wilderness Study Areas and their Wilderness Characteristics

1. Palisades WSA and Shoal Creek WSA were designated by the Wyoming Wilderness Act. They were then and remain today two of only three WSAs on National Forest in the State of Wyoming. *See* Wyoming Wilderness Act, Wyoming. Pub. L. No. 98-550, 98 Stat. 2807, §§ 201, 301.
2. In 1984, all recreation and use of the0 WSAs was by foot or horse, with limited snowmobile use occurring on snowed in forest service roads. The Wyoming Wilderness Act freezes any motorized and mechanized uses in the WSAs to a time and intensity not to exceed 1984 levels. Mountain bikes usage was negligible in 1984, because they were only starting get produced and sold commercially. The skinny tire road bikes were popular but not usable on forest trails.
3. Rifle hunting season in the WSAs occurs in September and October for deer, elk, moose, mountain goats, and bighorn sheep (Palisades WSA only). This fall months come after the summer heat dries out the land on a daily basis and before late fall or winter temperatures freeze the ground. Both WSAs are highly popular and sought-after hunting destinations.
4. In 2008, the BTNF released a document titled “Evaluation of Areas with Wilderness Potential” to assess the wilderness attributes and potential of both WSAs. The Report shows the wilderness values and characteristics of the two WSAs and potential for designation under various management regimes; including, as a roadless area in the Targhee National Forest, wilderness study area in the Bridger Teton National Forest, compliance with the Wyoming Wilderness Act (WWA) so to not jeopardize the potential for designating the WSAs as Wilderness.

5. The BTNF Evaluation ranked approximately 29 areas within the forest boundary for wilderness potential by ‘grading’ each area according to 4 factors. Each factor was graded 1 to 3 (3 being the highest) for wilderness potential and 12 is a perfect score. The significant is the Palisades WSA received a perfect score and Shoal Creek WSA received an 11. Meaning the WSAs are highly valued for its wilderness characteristics.

6. The Palisades WSA is located on the Bridger-Teton National Forest (“BTNF”) and in the State of Wyoming and the Caribou-Targhee National Forest (“CTNF”) in Idaho. As designated by Congress in the 1984 Act, the total size of Palisades is 135,840 acres. A Forest Service “Palisades WSA Fact Sheet” dated December 13, 2016 states the size of the WSA as 134,417 acres, of which 79,517 acres are administered or managed by the BTNMF; and 54,900 acres administered or managed by the CTNF. The description summarizes the wildlife values of Palisades WSA. “The area contains habitat for elk, deer, moose, wolves, wolverine, and bears. The wolverine is listed by the USFWS as proposed as threatened. Appendix 2-c Palisades Wilderness Study Area pg. 1, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_062637.pdf.

7. Palisades WSA is a rugged, remote, undeveloped area that is a stronghold for big game and other wildlife, in addition to being recognized by biologists as an important wildlife migration corridor. The 2008 Evaluation found that 76,873 acres had wilderness character, which confirms with Congressional intent in the WWA to protect existing character and the potential for future wilderness designation. At a minimum, this triggered a responsibility for USFS to analyze recreational management alternatives to maintain the existing character of 1984.

8. For the Teton Pass part of Palisades WSA, the Forest Service is managing for mountain bikes as the primary and dominant recreational activity. Five “Multi-use Trails” ranging from 1

to 6 miles total 17.75 miles. Three “Bike/Hike Trails” ranging from 1.5 to 5 miles total 10 miles. Four “Horse/Hike Only (No Bike)” trails ranging from 1.5 to 5.5 miles total 11.5 miles. Three “Downhill Bike Only Trails (No Horse/Hike Use) range from 1 to 3.5 miles and total 7.7 miles.

9. Thus, for the most accessible and popular recreational area in Palisades WSA, the Forest Service recognizes and designates 46.95 miles of trails. Of these, only 11.5 miles of trails are limited to non-mechanized use. This represents less than 25% and approximately $\frac{1}{4}$ of the total trail mileage. Hiking and equestrian use is prohibited on $\frac{2}{3}$ of the total mileage for which quiet, non-mechanized recreation is the only use allowed on trails. The same number of trails (4) excludes hiking and equestrian use as allows only those wilderness-compatible uses.

10. The 2009 BTNF Roadless Area Review also recognized that wildlife in Palisades WSA “includes several species of special interest: osprey and bald eagle near the Snake River, wolverine, elk, moose, mule deer, bighorn sheep, and introduced Rocky Mountain goat. Opportunities for seeing wildlife and hunting are outstanding.” Review at 23.

11. The Shoal Creek WSA is entirely located on the Bridger-Teton National Forest in Wyoming. The Act states the area of the WSA as approximately 30,000 acres. According to the BTNF Forest Plan, “the Shoal Creek Wilderness Study Area includes 32,374 acres contiguous with the 285,413-acre Gros Ventre Wilderness.” Appendix 2-D Shoal Creek Wilderness Study Area, pg. 1, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_063011.pdf

12. Shoal Creek WSA is the gateway to the Gros Ventre Range. Shoal Creek illustrates how less is more when it comes to the wilderness ideal defined by the 1964 Act and the Wyoming Wilderness Act. Wyoming’s best-known wilderness areas in the Wind River Range and Teton National Park see heavy visitation lured by world-famous alpine peaks and spectacularly scenic alpine lakes stocked with trout. Popular BTNF wilderness trailheads that may have hosted a

dozen Wyoming pickup trucks on a summer weekend in 1984 now contain hundreds of vehicles with license plates from dozens of states.

13. As the BTNF Shoal Creek WSA summary stated, “the non-wilderness backcountry areas of the BTNF, including the Shoal Creek WSA, are prized by those who are seeking solitude and unconfined recreation without the numbers of people that are found in some wildernesses.”

Forest Plan Appx 2D, “Shoal Creek WSA” at 6.

14. Shoal Creek WSA contains habitat for elk, moose, mule deer, mountain lion and other forest predators, migratory songbirds, goshawks, owls, and small mammals. It contains important winter range for elk, deer, and moose; the Dell Creek Game and Fish feed ground is nearby.

Opportunities for seeing wildlife are outstanding; there is good hunter success and summer viewing is excellent since there are few people in the area.” *Id.* at 2.

15. Tin Can Park is an outstanding example of a high wet meadow dominated by grasses but including wildflowers such as buttercups, elk slip, and elephant heads. Many of the creeks in the WSA have superb streambank stability and clear water, along with healthy willow stands and beaver ponds. All of these features add to the scenic beauty of this area. Swift, Shoal, Dell and West Dell Creeks are eligible for consideration as Wild and Scenic Rivers; all of these streams pass through the WSA.” *Id.* at 3.

16. By contrast with some alpine wilderness destinations in northwest Wyoming, Shoal Creek WSA and the Gros Ventre Wilderness retain the potential to offer core wilderness values including solitude and a primitive recreational experience. The biggest threats to Shoal Creek WSA and Palisades WSA are the exploding levels of mountain biking and ATV use targeted by this litigation.

Motorized and Mechanized Uses in the WSAs

17. The first modern mountain bikes were custom built in the 1970s, and mountain bikes were not mass produced until the early 1980s. Widespread mountain biking recreation on BTNF and CTNF trails did not begin until the late 1980s.

18. In 1984, mountain bikes were only beginning to be commercially manufactured. Downhill-specific mountain biking did not exist in 1984, but now Lithium, a mountain bike-only trail in the Palisades WSA, is a designated "downhill-only" trail.

19. Compared to 1984, current use includes entirely new types of uses during entirely different times of year compared to any mountain bike use that may have existed in 1984. First, bike-packing has made overnight mountain bike use possible. <https://www.rei.com/learn/expert-advice/bikepacking.html> Second, Fat Bikes have made year-round use spanning all four seasons possible. Third, technology has advanced to allow for riders to gain backcountry access for a range of uses, including hunting. *See* <https://bakcou.com/>, dealers selling bicycles that offer a range of options. These uses did not exist in 1984. Fourth, "Lithium" is a designated downhill-only mountain bike trail in the Palisades WSA. None of these uses related to mountain bikes existed in 1984.

20. Unlike the minimal or light mountain bike use that may have existed in 1984, when technology limited riders to late spring, summer, and early fall riding. Now, year-round use occurs, and overall use has exploded. Usage is heavy in summer, and has increased in spring, fall, and winter beyond any usage rate possible in 1984. Expansion of use from one to four seasons is a significant change, a significant threat to wilderness resources and competing uses, and a significant threat to potential designation as wilderness that requires the USFS to engage in supplemental NEPA analysis.

21. The continued evolution of mountain biking and cycling continues to raise new

management and resource challenges for public lands managers. In recent years, extra “Fat Tire” bikes with 8 inch or larger tires have emerged. Fat Tire bikes are marketed to allow users to take riders places they have never biked before in all four seasons for year-round use, including especially muddy trails, off trail, and over snow. They allow less expert or experienced bikers to access and use trails that they otherwise could not handle. Fat tire use has steadily increased in the WSAs since 2010 and has not been analyzed by USFS in any planning document.

22. Bike-packing is another new and growing mountain bike activity with its own specialized bikes, luggage and other gear and equipment. Bike-packing activity is pushing mountain biking into the interior of Shoal and Palisades, beyond the easy access of hikers, with its subsequent impact on wildlife. It extends the duration of mountain bike use to multi-day excursions, compared to a few hours for any light use that may have occurred in 1984.

23. E-bikes make it possible for cyclists to climb trails they could not have completed without a motorized bicycle, and to ride longer routes increasing the overall recreational use of authorized or unauthorized trails. E-bikes are difficult to recognize and limitations on e-bikes are difficult to enforce. On information and belief, e-bike usage in the WSAs has been steadily increasing since 2015. However, the Forest Service has not analyzed e-bike usage or trends.

24. Use in the WSAs continues to steadily increase in recent years and its popularity is driven by USFS designating trails as bike friendly, USFS publications depicting and describing WSA mountain biking trails, websites depicting mountain bike trails on the WSAs and adjacent lands, social media, word of mouth, and local bike shop rentals and promotion.

25. On information and belief, mountain bike rentals were unavailable in the Teton Valley. Mountain bikes usage on trails across the BTNF and CTNF was a small fraction of current use by all metrics including number of resident users, number of non-resident users, trails used for

mountain biking, intensity of use on such trails, and the period during the summer when mountain biking use occurred.

26. Teton Pass, including trails designated by the Forest Service as open to mountain bike use, is recognized and marketed as one of the most popular mountain bike designations on the Bridger-Teton National Forest, in the state of Wyoming, and the greater Yellowstone region.

27. Population growth in northwest Wyoming and northeast Idaho has corresponded with increases in recreational visitation as the tourism and recreation based outdoor economy has boomed. Mountain bike sales, ownership, and rental businesses have exploded since the late 1980s. In the last two or three decades, the additional population and visitation and ATV/OHV usage of WSA trails has resulted in increased mechanized and motorized use of the WSAs.

28. Just outside the WSAs, significant numbers of trails are available for mountain bike use. In the Teton Pass area on the east side of Palisade WSA, these include the very popular Fuzzy Bunny, Powerline Jumps, Jimmy's Mom and Parallel Trails; the Phillips Ridge Trail accessed via Teton Pass just to the north of the Palisades WSA, and the Munger Mountain Trail Systems just to the east. Munger Mountain Loop is 8.5 miles with a 1,410-foot ascent/descent; and the Big Munger Loop is 17.4 miles with more than 3,700 feet of elevation gain. On the west side of Palisades WSA in Idaho, mountain bike trails include the 13-mile out and back Upper Palisades Lake Trail that accesses the scenic high-country reservoir. Significant mileage of abundant and varied trails near the WSAs are available for mountain bike use.

29. Regarding motorized and mechanized use, the 2016 Palisades WSA Fact Sheet asserts that "Much of the area is closed to summer wheeled motorized use (decision made in late 1990s, 2000 and 2009). However, about 17 miles of single-track motorcycle trail is located in the Indian Creek area on the Caribou-Targhee Forest. [. . .] Mountain bike use within the WSA is

concentrated on three trails (Lithium, Black Canyon, and Mail Cabin – about 13 miles). Some mountain bike use occurs on other trails such as Cabin Creek, Dog Creek, Mosquito Creek and North Fork Fall Creek.” Palisades Wilderness Study Area, Fact Sheet 12.13.2016, Bridger Teton and Caribou Targhee National Forest, at page 3.

30. The Forest Service has ignored its description of wilderness areas as “special places where nature still calls the shots”; places where people “with an appetite for adventure, can find a sense of true self-reliance and experience solitude”; places that are “final holdout refuges for a long list of rare, threatened, and endangered species, forced to the edges by modern development”; and “places where law mandates above all else that *wildness* be retained for our current generation, and those who will follow.” See <https://www.fs.fed.us/managing-land/wilderness> (italics original). These are the standards for managing the WSAs to maintain their wilderness character as it existed in 1984 and their potential for inclusion in the NWPS.

31. The above summary falls short of a comprehensive inventory of trails designated open for mountain bike use or where mountain bike use occurs and lacks any reference to 1984 use levels or other requirements of the Act.

Impacts of Mountain Bike and ATV Usage in the WSAs

32. In 1984, there was little or no mechanized or motorized use of the WSAs during the spring elk calving, moose calving, and deer fawning seasons. That is changing due to new mountain bike and ATV/OHV technologies that increasingly provide three- or four-season access to the WSAs.

33. Elk, moose, and deer are especially vulnerable and susceptible to disturbances during the spring calving and fawning seasons. A growing body of scientific literature documents the impacts of mountain biking and ATV/OHV use on big game species. For instance, the Forest

Service Technical Guide for Monitoring Wildlife Habitat provides that “ATV use on trails affects distributions of ungulate species like elk, because one pass of a motorized vehicle or ATV per day causes increased movement rates and flight responses (Wisdom et al. 2004a, 2004b).” https://www.fs.fed.us/research/publications/gtr/gtr_wo89/gtr_wo89.pdf at 7-29 to 7-30.

34. A peer reviewed article published in 2018 titled “Elk responses to trail-based recreation on public forests” considered the impacts of various forms of recreation on elk populations and habitat. This article was co-authored by researchers from the U.S. Forest Service Northwest Research Station (lead authors), and studied four common types of trail-based recreation on public forests: “all-terrain vehicle (ATV) riding, mountain biking, hiking, and horseback riding.” (Wisdom et al., 2018). The papers notes elk are a species that is “highly sought for hunting and viewing on public forests, but that is sensitive to human activities, particularly to motorized traffic on forest roads.” *Id.*

35. According to the author’s findings: “Elk avoided the trails during recreation treatments, shifting distribution farther out of view and to areas farthest from trails. Elk shifted distribution back toward trails during control periods of no human activity.” *Id.* The article found that “[d]istances between elk and recreationists were highest during ATV riding, lowest and similar during hiking and horseback riding, and intermediate during mountain biking.” *Id.*

36. The authors concluded that “Forest managers can use results to help optimize trade-offs between competing objectives for trail-based recreation and wildlife species like elk that are sensitive to human activities on public forest.” *Id.*

37. The study supports Plaintiff’s concerns that recreation management on public forests can displace elk to private lands during hunting season. “Elk sometimes move much longer distances (e.g., >25 km) from public to private lands during hunting seasons when public forests are highly

roaded and lack adequate security for elk to hide from hunters.” *Id.* at 231.

38. The conclusions or implications provide that: “Avoidance by elk to recreation trails and recreationists represents a form of “habitat compression,” similar to that described for effects of forest roads open to traffic []. Habitat compression in response to human activities is a form of habitat loss for species like elk [] considering the potentially large areas not used or used less in the presence of humans, and that otherwise might be selected by a species in the absence of humans. Habitat compression can ultimately lead to largescale population shifts by elk from public forests to private lands, thus eliminating hunting and viewing opportunities on public lands[.]” *Id.* at 231 (internal citations omitted) (underlining emphasis added).

39. The authors stated: “To address these types of effects, forest managers could use our results to evaluate trade-offs between competing objectives for trail-based recreation and wildlife species like elk that are sensitive to human activities on public forests. Although public forests are governed by laws and policies of multiple use, not all areas can be simultaneously co-managed for recreation and recreation-sensitive wildlife. Different land allocations can accommodate such competing uses, but often on different landscapes with clear objectives about which resources are featured.” *Id.* (underlining emphasis added).

History of ATV Use in Shoal Creek WSA

40. In 1984, ATV/OHV usage was minimal in Wyoming National Forests generally, and the Bridger and Targhee National Forests specifically. Mass production or public ownership and use of ATVs and OHVs did not become common until later in the 1980s and the 1990s. ATV and OHV technologies have significantly improved in recent decades, meaning these vehicles can go places where passenger and even four-wheel drive vehicles cannot. In 1984, four-wheel drive pickups or sport-utility vehicles would have been the primary type of vehicle used to access

forest roads not passable by two-wheel drive passenger vehicles.

41. Trails open to ATVs and OHVs in Shoal Creek include USFS Roads 30650A and 30650B.

42. The Forest Service has failed to adequately analyze the direct, indirect and cumulative impacts of ATV and OHV use in Shoal Creek WSA. This includes impacts to wilderness resources, impacts to other WSA users, and impacts on the likelihood of the WSA being designated a Wilderness Area.

43. Therefore, the travel planning decisions authorizing mechanized mountain bike use within both WSAs and high levels of OHV/ATV use in Shoal Creek were arbitrary, capricious and contrary to the Wyoming Wilderness Act, NFMA, NEPA, and the Travel Management Rule. In accordance with the Administrative Procedure Act, these decisions must be held unlawful and set aside.

44. Plaintiffs therefore request that this Court issue declaratory and injunctive relief to remedy these violations of law.

Impacts of ATV and OHV Use in Shoal Creek WSA

45. ATV and OHV use has significantly increased in Shoal Creek WSA since 1984. This use threatens and impacts wilderness resources and the wilderness recreational experience of quiet users seeking solitude and primitive or unconfined recreation, such as Plaintiff's members. Heavy ATV and OHV traffic during fall hunter season negatively impacts or displaces both game and hunters seeking a wilderness quality experience. *See* Cumulative and Universal ATV Impacts on the Landscape and Wildlife: A Review of the Literature on the Subject, "Although roads may be the largest source of habitat fragmentation in North America trails can have a greater cumulative impact due to the density of trails on previously continuous habitats (citing to

Gaines et al. 2003; Gilbert 2003)”).

https://www.lsohc.leg.mn/materials/16_Mtg/DEC_14_2016_ORV_WHITE_PAPER_BackcountryHuntersAnglersofAmerica.pdf, p 14.

Federal Circuit Case Law

46. Heli-skiing in Palisades WSA was litigated in 2006. *See Greater Yellowstone Coalition v. Timchak*, Case No. CV-06-04-IBLW (D. Idaho Nov. 21, 2006). *Greater Yellowstone* establishes that: “[t]he Wyoming Wilderness Act requires that the Wyoming portion of the Palisades must be managed as a wilderness study area to ‘maintain [its] presently existing wilderness character’ as of 1984, the year Congress passed that legislation.” *Greater Yellowstone Coalition* at *5-6. Accordingly, the Wyoming Wilderness Act (WWA) “imposes a duty on the Forest Service to administer the Palisades WSA to maintain (1) the ‘wilderness character’ that existed there in 1984, and (2) its ‘potential for inclusion in the National Wilderness Preservation System.’” *Id.*

47. The Court determined the WWA obligated USFS to maintain and preserve the WSA's *presently existing wilderness character* to “the character existing in 1984.” *Id.* at *5-6. This means the USFS cannot “authorize any use that would diminish the wilderness character of the Palisades WSA as it existed in 1984.” *Id.*

48. In *Greater Yellowstone*, the Court found that the Forest Service failed to compare the spatial and temporal effects of present or proposed heli-skiing use levels “against the wilderness ‘character’ present within the Palisades WSA when the Wyoming Wilderness Act was passed in 1984[.]” *Id.* at 7. The impacts of the heavy mountain bike and ATV/OHV uses raised in this Complaint have similar impacts on wildlife, quiet recreation, and solitude as the heli-skiing operation at issue in *Greater Yellowstone*.

49. In *Montana Wilderness Assn. v. McAllister*, 666 F.3d 549, (9th Cir. 2011), the USFS

“recognized that the increasing use of motorized and mechanized transports like snowmobiles, motorcycles and mountain bikes, none of which can be used in designated wilderness areas, might potentially degrade the study area's wilderness character relative to the 1977 baseline, in contravention of the Study Act's mandate that 1977 wilderness character be maintained.” *Id.* at 553 (underlining emphasis added). Just as in this case, the USFS management of the Gallatin National Forest did not “attempt to maintain the area's 1977 wilderness character, including the relatively low motorized use volumes that existed at that time, for the enjoyment of current users.” *Id.*

50. The Ninth Circuit held “that the travel plan improperly ignores the impact of increased volume of motorized and mechanized use on current users' ability to seek quiet and solitude in the study area.” *Montana Wilderness Assn.*, 666 F.3d at 561. Accordingly, the USFS decision to allow increased motorized and mechanized usage in the WSA was arbitrary and capricious. The Court directed that, on remand, “the [Forest] Service must acknowledge the relevance of the missing information and comply with § 1502.22(b)'s instructions for assessing reasonably foreseeable adverse impacts despite gaps in the relevant data.” *Id.* at 560.

51. *Montana Wilderness Assn* and *Greater Yellowstone Coalition* establish that management of Congressionally designated WSAs must seek to maintain the wilderness experience and characteristics in WSAs available as of the date of designation, rather than only preventing permanent or physical impacts to the landscape that could interfere with future wilderness designation.

52. A third case affirmed a Forest Service decision restricting motorized and mechanized uses to levels in the year of WSA designations, where the Forest Service had quantitatively and qualitatively analyzed increases on recreational uses not allowed in wilderness.

Bitterroot Ridge Runners Snowmobile Club v. United States Forest Service, 329 F.Supp.3d 1191 (D. Mont. 2018). According to the decision, the Court reaffirmed that the USFS must manage WSAs to maintain existing wilderness characteristics at the time the Act was promulgated. *Bitterroot Ridge Runners*, 329 F.Supp.3d at 1191. The Court determined the Forest Service determined the current level “of motorized and mechanical users far surpassed the 1977 levels” and therefore the USFS “appropriately created current wilderness designations beyond what existed in 1977” to protect those characteristics. *Id.*

53. These cases applied here, mandates the USFS to provide analysis comparing existing mechanized and motorized use levels to 1984 to current uses on those trails within the WSAs. Without this analysis to reach a use baseline and environmental based, the USFS cannot protect wilderness values and characteristics in the WSA. The USFS has done no analysis, monitoring, or gathered user data from 1984 to the date of filing this Amended Complaint, despite evidence submitted directly to the Bridger Teton National Forest and Targhee National Forest showing increased uses are illegal and deteriorating wilderness characteristics in the WSAs. This action is arbitrary, capricious, and contrary to law, and binding case law within the 10th Circuit and 9th Circuit federal courts.

Bridger Teton Land Management Resource Plan and Targhee National Forest Plan

54. The BTNF completed its Land Management Resource Plan in 1990. The Forest Plan includes management direction related to WSAs, recreational uses, wildlife species including big game, and wildlife habitat. It requires that the recreation trail system be managed to minimize conflicts among users. Regarding the WSAs, the Plan acknowledges and adopts the provisions in the Act that no activities can occur that would impair Wilderness characteristics or reduce the potential of the area for inclusion in the NWPS. Had management complied with that standard,

this litigation would not be necessary.

55. Specifically, the BTNF LMRP recognizes that Congress designated the Palisades and Shoal Creek WSAs “for wilderness study” and provides that the WSAs “will be managed to protect long-term wilderness attributes. No activities will be allowed that will jeopardize the eligibility of the WSAs for future Congressional designation as Wilderness.” *Forest Plan* at 270 (underlining emphasis added).

56. The BTNF LMRP continues: “Existing uses of the WSAs, such as snowmobiling and mountain biking, will be allowed to continue. Land and Resource Management Objectives addressed and, in part, met by achieving this Desired Future Condition for Wilderness Study Areas include: 1.1(f), 2.3(a, b), 4.4(c), and 4.6(a, b.) Resource Prescriptions, Standards, and Guidelines.” *Id.* This provision fails to distinguish between snowmobile use in the WSAs, which was specifically mentioned in the Act, and mountain biking, which was not. It fails to recognize that mountain biking is almost entirely a new use subsequent to 1984. It fails to recognize that if any mechanized mountain bike use not authorized by the Act is allowed in the WSAs, that it must be limited to the level and location of use that existed prior to passage of the Act.

57. The Forest Plan provision disallowing activities that could “jeopardize the eligibility of the WSAs for future Congressional designation as Wilderness” is consistent with the Wyoming Wilderness Act. The provision allowing mountain biking in the WSAs is inconsistent with the Act. The failure of the Forest Plan to distinguish between 1990 and 1984 use levels violates the Act.

58. Forest Plan Goal 1.2 established targets for transportation, including trails, mountain biking or bicycling was not mentioned, in contrast to specific goals related to other users or uses such as commercial users, timber contractors, ranchers, the outfitting and guide industry, and

mineral developers. *Plan* at 141.

59. Forest Plan Goal 4.1 provides that “Road management preserves wildlife security, soil, visual resource, and water quality values”, and to “Minimize new road building and downgrade or close existing roads and motorized access trails to maintain or increase wildlife security. *Plan* at 147-48. A picture illustrating a gated and signed road closure is captioned: “SOME ROADS WILL BE CLOSED TO INCREASE WILDLIFE SECURITY.” *Id.* at 147.

60. The Forest Plan states a “Forest Challenge: Avoid Unacceptable Effects from Recreation Use”. Goal 4.5 involves whether “areas are capable of sustaining human use without unacceptable resource loss or jeopardy to human health and safety. Objectives: a. Close, reconstruct, or relocate trails.” *Forest Plan* at 150. These provisions trigger specific duties regarding the WSAs.

61. Another Forest Goal is to “Avoid Effects of Human Use which are Inconsistent with Wilderness”. Under Goal 4.6, “[t]he wilderness character of congressionally designated Wildernesses is retained or regained”; including “a. Retain and, where necessary, restore high-quality wilderness environments” and “b. Prevent human overcrowding in Wildernesses that leads to a loss of wilderness values, providing alternate recreation locations when a wilderness setting is not key to a visitor's experience.” *Forest Plan* at 150 (underlining emphasis added). The Act makes Goal 4.6 applicable to the WSAs, but the Forest Service has failed to address the Act’s requirements.

62. The Fisheries and Wildlife section of the Plan commits to protecting wildlife and habitat. For example, the Security Area Standard provides for maintaining Non-activity or security areas “adjacent to concentrated human activity areas.” *Forest Plan* at 155. Because WSAs are to be managed for solitude and primitive recreation, concentrated activity areas are inappropriate.

63. The “Habitat Effectiveness Standard” requires that “non-motorized and motorized vehicle access will be regulated either seasonally or year-round to protect such important big game habitat components as primary feeding areas, crucial winter range; calving/fawning/lambing areas, big-game rearing areas, rutting complexes, and big-game migration corridors.” *Plan* at 155. This applies to both mechanized/non-motorized mountain bikes and motorized ATVs.

64. The “Road Location Guideline” provides that “Roads and trail areas open to traffic should be located to avoid key areas described in the Habitat Effectiveness Standard.” The “Big-Game Winter Range Standard” provides that “Human activity and disturbance in crucial big-game winter range will be restricted from November 15 to April 30 if big-game are present in the area.” *Forest Plan* at 155. These guidelines and provisions are especially important for the WSAs, where Congress specifically directed the protection of wildlife and habitat.

65. Other protections provide for restricting human activity and disturbance “in elk calving areas from May 15 to June 30 if elk are present”; and for Timing-Limitation stipulations in elk calving areas. *Id.*

66. Plaintiff Mountain Pursuit seeks to ensure protections for wildlife under the Forest Plan and other management direction are followed. However, exploding recreational usage of mountain bikes and ATVs/OHVs are undercutting the viability of wildlife or habitat measures and commitments with negative impacts on elk, deer, moose, quiet users, and non-motorized hunters in the WSAs.

67. The Bridger-Teton made slight revisions to the winter travel plan in 1993 to adjust some motorized and non-motorized routes and boundary lines of crucial big game winter range, private land, and Wilderness areas.

68. The Forest Service initiated summer travel planning that covered the Teton Division in

2008 and issued motor vehicle use maps when that process was completed. The 2010 Winter Travel Map for the Teton Division showed the same Over-Snow Vehicle (“OSV”) designations as the 1990 map and stated that OSV closures were due to Wilderness and protection of crucial big game winter range.

69. The Forest Service acknowledged that there was ever-increasing recreation use in popular areas around Cache Creek and Game Creek and on Teton Pass; however, the Forest Service did not complete an environmental analysis for this decision as required by NEPA.

70. Appendix 2-C of the Forest Plan serves as a management analysis of the Palisades WSA. It acknowledges that 65% of the total area of the WSA, which is labeled “Teton Pass” in a pie chart at page 10, “is that part of the WSA being managed for high use in a semi- primitive setting.” *Appendix 2-C* at page 10. Managing for “*high* use” and a “*semi-primitive* setting” both violate the Wyoming Wilderness Act (*italics added within quotations*).

71. Appendix 2-C contains a single mention to mountain bikes. “Existing motorized/mechanized recreation in the WSA includes mountain biking, trail bike riding, heli-skiing, and snowmobiling.” *Id.* at 9. This statement fails to address whether mountain bike use is allowable under the Act in the first instance, or, if so, to analyze the appropriate level of allowable use and number of trails or trail mileage. It fails to address or analyze the fact that, even under the incorrect interpretation of the Act extending snowmobiling provisions to mountain biking, such use would be limited to the level existing in 1984. The Forest Plan lacks any analysis of the level of mountain bike use in 1984.

72. Mechanized and motorized recreation make WSAs less natural, more developed (trail construction and maintenance, including trail work by mechanized and motorized user groups), and less available for solitude and primitive or unconfined recreation. These types of recreation

tend to detract from wildlife or habitat features and values. They create manageability concerns to the extent the agency has allowed uses prohibited in wilderness to become established in WSAs. The more trail miles open to mechanized or motorized uses, the greater proportion of a WSA where such uses are allowed, and the level or intensity of such uses all tend to detract from wilderness characteristics and character.

Conclusion

73. For almost 30 years the individual members of Mountain Pursuit have attempted to divine the USFS justification for its management actions taken within the WSAs. Either the USFS is engaged in 30 years of administrative agency inaction that courts have been hesitant to review after *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004). Or, as the Plaintiff now alleges, discrete final agency actions that are ripe for judicial review are arbitrary, capricious, and contrary to the nondiscretionary language of Land and Resource Management Plans, NEPA programmatic documents and documents tiered to those documents, and federal statutes. Plaintiff alleges the USFS denial of their request to take action is reviewable under APA, 5 U.S.C.A. § 706(2) and also a discrete final action.

74. USFS management actions that are in direct violation of LRMPs and federal statutory law are both the type of discrete final agency action reviewable by a court and constitute an ongoing violation of law that will continue until an Order from this Court forces the agency to reevaluate its actions. APA § 706(1).

Respectfully submitted on April 6, 2020

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Exhibit 2



April 18, 2019

Tricia O'Connor, Forest Supervisor
Bridger Teton National Forest
340 N. Cache
P.O. Box 1888
Jackson, WY 83001

RE: Summer Travel Management for the Palisades and Shoal Creek Wilderness Study Areas

Dear Ms. O'Connor:

We are writing in regards to the use of mechanized vehicles, specifically mountain bikes, in the Palisades Wilderness Study Area, and both motorized (ATV/UTV) and mechanized (mountain bikes) in the Shoal Creek Wilderness Study Areas.

Both the Palisades and Shoal Creek Wilderness were established by Section 301(a) of the 1984 Wyoming Wilderness Act, which requires the Forest Service to maintain the "presently existing character" of both the Palisades and Shoal WSAs. The act does not mention ATV/UTV use, nor mountain biking.

The 1984 Wyoming Wilderness Act requires that the Forest Service does not allow activities such as ATV/UTV use and mountain biking to adversely affect the wilderness character that existed in Palisades and Shoal in 1984, nor the potential to designate both WSAs as Wilderness.

It's Mountain Pursuit's position that the Forest Service is legally bound by the 1984 Wyoming Wilderness Act not to allow any summer motorized/mechanized activity in the Palisades and Shoal WSAs beyond what was occurring in 1984.

However, mountain biking in the Palisades WSA, especially, has exploded in recent years, to include Forest Service - approved new trail construction for the extensive and growing system accessed off of Teton Pass. The fast-growing bike packing activity, hard-to-detect electric mountain bikes, and rapidly increasing population in Jackson and subsequent social media marketing is continually pushing mountain biking deeper into the Palisades interior and down to the Shoal WSA, in direct violation of the '84 act.

Likewise, the improving technology of ATV/UTVs has significantly increased their motorized use in the Shoal WSA above and beyond, what was occurring in 1984.

The negative impacts of motorized and mechanized (MTB) travel on big game, specifically elk and deer, are significant.

RE: Summer Travel Management for the Palisades and Shoal Creek Wilderness Study Areas

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A 2004 study conducted by the Forest Service at the Starkey Experimental Forest and Range in northeast Oregon, "Effects of Off-Road Recreation on Mule Deer and Elk" found that ATVs and mountain bikes caused a greater flight response amongst deer and elk than horseback riding and hiking. Importantly, the Starkey study found that the impact to wildlife from ATVs and mountain bikes was similar, despite mountain bikes being quieter.

In 2010, a federal court in Montana struck down a 2006 Forest Service Summer Travel Plan for the Hyalite Porcupine Buffalo Horn Wilderness Study Area over allowed mountain bike use. The Hyalite Porcupine Buffalo

Horn WSA was established by the 1977 Montana Wilderness Act, and also mandated that the Forest Service maintain the wilderness character of the designated WSAs. In the 2010 ruling, the court found that while many trails were open to mountain bikes in 1977, they were not likely present.

We believe the Forest Service has not taken a hard look at the summer motorized and mechanized use within the Palisades and Shoal Creek WSAs and may not be in compliance with the 1984 Wyoming Wilderness Act.

We are writing to respectfully request that the Forest Service:

- (1) Ensure the present and future management of the Palisades and Shoal Creek WESs comply with the Wyoming Wilderness Act's requirements to maintain the wilderness character of the areas as they existed in 1984, the potential for inclusion in the National Wilderness Preservation System, and that summer motorized and mechanized use is occurring only in the manner and degree it was occurring in 1984;
- (2) Provide us with any documentation available as to the manner and degree of motorized and mechanized use of the Palisades and Shoal Creek WSAs as of October in 1984;
- (3) Specifics as to the Forest Service's approval of summer motorized and mechanized use and any expansion of that use, including new trail construction, in the Palisades and Shoal Creek WSAs since October, 1984.

Respectfully,



Rob Shaul, President
Mountain Pursuit
rob@mtnpursuit.org
307 200 1968

Exhibit 3



File Code: 2320; 7700
Date: June 14, 2019

Rob Shaul
Mountain Pursuit
Jackson, WY 83001

Dear Rob:

Thank you for your letter of April 18, 2019 requesting information regarding motorized ATV/UTV use and mountain bike use in the Shoal Creek WSA and mountain bike use in the Palisades WSA. As you know through your involvement with the Teton County Wyoming Public Land Initiative, information about the history of motorized and mountain bike decisions was shared with the Committee. Thus, nothing in this letter should be a surprise. Additionally, information in this letter pertains only to the Bridger-Teton National Forest.

Status of Summer Motorized Travel in the WSAs

The portion of the Palisades WSA in the Bridger-Teton National Forest (BTNF) is closed to wheeled motorized travel, including ATV/UTV use. Likewise, the Shoal Creek WSA is closed to wheeled motorized travel with the exception of a portion of the Jack Creek road (Forest road 30650A) which pre-dates passage of the 1984 Wyoming Wilderness Act. Documentation of the analysis and rationale for these decisions can be found in the January 2009 Bridger-Teton Record of Decision and Final EIS for the "Off-Highway Vehicle Designation Project". This planning effort included thorough analysis of the effects of motorized recreation on wildlife, which referenced the study done at the Starkey Experimental Forest in Oregon, as well as a number of other relevant studies.

Motor Vehicle Use Maps (MVUM) are used to display designated open motorized routes and regulate summer travel management. These maps are available via the Forest website at: (<https://www.fs.usda.gov/main/btnf/maps-pubs>). We encourage the public to also download the Avenza application to ensure they are travelling on a designated motorized route. The Jackson Ranger District is responsible for implementing motor vehicle regulations in the BTNF portion of the Palisades WSA. The majority of the Shoal Creek WSA is located on the Big Piney Ranger District. At this point in time we do not have information that indicates motorized use is increasing within the WSAs. Clearly, less motorized use occurs now compared with the 1980s and 1990s, when both WSAs were open to motorized travel. If you are aware of specific locations where motorized use is occurring within either of the WSAs in violation of the MVUM, I encourage you to contact the appropriate Ranger District and work with recreation staff to address the issue.

Status of Mountain Bike Travel in the WSAs

The National Forest Travel Management Rule (Subpart B) pertains only to wheeled motorized travel. Additionally, all types of electric bikes are nationally classified by the Forest Service as motorized and the Bridger-Teton National Forest has clearly communicated that e-bikes are not permitted on non-motorized trails. While some Forests have chosen to analyze mountain bike travel as part of Travel Management planning, non-motorized travel (including mountain bikes) is not governed by the Travel Management Rule, and is not required to be included. The BTNF chose to focus travel planning analysis



on the requirement to address motorized travel, in part due to the often lengthy delays in implementing decisions experienced by those Forests who did chose to include mountain bikes in their travel plans.

With respect to the effects on wildlife, it is well documented that all types of recreation have the potential to disturb wildlife. In addition to the type of use, other factors such as the amount of use, timing of use, location of use, and behavior of users play an important role, with timing (season of use) and location/predictability often cited as critical factors. Numerous studies have examined the relationship between recreation use and wildlife. While there are many references which could be cited, I would suggest the following summaries as an introduction to the literature that includes implications for management decisions. <https://www.americantrails.org/resources/planning-trails-with-wildlife-in-mind-introduction> and https://visitorusemanagement.nps.gov/Content/documents/Contributing%20Paper_Impacts%20to%20Wildlife_Visitor%20Capacity_Edition%201.pdf

As opposed to focusing on impacts, I suspect the larger issue is really about the appropriateness of mountain bikes in a WSA. To address mountain biking (or any activity), we are tasked with applying the laws that established an area, whether it be a general National Forest area governed by the Multiple Use-Sustained Yield Act (as well as a number of other laws) or a specific designation within the National Forest such as a WSA established by the Wyoming Wilderness Act. Direction for applying various Congressional laws is found in an individual Forest's Land and Resource Management Plan (i.e. the "Forest Plan") and is also guided by National Forest Service Directives.

The Law: As you have noted, the Wyoming Wilderness Act states that the Palisades and Shoal Creek WSAs "shall be administered so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System" (section 301). The Act provided specific provisions regarding oil and gas exploration, valid existing rights (e.g. property rights), mineral withdrawal, and snowmobiling. The Act is silent regarding mountain biking and other activities that existed within these areas at the time of designation. House and Senate reports which accompanied the legislation are also silent about these uses. The presence of mountain bike use in a roadless area does not preclude the potential of the area from being considered for inclusion in the NWPS and, in fact, due to the area's status as a WSA, such areas are automatically included in the inventory of lands to be evaluated (FSH 1909.12, chapter 70). Numerous examples are available of areas or portions of areas designated by Congress as Wilderness despite the presence of mountain bike use. Maintaining "presently existing wilderness character" is a more subjective requirement, with differing and evolving interpretations. This is where we turn to National Forest Service Directives and Forest Plan direction.

Forest Plan: The 1990 Forest Plan for the Bridger-Teton National Forest contains the following direction for Wilderness Study Areas:

Management Emphasis - The Wyoming Wilderness Act designated two areas on the Bridger-Teton National Forest for wilderness study: Shoal Creek and Palisades. The Wilderness Study Areas (WSAs) will be managed to protect long-term wilderness attributes. No activities will be allowed that will jeopardize the eligibility of the WSAs for future Congressional designation as Wilderness. Existing uses of the WSAs, such as snowmobiling and mountain biking, will be allowed to continue.

National Forest Service Directives: Very little national guidance has been available for interim management of a recommended wilderness or wilderness study area. The most relevant guidance is

found in directives for land management planning (FSM 1900). FSM 1923.03 states: *“Effective August 14, 1996, the national directive stated: “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.”* With publication of the National Forest Planning Rule in 2012 (36 CFR Part 219), the 1923.03 directives were updated effective January 30, 2015, with the following language: *“Any area recommended for wilderness or wilderness study area designation is not available for any use or activity that may reduce the wilderness potential of the area.”*

In 2002, Bridger-Teton Forest staff became aware of increasing mountain bike activity in the Teton Pass area with associated unauthorized trail construction. There were also a number of non-system trails in the area created by horse use or historic human activity (e.g. homestead era logging in the Trail Creek/Black Canyon area). The mix of different uses, steep terrain, and limited sight distances due to dense vegetation occurring on non-system trails that were not managed or maintained created a significant safety and resource concern. The Forest solicited public input to develop a proposal, held a well-attended workshop, solicited comment on a scoping document, and held a follow-up workshop. The project was covered extensively in the newspaper and on local TV stations. Based on Forest Plan direction and national Forest Service directives that existed at the time, the focus was on maintaining the physical characteristics of the WSA (i.e. native surface, single-tread trails suitable for non-motorized use) and preventing unauthorized trail construction. The decision document was signed in August 2004. As an outcome of this decision, unauthorized trail construction no longer occurs in the area, two unauthorized trails were closed, mountain bike trespass into the Jedediah Smith Wilderness ceased, and mountain bike use on other trails in the WSA diminished. The two trails with regular mountain bike use that remain in the WSA are Black Canyon and Lithium.

Many of the trails in the Palisades WSA are rugged and subject to frequent landslides and washouts. Overall, the Palisades WSA receives light recreation use except for the easily accessed Teton Pass area. Forest Service trail crews spend considerable time each summer in the Palisades WSA and complete daily records of their observations regarding recreation use. A brief examination of their monitoring data reveals the following information for trails such as Cabin Creek, Dog Creek, Wolf Creek, East Table, North Fork Fall Creek, and Coburn Creek. Comparable information for 1984 doesn’t exist.

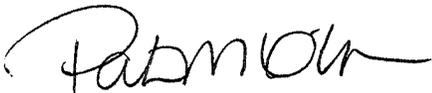
	2010	2011	2012	2013	2014	2017	2018
Number of patrol hours	218	188	180	202	210	169	233
Total people encountered	55	37	10	21	8	25	13
Number of mtn. bikers encountered	2	0	1	0	0	0	2

Trails in the Shoal Creek WSA are also very rugged and are not maintained annually. Trail specific monitoring data is not available but observations from field personnel suggest mountain bike use rarely occurs. With the exception of the Black Canyon and Lithium trail near Teton Pass, we have no evidence to indicate that mountain bike has significantly increased in the WSAs. If you have data that suggests otherwise, we would certainly be interested in seeing it.

It is clear that many people greatly value the undeveloped, relatively wild attributes that still prevail in the Palisades and Shoal Creek WSAs. However, as the WPLI process demonstrated, there are divergent, passionate views regarding what recreation uses should and should not be allowed in the areas. I believe that we need to use our collective energy to focus on the future rather than debating the past.

Per the Wyoming Wilderness Act, the Forest Service must make a recommendation as part of Forest Plan Revision regarding whether or not the entire area or a portion of the area should be recommended for wilderness designation. We are preparing to undertake this process in accordance with the 2012 Planning Rule and national directives found in Forest Service Handbook 1909.12, chapter 70. I fully expect there to be continued strong disagreement around the future of the WSAs, but we all learned valuable lessons through the WPLI effort, both in terms of substance and process, which will help us move forward. I look forward to working with you as well as other citizens and organizations as we embark on an evidence-based approach to evaluate the myriad of wilderness characteristics these areas possess and craft different alternative future scenarios.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia O'Connor', written in a cursive style.

PATRICIA O'CONNOR
Forest Supervisor

Enclosures:

2009 Record of Decision for OHV Designation Project
2004 Decision Memo for Teton Pass Trails