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

<b>MOUNTAIN PURSUIT;</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. _____
	)	
<b>U.S. FOREST SERVICE;</b>	)	<b>COMPLAINT FOR</b>
TRICIA O'CONNOR, SUPERVISOR,	)	<b>DECLARATORY AND</b>
BRIDGER TETON NATIONAL FOREST	)	<b>INJUNCTIVE RELIEF</b>
MEL BOLLING, SUPERVISOR,	)	
CARIBOU TARGHEE NATIONAL	)	
FOREST;	)	
	)	
Defendants.	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This case challenges the U.S. Forest Service (“Forest Service”) decisions and policies allowing and designating trails for mechanized use in Palisades Wilderness Study Area (“WSA”) and mechanized and motorized uses in Shoal Creek WSA, which are two of the three Congressionally designated WSAs on all of Wyoming’s eight National Forests.

2. Mountain biking is a mechanized form of recreation inconsistent with WSA management that diminishes the potential of both WSAs for future inclusion in the National Wilderness Preservation System (“NWPS”); which adversely impacts quiet uses allowed on

wilderness lands and favored in WSAs; which significantly impacts other wilderness values including wildlife; and which has been inadequately analyzed and improperly managed by the Forest Service in violation of applicable law.

3. All-terrain vehicle (“ATV”) and off-highway vehicle (“OHV”) are motorized uses that diminish the potential of the Shoal Creek WSA for future inclusion in the NWPS; which adversely impact quiet uses allowed on wilderness lands and favored in WSAs; which significantly impact other wilderness values including wildlife and habitat; and which has been inadequately analyzed and improperly managed by the Forest Service in violation of applicable law.

4. Title 1 and Section 102 of the Wyoming Wilderness Act of 1984 (“Wyoming Wilderness Act” or “the Act”) designated thirteen new Wilderness Areas spanning approximately 1.1 million acres on the Bighorn, Shoshone, Bridger-Teton, Targhee, and Medicine Bow National Forests. The Act is attached as Exhibit 1. These included both eight newly designated stand-alone Wilderness Areas, and five additions to pre-existing Wilderness Areas which extended protections to adjacent lands. For all of the newly designated NWPS lands, Section 203 of the Act provides that “[s]ubject to valid existing rights, each wilderness area designed by this Act shall be administered by the Secretary [of Agriculture] in accordance with the provisions of this Act and the [1964] Wilderness Act, except that any reference in the provisions of the [1964] Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.”

5. Title III of the Wyoming Wilderness Act designated the Palisades and Shoal Creek WSAs under Sections 301(a)(1) and (2). The Act provides that “[s]ubject to valid existing rights and reasonable access to exercise such rights, until Congress determines otherwise, the

Palisades, High Lakes and Shoal Creek Wilderness Study Areas shall be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System[.]” (underlining emphasis added).

6. The Wilderness Act of 1964 (“1964 Act”) defines wilderness in section 2(c): “A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.” 16 U.S.C. § 1131(c). For purposes of this case, key aspects of the definition include “outstanding opportunities for solitude or a primitive and unconfined type of recreation” and ecological features.

7. The 1964 Wilderness Act specifically guards against the pressures of population growth, encroaching development, and growing mechanization of lands outside wilderness. “In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby

declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” 16 USC §1131(a).. This refutes the Forest Service rationale that it is somehow appropriate to sacrifice or compromise wilderness uses and resources in the WSAs due to pressure of population growth, increasing popularity of mechanized or motorized recreation, and increased visitation of BTNF lands generally. The 1964 Act specifically instructs the agency to guard against “growing mechanization”, which applies to both mountain bike and ATV/OHV uses.

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

9. Congress states the purpose of the Act as to “(1) designate certain National Forest System lands in Wyoming for inclusion in the National Wilderness Preservation System in order to preserve the wilderness character of the land and to protect watersheds and wildlife habitat, preserve scenic and historic resources, and promote scientific research, primitive recreation, solitude, physical and mental challenge, and inspiration for the benefit of all of the American people[.]” Act at Act at Section 102(b)(1). (underlining emphasis added).

10. Congressional intent and direction to honor the protective provisions in the Act for wilderness lands and WSAs designated by the Act is underlined by another purpose, to “insure that certain National Forest System lands in the State of Wyoming be made available for uses

other than wilderness in accordance with applicable national forest laws and planning procedures and the provisions of this Act.” Act at Section 102(b)(2). The recognition that uses not allowed in wilderness be made available on lands not covered by the Act underlines the importance of observing the mandate to protect wilderness values and manage for wilderness in the WSAs.

11. The three members of the Wyoming Congressional delegation who drafted and achieved passage of the Wyoming Wilderness Act were Rep. Dick Cheney, and Senators Malcolm Wallop and Alan Simpson.

12. Since the Act was passed, the Forest Service has consistently ignored and violated the terms of the Act requiring that the WSAs be managed to maintain the wilderness character as it existed in 1984 and each WSA’s potential for inclusion in the NWPS.

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

14. Contrary to the Act, the Forest Service has allowed, fostered, encouraged, and affirmatively managed for heavy levels of mechanized mountain bike use in the WSAs, including usage levels and a geographical footprint across the WSAs that far exceeds any use that may have existed in 1984. The Forest Service has designated numerous trails within the WSAs for mechanized mountain bike use, despite no trails being so designated in 1984. The trail

designations and current Forest Service management violate the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA) in addition to the Wyoming Wilderness Act.

15. Contrary to the Act, the Forest Service has allowed, fostered, and affirmatively managed for heavy levels of motorized ATV/OHV use in the Shoal Creek WSA, including usage levels and a geographical footprint that far exceeds any use that may have existed in 1984. The Forest Service has designated several trails within the WSA for these motorized uses, despite no trails believed to have been so designated in 1984. The trail designations and current Forest Service management violate NFMA, NEPA, and the Forest Service’s Travel Management Rule, in addition to the Wyoming Wilderness Act.

16. The Palisades WSA is located on the Bridger-Teton National Forest (“BTNF”) and in the State of Wyoming and the Caribou-Targhee National Forest (“CTNF”) in Idaho. As designated by Congress in the 1984 Act, the total size of Palisades is 135,840 acres. A Forest Service “Palisades WSA Fact Sheet” dated December 13, 2016 states the size of the WSA as 134,417 acres, of which 79,517 acres are administered or managed by the BTNNF; and 54,900 acres administered or managed by the CTNF. Appendix 2-c Palisades Wilderness Study Area pg. 1, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsbdev3\\_062637.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_062637.pdf).

17. The Shoal Creek WSA is entirely located on the Bridger-Teton National Forest in Wyoming. The Act states the area of the WSA as approximately 30,000 acres. According to the BTNF Forest Plan, “the Shoal Creek Wilderness Study Area includes 32,374 acres contiguous with the 285,413-acre Gros Ventre Wilderness.” Appendix 2-D Shoal Creek Wilderness Study Area, pg. 1, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsbdev3\\_063011.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_063011.pdf)

18. Both areas meet the minimum 5,000-acre size of potential wilderness areas

prescribed by the Wilderness Act of 1964. Past Forest Service evaluations determined that both areas also meet the other criteria set by the agency to be eligible for inclusion in the NPWS.

19. Cumulatively, the three National Forest WSAs total 130,182 acres out of almost 9 million acres of National Forest in the state. *See* [https://www.fs.fed.us/land/staff/lar/LAR2017/LAR\\_Book\\_FY2017.pdf](https://www.fs.fed.us/land/staff/lar/LAR2017/LAR_Book_FY2017.pdf) at 123. Wyoming's National Forests currently include 3,067,649 acres of federally designated National Forest wilderness lands spanning 15 wilderness areas. *See* [https://www.fs.fed.us/land/staff/lar/LAR2017/LAR\\_Book\\_FY2017.pdf](https://www.fs.fed.us/land/staff/lar/LAR2017/LAR_Book_FY2017.pdf) at 157. Thus, the total area of the three WSAs is less than 5% of NWPS lands on Wyoming National Forests, and less than 1.5% of all National Forest lands in the Cowboy State.

20. The almost 55,000 acre portion of Palisades WSA within Idaho's Targhee NF is less than 0.3% of the total acreage of Idaho's seven National Forests spanning 20.7 million acres; and represents less approximately 1.1% of Idaho's 4.8 million acres of existing wilderness on all lands (including NPWS lands managed by the Department of Interior's National Park Service and Bureau of Land Management in addition to National Forests). *See* [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprd3852339.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3852339.pdf).

21. Thus, while Palisades and Shoal Creek WSAs are tremendously important wilderness resource locally, if the BTNF portions were managed for wilderness uses and character as directed by Congress more almost six million acres (or almost two-thirds) of National Forest lands in Wyoming would remain available for non-wilderness uses under the Act. Managing the CTNF portion of Palisades WSA for wilderness uses and character would leave more than 15 million acres of National Forest lands in Idaho (comprising more than 75% the state's National Forests) available for non-wilderness uses.

22. These numbers establish that managing the two WSAs to maintain wilderness values and for potential inclusion in the NWPS – as directed by Congress -- would only affect a small fraction of federal and National Forest lands in the two states.

23. The BTNF has inventoried and assessed the wilderness characteristics of at least twenty roadless areas on those two forests in documents including the BTNF Evaluation of Areas with Wilderness Potential. *See* [http://www.wyo-wcca.org/~wcca/files/4014/8424/1988/btnf\\_2008wildernesspotential.pdf](http://www.wyo-wcca.org/~wcca/files/4014/8424/1988/btnf_2008wildernesspotential.pdf). Of the 20-some areas totaling 1,535,600 acres, the agency found that 1,506,519 acres had Wilderness potential as of 2009. Although the Congressionally designated WSAs on the BTNF only amount to approximately 7.5% of lands with wilderness potential on the Forest, the BTNF has failed to prioritize maintaining the WSAs wilderness character and potential for inclusion in the NWPS.

24. The Wyoming Wilderness Act demonstrates that Congress knew how to make newly designated WSA lands available “for uses other than wilderness” or uses inconsistent with wilderness designation under the 1964 Act. For the Palisade and Shoal Creek WSAs, there were only two exceptions for inconsistent uses. First, three provisions concern to oil and gas leasing, exploration, or development in subsections (1), (2) and (3) Section 301(c) of the Act.

25. Second, subsection (c)(4) of the Act, addressed snowmobiling. “*Provided, That—* [ . . . ] (4) within the Palisades, High Lakes and Shoal Creek Wilderness Study Areas, snowmobiling shall continue to be allowed in the same manner and degree as was occurring prior to the date of enactment of this Act.” Subsection (c)(4) was the only Congressional provision addressing recreational use in the WSAs. No similar allowance was made by Congress for other non-conforming uses such as mountain biking, which is not mentioned in the Act.

26. The only mention of motorized recreation or uses in the Act applies exclusively to

a 6,497 acre addition to the Fitzpatrick Wilderness in the Wind River Range, allowing “occasional motorized access for administrative purposes and related management, trapping, transporting and proper management of the area’s bighorn sheep population may be allowed.” Title II, Section 201.(11). Thus, Congress knew how to allow or address specific, limited motorized use in lands otherwise closed to such usage – and did so in one instance to facilitate conservation of big game populations. It did not do so for the WSAs.

27. The Act also establishes that Congress specifically provided that designation of certain wilderness areas would not interfere with other potential specified uses or purposes by providing that Wilderness designation would not “in any way impair or affect a present or future water rights” or future “water development projects”. Section 201(c). Mechanized mountain bike or motorized ATV uses were *not* mentioned or accorded special consideration under the Act.

28. Title IV of the Act is titled, “Release of Lands for Multiple Use Management”. Title IV provides that certain areas which the Forest Service reviewed for under the second “roadless area review and evaluation (RARE II)” process could be released to multiple use by future Forest Plans, and that areas not in the Act and not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation” in future Forest Plan revisions. That section continues: “areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management.” *Id.* (emphasis added).

29. As documented below, mechanized and motorized uses of National Forest lands have exploded in recent decades across the West, across the Northern Rockies, and specifically across northwest Wyoming. The Forest Service, however, failed in its legal duty to manage the

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

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

31. However, subsequent Forest Service decisions have allowed mountain bike usage in the WSAs to expand geographically and on designated trails far beyond any limited use that may have existed in 1984. In addition, subsequent Forest Service decisions have allowed an intensity of use that goes far beyond any limited use that may have existed in 1984. Intensity of mountain bike use encompasses total number of user visits, hours or user-days of use, number of trails used, number of trail miles used, and total number of trail miles traveled by mountain bikes.

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

existed in 1984.

33. The increase in mountain bike use measured geographically, temporally and by intensity violates the Act.

34. By recognizing and designating the majority of trails in Palisades WSA as open to mountain biking, the Forest Service has allowed mountain biking to become the dominant recreational use for much of the WSA. It has recognized a dense set of interconnected mountain bike trails within the WSA without ever performing a comprehensive NEPA analysis of these trails and recreational activity, or of the impacts of these designations and heavy trail usage by mountain bikers and mountain bikes on wilderness values or other resources.

35. The only “NEPA” document on mountain bike usage is an outdated 2004 Decision Memo prepared in conjunction with a “Categorical Exclusion”. That Decision Memo is inadequate regarding the required comprehensive impacts assessment required by NEPA and NMFA.

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

37. Appendix 2-C contains a single mention to mountain bikes. “Existing motorized/mechanized recreation in the WSA includes mountain biking, trail bike riding, heli-skiing, and snowmobiling.” *Id.* at 9. This statement fails to address whether mountain bike use is allowable under the Act in the first instance, or, if so, to analyze the appropriate level of allowable use and number of trails or trail mileage. It fails to address or analyze the fact that, even under the

incorrect interpretation of the Act extending snowmobiling provisions to mountain biking, such use would be limited to the level existing in 1984. The Forest Plan lacks any analysis of the level of mountain bike use in 1984.

38. Plaintiffs' usage of the WSAs is focused on spring, summer and fall. The spring/early summer season is a period of particular concern for mountain bike use because of disturbance to the birthing period for ungulates, and the fall being a particular concern for ATV/ORVs in the Shoal WSA because hunter use during the rifle deer and elk seasons.

39. According to the current travel map for the Teton Division of the BTNF, motor vehicles are restricted to designated routes. The winter travel map for Palisades WSA allows unrestricted motorized use everywhere except the Teton Pass area, which is closed to snowmobiles." See [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsbdev3\\_062637.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_062637.pdf) at page 9 (underlining emphasis added). Plaintiffs are not challenging winter uses because the big game which Mountain Pursuit seeks to protect generally move out of the WSAs to lower elevation winter range during the winter snowmobiling season. Plaintiffs' usage of the WSAs is focused on spring, summer and fall; with the fall hunting season being a period of particular concern.

40. The Forest Service decided not to address mountain biking in its Motor Vehicle Use Map ("MVUM:) planning processes, which was allowable under governing law and agency guidance for that process. It does not, however, excuse the agency from complying with the 1984 Wyoming Wilderness Act, NEPA or NFMA regarding the proliferation of mountain bike use in the WSAs, and conflicts with other WSA and forest uses or resources.

41. Comprehensive planning on recreational usage and resource management for the WSAs is required pursuant to legal obligations under the Wyoming Wilderness Act, NEPA, NFMA and applicable court decisions. Pending such compliance with applicable law, unlawful

and unanalyzed mountain bike use should be suspended.

42. The agency's claim that allowing mechanized mountain bike use that is prohibited in wilderness does not jeopardize the potential for future inclusion in the NWPS is wrong. It runs contrary to the acknowledgement of Montana's Gallatin National Forest of the danger of allowing such uses in WSAs and is directly contradicted by federal court opinions interpreting the language of Acts of Congress designating WSAs on National Forests in the Northern Rockies.

43. The potential for future inclusion of the WSAs in the NWPS has been compromised by the proliferation of mechanized uses since 1990. Those uses and designations allowing such uses were never comprehensively analyzed by the Forest Service. Forest Service decisions have included official recognition and designation of user-created trails for mechanized recreation. Forest Service policies have resulted in only 25% of the trails in the most popular recreational portion of Palisades WSA being limited to those hiking and horse uses allowed under the Wilderness Act, making wilderness designation significantly more unlikely than had the Forest Service managed these areas consistent with the Wyoming Wilderness Act or properly analyzed the impacts of its decisions.

44. For the Teton Pass part of Palisades WSA, the Forest Service is managing for mountain bikes as the primary and dominant recreational activity.

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

46. Thus, for the most accessible and popular recreational area in Palisades WSA, the Forest Service recognizes and designates 46.95 miles of trails. Of these, only 11.5 miles of trails

are limited to non-mechanized use. This represents less than 25% and approximately ¼ of the total trail mileage. Hiking and equestrian use is prohibited on 2/3rds of the total mileage for which quiet, non-mechanized recreation is the only use allowed o trails. The same number of trails (4) excludes hiking and equestrian use as allows only those wilderness-compatible uses.

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

48. The BTNF 2002 National Visitor Use Monitoring Study acknowledged the problem: "Existing motorized and mechanized recreation in the WSA includes mountain biking, OHV use, and snowmobiling. Because topography is gentle in some areas and old roads enter the WSA in some places, there has been increasing use of 4WD vehicles within the WSA. Attempts to sign the area and maintain more effective closures have met with some success." *See* [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsbdev3\\_063011.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev3_063011.pdf) at page 7.

49. The BTNF Travel Analysis Report (2015) acknowledges that, like wilderness, WSAs should be non-motorized. “The Bridger-Teton National Forest is a mixture of roaded areas and unroaded areas, containing wilderness, wilderness study areas and other non- motorized areas.” *See* [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd530142.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd530142.pdf) at 8. The Report also generally acknowledges management concerns stemming from unauthorized routes. “The Forest, in general, seeks a reduction in unauthorized routes to reduce erosion, wildlife

disturbance, and other resource damage. These routes generally were never part of the legal transportation system.” *Id.* at 8. However, these acknowledgements are not reflected in current WSA management on the BTNF, nor have they informed a comprehensive analysis of WSA recreation or compliance with the Act.

50. The BTNF has not compiled an inventory of mountain bike or ATV trails in Shoal Creek WSA; analyzed the number and mileage of trails or use levels against 1984 levels; or specifically analyzed threats to wilderness uses, users, or potential for wilderness designation being compromised by nonconforming mechanized or motorized uses.

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

52. The Forest Service has failed to quantify or analyze the increases of mountain bike recreational use in the WSAs since 1984, the current use levels, or the impacts on WSA resources from current use levels or current trends of steadily increasing use.

53. Existing Forest Service decisions and analysis for these WSAs violate the language and intent of the Wyoming Wilderness Act; are inconsistent with direction in the Forest Plans for protecting wildlife and Recommended Wilderness or Wilderness Study Areas; in violation of NFMA; and never underwent analyses to assess the environmental effects of these uses or to account for new information and changed circumstances that have arisen since the prior designation decisions, in violation of NEPA. The decisions authorize continued mountain bike and ATV/ORV use that is greater in intensity, geographic scope, and times of year than what was occurring in 1984.

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

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

### **JURISDICTION AND VENUE**

56. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; NFMA, 16 U.S.C. § 1600 *et seq.*; NEPA, 42 U.S.C. § 4321 *et seq.*; the Forest Service Travel Management Rule, 36 C.F.R. Part 212 (2015); the Wyoming Wilderness Act, Pub. L. No. 98-550, 98 Stat. 2807 (1984); the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. § 2214 *et seq.* An actual, justiciable controversy now exists between Plaintiffs and Defendant, and the requested relief is therefore proper under 5 U.S.C. §§ 701–06 and 28 U.S.C. §§ 2201–02.

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

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

### **PARTIES**

59. Plaintiff MOUNTAIN PURSUIT is a Wyoming-based non-profit organization. Mountain Pursuit is a Western States Hunting Advocacy organization dedicated to ethical hunting, priority license allocation for state residents, subsistence hunting, hunter education, healthy wildlife populations and conservation.

60. Mountain Pursuit is dedicated to promoting and preserving wilderness values on eligible public lands in Wyoming and across the Rocky Mountain West, including management for solitude, quiet recreation, and non-mechanized recreation. It has approximately 112 members and supporters, including many members who live and recreate in Wyoming on the Palisades and Shoal Creek WSAs, and are adversely affected by mountain bike recreational use on these lands.

61. Mountain Pursuit's members and leadership have a longstanding interest in the management of the Forest Service lands involved in this case, as well as the protection and conservation of game and non-game wildlife species and wildlife habitat, and the overall ecological health of the National Forest lands where members recreate and pursue outdoor activities. Mountain Pursuit's members are deeply dedicated to the preservation of wilderness values consistent with the Congressional vision of the Wyoming Wilderness Act. Mountain Pursuit recognizes that protection of wilderness values requires eternal vigilance by wilderness supporters, lest these values and the unique wilderness experiences on federal public lands be lost or diminished. Similarly, protecting healthy wildlife habitat and populations, including big game, requires sustained engagement by wildlife advocates, in order to prevent habitat and wildlife from being significantly impacted or displaced by recreational uses of these WSAs. Wildlife have no voice of their own.

62. Mountain Pursuit's members and leadership regularly recreate, hunt, fish, appreciate nature, view wildlife, work, and study on the Palisades WSA, Shoal Creek WSA, and

contiguous National Forest lands.

63. Mountain Pursuit members have been visiting and recreating on these WSAs for over 30 years. Over this time period, members have observed increasing levels and intensity of mountain bike and ATV/OHV use within the WSAs. These increases in recreational use have corresponded to declines in the ability to observe wildlife by quiet recreational users (hikers and equestrians) of the WSAs.

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

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

66. Mountain Pursuit members and leaders derive aesthetic, recreational, health, food, inspirational and other benefits from their non-mechanized recreational activities on the WSAs on a regular and continuing basis. They intend to continue visiting frequently in the immediate future, including during the fall big game hunting season of 2019, and throughout all four seasons in upcoming years. Plaintiff's members' enjoyment of their non-mechanized hunting, angling, wildlife viewing and study, and recreational activities and interests in enjoying serene, healthy, natural environments during those activities are impaired by mechanized and motorized

recreation.

67. Defendant's violations of law and failure to properly manage mountain bike and ATV/OHV use on these WSAs adversely and irreparably injures the aesthetic, recreational, health, inspirational and other interests of Plaintiff Mountain Pursuit and its members and leadership. These are actual, concrete injuries to Plaintiff, caused by Defendant's violations of law, which will continue until and unless this Court provides the relief prayed for in this Complaint.

68. Mountain Pursuit and its members have a procedural interest in ensuring that Forest Service activities comply with applicable federal statutes and regulations.

69. Mountain Pursuit members and staff derive aesthetic, recreational, scientific, inspirational, educational, and other benefits from recreating during winter on the Bridger-Teton and Targhee National Forests where these mechanized and motorized uses occur.

70. Members visit the WSAs for solitude, quiet and primitive recreation purposes, nature appreciation, scientific study, wildlife observation, and hunting and fishing. Plaintiff's members and staff enjoy observing, attempting to observe, and studying wildlife in the wild, especially big game species. The opportunity to view these species, observe their habits, and track their movements is of significant interest and value to Mountain Pursuit members, and increases their use and enjoyment of these areas. Usage by Mountain Pursuit members includes hiking, scouting for wildlife and game, hunting in season, fishing, horseback riding, and backpacking. Mountain Pursuit has participated in Forest Service decision-making on these forests including decision making for the WSAs.

71. Three wildlife species that Mountain Pursuit is especially concerned about are popular game species: elk, deer, and moose. Healthy populations for the species depend on

successful elk calving, deer fawning, and moose calving in the spring months. Mechanized and motorized uses are increasingly impacting these species during the spring reproductive cycle and other critical periods for wildlife. *See* A Technical Guide for Monitoring Wildlife Habitat, detailing the factors associated with disturbances from motorized uses, Table 7.1 page 7-5.

[https://www.fs.fed.us/research/publications/gtr/gtr\\_wo89/gtr\\_wo89.pdf](https://www.fs.fed.us/research/publications/gtr/gtr_wo89/gtr_wo89.pdf)

72. Defendant's violations of law and failure to properly manage recreational use on National Forest lands adversely and irreparably injures the aesthetic, recreational, health, inspirational and other interests of Plaintiff's members and staff. These are actual, concrete injuries to Plaintiff, caused by Defendant's violations of law, which will continue until and unless this Court provides the relief prayed for in this Complaint

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

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

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

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

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

78. Defendant Jay Pence is the District Ranger for the Teton Basin Ranger District. Mr. Pence oversees the actions within this ranger district, including protecting the natural, primitive, and undeveloped characteristics of the Wilderness Study Area. Mr. Pence is responsible for implementing all laws, policies, and regulations within the district and ensuring the district complies with applicable law. He is sued in his official capacity.

## **LEGAL STANDARDS**

### **The Wilderness Act**

79. In 1964, Congress passed The Wilderness Act “to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition[.]” 16 U.S.C. § 1131(a). Congress declared its policy “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” *Id.*

80. In the Wilderness Act, Congress “established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as “wilderness areas”, and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for

the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness[.]” *Id.*

81. The Act defines wilderness thusly: “A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” *Id.* at § 1131(c). The definition continues: “An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.” *Id.*

82. Paragraphs 6-7 *supra* also address the Wilderness Act.

### **The Wyoming Wilderness Act**

83. The Wyoming Wilderness Act established eight Wilderness areas, five Wilderness area expansions, and three Wilderness Study Areas (WSAs) within the state of Wyoming. Pub. L. No. 98-550, 98 Stat. 2807, §§ 201, 301. The three WSAs are the Palisades WSA, Shoal Creek WSA, and High Creeks WSA. d. § 301(a). The Act required that the WSAs be administered to maintain their presently existing Wilderness character and potential for inclusion in the NWPS. It provided that snowmobiling could continue in the WSAs only “in the same manner and degree as was occurring prior to the date of enactment of this Act.” *Id.* § 301(c).

84. Paragraphs 4-5 and 8-11 *supra* also address the Wyoming Wilderness Act.

### **National Forest Management Act**

85. In 1976, Congress enacted NFMA, 16 U.S.C. § 1600 *et seq.*, which governs the Forest Service's management of the National Forests. NFMA establishes a two-step process for forest planning.

86. First, NFMA requires the Forest Service to develop, maintain, and revise Land and Resource Management Plans ("LRMP" or "Forest Plan") for each national forest. 16 U.S.C. § 1604(a). The Forest Plan guides natural resource management activities forest-wide, setting standards, management goals and objectives, and monitoring and evaluation requirements.

87. Second, once a forest plan is in place, site-specific actions are planned and evaluated by the Forest Service. All site-specific decisions must be consistent with the broader Forest Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15.

### **National Environmental Policy Act**

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

89. NEPA requires federal agencies to prepare, consider, and approve an Environmental Impact Statement ("EIS") for "any major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4(a)(1). To

determine whether an action requires an EIS under NEPA, an action agency may prepare an Environmental Assessment (“EA”). 40 C.F.R. § 1501.4(b).

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

91. NEPA and its regulations prohibit agencies from taking any action or making any irreversible or irretrievable commitment of resources before its NEPA analysis is completed that would have an adverse environmental impact or prejudice or limit the choice of reasonable alternatives. 40 C.F.R. §§ 1502.2(f), 1506.1(a).

92. 40 C.F.R. § 1502.22(b)(2) directs the Agency to provide a statement of relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse effects on the human environment.

93. The courts owe no deference to the Forest Service in its application of NEPA. *See Park County Resource Council, Inc. v. U.S. Dept of Agriculture*, 817 F.2d 609, 620 (10th Cir. 1987) (“Furthermore, deference to agency expertise is inapplicable in the NEPA context.”)

#### **Executive Order 11644 and Forest Service Travel Management Rule**

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

95. The need for this Executive Order was due to the large number of off-road

recreational vehicles being used on public lands that were “in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity,” which demonstrated the need for a “unified Federal policy toward the use of such vehicles on the public lands.” *Id.* (preamble).

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

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

98. The 2015 Travel Management Rule also imposes minimization criteria on travel plan designations to protect environmental and recreational values. When making the trail and area designations in a travel plan, the Forest Service must minimize: (1) damage to soil, watershed, vegetation, and other forest resources; (2) harassment of wildlife and significant

disruption of wildlife habitat; (3) conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and (4) conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands. It also must consider compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors. *Id.* § 212.55(b).

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

### **Forest Service Handbook**

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

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

102. The Forest Service Handbook establishes that all wheeled mountain bikes (including Fat Tire and e-bikes) qualify as mechanized recreation. “(a) Mechanical transport, as herein used, shall include any contrivance which travels over ground, snow, or water on wheels,

tracks, skids, or by floatation and is propelled by a nonliving power source contained or carried on or within the device.” § 293.6(a) (underlining emphasis added).

## STATEMENT OF FACTS

### The Wilderness Study Areas

103. As noted above, Palisades WSA and Shoal Creek WSA were designated by the Wyoming Wilderness Act. They were then and remain today two of only three WSAs on National Forest in the State of Wyoming.

104. In 1984, almost all recreation and use of the WSAs was by foot or horse, hiking or equestrian. Limited motorized use occurred on select roads. Mountain bikes usage was negligible as mountain bikes were only starting to gain widespread popularity and be available for purchase. The skinny tire road bikes popular at that time were not usable on forest trails.

105. Palisades WSA is a rugged, remote, undeveloped area that is a stronghold for big game and other wildlife, in addition to being recognized by biologists as an important wildlife migration corridor.

106. A Forest Service “Palisades WSA Fact Sheet” is dated December 13, 2016. The description summarizes the wildlife values of Palisades WSA. “The area contains habitat for elk, deer, moose, wolves, wolverine, and bears. Important elk calving areas exist within the area and the area is considered an important migration corridor for many species. Specific surveys have been conducted for wolverines, owls, and goshawks. Non-native mountain goats were introduced in the early 1970s within the Idaho portion of the Palisades and have spread throughout the area.” BTNF Palisades WSA Fact Sheet (2016) at page 2.

107. The 2009 BTNF Roadless Area Review recognized that wildlife in Palisades WSA “includes several species of special interest: osprey and bald eagle near the Snake River,

wolverine, elk, moose, mule deer, bighorn sheep, and introduced Rocky Mountain goat.

Opportunities for seeing wildlife and hunting are outstanding.” Review at 23.

108. Shoal Creek WSA is the gateway to the Gros Ventre Range. Shoal Creek illustrates how less is more when it comes to the wilderness ideal defined by the 1964 Act and the Wyoming Wilderness Act. Wyoming’s best-known wilderness areas in the Wind River Range and Teton National Park see heavy visitation lured by world-famous alpine peaks and spectacularly scenic alpine lakes stocked with trout. Popular BTNF wilderness trailheads that may have hosted a dozen Wyoming pickup trucks on a summer weekend in 1984 now contain hundreds of vehicles with license plates from dozens of states. As the BTNF Shoal Creek WSA summary stated, “the non-wilderness backcountry areas of the BTNF, including the Shoal Creek WSA, are prized by those who are seeking solitude and unconfined recreation without the numbers of people that are found in some wildernesses.” Forest Plan Appx 2D, “Shoal Creek WSA” at 6.

109. The BTNF description summarizes wilderness characteristics of Shoal Creek WSA. “The WSA offers opportunities for outdoor education on extended trips as well as day excursions, with focus on geology and waterfalls. Shoal Creek is close to a Girl Scout camp and the American Wilderness Leadership School in Granite Creek, both of which make use of the WSA.” *Id.* at 2.

110. “Wildlife is diverse, responding to the varying habitats in the WSA. Shoal Creek contains habitat for elk, moose, mule deer, mountain lion and other forest predators, migratory songbirds, goshawks, owls, and small mammals. It contains important winter range for elk, deer, and moose; the Dell Creek Game and Fish feed ground is nearby. Opportunities for seeing wildlife are outstanding; there is good hunter success and summer viewing is excellent since there are few people in the area.” *Id.* at 2.

111. Additional qualities include: “Diversity of terrain and vegetation, water features, and steep mountains contribute to outstanding scenic quality. Some of the area’s outstanding scenic attributes are views of the south flank of the Gros Ventre Peaks, Shoal and West Dell Falls, aspen stands that turn gold in the fall, and meadows with wildflower displays in July and August. Tin Can Park is an outstanding example of a high wet meadow dominated by grasses but including wildflowers such as buttercups, elk slip, and elephant heads. Many of the creeks in the WSA have superb streambank stability and clear water, along with healthy willow stands and beaver ponds. All of these features add to the scenic beauty of this area. Swift, Shoal, Dell and West Dell Creeks are eligible for consideration as Wild and Scenic Rivers; all of these streams pass through the WSA.” *Id.* at 3.

112. “The area is large and intact enough at its core to be easily managed to retain and enhance its backcountry setting and character whether managed as it is or as potential future wilderness.” *Id.*

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

114. In 2008, the BTNF released a document titled “Evaluation of Areas with Wilderness Potential” that assessed the wilderness attributes and potential of both Palisades and Shoal Creek WSA.

115. The BTNF Evaluation is instructive regarding wilderness values and characteristics of the two WSAs as of 2008, and the potential of the areas for future designation

under various management regimes, including management that prioritized legal compliance with the Wyoming Wilderness Act, and management that pretends that authorizing widespread non-compliant NWPS uses would not jeopardize the potential for inclusion in the NWPS.

116. The BTNF Evaluation ranked approximately 29 areas with wilderness potential and provided each area's relative score for capability based on five criteria: Naturalness and undeveloped character; Outstanding opportunities for solitude and unconfined recreation; Special features; and Manageability. Scores were 1 to 3 with 3 being the highest for wilderness potential and 12 points being a perfect score.

117. Palisade was one of five areas that scored a perfect 12, and Shoal Creek scored 11 for the second-highest possible score. Notably, at least one of the other areas receiving 12 points was subsequently protected by Congress in the 2008 Wyoming Range Protection Act. S. 2229 [Report No. 110-363] To withdraw certain Federal land in the Wyoming Range from leasing and provide an opportunity to retire certain leases in the Wyoming Range.

118. Shoal Creek received 2 points for "solitude and unconfined recreation", which was due to its smaller total area (less than 35,000 acres) compared to Palisade WSA and several of the other areas exceeding 100,000 acres.

119. "The capability ratings show that naturalness and opportunities for solitude and unconfined recreation are directly related to the size of the area. Those areas that scored highly are the largest areas with wilderness potential, as illustrated in Figure 2. Most of the low to moderately capable areas are relatively small, close to human activities, and isolated from other wild areas by roads or other developments." However, Shoal Creek WSA's 32,374 acres are "contiguous with the 285,413-acre Gros Ventre Wilderness." BTNF Appx D at page 1.

120. Shoal Creek WSA was deemed to have wilderness character, along with the

entirety of former roadless areas now protected as the Gros Ventre Wilderness. Evaluation at 74-75.

121. The evaluation described “Recommended Wilderness” as the desired future condition for “[t]hose parts of the forest meeting national criteria for potential wilderness and determined to be capable, available, and needed for additions to the National Wilderness Preservation System. The Wilderness Study Areas (Palisades and Shoal Creek), and numerous large backcountry areas are potential candidates.” *Evaluation at 72 (Chart)* (underlining emphasis added).

122. For Palisades, the 2008 Evaluation found that 76,873 acres had wilderness character. This conclusion triggered a responsibility to protect existing character and the potential for future wilderness designation by the Wyoming Wilderness Act. At a minimum, it triggered a responsibility to fully analyze recreational management alternatives that maintained existing character as of 1984 and the date of the Evaluation, including prohibition of non-conforming mechanized and motorized uses. This was not done.

123. Rifle hunting season in the WSAs occurs in September and October for deer, elk, moose, mountain goats, and bighorn sheep (Palisades WSA only). This fall months come after the summer heat dries out the land on a daily basis and before late fall or winter temperatures freeze the ground. Both WSAs are highly popular and sought-after hunting destinations.

124. Fall moisture causes muddy roads or trails that make them vulnerable to rutting, and difficult passage. Mountain bike, ATV and OHV users create new routes navigating around pools of standing water and muddy sections of road. Impacts include loss of vegetation, trampling and erosion. The overall effect of motorized ATV and OHV uses includes loss or diminishment of wilderness values.

## **History of Mountain Bike and ATV Usage in the WSAs**

125. In 1984, mechanized mountain biking and mechanized/motorized ATV/OHV usage were minimal in Wyoming and Idaho National Forests generally, and the BTNF and CTNF specifically. This includes the WSAs.

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

127. In 1984, mountain bikes were only beginning to be commercially manufactured. On information and belief, mountain bike rentals were unavailable in the Teton Valley. Mountain bikes usage on trails across the BT and Targhee National Forests was a small fraction of current use by all metrics including number of resident users, number of non-resident users, trails used for mountain biking, intensity of use on such trails, and the period during the summer when mountain biking use occurred.

128. The continued evolution of mountain biking and cycling continues to raise new management and resource challenges for public lands managers. In recent years, extra “Fat Tire” bikes with 8 inch or larger tires have emerged.

129. Fat Tire bikes are marketed to allow users to take riders places they have never biked before in all four seasons for year-round use, including especially muddy trails, off trail, and over snow. They also allow less expert or experienced bikers to access and use trails that they otherwise could not handle. Fat tire use has steadily increased in the WSAs since approximately 2010 but has not been analyzed by the Forest Service.

130. Downhill-specific mountain biking did not exist in 1984, but now Lithium, a mountain bike-only trail in the Palisades WSA, is a designated "downhill-only" trail.

131. Previously, mountain biking in the WSAs was limited to late spring, summer, and early fall. Now, year-round use occurs, and overall use has exploded. Use in the WSAs continues to steadily increase in recent years, driven by factors including Forest Service trail designations, Forest Service publications depicting and describing WSA mountain biking trails, websites depicting mountain bike trails on the WSAs and adjacent lands, social media, word of mouth, local bike shop rentals and promotion, and other means.

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

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

134. The number of trips and users alone do not provide accurate comparisons of mountain bike use versus quiet recreation, or regarding impacts to quiet users, either today or between now and 1984. Because mountain bikes cover far more ground in far less time than hikers or equestrians, mountain bikers can easily travel 20 or more miles of trail and penetrate the interior of either WSA during a half-day visit. This impacts solitude and infringes on a primitive or unconfined recreational experience, far in excess of the low odds that a quiet user in 1984 might have encountered a mountain biker near an outside boundary of one of the WSAs.

135. These recent developments and trends illustrate the need for the Forest Service to comprehensively address mountain biking and ATV/ORV use in the WSAs.

136. Since the prior designations, significant changes have occurred on each National Forest. Advances in mountain bike and ATV/OHV technology have resulted in the expansion of these nonconforming uses into previously inaccessible or little used WSA trails and areas. The geographic expansion and increase in use levels is resulting in increased impacts to WSA and wilderness resources and uses. The number of trails, the total amount of trail miles, and heavy levels of these non-conforming uses are harming wilderness resources, interfering with quiet recreational uses, and jeopardizing the potential for Congressional wilderness designation.

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

138. Unlike the minimal or light mountain bike use that may have existed in 1984, today's usage is heavy in summer, has gone from practically non-existent in spring and fall to approaching heavy use, and is increasing in winter. Expansion of use from one to four seasons is a significant change, a significant threat to wilderness resources and competing uses, and a significant threat to potential designation as wilderness.

139. Teton Pass, including trails designated by the Forest Service as open to mountain

bike use, is recognized and marketed as one of the most popular mountain bike designations on the Bridger-Teton National Forest, in the state of Wyoming, and the greater Yellowstone region.

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

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

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

143. Regarding motorized and mechanized use, the 2016 Palisades WSA Fact Sheet

asserts that “Much of the area is closed to summer wheeled motorized use (decision made in late 1990s, 2000 and 2009). However, about 17 miles of single-track motorcycle trail is located in the Indian Creek area on the Caribou-Targhee Forest. [. . .] Mountain bike use within the WSA is concentrated on three trails (Lithium, Black Canyon, and Mail Cabin – about 13 miles). Some mountain bike use occurs on other trails such as Cabin Creek, Dog Creek, Mosquito Creek and North Fork Fall Creek.” Palisades Wilderness Study Area, Fact Sheet 12.13.2016, Bridger Teton and Caribou Targhee National Forest, at page 3.

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

#### **Impacts of Mountain Bike and ATV Usage in the WSAs**

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

146. Elk, moose, and deer are especially vulnerable and susceptible to disturbances during the spring calving and fawning seasons.

147. A growing body of scientific literature documents the impacts of mountain biking and ATV/OHV use on big game species. For instance, the Forest Service Technical Guide for Monitoring Wildlife Habitat provides that “ATV use on trails affects distributions of ungulate species like elk, because one pass of a motorized vehicle or ATV per day causes increased movement rates and flight responses (Wisdom et al. 2004a, 2004b).”

[https://www.fs.fed.us/research/publications/gtr/gtr\\_wo89/gtr\\_wo89.pdf](https://www.fs.fed.us/research/publications/gtr/gtr_wo89/gtr_wo89.pdf) at 7-29 to 7-30.

148. A 2017 article titled “Elk responses to trail-based recreation on public forests” considered the impacts of various forms of recreation on elk populations and habitat. This article was co-authored by two researchers who work for the U.S. Forest Service Northwest Research Station (lead authors), and four state researchers affiliated with the Department of Fisheries and Wildlife at Oregon State University, the OSU Cooperative Fish & Wildlife Research Unit, and the Oregon Department of Fish Wildlife.

149. Conducted on the Starkey Experimental Forest, the study looked at four common types of trail-based recreation on public forests: “all-terrain vehicle (ATV) riding, mountain biking, hiking, and horseback riding.” Article at page 223, Abstract. The Abstract notes that elk are a species that is “highly sought for hunting and viewing on public forests, but that is sensitive to human activities, particularly to motorized traffic on forest roads.” *Id.*

150. According to the findings: “Elk avoided the trails during recreation treatments, shifting distribution farther out of view and to areas farthest from trails. Elk shifted distribution back toward trails during control periods of no human activity.” *Id.* The article found that ATV recreation has the highest impacts, followed by intermediate impacts from mountain biking, with hiking and equestrian use similar and lowest. “Separation distances maintained by elk from recreationists also were 3–5 times farther than mean distances at which elk could be viewed from trails. Distances between elk and recreationists were highest during ATV riding, lowest and similar during hiking and horseback riding, and intermediate during mountain biking.” *Id.*

151. “Our results support the hypothesis that elk avoid trail-based recreation similarly to their avoidance of roads open to motorized traffic on public forests. Forest managers can use results to help optimize trade-offs between competing objectives for trail-based recreation and wildlife species like elk that are sensitive to human activities on public forest.” *Id.* Accordingly,

allowing high levels of ATV and mountain bike use in the WSAs can approximate the impacts of roads open to vehicles on non-wilderness or non-WSA lands.

152. The study supports Plaintiff’s concerns that recreation management on public forests can displace elk to private lands during hunting season. “Elk sometimes move much longer distances (e.g., >25 km) from public to private lands during hunting seasons when public forests are highly roaded and lack adequate security for elk to hide from hunters.” *Id.* at 231.

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

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

155. According to the article: “Optimizing land allocations through spatial analyses of tradeoffs between competing forest uses [. . .] with the inclusion of human ecology mapping [] and

stakeholder engagement [] is a forest planning approach that holds promise in helping address recreation and wildlife conflicts. We suggest that such an approach be considered in comanaging trail-based recreation and sensitive wildlife like elk on public forests.” *Id.*

### **History of ATV Use in Shoal Creek WSA**

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

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

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

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

160. Plaintiffs therefore request that this Court issue declaratory and injunctive relief to

remedy these violations of law.

### **Impacts of ATV and OHV Use in Shoal Creek WSA**

161. ATV and OHV use has significantly increased in Shoal Creek WSA since 1984. This use threatens and impacts wilderness resources and the wilderness recreational experience of quiet users seeking solitude and primitive or unconfined recreation, such as Plaintiff's members. Heavy ATV and OHV traffic during fall hunter season negatively impacts or displaces both game and hunters seeking a wilderness quality experience. *See* Cumulative and Universal ATV Impacts on the Landscape and Wildlife: A Review of the Literature on the Subject, "Although roads may be the largest source of habitat fragmentation in North America trails can have a greater cumulative impact due to the density of trails on previously continuous habitats (citing to Gaines et al. 2003; Gilbert 2003)".

[https://www.lsohc.leg.mn/materials/16\\_Mtg/DEC\\_14\\_2016\\_ORV\\_WHITE\\_PAPER\\_BackcountryHuntersAnglersofAmerica.pdf](https://www.lsohc.leg.mn/materials/16_Mtg/DEC_14_2016_ORV_WHITE_PAPER_BackcountryHuntersAnglersofAmerica.pdf), p 14. Plaintiff Mountain Pursuit is not challenging winter snowmobile or heli-skiing use in the WSAs for two reasons. First, other groups have litigated or are in the process of litigating these issues. Second, the wildlife species Mountain Pursuit seeks to protect in this litigation are primarily game species that do not use the WSAs as habitat in the winter because they predominantly move to lower elevations known as winter range.

### **BTNF Forest Plan and Management or Recreation Decisions for the WSAs**

162. The BTNF completed a Forest Plan in 1990 ("BTNF Forest Plan" or "Forest Plan"). The Forest Plan includes management direction related to WSAs, recreational uses, wildlife species including big game, and wildlife habitat. It requires that the recreation trail system be managed to minimize conflicts among users. Regarding the WSAs, the Plan acknowledges and adopts the provisions in the Act that no activities can occur that would impair Wilderness

characteristics or reduce the potential of the area for inclusion in the NWPS. Had management complied with that standard, this litigation would not be necessary.

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

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

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

166. Forest Plan Goal 1.2 established targets for transportation, including trails,

Mountain biking or bicycling was not mentioned, in contrast to specific goals related to other users or uses such as commercial users, timber contractors, ranchers, the outfitting and guide industry, and mineral developers. *Plan* at 141.

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

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

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

170. The Fisheries and Wildlife section of the Plan commits to protecting wildlife and habitat. For example, the Security Area Standard provides for maintaining Non-activity or security

areas “adjacent to concentrated human activity areas.” *Plan* at 155. Because WSAs are to be managed for solitude and primitive recreation, concentrated activity areas are inappropriate.

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

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

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

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

175. The Bridger-Teton made slight revisions to the winter travel plan in 1993 to adjust some motorized and non-motorized routes and boundary lines of crucial big game winter

range, private land, and Wilderness areas.

176. The Forest Service initiated summer travel planning that covered the Teton Division in 2008 and issued motor vehicle use maps when that process was completed. The 2010 Winter Travel Map for the Teton Division showed the same Over-Snow Vehicle (“OSV”) designations as the 1990 map and stated that OSV closures were due to Wilderness and protection of crucial big game winter range. OSV designations are outside the scope of this litigation, which focuses on mechanized and motorized uses outside the winter months but includes winter Fat Tire biking.

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

#### **APRIL 2019 BTNF EVALUATION REPORT**

178. The 2019 Evaluation Report acknowledges the emergence of single-track trails and fat biking as a winter activity. Report at 60. However, there is no indication that the Forest Service has analyzed the impacts of this new recreational activity on wildlife or habitat.

179. Over-snow fat bike recreation can occur year-round when there is snow. This use did not emerge until approximately 2010 and has been steadily and exponentially growing ever since. It did not exist in 1984. It raises questions about impacts to other users under the Act and WSA management provisions, and to big game under the Forest Plan and other protective management guidance. It is inconsistent with the Act and should be prohibited in the WSAs.

#### **MOUNTAIN PURSUIT LETTER TO BTNF AND FS RESPONSE**

180. On April 11, 2019, Mountain Pursuit wrote the Supervisor of the Bridger-Teton National Forests regarding “the use of mechanized vehicles, specifically mountain bikes, in the

Palisades Wilderness Study Area, and both motorized (ATV/UTV) and mechanized (mountain bikes) in the Shoal Creek Wilderness Study Area[.]” Mountain Pursuit’s letter noted that both WSAs were established by the Wyoming Wilderness Act, “which requires the Forest Service to maintain the ‘presently existing character’ of both the Palisades and Shoal WSAs.” Mountain Pursuit stated that the Act does not mention either ATV/UTV use or mountain biking. The Mountain Pursuit letter is attached as Exhibit 2.

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

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

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

184. Mountain Pursuit stated that “[t]he impacts of motorized and mechanized travel on big game, specifically elk and deer, is significant.” It cited to the Starkey Experimental Forest

study, *supra* at ¶¶ 148-155, establishing that “ATVs and mountain bikes caused a greater flight response amongst deer and elk than horseback riding and hiking, and that the impact to wildlife from ATVs and mountain bikes was similar, despite mountain bikes being quieter.” Letter at 1.

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

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

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

188. The agency response conflates the Forest Service’s specific legal duties in managing Congressionally designated WSAs with the assertion that “[t]he presence of mountain bike use in a roadless area does not preclude the potential of the area from being considered for inclusion in the NWPS[.]” *Id.* at 2. Roadless area management mandates differ from Congressionally designated WSAs, and the BTNF alone has more than 1.3 million acres of roadless lands with wilderness characteristics not subject to the special Congressional protections imposed by the Act. Further, the assertion that some roadless areas in other states that had

mountain bike use were designated for inclusion in the NWPS is neither relevant nor dispositive regarding WSA management.

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

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

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

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

192. The agency response acknowledges that it "became aware of increasing mountain bike activity in the Teton Pass area with associated unauthorized trail construction" in 2002. Response at 3. That led to the 2004 Decision Memo for which "the focus was on maintaining the physical characteristics of the WSA" and "preventing unauthorized trail

construction.” *Id.* The agency response omits the fact that it failed to seek to maintain the wilderness experience available in 1984, or that part of the 2004 decision rewarded past unauthorized trail construction by officially recognizing and designating such trails for mountain bike use in the WSA.

193. The agency’s assertion that “[o]verall, the Palisades WSA receives light recreation use except for the easily accessed Teton Pass area” is contradicted by the trail usage characterizations of the BTNF on recreational pages of the Forest website.

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

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

196. For Shoal Creek WSA, the agency response states that “observations from field

personnel suggest mountain bike use rarely occurs.” *Id.* at 3. This is contradicted by the Plaintiff’s experience and observations. The response is largely silent on ATV/OHV impacts in Shoal Creek, the effect on solitude and quiet recreation, impacts to hunters accessing the WSA on foot or horseback, and impacts to big game during hunting season, calving season, and other times of year when the herds are vulnerable and especially susceptible to disturbance. The agency is also silent concerning the resource impacts to the WSAs by ATV/ORVs including new trails, and destruction/expansion of existing roads/trails during the busy and often wet and muddy fall rifle hunting seasons.

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

### **LEGAL BACKGROUND**

198. Plaintiff’s claims in this case are supported by several preceding federal court cases involving similar issues going to mechanized and motorized recreation within Congressionally designated WSAs on National Forest lands.

199. Heli-skiing in Palisades WSA was litigated in a 2006 case that presents many of the same factual and legal issues as this Complaint. See *Greater Yellowstone Coalition v. Timchak*, Case No. CV-06-04-IBLW (D. Idaho Nov. 21, 2006). *Greater Yellowstone* establishes that: “[t]he Wyoming Wilderness Act requires that the Wyoming portion of the Palisades must be managed as a wilderness study area to ‘maintain [its] presently existing wilderness character’ as of 1984, the year Congress passed that legislation.” *Greater Yellowstone Coalition* at \*5-6 According to the decision: “The parties agree that this language imposes a duty on the Forest Service to

administer the Palisades WSA to maintain (1) the ‘wilderness character’ that existed there in 1984, and (2) its ‘potential for inclusion in the National Wilderness Preservation System.’” *Id.*

200. Regarding the first duty, “when Congress directed the Forest Service to maintain the WSA’s ‘presently existing’ wilderness character, it meant the character existing in 1984. And to ‘maintain it’ means to preserve it — to not authorize any use that would diminish the wilderness character of the Palisades WSA as it existed in 1984.” *Id.* at \*5-6. The Court looked to the 1964 Wilderness Act for the definition of “wilderness as an area that has, among other things, ‘outstanding opportunities for solitude or a primitive and unconfined type of recreation.’” *Id.*

201. In *Greater Yellowstone*, Plaintiffs alleged that the heli-skiing operation approved by the Forest Service would “buzz the Palisades Wilderness Study Area and recommended wilderness on the Idaho side of the border on virtually every day of good weather during the winter season, disturbing sensitive wildlife and depriving other recreationists of the opportunity to enjoy their public lands in quiet solitude.” *Greater Yellowstone*, Order on Motion for Change in Venue, Slip Op. at 1. (underlining emphasis added). The impacts of the heavy mountain bike and ATV/OHV use raised in this Complaint has the similar impacts on wildlife, quiet recreation, and solitude as the heli-skiing operation at issue in *Greater Yellowstone*.

202. *Greater Yellowstone* held that “[t]he analysis required by the [Wyoming Wilderness] Act was not done here. Accordingly, the FEIS and ROD violate the mandate of Congress contained in the Wyoming Wilderness Act. The Forest Service decision to issue a permit to High Mountains is therefore arbitrary and capricious under the Administrative Procedures Act, 5 U.S.C. § 706(2)(A). The analysis required by the Act was not done here. Accordingly, the FEIS and ROD violate the mandate of Congress contained in the Wyoming Wilderness Act. The Forest Service decision to issue a permit to High Mountains is therefore

arbitrary and capricious under the Administrative Procedures Act, 5 U.S.C. § 706(2)(A).” *Greater Yellowstone*, Order on Merits at \*15-16.

203. The Court found that the Forest Service FEIS failed to compare the spatial and temporal effects of present or proposed heli-skiing use levels "against the wilderness `character' present within the Palisades WSA when the Wyoming Wilderness Act was passed in 1984[.]" *Id.* at 7. “While the FEIS contains a paragraph discussing the 1984 wilderness character, see *FEIS* at p. 79, it is very general, contains no specific discussion of motorized use in 1984, and, most importantly, is never referred to again as a benchmark for comparison.” *Id.* The analysis of mountain bike use prior to 1984 in the NEPA and planning documents relied on by the Forest Service to justify existing mechanized mountain bike and motorized ATV/OHV use is no better than that conducted in the heli-ski FEIS. Thus, the Forest Service has violated the Act, NEPA and NFMA.

204. Under NEPA, *Greater Yellowstone* found that the Forest Service’s failure to compare proposed usage levels to 1984 was “a crucial inaccuracy” and that the agency’s analysis overstated historical use “and consequently underestimated the increased impacts in the present.” *Id.* at \*16. “While the Forest Service now claims that is a mis-interpretation, any member of the public reading the FEIS would have been misled. This is a crucial inaccuracy because it would have overstated helicopter use in 1984 and consequently underestimated the increased impacts in the present. For this reason, the FEIS and ROD violate NEPA.” *Id.*

205. NEPA requires supplemental analysis when "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" emerge. 40 C.F.R. § 1502.9(c)(1)(ii). More than 20 years have passed since the Forest Service has analyzed and assessed the impacts that mountain bikes and mechanized uses are having in the

Palisades WSA and Shoal Creek WSA. New information and circumstances relevant to the impacts of mountain bikes in WSAs has emerged, which includes scientific publications on wildlife interactions and mountain bikes that require the Forest Service to prepare a supplemental NEPA analysis. Similarly, the Forest Service has not conducted any analysis regarding how increased mountain bike use in the Palisades and Shoal Creek WSAs impact how the Forest Service will manage these uses in order to maintain the primeval character and preserve the natural conditions of these WSAs.

206. Under NFMA, *Greater Yellowstone* found that existing agency decisions authorized an increase from 14 to 140 annual service days of heli-skiing use absent any discussion “concerning how this increase complies with the Forest Plan. Accordingly, the Court finds a violation of NFMA.” *Id.* at \*17. In the instant Complaint, Plaintiffs allege a similar increase in mechanized and motorized recreational usage and user-days compared to 1984 levels.

207. The Court found that the agency documents “violate the Wyoming Wilderness Act, NEPA, and NFMA,” and gave the parties time to negotiate a remedy, “without prejudice to Greater Yellowstone’s right to seek injunctive relief if negotiations between the parties break down.” *Id.* at \*19.

208. Ultimately, the negotiations resulted in a new Forest Service limit of 65 annual heli-skiing days in Palisades WSA, a number far below the 140 days allowed by the challenged agency decision. *See* [https://www.fs.fed.us/sites/default/files/media\\_wysiwyg/final\\_report-palisades.pdf](https://www.fs.fed.us/sites/default/files/media_wysiwyg/final_report-palisades.pdf) .

209. In a case involving mechanized and motorized recreation on Montana’s Gallatin National Forest, the federal courts recognized and adopted the Forest Service finding that, between the 1987 Gallatin Forest Plan and the filing of the case in 2016, “Motorized and

mechanized recreational use has intensified: '[u]se of snowmobiles and ATVs has grown in popularity,' for instance, and mountain bike activity has 'exploded.'" *Montana Wilderness Assn. v. McAllister*, 666 F.3d 549, (9th Cir. 2011). This case involved recreational uses on the Hyalite–Porcupine–Buffalo Horn WSA, a 155,000 area on Montana's Gallatin National Forest. The Hyalite-Porcupine-Buffalo Horn was designated by the 1977 Montana Wilderness Study Act, and the Court held that the Forest Service is required to manage the WSA consistent with the Montana Act. *Montana Wilderness Assn.*, 666 F.3d at 552.

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

211. The Ninth Circuit held “that the travel plan improperly ignores the impact of increased volume of motorized and mechanized use on current users' ability to seek quiet and solitude in the study area.” *Id.* at 561. Accordingly, the challenged agency decision to allow the motorized and mechanized usage in the WSA was arbitrary and capricious.

212. The Court directed that, on remand, “the [Forest] Service must acknowledge the relevance of the missing information and comply with § 1502.22(b)'s instructions for assessing reasonably foreseeable adverse impacts despite gaps in the relevant data.” *Id.* at 560.

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

214. A third case affirmed a Forest Service decision restricting motorized and mechanized uses to levels in the year of WSA designations, where the Forest Service had quantitatively and qualitatively analyzed increases on recreational uses not allowed in wilderness. *Bitterroot Ridge Runners Snowmobile Club v. United States Forest Service*, 329 F.Supp.3d 1191 (D. Mont. 2018).

215. According to the decision: “First, the Court concludes that the Forest Service properly interpreted the MWSA guidelines for maintaining existing wilderness character in 1977. Because the Forest Service found that the current amount of motorized and mechanical users has far surpassed the 1977 levels, it appropriately created current wilderness designations beyond what existed in 1977.” *Bitterroot Ridge Runners*, 329 F.Supp.3d at 1191 (underlining emphasis added).

216. “Second, the Court finds that the Forest Service did not err in changing the management of the Sapphire and Blue Joint WSAs to restrict motorized and mechanical use in order to maintain the areas' 1977 wilderness character. The Forest Service analyzed available data to estimate the number of motorized and mechanical users from 1977 to 2009 in the Study Areas, as indicated through the Northern Region economist, Keith D. Stockman's report[.]” *Id.* (underlining emphasis added).

217. In the instant case, the Forest Service abdicated its duty to compare existing

mechanized and motorized use levels to 1984, and to protect wilderness values and characteristics in the WSA. No analysis comparable to that performed for the Sapphire and Blue Joint WSAs was done for Palisades and Shoal Creek WSAs.

### **FIRST CLAIM FOR RELIEF**

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

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

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

220. The Forest Service has failed to acknowledge or meet its duty to manage the WSAs so as not to authorize uses that would diminish the wilderness character or the wilderness experience available to users in 1984.

221. Mechanized and motorized recreation make WSAs less natural, more developed (trail construction and maintenance, including trail work by mechanized and motorized user groups), and less available for solitude and primitive or unconfined recreation. These types of recreation tend to detract from wildlife or habitat features and values. They create manageability concerns to the extent the agency has allowed uses prohibited in wilderness to become established in WSAs. The more trail miles open to mechanized or motorized uses, the greater proportion of a WSA where such uses are allowed, and the level or intensity of such uses all tend to detract from wilderness characteristics and character.

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

WHEREFORE, Plaintiffs pray for relief as set forth below.

### **SECOND CLAIM FOR RELIEF**

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

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

224. This second claim for relief challenges the Forest Service's decisions allowing mountain bike use that significantly exceeds the volume and locations of uses in 1984 as being arbitrary, capricious, an abuse of discretion, and contrary to the Travel Management Rule, NFMA, and NEPA. Plaintiffs bring this claim pursuant to the judicial review provisions of the APA, 5 U.S.C. § 706.

225. After passage of the Act, the Forest Service ignored the explosion of mountain bike use in the Palisades and Shoal Creek WSAs for two decades. The 1990 Bridger Teton Forest Plan abdicated the Forest Service's duty to manage the WSAs consistent with the direction prescribed by Congress. Instead of recognizing and analyzing the burgeoning explosion in mountain bike use in 1990 compared to negligible levels of mountain biking in the WSAs in 1984,

the Forest Service simply recognized that mountain biking was occurring in the WSAs.

226. In 2004, the Forest Service finally issued a Decision Memo. The Decision Memo failed to comply with NEPA, NFMA, or the Wyoming Wilderness Act.

227. “The [Forest] Service must acknowledge the relevance of the missing information and comply with § 1502.22(b)'s instructions for assessing reasonably foreseeable adverse impacts despite gaps in the relevant data.”

228. The winter snowmobile closure of the Teton Pass area (*supra* paragraph 39) establishes the viability of a mountain bike closure for the WSAs in the same area, WSA-wide, or in other areas of either WSA to be informed by the required but missing analysis of current usage and impacts compared to 1984 levels.

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

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

231. Through this complaint, Plaintiffs seek a declaration that the Forest Service’s management of mountain bike use in the Palisades and Shoal Creek WSAs violates federal law and is otherwise arbitrary and capricious. Plaintiffs additionally seek injunctive relief to redress

the injuries caused by these violations of the law.

WHEREFORE, Plaintiffs pray for relief as set forth below.

### **THIRD CLAIM FOR RELIEF**

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

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

233. This third claim for relief challenges the Forest Service's decisions in the 1990 Forest Plan, as amended and updated in 2015, and the Travel Management Maps covering Shoal Creek WSA pertaining to recreational use and failure to protect wilderness resources and wilderness recreational experiences.

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

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

236. The winter snowmobile closure of the Teton Pass area (*supra* paragraph 39)

establishes the viability of motorized use closures across Shoal Creek WSA, or in areas where recreational conflicts, big game impacts, or other impacts indicate that such a closure is appropriate.

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

WHEREFORE, Plaintiffs pray for relief as set forth below.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare that the Forest Service's existing decisions allowing mountain bike and ATV/OHV usage far in excess of 1984 levels at the expense of wilderness resources and quiet, non-mechanized, non-motorized WSA users seeking solitude and a wilderness experience as intended by Congress were arbitrary, capricious, an abuse of discretion, and/or violated the Wyoming Wilderness Act, NEPA, NFMA, and/or the Travel Management Rule, and thus were unlawful under the judicial review standards of the APA, 5 U.S.C. § 706(2)(A);

B. Remand for the Forest Service to conduct comprehensive planning on mechanized and motorized usage in the WSAs and the impacts on resource management for quiet recreation and resources including wildlife, as required pursuant to legal obligations under the Act, NEPA, NFMA and applicable court decisions.

C. Suspend and enjoin mountain bike use in both WSAs and ATV/OHV use in Shoal Creek WSA pending compliance with applicable law regarding existing unlawful and unanalyzed or under-analyzed uses.

D. Vacate and set aside the existing recreational decisions and trail management designations governing mountain bike and ATV/OHV usage in the WSAs for the BTNF and CTNF;

E. Order the Forest Service to ensure that future recreational use management and travel management planning for these forests comply with the Wyoming Wilderness Act, NFMA, NEPA, and the Travel Management Rule,

F. Issue such temporary, preliminary, and/or permanent injunctive relief as may specifically be requested hereafter by Plaintiff;

G. Award Plaintiffs their reasonable attorney fees, costs, and litigation expenses under the Equal Access to Justice Act, , 28 U.S.C. § 2412, and/or any other applicable law; and grant such further and additional relief as the Court deems just and proper in order to remedy the violations of law alleged herein and to protect the interests of Plaintiff, the public, and the lands at issue.

Respectfully submitted on September 24th, 2019

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