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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

VILLAGE OF YELLOWPINE ASSOCIATION;)
IDAHO RECREATION COUNCIL; CHRIS and)
LOIS SCHWARZHOFF; BIG CREEK LODGE)
AND OUTFITTERS;)

Case No. _____;

Plaintiffs,

COMPLAINT

v.)

UNITED STATES FOREST SERVICE;)
PAYETTE NATIONAL FOREST; Suzanne C.)
Rainville, Forest Supervisor;)

Defendants.)

NATURE OF ACTION

1. This action seeks declaratory and injunctive relief requiring Defendants United States Forest Service, Payette National Forest, and Forest Supervisor Suzanne C. Rainville (the "Forest Service") to acknowledge and adhere to controlling law while managing public and recreational access to the Payette National Forest.

2. Plaintiffs specifically challenge the Forest's McCall and Krassel Ranger Districts Snow Free Travel Management Plan and accompanying Final Environmental Impact Statement

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(“FEIS”) (the “Travel Plan”). The Travel Plan reflects a decision to designate roads, trails and areas for motorized vehicle use, and to prohibit such travel on roads, trails and areas not so designated, formally presented through the October 3, 2008 Record of Decision (“ROD”). The ROD prohibited motorized access on approximately 47.5 miles out of 58 miles of roads in the Big Creek drainage previously available for use, or approximately an 82 percent reduction of available mileage. The Forest relied heavily, if not exclusively, on the determination that the “existing condition” for these routes was closed. This determination contradicts previously-issued Forest Travel Maps showing the routes in question as open to travel. This determination further contradicts the Forest’s Fall, 2004 internal analysis entitled “Big Creek Roads Analysis Report” depicting the “current road status” as having 6 miles of “closed” roads, and 81 miles of “open” roads.

3. The ROD’s restrictions were drastic beyond their sheer volume. Recreationists, private landowners and miners have expended hundreds, if not thousands, of man-hours maintaining trails over the last five decades in this part of the Forest, only to see them closed by the ROD. The roads listed in paragraph 43 of this complaint have existed on the ground for between 50 and 103 years, are, or with appropriate maintenance can be, geologically and ecologically stable and sustainable, and have been recognized as open to travel by the Forest Service, yet were closed by the Travel Plan as a result of the agency’s arbitrary and unjustifiable reliance on a flawed internal analysis. The Travel Plan and ROD present a confusing and illogical bouillabaisse of route components rather than a logical and integrated recreation route network.

4. This action arises under the National Forest Management Act, 16 U.S.C. § 1600 et seq. (“NFMA”); the National Environmental Policy Act, 42 U.S.C. § 4331, et seq. (“NEPA”);

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the Administrative Procedure Act, 5 U.S.C. § 551, et seq. (the “APA”), and any implementing regulations for these statutes.

JURISDICTION AND VENUE

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

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

PARTIES

7. Plaintiff Village of Yellow Pine Association (“Yellow Pine”) is an Idaho unincorporated association comprised of approximately 100 members. Members of the Association include local business persons, property owners and residents in Yellow Pine. Members are connected not through their interest in any particular activity or sociopolitical attribute, but through their common appreciation of and love for the Big Creek drainage, East Fork of the South Fork of the Salmon River and all the historic mines and natural features within these areas. Association members have enjoyed, and hope for themselves and future generations to enjoy, a variety of recreational, aesthetic, and commercial activities within east Valley County, which specifically includes the Krassel Ranger District of the Payette National Forest. These activities include sightseeing, hunting, fishing, camping, wildlife and plant viewing, photography, and travel associated with and necessary to such activities via motorized vehicles, horseback and on foot. Members have enjoyed in the past, and have concrete plans to enjoy in

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the future should they again be authorized, numerous activities prohibited by the ROD, specifically including access via motorized vehicle to more than a dozen historic mines. Members, as an organization and through individual members, attended public meetings, submitted input to the Forest, and otherwise participated in the process that generated the Travel Plan and ROD. Some members are solely dependent on revenue associated with recreational visitation to National Forest lands in the Big Creek/Yellow Pine area.

8. Plaintiff Idaho Recreation Council (“IRC”) is an Idaho nonprofit corporation representing Idaho mechanized and nonmechanized recreation interests, which acts through committee(s) comprised of representatives from numerous Idaho recreation organizations, including the Idaho Off-Road 4x4 Club, the Gem State All-Terrain Vehicle (“ATV”) Association, the Idaho Aviation Association, the Backcountry Horsemen of Idaho, the Treasure Valley Trail Machine Association, the Gem State Mountain Bike Alliance, the Western Whitewater Association, and the Idaho State Snowmobile Association. IRC members use motorized and non-motorized means, including off-highway vehicles (motorcycles, all-terrain vehicles, jeeps/4 wheel drives), snowmobiles, horses, mountain bikes, boats, skiing and hiking, to access state and federally-managed lands throughout the United States and especially in Idaho, including the Forest Service-managed lands in the Payette National Forest at issue in this suit. IRC and its members attended public meetings, submitted input to the Forest, and otherwise participated in the process that generated the Travel Plan and ROD.

9. Plaintiffs Chris and Lois Schwarzhoff, are individuals and husband and wife, who have since 1990 recreated upon trails and areas within the Krassel Ranger District, and own property in Big Creek. During the period 1996 to 2003 they were one of the owners of the Big Creek Lodge. The Schwarzhoffs use and hope in the future to use to the extent authorized by the

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Forest, motorized means of access to travel routes and visit areas within the Krassel Ranger District. Many of these routes or areas have been closed to motorized access by the Travel Plan and ROD, making them extremely difficult, if not impossible, for Schwarzhoff's to safely and reasonably visit. The Schwarzhoffs participated in all aspects of the administrative process leading to the Travel Plan and ROD.

10. Plaintiff Big Creek Lodge and Outfitters, Inc. (the "Lodge") is a business which has and hopes in the future to continue, in accordance with a special use permit issued and administered by the Forest, to provide food, lodging and outfitting services in Big Creek. This Lodge has been in existence for 77 years. The Lodge's customer base is split between air traffic at the adjoining air strip, motorized recreationists and guided backcountry hunting, which typically would visit the Lodge from late May through early November. The owners and operators of the Lodge, as well as their visitors, use motorized means of access to travel routes and visit areas within the Krassel Ranger District. Many of these historically-accessed routes or areas have been closed to motorized access by the Travel Plan and ROD, making them extremely difficult, if not impossible, for the Lodge owners and visitors to safely and reasonably visit. The Travel Plan and ROD, coupled with severe fire damage to the Lodge in fall, 2008, have severely hampered, if not eliminated, the Lodge's ability to continue viable operations. The Lodge participated in all aspects of the administrative process leading to the Travel Plan and ROD.

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

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12. Defendant Payette National Forest is a subunit of the United States Forest Service comprised of approximately 2,300,000 acres of land located in Idaho. The Forest's main office is located in McCall.

13. Defendant Suzanne C. Rainville is the Forest Supervisor for the Payette National Forest. As her title implies, she is the supervisor for the Forest and is the ultimate authority for the actions, procedures and decisions of the Forest and is charged with ensuring the Forest complies with applicable law. She is sued solely in her official capacity.

LEGAL FRAMEWORK

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

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

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

16. NFMA establishes the statutory framework for management of the National Forest System. In NFMA and other statutes, “Congress has consistently acknowledged that the Forest Service must balance competing demands in managing National Forest System lands. Indeed, since Congress’ early regulation of the national forests, it has never been the case that “the national forests were...to be ‘set aside for non-use.’” *The Lands Council v. McNair*, 537 F.3d 981, 990 (9th Cir. 2008) (citations omitted). Additional guidance, incorporated expressly within NFMA, is offered in the Multiple-Use Sustained Yield Act (“MUSYA”), which provides that the various surface resources be managed “so that they are utilized in the combination that will best meet the needs of the American people” and to “achieve[] and maintain[] in perpetuity [] a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.” 16 U.S.C. § 531(a) (definition of “multiple use”) and (b) (definition of “sustained yield”); 16 U.S.C. § 1604(g) (incorporating MUSYA provisions in NFMA).

17. NFMA procedurally requires the Forest to prepare and revise a “forest plan.” 16 U.S.C. § 1604. A forest plan lays out broad guidelines to advance numerous goals and objectives, including to “insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resource, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish...” *Id.* at (g)(3)(A). These plans contain desired conditions, objectives and guidance for project and activity decisionmaking, but do not approve or execute projects and activities. 36 C.F.R. § 219.3 (2007). The guidance in the Forest Plan is

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subject to change through plan amendment in site-specific or project-level planning, or through revision of the Forest Plan itself. 36 C.F.R. § 219.12 (2007). Additional guidance and criteria are presented in activity-specific rules, such as the Travel Management Rule provides for motorized access to the Forest System.

18. On November 9, 2005, the Forest Service published in the Federal Register a Final Rule entitled “Travel Management; Designated Routes and Areas for Motor Vehicle Use.” 70 Fed.Reg. 68264-68291 (Nov. 9, 2005) (the “Travel Management Rule”). The Travel Management Rule was issued following publication of, and receipt of public comment upon, a proposed rule and was otherwise promulgated in accordance with notice-and-comment rulemaking procedures of the APA. As such, the Travel Management Rule carries force and effect of law and the procedures and provisions therein are binding upon the Forest Service.

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

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

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soils, watersheds, wildlife and associated habitats and conflicts between vehicle and other uses and within vehicle use types. *Id.* at (b).

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

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

21. The Payette National Forest lies in central Idaho. The Forest encompasses portions of four (4) Idaho counties and includes approximately 2,300,000 acres. The Forest includes lands ranging from the deepest recesses of Hell's Canyon to mountain peaks reaching almost 9,500 feet. The Forest's rivers and streams drain in the south and west to the Snake River, and in the north and east to the Salmon River. The Forest includes varied ecological communities including grasslands near Weiser to subalpine forests east of McCall. The Forest is home to eight (8) species of conifers, over 1,500 species of plants, and approximately 300 species of mammals and birds.

22. The Forest has long included outstanding and diverse opportunities for both motorized and nonmotorized recreation. Nonmotorized uses are emphasized on more than 40% of all land within the Forest including the congressionally-designated wilderness in the Frank Church River of No Return Wilderness and areas otherwise closed to motorized access. Multiple use including motorized travel has long occurred and been enjoyed by the public in many areas, specifically including 12 mining access roads detailed in paragraph 43 of this complaint. Aside from any intrinsic enjoyment associated with this access, motorized travel has long facilitated safe and efficient backcountry experiences for many different recreationists, ranging from Search and Rescue operations/training, dispersal of campers and hunters, ethical harvest and recovery of big game, and access for physically-challenged individuals. While many recreationists dream of a self-supported trip into the most remote of wilderness areas, far more are no longer capable of

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such a trip, cannot safely attempt one with their family/friends, lack the necessary time or equipment, or face other constraints making access/support through mechanized transport a logical necessity for their Forest experience.

23. The 2008 Travel Plan is one of a series of Forest planning activities. The governing land use plan for the Forest is the 2003 Land and Resource Management Plan (“LRMP” or “Forest Plan”). The Forest Plan reflects the broadest, programmatic planning direction, which outlines goals and objectives for multiple use resource management and identifies standards and guidelines which describe the sideboards within which specific activities will be conducted in accordance with more detailed project-level or site-specific planning. While it did for some activities, the 2003 Payette Forest Plan did not specifically address travel management planning. Instead, the 2003 Forest Plan reflects an agency decision to conduct travel management planning through a separate planning process(es). Travel management planning was last performed at the Forest Plan level through issuance of the 1988 Payette Forest Plan.

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

25. The 1988 Forest Plan generally established that the Forest would be “open” to vehicle travel except for those roads, trails or areas specifically restricted.

26. The broad direction of Forest Plans is necessarily augmented and/or amended by more detailed project and activity planning. This more detailed site-specific planning includes analysis of on-the-ground management options and associated effects to the human environment

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for each option. Such project level planning occurs for a broad spectrum of projects and activities within the Forest Service system, including vegetation management and timber projects, mining plans of operation, ski area development and operations, special use management such as guiding and outfitting, and travel management. A “Forest Travel Map” was revised by the Forest in 1995, and was updated annually until 2006.

27. Neither the 1995 Map nor any of its annual updates included formal travel planning including advance public notice and opportunity to participate under NEPA.

28. There has been confusion within the Forest Service as well as the public about the extent of the Forest’s transportation system and the various management prescriptions applicable to specific system components or other routes existing within the Forest. Some roads and trails have been laid out, constructed or engineered by the Forest Service or other public agency. These “planned” roads/trails encompass a variety of access modes, ranging from passenger-style automobiles to narrow trails for hiking-saddle stock use. Other routes pre-date creation of the Forest or have been created in conjunction with historical use of the Forest, including access in association with mining exploration/development, timbering, homesteading and private property access. The nature and extent of public, private and administrative access along all of these various types of routes has been highly variable based on their location, physical attributes and resultant ease of travel, areas/destinations accessed via the route, nature of activities in the area, and various other factors.

29. Notwithstanding the various above-described layers of planning, there remained considerable confusion amongst Forest visitors and disagreement about the optimal mix of recreation opportunities on the Forest. Particularly upon promulgation of the Travel

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Management Rule, the Forest initiated a planning process to designate roads, trails and areas for vehicle use in the project area.

B. Chronology of Travel Planning Process

30. On October 4, 2004, the Forest published a “notice of intent” advising the public of its intent to conduct a public planning process by which to manage summer and winter recreational access to the Forest. A “notice of intent” signifies the beginning of a period known as “scoping” during which the agency identifies the nature of the project, conducts outreach to the general public and to affected federal agencies, local governments, tribes and identified “stakeholder” interests. Five (5) public meetings were held, and comments were received through January 7, 2005.

31. A Draft Environmental Impact Statement (“DEIS”) was prepared in accordance with NEPA and was circulated beginning in February, 2006. The DEIS was originally intended to be available for public comment for 46 days, but the comment period was extended in response to public requests for a total of 92 days. Five (5) additional public meetings were held during which Forest personnel presented and received input on the DEIS. A total of approximately 450 comments were provided on the DEIS.

32. The DEIS presented a total of four (4) distinct alternatives to be analyzed in detail, including the legally-required “no action” alternative. Alternative A, the “no action” alternative, would maintain the present system of roads, trails, and areas open to motorized vehicles. Of course this alternative would not comply with the Travel Management Rule. Alternative B was designed to meet a variety of resources objectives. Alternative B would have slightly decreased existing road and motorized trails mileage, but would have increased the miles of trail designed specifically for ATVs. Alternative C was designed to respond to requests for

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more motorized access in summer. Alternative D was designed to respond to concerns about the effects of motorized access on recreationists desiring a non-motorized experience. Alternative D would have reduced roads and motorized trails more than in Alternative B.

33. A Final Environmental Impact Statement (“FEIS”) was published in April, 2007, and was available for public comment for 30 days. Analysis of comments to the DEIS apparently prompted the Forest to create a new alternative (“Alternative E”) in addition to those presented in the DEIS. Alternative E was developed in response to internal and external comments received on the draft EIS and attempted to balance resource protection, input from the public, and non-motorized and motorized recreation opportunities. Alternative E would have reduced roads and two-wheel motorized trails, and provided greater ATV and OHV opportunities than Alternatives B and D but less than Alternative C. All action alternatives would prohibit cross-country motorized travel on the approximately 500,000 acres currently open. Alternative E was identified in the FEIS as the preferred alternative.

34. Subsequent to release of the FEIS, Forest Service personnel engaged in both private and public meetings with interested publics, including an open meeting in Yellow Pine in October, 2007, seeking to respond to questions raised by local residents.

35. The Record of Decision (“ROD”) was released on October 3, 2008. The ROD adopts a variation of Alternative E. For the 12 roads in paragraph 43 of this complaint the ROD states (at p. 41) “[a]s funding allows, site specific analysis may be conducted in the area to identify routes for use as recreation trails.....” The ROD further acknowledges “[a]lthough used (the Backroads Guide) as a starting point, I recognize that it was not error free.” ROD at 15.

36. Within the 45-day period provided by the regulations the Forest received a total of 31 appeals from the ROD under 36 C.F.R. part 215. Of the 31 appeals, twenty-three (23) were

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filed by individuals, and eight by entities/organizations. On January 8, 2009, the Appeal Deciding Officer, Brent L. Larson, issued a decision affirming the ROD and rejecting all appeals.

37. The Appeal Deciding Officer indicated that his decision was based, in part, on “the Forest Supervisor’s commitment to further evaluate the concerns raised by appellants regarding the decision to not include certain roads and trails in the Big Creek/Yellowpine area in the designation for motor vehicle use.” The appeal decision further stated that the further evaluation promised by the Forest Service made it “unnecessary to reverse or remand” the Travel Plan ROD, and that “[r]emanding the decision would prevent realization of the benefits of a managed transportation [system] for the larger landscape of these two Ranger Districts.” *Id.* The appeal decision directs that the further evaluation “be completed and a decision issued not later than March of 2010 so that no more than one summer season is affected.” *Id.*

38. The appeal decision dated January 8, 2009, constitutes the final administrative determination of the U.S. Department of Agriculture and Forest Service regarding the Travel Plan appeals.

C. Summary of Challenged Decisions

39. Plaintiffs are largely concerned with the Forest’s restrictions on previously-existing travel by high clearance vehicles and all-terrain vehicles (“ATVs”) on the historical mining road network in the Big Creek and Yellow Pine area. These areas represent higher elevations with relatively easy access from a riding/navigational perspective providing breathtaking scenery and unique destinations in and near historic mining sites.

40. The historical background of the road network is both interesting and necessary in understanding the context of current travel planning. Warren was an important mining center and staging area for mineral development as early as 1862. Mining activity in the Big Creek area

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began in the 1880's and a Big Creek Mining District was formally established in 1883. The Thunder Mountain "gold rush" occurred from about 1902 to 1909, and the Big Creek area is about halfway between Warren and Thunder Mountain. Edwardsburg is located in this vicinity on Big Creek, and was founded in 1903. The trail from Warren to the Big Creek area was improved from a trail to a primitive wagon road, including funding from the State of Idaho in 1905 and completion of work in 1906 on a road construction project from Warren to the Lower Wardenhof mine cabin on Smith Creek.

41. The Warren-Profile Gap Road (Forest Service Road 50340) is the only road access into the Big Creek area, and is under Valley County jurisdiction. This road runs from Warren, Idaho, east over Elk Creek Summit into the Big Creek area. The road continues to Edwardsburg and then southeast through Profile Gap, eventually connecting to the McCall-Stibnite Road (Forest Service Road 50412) about 4 miles east of Yellow Pine, Idaho. From Yellow Pine one can travel back to State Highway 55. The two high points along this route, Elk Summit and Profile Gap (elevations 8,670 and 7,605, respectively) are sufficiently snow-free for automobile travel from early July through early November. Thus, one can drive a loop from McCall, Idaho along the above-described route, the entirety of which is authorized for travel by passenger vehicles.

42. The twelve mining roads at issue in this action largely originate from this road, and total more than 30 miles of routes that have been used for a minimum of 50 years up through 2008. Some of these routes have been constructed or reconstructed to allow transport of heavy equipment associated with mining activity, and are therefore have been, and in some cases still are, passable by full size automobiles. Other routes are less developed, and are more suitable for 4WD, "jeep" or ATV travel.

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43. Routes of particular interest to Plaintiffs, with numbers listed from the 2004 Big Creeks Roads Analysis Report, are the Smith Creek Road (50371), the Big Creek Loop (503408500), Cleveland Mine Road (503408540), Logan Creek Road (50343), Moscow Mine Road (503438000), Ludwig Mine Roads (503435000 and 503435500), Golden Cup Mine Roads (503406600 and 503406650), McCrea Mine Roads (503717000, 503717500 and 503442000), Wilson Mine Loop Road and extension (T20N R8E section 24), Red Metal Mine Road (T20N R9E section 30), and Quartz Creek Road and Cinnabar Mine Road (including the extension to Monumental Road 1290) (starting in T19N R9E section 34).

44. All of the routes described in the preceding paragraph were depicted as “open” to some form of vehicle travel on the Forest Travel Maps issued by the Forest to the general public, the last of which was produced in 1995.

45. All of the routes described in paragraph 43 were depicted as “open” in the 2004 Big Creek Roads Analysis Report prepared by the Krassel Ranger and his staff.

46. Since releasing the 1995 Payette National Forest Travel map, the Forest issued a document entitled “Payette National Forest Backroads - A guide to motorized roads and trails.” This “Backroads Guide” generally describes travel planning on the Forest, and purports to identify, through a series of maps, the roads/trails/areas open to vehicle travel. The Backroads Guide states “[i]f the road or trail is not shown on the map, then it is closed.” The Backroads Guide further states “this publication is only a general guide. The 1995 Forest Visitor/Travel Map provides more detailed information....” The routes in paragraph 43 are not depicted as “open” to vehicle travel in the Backroads Guide. The Backroads Guide was not developed using any NEPA process or other public planning process.

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47. The Backroads Guide and 2004 Big Creek Roads Analysis Report are inconsistent, if not contradictory, regarding the status of roads and trails in the Big Creek Area.

48. Between 1995 and 2008 the Forest did not conduct a public planning process changing the travel management status of roads in the Big Creek Area. In 1977 a special order was issued that was intended to initiate road closures and vehicle restrictions. The order did not list the closures or restriction, but referred to the 1995 Travel Map and annual errata sheets. The order was not “posted” in accordance with applicable regulations. No citations have ever been issued for use of the roads listed in paragraph 43 since the 1977 special order was issued.

49. The relationship between the Travel Map(s), the Backroads Guide, and any special order(s) has been a source of great confusion both within and beyond the Forest. During the travel planning process, on information and belief, many Forest employees and/or members of the planning team questioned the validity of the Backroads Guide and advised against relying solely on the Backroads Guide in determining the management status of specific routes.

50. All of the routes described in paragraph 43 were designated as closed to vehicle travel by the Travel Plan and ROD. These determinations were not based on a site-specific, route-by-route interdisciplinary analysis, but rather on a finding that the administrative “status quo” preceding the Travel Plan was that the routes were “closed” to vehicle travel by the general public.

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

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

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

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

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

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

COUNT TWO: VIOLATION OF NEPA (Inadequate Range of Alternatives)

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

57. NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives in an EIS. 40 C.F.R. § 1502.14. The alternatives section is considered the "heart" of an EIS. *Id.* A NEPA analysis is invalidated by the existence of a viable but unexamined alternative.

58. The Forest illegally determined that numerous routes in the Big Creek/Yellow Pine area, specifically those identified in paragraph 43 above, were closed to vehicle travel.

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59. The Forest's improper finding that routes in the Big Creek/Yellow Pine area were closed to vehicle travel resulted in legal violations and/or improperly infected the Travel Plan analysis in several notable ways:

(a) The Travel Plan documents illegally defined the "no action" alternative so as to "close" the referenced routes in the Big Creek/Yellow Pine area;

(b) The Travel Plan documents illegally refused to consider viable alternatives to the proposed action, namely one or more alternatives that would have allowed the referenced routes in the Big Creek/Yellow Pine area to remain open to vehicle travel, or some variation(s) of those routes or limited restrictions (such as season of use, vehicle type, use quotas) that would have allowed for some access to at least some of those routes.

60. The Forest's promise to conduct further planning is an imperfect, if not wholly unsatisfactory, remedy because such further planning proceeds from the assumption that the routes in question are closed by the ROD. Put colloquially, the Forest must now conclude there is a reason to "open" (or "reopen") those routes, as opposed to performing the yet-to-be-performed analysis that there is a reason to "close" currently open routes.

61. Defendants' failure to include one or more viable alternatives to the proposed action precluded full and proper public review and comment upon those alternatives.

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

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

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

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

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

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

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

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

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

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

COUNT FOUR: VIOLATION OF NEPA (Deficient Socioeconomic Analysis)

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

72. The term "effects" is defined broadly in NEPA to include not only effects on natural resources, but also "aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8. "Cumulative impact" is also a defined term, referring to "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions....Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." *Id.* at § 1508.7.

73. The communities in the Forest, and more specifically the Big Creek/Yellow Pine area, are struggling to remain viable. In Yellow Pine, year-round occupation is possible only with some meaningful connection to, and support from, the "outside world." Historically-dominant uses such as mining and timber harvest have been dramatically reduced, and the remaining handful of businesses in the Big Creek/Yellow Pine area depend heavily, if not entirely, on tourism-related traffic to and through their communities.

Exhibit B

74. The Travel Plan decision continues a series of decisions threatening the continued viability of Big Creek/Yellow Pine business operations. These decisions include restrictions on commodity-related uses on the Forest, forest health and fire management decisions which have complicated access to the area, and declining recreational opportunities. Looking forward, the Forest is planning to issue a winter season travel plan, which threatens restrictions on snowmobile and other winter modes of travel that could further challenge residents and businesses in the Big Creek/Yellow Pine area.

75. The above-described impacts, in conjunction with the Travel Plan, have cumulative impacts that place an undue strain on the viability of Big Creek/Yellow Pine businesses and residents.

76. The Travel Plan fails to adequately disclose and analyze these socioeconomic effects and impacts, both as tied to Travel Plan itself and in light of past, present and reasonably foreseeable future actions.

77. These present and cumulative socioeconomic effects, in conjunction with potential effects to the physical environment and/or other aspects of the human environment, constitute “significant” effects that should be analyzed in a more comprehensive Environmental Impact Statement.

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

Exhibit B

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

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

REQUEST FOR RELIEF

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

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

MOORE SMITH BUXTON & TURCKE, CHTD.

/s/ Paul A. Turcke

Paul A. Turcke
Of Attorneys for Plaintiffs