

Data Submitted (UTC 11): 6/6/2019 6:00:00 AM

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Comments: Montana Mountain Bike Alliance respectfully offers the following summary of legislative and legal history that is relevant to the Custer Gallatin Forest planning process as applied to the Hyalite Porcupine Buffalo Horn Wilderness Study Area. The Conclusion holds our recommendation.

Legal Concerns about continuation of the Hyalite Porcupine Buffalo Horn Wilderness Study Area Interim Travel Plan

Summary

The Montana Wilderness Study Act of 1977, over the 40+ years of its existence, has been overrun by conservation organizations pressuring various Regional Forests to overreact to court rulings, disenfranchising public access to bicycle recreation. While trying to comply with several judgments from the Ninth Circuit Court, Custer Gallatin National Forest (CGNF) has implemented unwarranted Travel Plan restrictions for nine years, restrictions that exceed the intent of the 95th Congress.

The judgments stated many things, but foremost was that the Forest must manage the HPBHWSA to maintain wilderness character, while maintaining recreation. What has occurred though is a blatant favoritism; allowing and even encouraging massive crowds to impact the WSA summer and winter from all of the Hyalite trailheads. These crowds, mostly on foot, have pounded the trails into new shapes, created shortcuts, and prompted enlargements of trailhead parking facilities, perpetuating the human onslaught. Bicyclists were targeted, and participated in Time Share negotiations, reducing their impacts but no such management has been attempted for the hordes of hikers and ice climbers.

Careless motorcycle riders shortcutting every switchback on the Storm Castle Divide trail have ruined both the trail and the experience of others on that trail. No management has been attempted. The Custer-Gallatin NF has a record of closing trails to selected recreation types rather than engaging clubs or managing volumes of users. Many methods could be employed to maintain wilderness character; but selecting certain recreation types to restrict, without specific justification and without attempting incremental management, is wrong.

Now in 2019 it's past time to manage rather than eliminate recreation. From 2001 to 2006 bicyclists participated in good faith in the 5-year NEPA travel planning process. While the outcome wasn't perfect and some trail access was lost, cyclists adapted. Lawsuit judgments identified impacts from large groups of motorcycle riders, impacting wilderness character. Without NEPA compliance, and without adherence to the court remand, CGNF imposed a large amount of closures, incorrectly lumping bicycles in with motorcycles for most of those closures. Management should have been attempted, but wasn't because of the litigious nature of the conservation organizations (plaintiffs). Cyclists have been shortchanged in this process, losing access to trails, losing time. Losing an entire decade of recreation and enjoyment of the grand Gallatin Crest Trail with friends and family. In human terms, time lost can be the worst outcome of indefinite closures. We only have

our finite time on the planet; time lost can't be retrieved.

An Iconic Experience

Of all the trails in the Hyalite Porcupine Buffalo Horn wilderness Study Area, the Gallatin Crest Trail #96 stands apart. Traversing the trail takes commitment, planning, self-sufficiency, and a lot of grit. Its rewards are infinite vistas and reliable solitude. A world apart, no other trail in the HPBHWSA is equal. There is no substitute. Across Montana there is no substitute.

Bicyclists used to revere the Crest Trail. Since the early 1980s it gained legendary status among adventurous cyclists. We would ride many miles of increasingly difficult trails during the early summer, building strength and endurance to ready ourselves for a ride along the Crest (aka Devils Backbone). This through route, from Hyalite to Windy Pass, was a big deal. Setting up a return shuttle at Portal Creek was required. Each rider had to check and double check every scrap of food, spare parts, tubes and tools. Bring two lunches. Bring foul weather clothing. Be prepared for the worst. Our normal riding packs would strain to contain their expanded loads. Sleep the night before, usually the first weekend of August, was hit or miss. Rise at 3:30 and jam down a breakfast.

Then head to the gathering spot, usually someone's front yard, where gear and bikes were checked once again by flashlight, and the last gulps of coffee were downed. Usually we crammed into one vehicle, because one vehicle was all we had parked for a return shuttle. (Most Crest rides had less than 6 riders) We would slowly drive to Grotto Falls Trailhead for an "Alpine Start."

Riding the Crest wasn't a hasty endeavor but more of a practiced pace, an enjoyable progression. Sure we often wound up huddled under sparse tree branches while ducking from a hailstorm, we would bonk and we would also eat all of our food. But traveling along that trail was a visual delight, we felt so lucky and privileged to be doing it. The trail is an elevated path, literally above the distinctly different and separate ecosystems to the east and west below it. We strove for a pace slow enough to take in the surroundings. We would often stop to stroll over to the edge of an escarpment. Sometimes herds of elk could be

spotted in the basins below. For 17 miles one travels the heights of the Gallatin Range between 9 and 10 thousand feet in elevation. Wildlife at those higher elevations is almost exclusively ravens, marmots, bighorn sheep, and mountain goats. For Montana's bicyclists, this trail has been a unique gift. It's incredibly special. Usually we would reach Windy Pass by 6 or 7 p.m., lingering as long as possible, then head down the trail to our shuttle vehicle. For most people this outing would represent the zenith of their summer. We were satisfied for another year, and smug in the knowledge that we were very low impact, that the trail was bicycle friendly and was/is the lowest impact route through the Range. We had pictures and memories to share until the next year; life in Montana was grand.

Sadly without any attempt to manage or understand, this experience has been removed in order to quell special interest conservation groups quest for wilderness through litigation.

Congressional Intent

From the Committee on Interior and Insular Affairs, Representative Morris Udall issued a report September 28, 1977. The report accompanied final legislation for S 393. This vital report covered details for the act plus dissenting views that were left from the final act for brevity. Here is the report's final paragraph:

Off Road Vehicle Use

"The use of off-road vehicles, while generally prohibited in designated wilderness areas, is entirely appropriate in wilderness study areas, including the nine areas in S. 393. Nothing in S. 393 will prohibit the use of off road vehicles, unless the normal Forest Service planning process and travel planning process, which applies to all national forest lands, determines off road vehicle use to be inappropriate in a given area. Of course, commonsense dictates that certain areas may be temporarily closed to off road vehicle use where fire danger or physical damage to terrain indicate closure is warranted. However, absent such circumstances or Forest Service planning decisions, it is the intention of the committee that the areas in S. 393 (and other wilderness study areas) remain open to off road vehicle use unless and until they are formally designated as wilderness."

During October 18, 1977 House hearings for S 393, several topics were explained and debated. One topic was continued use of off road vehicles within Wilderness Study Areas. The other topic was the fear of creating de facto wilderness that would endure into perpetuity. Both of these topics were tied to an air of urgency to pass the bill, in order to start the five-year timeline for wilderness study and two-year timeline for presidential recommendation. Congressional committee was assured that the study and recommendation process could occur within those seven years. Hope was expressed that amendments could be added later. The Montana Wilderness Study bill was passed weeks later in November 1977.

The bill did not contain language about off road vehicle use; this language was contained in the committee report that accompanied S 393. During the House hearing, this topic was visited again. Congressional intent by both parties, and by both proponents and opponents of the bill, was to allow continued vehicle access to these Montana areas until such a time they become congressionally designated. After examining congressional record it's apparent without any doubt that S 393 would not have passed unless this fact of management was true.

Here follows excerpts from the October 18, 1977 hearing:

Teno Roncalio, a Democratic Representative from Wyoming, states: "Under the law, wilderness study areas are to be managed so as to preserve their wilderness characteristics. However, this does not mean they are to be managed as if they had already been designated as wilderness. For example, in wilderness study areas the use of off road vehicles is permitted. In designated areas it is not."

Gillis Long, a Democratic Representative from Louisiana, states: [ldquo]Additionally, the bill contains a provision which allows existing uses such as snowmobiling and off-road vehicle use to continue virtually unaffected during the course of the study.[rdquo]

Max Baucus, a Democratic Representative from Montana read from a letter by Rupert Cutler, USDA Assistant Secretary. [ldquo]The use of off-road vehicles, while generally prohibited in designated wilderness areas, is entirely appropriate in wilderness study areas, including the nine areas contained in S 393. Nothing in S 393 will prohibit the use of off-road vehicles, unless the normal Forest Service planning process and travel planning process, which applies to all national forest lands, determines off- road vehicle use to be inappropriate in a given area. Of course, commonsense dictates that certain areas may be temporarily closed to off- road vehicle use where fire danger or physical damage to terrain indicate a closure is warranted. However, absent such circumstances or Forest service planning decisions, it is the intention of the committee that the areas in S 393 (and other wilderness study areas) remain open to off-road vehicle use unless and until they are formally designated as wilderness.[rdquo]

Representative Max Baucus also read a letter from Derrick Crandall, Director of Government Affairs for the International Snowmobile Industry Association:

[ldquo]As you know, both the Montana Snowmobile Association and our organization originally were actively opposed to the legislation during the 94th Congress because of the immediate closure of areas now open to snowmobiling which would have resulted.[rdquo]

[ldquo]Subsequently, and in part through your efforts, clarifying statements by the Senate author of the legislation have asserted that current

snowmobiling usage shall be authorized until and unless Congress acts to designate these areas as Wilderness because snowmobiling results in no permanent, adverse effects.[rdquo] [ldquo]We rely upon your judgment to protect the legitimate interests of snowmobilers in Montana.[rdquo]

Were Congressional Democrats trying to bait and switch the facts? Were they trying to deceive opponents about bill details? We say not, the record is irrefutable. We believe that Congress intended for recreational activity to continue, subject to management adjustments in order to maintain wilderness characteristics. In other words, recreation activity alone doesn[rsquo]t degrade wilderness character. Frequent and flagrantly abusive activity would be required to create negative impacts to the land. Such activity hasn[rsquo]t occurred; in fact bicyclists have been proven stewards for the betterment of the resource. Time hasn[rsquo]t altered the legislation, after 40+ years these areas are still wilderness study areas, and after 40+ years the language and intent of the Act still prevails.

Governmental Management

Excerpts from the [ldquo]Status and Use of Wilderness Study Areas[rdquo] by James Duffus III Director, Natural Resources Management Issues, United States General Accounting Office. Resources, Community, and Economic Development Division; a Sept. 23, 1993 letter to Bruce Vento, Chairman of Subcommittee on National Parks, Forests, and Public Works:

[ldquo]Notwithstanding this general mandate, the Congress has allowed for certain uses other than primitive recreation in wilderness study areas. For example, various types of motorized and mechanized recreation are allowed, such as riding all-terrain vehicles, motorcycles, snowmobiles, and mountain bikes. Such types of recreation occur in over 75 percent of wilderness study areas.[rdquo]

[ldquo]Despite the different views about the effects of uses in study areas, the ultimate decision about wilderness designation rests with the Congress. Once an area is designated as wilderness, motorized and mechanized uses are generally prohibited.[rdquo]

[ldquo]Various Uses Exist in Study Areas. We divided the major types of study area uses into three categories:

1. primitive recreation, such as hiking, backpacking, fishing, and hunting;
2. motorized and mechanized recreation, such as using off-road vehicles, all terrain vehicles, snowmobiles, and mountain bikes; and
3. nonrecreational uses, such as mining, livestock grazing, and mineral leasing.[rdquo]

While this next important excerpt is relatively recent when compared to the age of the Montana Wilderness Study Act of 1977, it does note how the wilderness characteristics of 1977 may differ from today[rsquo]s evaluations of wilderness characteristics within designated Wilderness. It notes that 1977 standards are to

be used. This 2008 guideline (currently in affect) also makes a clear distinction showing that off-road vehicle use of any kind is apart from wilderness characteristics of 1977:

FOREST SERVICE MANUAL NORTHERN REGION (REGION 1) MISSOULA, MT

FSM 2300 [ndash] RECREATION, WILDERNESS, AND RELATED RESOURCE MANAGEMENT

2329 [ndash] MANAGEMENT OF WILDERNESS STUDY AREAS

1. Manage Montana Wilderness Study Areas (MWSA) to maintain wilderness character as it existed at time of designation (1977) and potential for inclusion of the area in the National Wilderness Preservation System

(NWPS).

1. When making project level decisions (for example, trail maintenance, relocation, improvement, construction, reconstruction, permitted uses, and closures), the line officer must consider the effect of the decision on the wilderness character as it existed in 1977 (see Exhibit 01 for definition of wilderness characteristics). showing that off-road vehicle use of any kind is apart from wilderness characteristics of 1977:

2. If wilderness characteristics have been degraded, restore the area to 1977 conditions. That is, if a trail was single track and has evolved into two-track, close the trail to two-track use and restore it to single track use, or allow natural restoration where effective. If conflicting uses are occurring, consider separating the uses geographically through an appropriate planning process. That is, identify areas for snowmobiling and areas for cross-country skiing and snowshoeing.

3. Trails should not be upgraded to a more-developed standard than existed in 1977. d. Pursuant to 36 CFR 212.52 (2), the line officer shall institute closure of a trail in a Wilderness Study Area if use is causing or will cause considerable adverse effects on resource values referred to in Sec. 212.52 (2), until the effects are mitigated or eliminated.

2. Management of existing uses and facilities.

1. At the time of designation of the areas, uses that existed in 1977 can be allowed to continue subject to 36 CFR 212.57. If increases in amount of use occur, the line officer should consider how the increases affect wilderness character and the area's potential for inclusion in the NWPS. If negative effects are noted, implement actions as described in 1.b. of this policy.

2. Facilities that existed in 1977 can continue to exist, be maintained, or reconstructed. This may include administrative structures or structures in

support of permitted activities such as grazing allotments or outfitter and guide permits.

1. New uses, activities, and facilities.

1. When evaluating new uses, resource management activities, or administrative facilities in the WSA such as prescribed fire, tree planting, trail construction, or special use permits, document how the use, activity or facility maintains the wilderness character and the potential for the area's inclusion in the NWPS.

2. Uses, activities, or facilities that are detrimental to or do not maintain or enhance the wilderness character and potential for the area's inclusion in the NWPS will not be allowed.

3. All terrain vehicles (ATVs) and motor bikes may be allowed on roads that had jeep use in 1977 (two tracks).

4. Mountain bikes may be allowed on trails that had established motor- bike use in 1977, or on non-motorized trails as long as the aggregate amount of mountain bike and motorcycle use maintains the wilderness character of the WSA as it existed in 1977 and the area's potential for inclusion in the National Wilderness Preservation System.

2. Monitoring. Forests and Grasslands shall monitor WSAs to ensure that the wilderness character is not diminished beyond what existed in 1977 and to ensure that the areas are maintained for potential inclusion in the NWPS. Monitoring WSAs will be covered through the encompassing monitoring program for the Land and Resource Management Plan (LRMP).

3. Administrative Use of Motorized Equipment. Motorized equipment; chainsaws, motorized rock drills, wheelbarrows, mini trail excavators and other similar trail machines are allowed for project work. For fire

suppression, utilize MIST tactics to minimize impacts to resources where possible without jeopardizing firefighter safety. Dozers may be allowed for fire suppression. Special approval for use of motorized equipment and mechanical transport resides with the designated line officer. As near as possible, all firelines and dozer firelines must be rehabilitated to their condition prior to the fire.

4. Public Notification of Wilderness Study Areas. Post WSA trailheads with posters and/or maps indicating the WSA boundary, description of agency legal responsibilities and any travel management restrictions. Include the WSA boundary on forest visitor maps.

2329 - Exhibit 01

Definitions of Wilderness Characteristics

Natural Integrity[mdash]The extent to which long-term ecological processes are intact and functioning. Impacts to natural integrity are measured by the presence and magnitude of human-induced change to an area. Such impacts include physical developments (for example, roads, trails, utility rights-of-way, fences, lookouts, cabins, recreation developments, livestock grazing, mineral developments, wildlife/fisheries management activities, vegetative manipulation, and fire-suppression activities).

Apparent Naturalness[mdash]The environment looks natural to most people using the area. It is a measure of importance of visitors[rsquo] perceptions of human impacts to the area. Even though some long-term ecological processes of an area may have been interrupted, generally the area landscape appears to be affected by forces of nature. If the landscape has been modified by human activity, the evidence is not obvious to the casual observer, or it is disappearing due to natural processes.

Opportunities for Primitive Recreation Experience[mdash]The area provides opportunities for isolation from evidence of man, a vastness of scale, feeling a part of the natural environment, having a high degree of challenge and risk, and using outdoor skills characterized by meeting nature on its own terms without comfort or convenience of facilities.

Opportunities for Solitude[mdash]Isolation from sights, sounds, presence of others and developments of man, focusing on features of the area that offer users outstanding opportunities for solitude; size of the area, presence of vegetation and topographic screening rather than focusing on amount of use.

Wilderness characteristics are taken from the Wilderness Attribute Rating System[mdash]a system that was designed in 1977 to assess the capability of roadless areas for wilderness recommendation. This was the system used to rate the Montana Wilderness Study Areas in the study mandated by the WSA Act of 1977. These definitions may differ from definitions of wilderness characteristics in areas within the National Wilderness Preservation System.

(end of FSM 2329)

Recommended Wilderness

Region One employees have tried to push personal agendas upon unsuspecting public since 2003, from the issuance of the [ldquo]white paper[rdquo] telling managers to generally restrict all non-conforming uses from Recommended Wilderness Areas. In Forest Plans, subsequent Travel Plans and some special orders, bicycle use has been eliminated in Recommended wilderness across much of Region One.

The restrictions have been implemented to satisfy political ambitions. Over 1,000

miles of trails have been closed without specific evaluation or attempts to manage activities.

All the DEIS Forest Plan alternatives except E contain Recommended Wilderness, the difference between B, C, and D is whether or not existing non- conforming recreational activities are restricted. MMBA believes that the full spectrum of adaptive management steps, provided in the Forest Service Handbook Chapter 70 should be employed to maintain existing uses to the extant possible to provide the basis for wilderness recommendation. CGNF should allow all uses by utilizing the adaptive management steps provided in the handbook, so that such uses do not prevent the protection and maintenance of the social and ecological characteristics that provide the basis for wilderness recommendation.

Conclusion

There is a great difference, a distinction between managing an area[rsquo]s recreation to maintain its wilderness characteristics, and managing an area by imposing unwarranted closures, as the HPBHWSA Interim Travel Plan does. Congress was clear that the areas should not become de facto wilderness areas and that the areas were an interim designation, not intended to last into perpetuity, not intended to incrementally displace suitable low impact recreation over an indefinite span of time.

The Hyalite Porcupine Buffalo Horn Wilderness Study Area had motorized access without restrictions except on two trails in 1977. FSM 2329 clearly shows how recreation should be managed if resource damage shows a decline of wilderness characteristics. Management by closure to recreational activities was never the intent of Congress, unless resource damage was evident and all other management options had been exhausted. Damage from cyclists on the closed trails hasn[rsquo]t been demonstrated. CGNF hasn[rsquo]t cited any resource damage from cycling activity rendering Interim Travel Plan closures arbitrary.

In 1977 were bicycles considered [ldquo]off-road vehicles[rdquo]? MMBA contends bicycles weren[rsquo]t intended to fit that category, as bicycles at the time were allowed in most designated Wilderness Areas. Bikes are [ldquo]not powered by a non-living power source[rdquo], the administrative line defining the difference between

motorized conveyances and all other human powered devices. Under the historical intent and regulation of both the 1960s and 1970s, bicycles were compliant; they weren't off-road vehicles by congressional definition. Bicyclists traveled in the HPBHWSA before and after 1977.

MMBA feels that CGNF sometimes confuses idealistic wilderness characteristics with the 1977 wilderness characteristics. It is also evident that significant deference is given to those that are offended at the mere sight of a bicycle.

Applying this standard of wilderness character to the HPBHWSA is contrary to congressional intent, and contrary to FSM 2329.

Using administratively applied Recommended Wilderness to create defacto wilderness within a Wilderness Study Area formed from S393, a congressional bill that carried clear direction, could be looked at as illegal, and thus could be challenged. Administrative decisions should not override Congress. Applying Recommended Wilderness with bicycle and motorized restrictions as proposed in Alternatives C and D, could easily be viewed as an attempt to create or enhance wilderness characteristics by circumventing Congressional intent.. It would be wise to not use any Recommended Wilderness within the Hyalite Porcupine Buffalo Horn WSA to permanently restrict uses that remain to be evaluated. In other words, Recommended Wilderness can and should be identified, but it should not be restricted.

While the Forest has preserved some historical bicycle access, this is not the same as managing the trails to preserve wilderness character, or managing the trails to reduce volume of use where that use has physically impacted wilderness character. All intrusions by humans, where abused, and whether conforming or non-conforming can result in deterioration of wilderness character, yet only bicycle and motorized activities has been restricted by the Interim Travel Plan.

None of the remaining [ldquo]conforming[rdquo] activities have been addressed. The DEIS makes this evident by not recognizing any of Hyalite as Recommended Wilderness in alternatives B and C. Hyalite has been irreversibly impacted by everyone. Hyalite is a lost cause. Because of the present pattern of restrictions in contrast to blatant and obvious abuses near Hyalite allowed by the Interim Travel Plan, CGNF appears to be playing favorites with the public by concurrently promoting abundant and scantily managed access in Hyalite to the detriment of 1977 Wilderness Character, yet has restricted the infrequent, reverent bicycle access to the Gallatin Crest, an activity that hasn't been demonstrated as detrimental.

Collaborative process could have resulted in creative solutions, we tried with all our good faith but what became the Gallatin Community Collaborative was hijacked by conservation organizations, resulting in a colossal mismanaged failure. Despite our monumental volunteer efforts the Gallatin Community Collaborative became a tragic waste of our time and money. CGNF personnel failed to moderate the process and keep people from divergent tangents that eventually derailed a four-year effort.

The much more successful Gallatin Forest Partnership achieved its quick result by ignoring much of the public, hosting secret meetings, and manipulating conversation by taking a number of important topics off the table, labeling those topics as [ldquo]non-starters[rdquo]. In other words, the final agreement lacks certain substance, lacks diverse support, but is growing anyway due to an aggressive

media campaign. The Gallatin Forest Partner Agreement might be a solution but it isn[rsquo]t based in the whole truth, it[rsquo]s just successful propaganda.

Bicyclists are still waiting for a fair and impartial NEPA process to create a new WSA Travel Plan, evaluating historical uses from the last 40+ years and identifying how those uses could be managed to comply with the 1977 Montana WSA Act and the Ninth Circuit Court Remand. MMBA feels CGNF continues to fall short of what is owed to the public, what is required to comply with Congressional Intent, FSM 2329 and the court Remand. We feel compliance can be accomplished within all these constraints by a separate evaluative process after the Forest Plan is completed. The final CGNF Forest Plan decision should note this evaluative process and confirm it as a desired goal.