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# Western Environmental Law Center

Sent via U.S. Mail (delivery confirmation) and e-mail

February 13, 2019

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**Re: Notice of intent to sue the Forest Service for failing to protect and defend public access rights in the Crazy Mountains**.

Dear Ms. Erikson, Ms. Marten, and Ms. Christiansen:

The Western Environmental Law Center ("WELC") hereby notifies the U.S. Forest Service ("Service") that it intends to pursue a civil action challenging the Service's failure to protect and defend public access rights in the Crazy Mountains.

This civil action will be brought under to the Administrative Procedures Act ("APA"), 5 U.S.C. § 706, for non-compliance with the National

Environmental Policy Act ("NEPA"), the National Forest Management Act ("NFMA"), NFMA's implementing regulations, 36 C.F.R. § 212 *et seq*., the 1987 Gallatin National Forest plan ("forest plan"), 2006 Gallatin National Forest Travel Management Plan ("travel plan"), and the Service's own policy, Forest Service Manual ("FSM") 5460.[1]

This notice is provided by WELC *on behalf* of the Montana Chapter of Backcountry Hunters and Anglers, Friends of the Crazy Mountains, Enhancing Montana's Wildlife and Habitat, the Skyline Sportsmen Association, John Daggett, Tony Schoonen, Harold Johns, Justin Mandic, and the John Gibson (collectively "the Coalition").

This Coalition is made up of informed and engaged organizations and individuals, including many hunters and anglers, hikers, and recreationalists who value our public lands and the challenge, peace, and solitude that occurs with a backcountry experience. These organizations and individuals value the wild lands and wildlife that make the Crazy Mountains a special place and actively work across Montana to protect our natural resources and, when necessary, defend public access to our public lands. These organizations and individuals are committed to ensuring opportunities for outdoor recreation remain on our public lands for future generations. Ensuring public access to our public lands is the only way to ensure our kids will have the same opportunities in the future. As aptly noted by the acting District Ranger for the Crazy Mountains, "[f]or most kids in Montana and in our Nation, the national forest is the only 'ranch' they'll ever own" so the Service's duty to protect the public's ability to access National Forest lands must be taken "very seriously."

The Coalition is intimately familiar with the Crazy Mountains and has and continues to use the existing, public trails depicted on the Service's maps, forest plan, and travel plan (and road access to such trails) for all forms of outdoor recreation, including hiking, fishing, and hunting.

Increasingly, however, members of the Coalition have been and continue to be confronted with locked gates and "no forest service access" signs on well-known and historic public trails. They also routinely encounter "no trespassing" signs and "keep out" or "permission required" signs at public trailheads and along public trails. In addition, they have encountered and continue to encounter brush piles in the middle of public trails, spots where someone has removed National Forest signs, blazes, and trail markers and

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[1] This notice is not required by the APA but is being provided solely as a courtesy to the Service and with the hope of discussing and resolving these issues in a timely fashion and before proceeding to court.

sometimes intimidation from some landowners. All of this is occurring on public National Forest System trails in the Crazy Mountains.

This obstruction is having a chilling effect on members of the Coalition, the public at large, and its confidence in using public trails in the Crazy Mountains. Some members of the Coalition are concerned for their safety. Others are simply unwilling to deal with the hassle and intimidation from landowners or risk the confrontation and consequences (including a potential trespass citation) that comes with bypassing or climbing an illegal fence or ignoring a "no trespass" sign in order to access public trails in the Crazy Mountains. Others continue to use the trails but their experience is tainted by the landowners' actions and intimidation. Over the last few years, the situation has only intensified and escalated.

Many of the Coalition's members, supporters, and staff now feel they are effectively shut out of portions of the Crazy Mountains due to the illegal and obstructive actions of some landowners who insist the public has no right to use and access historic trails in the Crazy Mountains. The Coalition is thus compelled to submit this notice letter and, if necessary, pursue legal action.

The Coalition is particularly concerned about the Service's decision and/or related failure to protect and defend public access on *five* specific trails in the Crazy Mountains:

- Lowline Porcupine trail (No. 267);
- Elk Creek trail (No. 195);
- Sweetgrass trail (No. 122);
- East Trunk trail (No. 136, formerly No. 115); and
- Swamp Lake trail (No. 43).[2]

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[2] A reference to a "trail" in this notice includes the trail itself and, where applicable, any road access to the trailhead. In addition to these five trails, the Coalition is also investigating other trails that may be illegally obstructed in the Crazy Mountains. The Coalition is actively working to compile additional information on these trails. The Coalition is also aware that a number of historic trails simply disappeared from the Service's maps without any public notice, input, review or analysis. For example, there was once a trail that encircled the Crazy Mountains and connected historic Service guard stations (many of which are now rental cabins). The 1937 printing of the then Absaroka National Forest map that hangs in the Service's

On the west-side of the Crazy Mountains, the Lower Porcupine trail (No. 267) and lower portion of Elk Creek trail (No. 195) are currently being obstructed. The Service's trail markers, signs, and fencing have been removed, there are large brush piles blocking the trails, and there is a locked gate blocking access. This is all well-documented by members of the public, including members of the Coalition, and well-documented by the Service's own staff which has a sizable file on the landowner's actions (including documentation of complaints).

On the east-side, the Sweetgrass trail (No. 122) is blocked with a locked gate and signs telling members of the public the route is "private land" and "private property" requiring permissive use. The National Forest signs and markers are gone and some landowners insist the public has no prescriptive or deeded rights to use the public trail. Access to the Swamp Lake trail (No. 43) and East Trunk trail (No. 136, formerly No. 155) on the east-side are also obstructed. Coalition members have reported a locked gate across the East Trunk trail, intimidation, threats, and bullying, as well as signs reading "the Service has no easement to enter – this is private property." The Service's trail markers, blazes, and signs have also been removed.

Based on our review of the Service's own documents (obtained via numerous FOIA requests), the original railroad grants, historic documents and files, forest plan maps, travel plan maps (and related documents), trail maintenance records, and other information, there is no question that the public has had (for nearly a century) and continues to have a right of public access to each of these five (and likely more) illegally blocked trails.

In fact, when the Northern Pacific Railroad deeded their odd sections of the checkerboard land to private parties – on both the west-side and east-side of the Crazy Mountains – an easement for "public use" of these five existing routes across private property was expressly reserved. The Service acknowledges this fact in a number of internal e-mails and memorandum.

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Livingston ranger station clearly depicts this public travel route, as well as the historic guard stations it connected. The Porcupine Lowline trail (No. 267) and the East Trunk trail (No. 136, formerly No. 115) at issue here were part of this trail system. Other parts of this trail, however, mysteriously disappeared from the Service's maps. This includes trail No. 116 which used to connect trail No. 272 (Rock Creek) to trail No. 43 (Swamp Lake) and eventually connected up to trail No. 115 which extended north to Big Timber Canyon.

The Coalition was thus surprised by the Service's recent, August 15, 2018 statement that there are no "recorded easements" for these trails. This statement is inaccurate. It is also misleading because even if one assumes, *arguendo*, that no such "recorded easement" exists, the Service has been and remains well aware that it has a well-documented and valid prescriptive (unrecorded) easement on each of these five trails based on nearly a century of open, notorious, continuous, uninterrupted (and adverse) public use.

Indeed, each of these five trails were likely built, maintained, and mapped by the Service *well before* significant private land ownership occurred in the region. These five trails have also been maintained and continuously used by Service employees and rangers for administrative purposes (timber sales, grazing, public access) and members of the public to access National Forest lands in the Crazies for hunting, hiking, and other recreational pursuits. Again, this is well documented in a "sizeable file" held by the Service.

Moreover, to the extent any lingering doubt about the five trails' public status existed over the years, any such doubt was squarely put to rest during the 1987 forest planning process and, more recently, upon issuance of the 2006 travel plan for the Crazy Mountains. *All* five of the trails at issue here – Nos. 267, 195, 122, 136/115, and 43 – were carefully analyzed, mapped, and included in the 2006 travel plan as public trails (and roads) open to public access.

For example, when pressed on this issue during the 2006 travel plan's comment and appeal process, the Service's response was unequivocal: "The Forest asserts that the Forest and the public has enjoyed the right to use this National Forest Trail [No. 267] for many decades for the prescribed uses. While recorded (written) easements don't' exists for all segments of the trail (some do on other private lands along this trail), the Forest asserts the right to continue to use this route for public and administrative uses." Resp. to letter No. 1155 concerning the Porcupine Lowline trail (No. 267); *see also e.g.*, Resp. to letter No.1008 concerning the Sweetgrass trail (No. 122) (same).[3]

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[3] To the extent the private landowners disagreed with the Service's position on these five trails during the 2006 travel planning process – which they clearly did as evidenced by their comments, administrative appeals, and correspondence with the Service (via U.S. mail and e-mail) – they should have pursued a Quite Title Action pursuant to 28 U.S.C. § 2409a. However, having failed to do so, it is now too late because such actions have to be commenced "within twelve years of the date upon which it accrued" and such actions are "deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United

As such, the Service is well aware that: (1) these five trails are public trails depicted on National Forest System maps and expressly included in the 2006 travel plan as open for public use and enjoyment; and (2) these five trails are being illegally obstructed and/or blocked at various access points (as described above and well documented by members of the public). Again, all of this information is on file with the Service.

To date, however, the Service has been and remains unwilling to take any meaningful steps – beyond multi-year, voluntary discussions with landowners – to address such illegal obstructions even though it now concedes in a recent briefing paper that it is a problem that is getting worse and becoming "increasingly common" across the Custer Gallatin National Forest and the Northern Region.

In an October 2, 2015 letter to Senator Daines about the landowners' "illegal" actions to obstruct public use of public trails, the Service stated that the "process for resolving this and other comparable access disputes is expensive, lengthy and time consuming. With limited staff and budget, the Forest is unable to immediately address these complex property law issues and often times these disputes remain unresolved until brought before a court of law . . . the [Service] is rarely in a position to forcibly remove illegally placed barriers to access . . . the resolution process can be quite lengthy and it is not likely to conclude prior to the end of this year's hunting season." In other words, the Service does not have the time, money, or apparently the appetite to resolve what it acknowledges is illegal activity that is harming the public interest. Essentially the Service is too busy and too distracted to protect public access to our public lands in the Crazy Mountains.

This was not always the case. Back in 2009, for instance, then District Ranger Ron Archuleta drafted a letter to the private landowners requesting that all "keep out" and "trail closed" signs posted on the Porcupine Lowline Trail (No. 267) and the locked gate placed on the trail near the Porcupine Cabin be removed because they are illegal and impede public use of the public trail. The District Ranger also informed the landowner that the Service planned to "improve the trail marking and signing along the entire trail route." But nothing came of this letter and no follow up occurred. The "keep out," "no Forest Service access," and "trail closed" signs remained up,

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States," *id*. at § 2409(g). The private landowners have known about the Service's claims to these five trails for decades (and likely when they or their predecessors first acquired the property) and certainly knew about the Service's claims in 2006, during the travel planning process.

the gate locked, and any and all Service signs (that were replaced) were removed once again.

Similar and more recent efforts by the current District Ranger to respectfully (but forcibly) address the continued and on-going illegal obstruction of these five public trails has also been rebuffed. This District Ranger was also recently removed and reassigned after correctly informing the public that it need not (and should not) ask for permission from private landowners to use existing, public trails on Service maps, including the trails at issue here. He was later restored to his District Ranger post because he was correct: the public does not need permission to access public trails.

Over the years, members of the Coalition and public have called, filed complaints, sent in photos, and spoken with staff from the Service, the County, and the Montana Department of Fish, Wildlife and Parks about illegal obstruction on these five trails. In so doing, these members received reassurance that the actions by the private landowners are illegal but no on-the-ground or meaningful changes or actions were ever taken. One member of the public was told that while the Service "agrees with his position that what the landowner is doing is illegal," agency staff are nonetheless "afraid of cutting the lock themselves because they don't have support from their supervisors."

As such, the problem remains unresolved. Illegal obstruction and destruction of government property continues and the public loses. The Service is violating the public trust by failing to protect its existing access rights on these five trails, failing to take action necessary to defend such rights, and failing to resolve any and all such disputes with the landowners in a timely fashion.

Many of the same landowners who are illegally obstructing and illegally blocking access to public trials also hold special use permits for commercial outfitting (including a private "hunting club") or grazing operations on our National Forest lands. So while these landowners are illegally blocking public access to big game on our National Forest lands they are simultaneously getting rich selling such access to wealthy (and typically out-of-state) hunters pursuant to a commercial outfitting permit. As correctly noted by one Service employee in a July, 2013 staff e-mail: "The Crazy Mountains have basically been appropriated by a bunch of landed rancher-outfitter business men (and a multinational corporation), because [the Service] has not sued to protect and perfect public interests . . . the public wildlife on this land has been appropriated by these same people and their 'hunt clubs.'"

The status quo is thus unacceptable and the Service has and continues to fail to live up to its legal duties, trust responsibilities, and moral obligation to protect and defend public access rights on public National Forest trails in the Crazy Mountains.

Pursuant to NFMA, NFMA's implementing regulations, and the Service's own forest plan, travel plan, and policy, the Agency is directed to protect and defend public access to public lands in the Crazy Mountains including, *inter alia*, public access on the five specific trails discussed herein.

NFMA, 16 U.S.C. § 1604 (g)(3)(A), directs the Service to provide for outdoor recreation on our National Forest lands and, as specifically noted in the forest plan for the Crazy Mountains, provide "public access to National Forest lands." Forest Plan at p. II-1. Providing for "adequate public access to National Forest lands is of high priority" and, as such, the Service commits itself in its own forest plan to displaying recreational opportunities (and any restrictions) on travel maps for the public and ensuring that existing "opportunities for recreational hunting" are maintained. *Id.* at p. II-2. In furtherance of this objective, the Service also commits itself to building and maintaining facilities at trailheads and providing guides, displays, and signs at all existing trails to provide for "safe public access." *Id.* None of this is happening with respect to the five trails discussed herein.

In 2006, and after extensive public review, comment (and appeals), the Service adopted a new travel plan which amended the forest plan with new direction for how to manage the forest's roads and trails and public access.

Relevant here, the 2006 travel plan builds on the public access commitments from the forest plan and includes detailed goals, objectives and guidelines designed to protect and provide for public access of existing roads and trails (including the five trails discussed herein). *See* Detailed Description of Travel Plan ("travel plan") at p. I-3 (discussing access goal of providing and maintaining public access and the objective to acquire or perfect necessary easements to insure such access on the disputed trails).

The 2006 travel plan also identifies specific roads and trails - including the five trails discussed here – where it will manage for the "emphasized" use of public access (hiking) and where disputes are occurring and where access rights need to be protected. *Id.* at p. I-4 (table I-3). In accordance Guideline B-5, entitled "protect existing access rights," the Service expressly states that in "situations where continued use of historical road or trail access route is challenged or closed, the Service *will take actions necessary to protect the existing access right* to National Forest System lands, and to protect the

jurisdictional status of roads and trails in cooperation with area counties." *Id.* at p. I-10 (emphasis added).[4]

This is consistent with the Service's regulations and policy directing the Agency to: (1) ensure that the public's ability to enter National Forest lands and use existing roads and trails is "permitted for all proper and lawful purposes subject to compliance with rules and regulations . . ."; and (2) obtain needed access to such National Forest lands "as promptly as feasible" for any trails or roads that are the subject of dispute. 36 C.F.R. §§ 212.6(a), (c); *see also* Forest Service Manual ("FSM"), Region 1 Supplement 5460.3 (discussing the Service's policy for resolving road and trail disputes "as soon as feasible" in accordance with the implementing regulations, 36 C.F.R. §§ 212.6(a),(c)).

But again, none of this is occurring on the five trails at issue here. The Service is not managing and maintaining these five trails for public access, not permitting access on existing trails, and not taking needed action to ensure public access continues and any and all outstanding disputes are resolved "as promptly as feasible."

According to the Service's own policy, "[w]henever an action or threat interferes with continued use and management of a road or trail and the Forest Service has not perfected title, *the following actions need to be taken* by the Forest Supervisor . . . Evaluate status evidence to determine historic United States investment, management, maintenance, and use of the facility . . . If supported by historic evidence, execute a Statement of Interest . . . Notify the private landowner by certified mail that the United States has acquired an easement across the property . . . [and] Submit the recorded original to the Regional Office for the permanent files." FSM 5460.3(11) (emphasis added).

Here, the Service has a "sizable file" on all of the five trails and all of the historic and current evidence it needs to assert a recorded easement on certain section so private land (from the railroad grants) and/or establish a

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[4] In a sworn declaration, Robert Dennee, the Gallatin National Forest's Lands Program Manager who helped prepare the 2006 travel plan and draft the applicable plan components pertaining to access needs, stated that the Service's "direction and policy" is to "acquire perpetual road and trail easements across non-[National Forest system] lands needed to assure adequate management and protection of National Forest resources and values" and in situations where disputes arise, i.e., in situations where continued use of a historical road or trail access route is challenged or closed, the Service's "direction and policy is also to take actions necessary to protect the existing access rights to [our National Forest System] lands."

prescriptive easement on each of the five trails and file a statement of interest. The Service complains of resource and time constraints, but the evidence needed to prove a prescriptive easement has already been compiled and the subsequent filing of a statement of interest – a few page document – is not a heavy lift (draft statements of interest for many of the five trails may already be on file with the Service). Indeed, records obtained from the Service reveal a statement of interest was filed for thirty-six (36) disputed trail segments on the Gallatin National Forest in October, 1991 pursuant to a simple form with related maps.

In the end, however, and despite the Service's trust obligations, statutory and regulatory duties, own directives, and own policy regarding its duty to maintain and protect public access on public trails, no meaningful and effective measures or steps are being taken to resolve the problem. Nor has the Service explained how its decision and/or failure to address the access problems on these five trails complies with NFMA, NFMA's implementing regulations, its own forest and travel plan components, or its own policy.

Instead, somewhere along the way – perhaps over the last year or two and most likely at the direction of a new leadership, a new Secretary of Agriculture, and a new administration – the Service made the conscious decision to back off.

The Service stated it will only seek to protect and defend public access to our public lands in the Crazy Mountains through "mutual agreement" with the private landowners. In other words, instead of addressing the locked gates, illegal signs, intimidation, and destruction of federal property head on and taking immediate steps to restore trail markers and ensure public access and proper maintenance on existing trails and/or filing statements of interest (in accordance with its own policy), the Service is dedicating all of its time, energy, and its limited resources into multi-year discussions with private landowners and its "working group" to try and resolve any and all trail and access disputes by "mutual agreement."

On its face, this is a reasonable approach – at least in theory. But a closer examination of the "working group" and its multi-year talks reveal they operate at the public's expense. The meetings – which are attended by Service personal and influence public land management in the Crazy Mountains – are not noticed or open to the public and they are facilitated by an attorney paid for by the landowners. Further, the landowners have refused and continue to refuse to stop their illegal obstruction practices during these multi-year "negotiations" with the working group. The gates on the disputed trails remained locked, the "no trespassing" and "no Forest Service access" signs remain up, and the public – including members of the

Coalition – are effectively locked out of our National Forest lands in the Crazy Mountains while "good faith" negotiations drag on. As such, time is working for the landowners and its working group but against the public interest.

Previously, the Service insisted in response to comments on the 2006 travel plan that it would only work "with any landowner in agreeing to a long-term location and easement . . . as long as the public and administrative interests are preserved." This, apparently, is no longer the case.

For example, on the Porcupine Lowline trail (No. 267), the Service has been engaged in negotiations with landowners and recently announced its decision and plans for a potential trail re-route that will involve: (a) constructing approximately 8 miles of new trail on steeper terrain on National Forest lands in big game habitat (and across streams); (b) acquiring some easements across private property in the area; and (c) the relinquishment of the public's interest on the current Porcupine Lowline trail (No. 267) and lower portions of the Elk Creek trail (No. 195). But as part of these negotiations, the Service never insisted that the landowner first end its illegal and harmful practice of blocking public access on these public trails. This is true despite repeated requests from the public to do so. Adding insult to injury, the Service has also announced that this project will move forward in the absence of any new environmental review or analysis or consideration of alternatives, including a "no action" alternative that questions whether such a re-route is even necessary given the Service's existing, prescriptive easement to the trail.[5]

On the east-side, the Service also asserts that it will continue to work with private landowners to find a solution the disputed trails. But no details or meaningful commitments and timelines are provided. And, as noted above,

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[5] After conducting scoping, the Service's now insists that this re-route decision is covered by the Agency's earlier 2006 travel plan EIS and a 2008 forest-wide EA addressing site-specific impacts for new road and trail projects. This is incorrect. Neither of these two previous NEPA documents analyze the impacts (direct, indirect, and cumulative) of this new re-route or consider a reasonable range of alternatives to it. Moving forward with this project in the absence of a new analysis is thus a blatant violation of NEPA. This decision may also conflict with NFMA (due to inconsistencies with the forest plan and travel plan), the inventory and survey requirements of the National Historic Preservation Act ("NHPA"), and the conferencing requirements of the Endangered Species Act ("ESA") for species proposed for listing, like the wolverine, and consultation requirements for threatened species, including Canada lynx (verified in the area).

public access to such trails remains blocked and the "no trespassing," "no Forest Service access," and "ask permission" signs and intimidation continues.

Further, while these "good faith" multi-year negotiations on both the west-side and east-side of the Crazy Mountains drag on (with the gates locked), some of the very landowners and their related organizations that are driving these negotiations are consulting with their attorneys, attempting to block and restrict public access and force members of the public to "ask for permission" to use the trails (to undermine future claims via reverse prescriptive rights), and actively engaging in a parallel effort to undermine the public's ability to even assert its rights to use such trails.

For example, in 2017, a number of landowners and their related organizations sent a letter to Senator Daines and Secretary Perdue claiming agency over-reach and challenging the Service's position that these are public trails. The landowners also asserted that the Service (and the District Ranger, in particular) are encouraging "trespass" on private lands when they encourage members of the public to use such trails without requesting permission. Senator Daines responded with additional questions for the Service and a word of caution for the Agency, noting that the "perceived directive" coming from the Service (to freely use our public trails without asking for permission) seemed to promote "controversy and aggressive action" rather than a mutually agreeable, collaborative approach.

Shortly thereafter, on June 7, 2017, then Rep. Pete Sessions (32nd District, Texas) sent a formal request to the Secretary Perdue and then Secretary Zinke asking them to "issue a directive precluding the Service from acquiring interest in lands by prescription and disavowing the use of so-called Statements of Interests." Rep. Sessions also suggested that the Service had "gone rogue."[6]

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[6] Members of the Coalition sent a FOIA request and reached out to then Rep. Sessions' legislative director for more information about his request for a new "directive" but never received a response. Former Rep. Sessions' got involved because one of his constituents is the owner of the Wonder Ranch who recently lost his Quite Title Action against the Service at the Ninth Circuit. *See Wonder Ranch LLC v. United States*, 2018 WL 3153123 (9th Cir. June 28, 2018). In his letter, Rep. Sessions insists that the Federal Land Policy Management Act ("FLPMA"), 43 U.S.C. § 1715(a), precludes the Service from acquiring interests in land by prescription but this very argument was rejected by the Court who recognized that FLPMA does not apply because the "prescriptive easement arose before the enactment of the [statute]." 2018 WL 3153123 at *2 n.5. Further, even if one assumes, *arguendo*, that FLPMA does

The take away from these (and other) efforts is clear: while the Service continues to "work with landowners and others to discuss" access solutions and configurations in the Crazies and work in "good faith," the gates are up, the intimidation continues, and the public loses. And, during this period of "good faith" negotiations the private landowners continue to proceed on several fronts and use every political angle and tool they can to keep the public out, extinguish the public's ability to use existing trails, and ultimately prohibit the Service from doing its job.

The current situation is thus unacceptable as it continues to work against the public – both in terms of lack of access and allowing private landowners the ability undermine the public's (and any future Service) claim of a prescriptive easement. This was precisely the tactic used in the *Wonder Ranch* litigation (fortunately unsuccessfully).

For these reasons, the Coalition is putting the Service on notice that it intends to pursue a civil action challenging the Service's decision and/or failure to defend public access to our public lands and preserve historic access routes in the Crazy Mountains. The Coalition also intends to challenge the Service's decision to forgo new NEPA on the west-side for the proposed trail re-route and, relatedly, intends to pursue additional claims on both the west-side and east-side for non-compliance with NFMA, NFMA's implementing regulations, the forest plan, 2006 travel plan, and the Service's own directives and policy, all of which imposes a duty on the Service to protect and defend public access to our public lands in the Crazy Mountains.

Prior to doing so, however, we would welcome the opportunity to meet and discuss these issues further with you and Service personnel – preferably within the next thirty (30) days and *before* the Service relinquishes any public access rights on public trails or begins any on-the-ground work on a proposed re-route in the Crazy Mountains.

Thank you in advance for taking the time to consider the concerns and issues raised in this letter. We look forward to hearing from you.

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apply, former Rep. Sessions' interpretation that it precludes prescriptive easements is wrong. FLPMA simply empowers the Service to acquire interests in land by purchase, exchange, donation, or eminent domain. By its own terms, it does not prevent acquisition by other means, including prescription which is well-documented in the relevant case law.

Sincerely,

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