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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION

TEN LAKES SNOWMOBILE CLUB; MONTANANS FOR MULTIPLE USE, North Lincoln County Chapter; CITIZENS FOR BALANCED USE; GLEN LAKE IRRIGATION DISTRICT; BACKCOUNTRY SLED PATRIOTS; IDAHO STATE SNOWMOBILE ASSOCIATION; and BLUERIBBON COALITION; Plaintiffs, v. UNITED STATES FOREST SERVICE; U.S. FOREST SERVICE, Northern Region; KOOTENAI NATIONAL FOREST; IDAHO PANHANDLE NATIONAL FORESTS; LEANNE MARTEN; Regional Forester, Northern Region; CHRIS SAVAGE, Forest Supervisor, Kootenai National Forest; MARY FARNSWORTH, Forest Supervisor, Idaho Panhandle National Forests; Defendants.	Case No. _____ COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF ACTION

1. This action seeks declaratory and injunctive relief requiring Defendants United States Forest Service; U.S. Forest Service, Northern Region; Kootenai National Forest; Idaho Panhandle National Forest; Leanne Marten, Regional Forester, Northern Region; Chris Savage,

Forest Supervisor, Kootenai National Forest; and Mary Farnsworth, Forest Supervisor, Idaho Panhandle National Forests (the "Forest Service") to comply with controlling law while managing the Kootenai National Forest (the "Kootenai" or "KNF") and the Idaho Panhandle National Forests (the "Panhandle" or "IPNF").

2. Plaintiffs specifically challenge the Forests' 2015 revised Kootenai National Forest Land Management Plan (the "KFP") and 2015 revised Idaho Panhandle National Forests revised Land Management Plan (the "PFP"). The Forest Plans reflect programmatic direction to address topics like desired conditions, objectives, standards and guidelines, but also contain land suitability decisions that have an immediate site-specific effect on day-to-day use of the Forests, including by Plaintiffs. These decisions and actions associated with formal adoption of the Forest Plans are presented through the January 5, 2015, decision documents, which for each Forest include a Record of Decision ("ROD"), Final Environmental Impact Statement ("FEIS"), Errata to the FEIS, Objection Response, Draft ROD, and Draft Environmental Impact Statement ("DEIS").

3. The consolidated Forest Planning process stretched for roughly fifteen (15) years, weathering four (4) changes in Presidential administrations, at least four (4) different versions of the national Forest Service Planning Rule, and an omnipresent buzz of changing science, conflicting public input and controversy.

4. While the agency dutifully grappled with these challenges, the resulting Forest Plans are unsurprisingly plagued by both procedural and substantive errors. The Kootenai did not properly define the range of alternatives, and found itself straying outside the range of alternatives in selecting a final decision. The evaluation/selection of potential additions to both recommended wilderness and Wild and Scenic River systems were procedurally flawed and

many of the resulting choices thus seem arbitrary and bereft of anything resembling science. Both Forests imposed an unwavering prohibition on all motorized and mechanized vehicles from recommended wilderness, even though agency guidance allows for continuation of these uses where they do not impair existing wilderness character. The KFP failed to properly address its duties and obligations to local governments and in managing municipal watersheds. These flaws cause concrete injury to Plaintiffs' legally protectable interests.

5. Any or all of the above-described flaws necessitate judicial action to set aside and declare unlawful at least certain aspects of the Forest Plans, and to determine the appropriate remedy, guidance and/or interim management direction for the Forests on remand.

6. This action arises under the National Forest Management Act, 16 U.S.C. § 1600 et seq. ("NFMA"); the Wilderness Act, 16 U.S.C. § 1131 et seq.; the Wild and Scenic Rivers Act, 16 U.S.C. § 1271 et seq. ("WSRA"); the National Environmental Policy Act, 42 U.S.C. § 4331, et seq. ("NEPA"); the Administrative Procedure Act, 5 U.S.C. § 551, et seq. (the "APA"), and any implementing regulations for these statutes.

JURISDICTION AND VENUE

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

8. Venue is proper in this Court under 28 U.S.C. § 1391(e) because a substantial number of the events or omissions giving rise to these claims occurred, or, a substantial part of the property that is the subject of these claims is situated, within the District of Montana. The Kootenai includes lands within Lincoln, Sanders, and Flathead Counties, all of which are within the Missoula Division of the Court. The Panhandle includes lands in these Counties; as well as

Pend Oreille County, Washington; and Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah and Clearwater Counties in Idaho. The RODs were issued from the Northern Region office in Missoula, Montana.

PARTIES

11. Plaintiff Ten Lakes Snowmobile Club ("TLSC") is a nonprofit, Montana public benefit corporation with approximately 260 members. TLSC is a volunteer and membership driven organization committed to protecting and advancing the general welfare and safety of the sport of recreational snowmobiling and other winter activities. Such activities include: trail grooming, preservation of forest access, sponsored events, safety forums and training. TLSC members have visited the Forests primarily by snowmobile but also by other or associated forms of motorized transport, and have concrete plans to do so in the future to the extent authorized by the agency. These past and planned future uses include riding snowmobiles in portions of the Kootenai and Panhandle Recommended Wilderness Area's ("RWA"), which was authorized under prior management direction or could be reinstituted through this action. TLSC, including through its members, attended public and personal meetings with the Forest Service and other interested persons and entities, submitted written correspondence and comments, and otherwise fully participated in the process leading to the KFP.

12. Plaintiff Montanans for Multiple Use, North Lincoln County Chapter ("MFMU") is nonprofit, Montana public benefit corporation with approximately 120 members. MFMU's mission is to provide equal recreation opportunities to all responsible recreationists, and to provide and enhance recreation opportunities, access to public lands, and the social and economic climate in and around Western Montana. MFMU members use motorized and non-motorized means, including off-highway vehicles, snowmobiles, horses, mountain bikes, boats,

skiing and hiking, to access state and federally-managed lands throughout the United States and especially in Montana, including the Forest Service-managed lands in the Kootenai and Panhandle Forests at issue in this suit. MFMU members also derive income and in some instances their livelihood from activities/industries that are based on or inextricably connected to the management of the Kootenai Forest, such as agriculture, forest products, livestock, and outfitting operations. MFMU and its members participated in the administrative process culminating in the KFP, and MFMU members have concrete plans to enjoy future off-highway vehicle, mountain bike, hiking and/or other recreational access to the Kootenai and Panhandle National Forests affected by the agency decisions at issue in this suit.

13. Plaintiff Citizens for Balanced Use ("CBU") is a nonprofit, Montana public benefit corporation with approximately 1,800 individual and 25 organizational members. CBU was formed for the purpose of preserving and enhancing recreational access opportunities onto public lands for all forms of recreation, and sustained yield of forest products, grazing, mining and other uses. CBU members use motorized and non-motorized means, including off-highway vehicles, snowmobiles, horses, mountain bikes, boats, skiing and hiking, to access state and federally-managed lands throughout the United States and especially in Montana, including the Forest Service-managed lands in the Kootenai and Panhandle National Forests at issue in this suit. CBU and its members participated in the administrative process culminating in the KFP, and CBU members have concrete plans to enjoy future off-highway vehicle, mountain bike, hiking and/or other recreational access to the Kootenai and Panhandle National Forests affected by the agency decisions at issue in this suit.

14. Plaintiff Glen Lake Irrigation District ("GLID") is an irrigation district formed under and operated in accordance with Montana Code Annotated, Title 85. As such, GLID is a

public corporation for the promotion of the public welfare. Mont. Code Ann. § 85-7-109 (2014). A public corporation is a Montana political subdivision. Mont. Code Ann. §2-9-101(5) (2014). GLID is comprised of approximately 250 members who irrigate roughly 3,000 acres of land within Lincoln County, Montana. GLID is empowered to and does construct, administer and oversee water diversion and conveyance works and to otherwise address the appropriation, ownership, lease, conveyance of water, and other related activities. Mont. Code Ann. § 85-7-1904 (2014). GLID-administered lands and facilities are located adjacent to, and are affected by, Kootenai National Forest lands and waters arising from or traveling through the Kootenai National Forest. Management, mismanagement, or lack of management on the Forest can directly and concretely affect GLID property, as well as the property of owners of land included within GLID. Despite GLID's request, the KNF refused to recognize GLID as a state or local government, and thus relegated GLID to the same participatory rights in the Revised Forest Plan process as the general public. GLID objected to this treatment, but participated to the full extent it was allowed, including by attending meetings, submitting comments, and objecting in writing to the KFP.

15. Plaintiff Backcountry Sled Patriots ("BSP") is a Montana nonprofit organization created to unite and offer strategic assistance to snowmobile clubs, associations, and individuals in order to retain historic riding areas for the snowmobile community. BSP has approximately 800 members. BSP, through its members, attended public and personal meetings with the Forest Service and other interested persons and entities, submitted written correspondence and comments, objected to the ROD(s), and otherwise fully participated in the process leading to the Revised Forest Plans for the Forests.

16. Plaintiff Idaho State Snowmobile Association ("ISSA") is an Idaho nonprofit corporation advocating for snowmobile riders and supporters throughout the state of Idaho and beyond. ISSA is comprised of local snowmobile clubs, and individual and business members. ISSA presently has about 34 member clubs, 55 business members, and numerous individual members. ISSA's goals include providing a unified voice for the Idaho snowmobile community, obtaining and maintaining reasonable snowmobile access to public and private lands in Idaho, and promoting and educating public and private interests on snowmobile use, access and safety issues. ISSA maintains positive working relationships with governmental officials and regulatory agencies, including the Panhandle National Forest. ISSA's members have visited the Panhandle National Forest, including the RWA's, primarily by snowmobile but also by other or associated forms of motorized transport, and have concrete plans to do so in the future to the extent authorized by the agency. These past and planned future uses include riding snowmobiles in the Panhandle RWA's, which was authorized under prior management direction or could be reinstituted through this action. ISSA attended public and personal meetings with the Forest Service and other interested persons and entities, submitted written correspondence and comments, and otherwise fully participated in the process leading to the PFP.

17. Plaintiff Blue Ribbon Coalition, Inc. ("BlueRibbon") is an Idaho nonprofit corporation that champions responsible recreation and encourages individual environmental stewardship. BlueRibbon has members in all 50 states, including Montana and Idaho. BlueRibbon members use motorized and non-motorized means, including jeeps, all-terrain vehicles, snowmobiles, mountain bikes, horses, and hiking, to access Forest Service and other public lands throughout the United States, including such lands in Montana and the Kootenai National Forest, and in Idaho and the Panhandle National Forest. BlueRibbon has a long-

standing interest in the protection of the values and natural resources addressed herein, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors. BlueRibbon members have visited the Kootenai and Panhandle Forests via the above-described means of access and intend to do so in the future, including using motorized and mechanized means such as snowmobiles, motorcycles and mountain bikes in RWA's. BlueRibbon, including through its members, attended public meetings, submitted input to the Forest, provided formal written comments, and otherwise fully participated in the process that generated the Forest Plans and RODs.

18. 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.

19. Defendant U.S. Forest Service, Northern Region, is a subunit of the Forest Service which oversees and administers about 25 million acres of National Forests located within northeastern Washington, northern Idaho, and Montana, and the National Grasslands in North Dakota and northwestern South Dakota. Included within this area and administered by the Northern Region are the Kootenai and Panhandle National Forests.

20. Defendant Kootenai National Forest is a subunit of the United States Forest Service within the Northern Region comprised of approximately 2.2 million acres of land located in the extreme northwest corner of Montana. The Forest's main office is located in Libby.

21. Defendant Idaho Panhandle National Forest is a subunit of the United States Forest Service within the Northern Region comprised of approximately 2.5 million acres of land in the panhandle of north Idaho, with small portions extending into eastern Washington and western Montana.

22. Defendant Leanne Marten is the Regional Forester for the United States Forest Service, Northern Region. The Regional Forester during the most significant developments in preparation and adoption of the Forest Plans was Faye Krueger, who signed the RODs on January 5, 2015, and retired shortly thereafter. Under Fed. R. Civ. P. 25(d), Ms. Marten would be substituted as a defendant in an action naming Ms. Krueger. The Regional Forester oversees and is ultimately responsible for the actions, procedures and decisions of the Forest Service within the Northern Region and is charged with ensuring the Forest Service complies with applicable law. Ms. Marten is sued solely in her official capacity.

23. Defendant Chris Savage is the Forest Supervisor for the Kootenai National Forest. He is the supervisor for the Forest and is the ultimate authority for the actions, procedures and decisions of the Forest and is charged with ensuring the Forest complies with applicable law. Mr. Savage is responsible for interpreting and implementing the Forest Plan's prescriptions on the Kootenai Forest. He is sued solely in his official capacity.

24. Defendant Mary Farnsworth is the Forest Supervisor for the Idaho Panhandle National Forests. She is the supervisor for the Forest and is the ultimate authority for the actions, procedures and decisions of the Forest and is charged with ensuring the Forest complies with applicable law. Ms. Farnsworth is responsible for interpreting and implementing the Forest Plan's prescriptions on the Panhandle Forests. She is sued solely in her official capacity.

LEGAL FRAMEWORK

25. The APA addresses and regulates the function of executive branch administrative agencies within our system of open government. Among such functions, the APA represents a waiver of sovereign immunity by the United States and outlines the circumstances in which "final agency action" may be subject to judicial review, as well as the standards of review to be

applied in such challenges. Since many statutes and regulations do not provide for a private right of action, the APA provides the jurisdictional basis for judicial review of administrative decisions by federal land management agencies applying statutes like NFMA, WSRA, NEPA and the Wilderness Act to public lands like the Forests.

26. NFMA provides the statutory framework for management of the National Forest System. In NFMA and other statutes, "Congress has consistently acknowledged that the Forest Service must balance competing demands in managing National Forest System lands. Indeed, since Congress' early regulation of the national forests, it has never been the case that "the national forests were…to be 'set aside for non-use.'" *The Lands Council v. McNair*, 537 F.3d 981, 989 (9th Cir. 2008) (en banc) (citations omitted). Additional guidance, incorporated expressly within NFMA, is offered in the Multiple-Use Sustained Yield Act ("MUSYA"), which provides that the various surface resources be managed "so that they are utilized in the combination that will best meet the needs of the American people" and to "achieve[ ] and maintain[ ] in perpetuity [ ] a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land." 16 U.S.C. § 531(a) (definition of "multiple use") and (b) (definition of "sustained yield"); 16 U.S.C. § 1604(g) (incorporating MUSYA provisions in NFMA).

27. MUSYA further directs "that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes." 16 U.S.C. § 528.

28. NFMA requires each Forest to prepare and revise a Land and Resource Management Plan ("LRMP" or "Forest Plan"). 16 U.S.C. § 1604. A Forest Plan lays out broad guidelines to advance numerous goals and objectives, including to "insure consideration of the

economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resource, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish…." *Id.* at (g)(3)(A). These plans contain desired conditions, objectives and guidance for project and activity decision making, but do not approve or execute projects and activities. 36 C.F.R. § 219.3 (2007). The guidance in the Forest Plan is subject to change through plan amendment in site-specific or project-level planning, or through revision of the Forest Plan itself. 36 C.F.R. § 219.12 (2007).

29. A Forest Plan is the governing land use plan for an individual National Forest. A Forest Plan is strategic in nature, and does not make commitments to selection or specifications of any particular project or daily activities. The Forest Plan also identifies standards and guidelines to govern specific activities subject to more detailed project-level or site-specific planning.

30. Project level planning occurs for a broad spectrum of projects and activities within the Forest Service system, including vegetation management and timber projects, mining plans of operation, ski area development and operations, special use management such as guiding and outfitting, and travel management. This more detailed site-specific planning includes analysis of on-the-ground management options and associated effects to the human environment for each option.

31. An additional example of project-level planning affecting Plaintiffs occurs in "travel planning" when a Forest implements the agency's Travel Management Rule. See, "Travel Management; Designated Routes and Areas for Motor Vehicle Use." 70 Fed. Reg. 68264-68291 (Nov. 9, 2005). The Travel Management Rule generally "requires designation of

those roads, trails and areas that are open to motor vehicle use…and will prohibit the use of motor vehicles off the designated system, as well as use of motor vehicles on routes and in areas that is not consistent with the designations." 70 Fed. Reg. 68264 (Nov. 9, 2005).

32. The Travel Management Rule designation process can constitute the "site-specific" management direction for specific areas/roads/trails that are found within the broader "zones" established under a Forest Plan. However, where a "zone" precludes a certain use, such as motorized/mechanized use, it is unlikely that the Forest Service will consider designating uses that do not conform to the programmatic Forest Plan direction. So for area- or zone-wide prohibitions on specified uses, a programmatic decision to prevent specified uses is effectively a site-specific decision to prohibit such use(s) on every area/road/trail in the "zone" governed by the programmatic restriction.

33. A Forest Plan is intended to be revised "from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years…." 16 U.S.C. § 1604(f)(5).

34. WSRA was enacted in 1968 and protects "free flowing" rivers and streams possessing "outstandingly remarkable…values…for the benefit and enjoyment of present and future generations." 16 U.S.C. § 1271. As part of Forest Plan creation/revision, the Forest Service must conduct a two-step process to determine whether the project area contains potential additions to the national wild and scenic rivers system. *Id*. at § 1276(d)(1). The agency must first determine whether certain river segments are "eligible" for inclusion, and among those whether any are "suitable" for wild/scenic designation. *Id*. at §§ 1273(a), (b), 1275(a).

35. The Wilderness Act was ultimately signed into law by President Lyndon B. Johnson on September 3, 1964 (P.L. 88-577). The Act was the product of over eight years'

struggle and evolved through more than 60 distinct drafts in the legislative process. The Wilderness Act is codified at 16 U.S.C. §§ 1131-1136.

36. Central to the Act is the definition of "Wilderness" as:

> [A]n area where the earth and its community of life are untrammeled 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) (1965).

37. In the Act Congress prohibits certain uses in wilderness, stating that "there shall be no commercial enterprise and no permanent road with any wilderness area…." 16 U.S.C. § 1134(c). The same section provides "except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area." *Id.*

38. Statutory Wilderness designations are also subject to a series of "special provisions" which reflect legislative compromises for things like continuation of pre-existing use of aircraft or motorboats the Secretary "deems desirable", any activity for the purpose of "gathering information" about minerals if "carried on in a manner compatible with the preservation of the wilderness environment", similar continuation of water development and

even power projects and transmission lines "needed in the public interest", continuation of livestock grazing, and commercial services "to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas." 16 U.S.C. § 1134(d).

39. The Wilderness Act as passed in 1964 included an initial designation of about 9 million acres of identified wilderness areas. Through subsequent additions by Congress, the National Wilderness Preservation System now comprises over 109 million acres.

40. NEPA represents "our basic national charter for protection of the environment." 40 C.F.R. § 1500.1. NEPA's protections of the "environment" refer to the "human environment" which "shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment." 40 C.F.R. § 1508.14. Thus, the agency's duty to analyze impacts does not end with impacts to the physical environment, because "[w]hen an [EIS] is prepared and economic or social and natural or physical environmental effects are interrelated, then the [EIS] will discuss all of these effects on the human environment." *Id.* Among its numerous purposes, NEPA procedures are designed to foster informed agency decision making based upon informed public participation.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. The Project Areas and Forest Planning Background.

41. The Kootenai lies in the northwest corner of Montana and includes about 2.2 million acres of public lands. It features the Kootenai and Clark Fork river drainages, river valleys and rolling forested hills capped by the Whitefish, Purcell, Bitterroot, Salish and Cabinet Mountains. The Kootenai is home to diverse habitats for varied plant and animal species, and

has included some of the region's most productive forestlands with a rich history of timber and mining resource production.

42. The Panhandle lies primarily in north Idaho and contains major portions of three historically proclaimed national forests: the Kaniksu, the Coeur d'Alene, and the St. Joe. In 1973, major portions of these forests were combined to be managed as one unit, referred to as the Idaho Panhandle National Forests. The Panhandle includes about 2.5 million acres of public lands. The Panhandle features the Kootenai, Clark Fork, Pend Oreille, Priest, Coeur d'Alene and St. Joe river drainages, the Selkirk, Cabinet, Purcell, Coeur d'Alene, and Bitterroot mountain ranges, and the transitional forests, woodlands, and river valleys between these features. The Panhandle too is home to diverse habitats for varied plant and animal species, and has included some of the region's most productive forestlands with a rich history of timber and resource production.

43. Recreation opportunities have long attracted, and increasingly attract, local residents and visitors from across the nation and Canada to the Forests. Popular recreation activities include boating, fishing, hunting, gathering forest products, skiing, hiking, biking, riding wheeled off highway vehicles ("OHV") and snowmobiling. Recreation is important to the local economy and is a major reason people choose to live in the communities within the Forests.

44. Many visitors to the Forests, including Plaintiffs, find unique enjoyment in the maintenance, navigation, operation or riding experience associated with vehicle oriented recreation. Vehicle access is additionally the basis for nearly all forms of recreation on the Forest, as even "non-motorized" forms of recreation such as hiking, horseback riding, biking, or backcountry hunting, rely on vehicle access to a staging area or trailhead that facilitates enjoyment of the targeted activity and destination(s).

45. The history, geography and land ownership pattern of the Forests necessitate and enhance collaborative planning and partnership opportunities. The Forests contain an array of private, state, county, or other governmentally owned/managed lands, wildland urban interface, and population centers and rural communities. The Forests attempt to work with and balance the needs and input of people with different backgrounds, values and priorities, yet united by their common interest in management of the Forests.

46. The Revised Forest Plans became the product of a roughly fifteen (15) year agency effort that spanned multiple changes in national political and agency leadership, as well as several versions of regulatory guidance. The prior Forest Plans for the Kootenai and Panhandle were each completed in 1987.

B. Chronology of Revised Forest Planning Process.

47. The Forests conducted a coordinated planning process to revise their collective 1987 Plans, which first began in late 2000, under the "2000 Planning Rule." See, 65 Fed. Reg. 67568 (Nov. 9, 2000). In April, 2002, the Forests published a "notice of intent" in the Federal Register formally announcing initiation of the Plan Revision process and inviting public input for a twelve (12) month comment period. This publication reflects the beginning of the "scoping process" which is "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." 40 C.F.R. § 1501.7.

48. In addition to receiving public comments, the Forests hosted public meetings, open houses, field trips, and met with county commissioners. Between April, 2002, and May, 2004, each Forest hosted more than a dozen public meetings in and around local communities. In addition, a total of approximately 165 "workgroup" meetings were held within the Forests

between about August, 2003, and September, 2005, involving identified workgroup members focused on certain geographic areas within the Forests.

49. During this time period, the Forest Service modified and issued interpretative guidance on the 2000 Planning Rule on multiple occasions, and eventually "removed" that rule to "clarify" that the 2004 Planning Rule would guide agency compliance with NFMA. See, 70 Fed. Reg. 1022 (Jan. 5, 2005).

50. On May 12, 2006, the Forests formally released Proposed Revised Forest Plans, prepared in accordance with the 2004/2005 Planning Rule. Release of these Plans spurred another round of public review, input, and meetings. However, an injunction issued by the U.S. District Court for the Northern District of California on May 30, 2007 suspended Forest Service activities under the 2004/2005 Planning Rule.

51. The Plans Revision effort stalled while the Forest Service addressed the regulatory limbo created by the injunction. The agency finalized the 2008 Planning Rule in April, 2008. 77 Fed. Reg. 21468 (April 21, 2008). The Plans Revision effort thus resumed under that version of the Planning Rule, and Revised Forest Plans were slated for release in the winter of 2009.

52. The 2008 Planning Rule's lifespan was even shorter than its predecessor, and it was invalidated by another Northern District of California court ruling in June, 2009. Under revised guidance issued in December, 2009, the Forest Service reinstated the 2000 Planning Rule with a transition period providing the option of following the procedures of the 1982 Planning Rule.

53. In March, 2010, the Forests published a new "notice of intent" re-initiating scoping on a Revised Forest Plan, to be prepared under the 2000 Planning Rule using the 1982 Planning Rule procedures. Prior input was considered, along with that generated through a

renewed series of open houses, workgroup meetings, and other meetings with individuals, private group representatives, agencies, and local governments.

54. A draft environmental impact statement ("DEIS") for each Forest was released in January, 2012. The DEISs were available for a 90 day public comment period, which was extended an additional 30 days to end on May 7, 2012.

55. The Forest Service adopted a "pre-decisional administrative review process" applicable to Forest Plan creation/revision in April, 2012, in conjunction with the Final Rule adopting the 2012 Planning Rule. 77 Fed. Reg. 21162-21276 (April 9, 2012). Under this pre-decisional review process, which is based on a process created in 2004 for hazardous fuel reduction projects under the Healthy Forests Restoration Act, the agency shifted from a "post-decision appeal" under prior authorities, to a "pre-decisional administrative review process." *Id*. at 21247.

56. The 2012 Planning Rule has "transition language" like prior planning rules, which the Forests invoked to continue the intent to complete the Revised Forest Plans in accordance with the 1982 Planning Rule. As a result, the Revised Forest Plans are governed by the substantive requirements of the 1982 Planning Rule, but their final approval was governed by the 2012 Rule and pre-decisional review process. Under the pre-decisional review process, the Forest Service issues a Draft ROD, which is subject to objection for a 45 day period. If objections are submitted, the agency must consider and respond to objections, after which it may issue a Final ROD and any additional information

57. A total of thirty-eight (38) objections to the Kootenai Draft ROD and related documents were considered by the Forest Service to meet regulatory criteria, and were thus forwarded for consideration to the "Reviewing Officer." Jim Pena was appointed as the

Reviewing Officer, and served in that capacity from about December, 2013, to about July, 2014. This tenure included presiding over the only objection resolution meeting, which was held in Libby, Montana on April 30, 2014.

58. A total of twenty-two (22) objections to the Panhandle Draft ROD and related documents were considered by the Forest Service to meet regulatory criteria, and were thus forwarded for consideration to the "Reviewing Officer." Mr. Pena was also appointed as the Reviewing Officer for the Panhandle objections, and served during the same time period as for the Kootenai, which included presiding over the only objection resolution meeting, which was held in Coeur d'Alene, Idaho on April 29, 2014.

59. In July, 2014, Mr. Pena was appointed to serve as the Regional Forester for the Northwest Region (R6) of the Forest Service, headquartered in Portland, Oregon.

60. Aside from whether there was any connection between Mr. Pena's duties as the objections Reviewing Officer and his reassignment, it was apparently determined that Mr. Pena would not conclude the pre-decisional review process. His first official duty day as the R6 Regional Forester was August 3, 2014.

61. The Panhandle "Objection Response" was dated September 8, 2014, and signed by Gregory C. Smith. The Objection Response provided three (3) tiers of analysis, with "four issue areas" addressed greater detail, including "final instructions," concerning the topics of "local government coordination, wild & scenic river eligibility determinations, recommended wilderness and wilderness study area management, and management indicator species."

62. The Kootenai "Objection Response" was also dated September 8, 2014, and also signed by Gregory C. Smith. The Objection Response followed the same structure as the

Panhandle, with the same "four issue areas" addressed greater detail, including "final instructions."

63. In addition to the discussion of these four (4) primary topics, each Objection Response contained Attachment 1, which listed each of the objectors, Attachment 2, which consisted of "other issue responses that include instructions that must be carried out before the final ROD can be signed…," and Attachment 3, which "contains issue responses that have no instructions." Objection Response(s) at 3.

64. Each Objection Response is intended to provide direction to the Regional Forester "to implement prior to signing a final ROD" and the Objection Response "is the final determination of the U.S. Department of Agriculture on the objections." *Id*.

65. On January 6, 2015, the Forest Service formally announced the release of the Final ROD, Errata to the FEIS, and final (2015) version of each Revised Forest Plan. The Regional Forester stated that these documents "incorporate the reviewing officer's instructions." Final RODs at 1. The Final RODs and resulting Revised Forest Plans were implemented 30 days after publication of the notice of the Final ROD in the Federal Register, and now constitute the governing land use plans for the Kootenai and Panhandle.

B. Kootenai Proposed Additional Wild and Scenic Rivers.

66. The KFP evaluated whether any river/stream segments might qualify for addition to the Wild and Scenic Rivers system. Under the "existing condition," as a result of prior determinations reflected in the 1987 Forest Plan, the Forest had found eligible 112.4 miles on Forest System lands (186.1 miles total on all lands) for inclusion in the WSR System, located in the Kootenai, Yaak, Bull, and Vermillion Rivers, and Big Creek. KFP Draft ROD at 9; KFP DEIS at 323-324 (Table 71).

67. According to the DEIS, an inventory was conducted as part of the KFP process that considered 752 river/stream segment candidates for WSRA eligibility. KFP DEIS at 322.

68. The DEIS released in January, 2012, reflected the results of this inventory, reporting that an additional 62.8 miles of river/stream segments were found eligible for addition to the WSR System. These segments were located in the Bull and West Fork Yaak River systems, and the Grave, Quartz and Vinal Creek Systems. The DEIS states that "Alternatives B, C, and D identify approximately 63 additional miles of river…as eligible for study as additions to the [WSR] System." KFP DEIS at 324.

69. The FEIS released in August, 2013, reflects the DEIS analysis, referring again to the same 62.8 miles identified as eligible to add to the WSR System, but clarifying the specific segments that might be deemed eligible under each alternative. KFP FEIS (2013) at Table 123, pp. 478-479. Again, these segments under consideration are confined to the Bull River, West Fork Yaak River, Grave Creek, Quartz Creek and Vinal Creek systems.

70. Multiple objections, including some filed by Plaintiffs, alleged errors in the treatment of WSRA issues. For example, Plaintiff TLSC objected to inclusion of segments in the Grave and Quartz Creek systems as eligible. Conversely, other objectors contended that at least ten other segments should have been found eligible, including portions of Callahan Creek, Ross Creek, and the Wigwam River.

71. The Objection Response concluded that "[o]bjectors accurately identified a deficiency in the record related to the WSRA eligibility inventory." KNF Objection Response at 7. The Objection Response questioned determinations made for Callahan Creek, Wigwam River, Granite Creek, Rock Creek, Grave Creek, and Quartz Creek. The Objection Response

instructed the Kootenai to revisit certain aspects of the WSRA analysis for these, and other, segments.

72. The Final ROD/FEIS and related documents made a number of changes, in apparent reaction to the Objection Response. These changes are summarized in the KFP Final ROD, Appendix 1, Table 3, and are described/documented as cited in the Final ROD, "errata" to the FEIS, or other documents as noted.

73. The 2013 KFP FEIS contained a section in Chapter 3 addressing WSRA analysis, as well as an Appendix E entitled Wild, Scenic, and Recreational Rivers. The "Errata to the 2013 Final EIS" was issued contemporaneously with the January, 2015, KFP Final ROD and contains an Appendix E which "replaces in its entirety Appendix E of the 2013 [FEIS]."

74. The 2015 KFP Final ROD/Errata/Appendix E includes various changes from the 2013 FEIS/Draft ROD, summarized in Table 196-A. Specifically, segments in Quartz Creek and Grave Creek are "[r]emoved from FEIS Alt. C & D as eligible river[s]," while segments in Callahan Creek and Ross Creek are "[c]hanged to be eligible river."

75. As a result, the total miles of WSRA-eligible streams increased in the Final ROD and included new streams. In the DEIS, the total under each action alternative of WSRA-eligible segments was 186.1 miles. In the 2013 FEIS, Alternative B Modified omitted the proposed additions in the Grave and Quartz Creek systems, so that Alternative B Modified would have added 17.3 WSRA-eligible miles, while Alternatives C and D each would have added 59.9 WSRA-eligible miles. The Proposed ROD dated August 28, 2013, adopted Alternative B Modified, and thus would have added 17.3 miles of river/stream deemed eligible under WSRA. The 2015 Final ROD/Errata adds 37.6 miles to river/streams deemed eligible under WSRA.

76. There was no alternative in the DEIS, or otherwise available for public comment, that proposed addition of any segment in Callahan Creek or Ross Creek as eligible for inclusion in the WSR System.

77. In fact, there is no mention of Callahan Creek or Ross Creek in the agency analysis until the Objection Response. This may be because the analysis throughout the KFP process for WSRA compliance focused on those segments the Forest found eligible for possible addition to the WSR System. In other words, the analysis identified river/stream segments, and included narrative summaries of the data/analysis for them, that were ultimately deemed eligible for inclusion to the WSR System. However, the identification/analysis was not presented for segments that were deemed not eligible for inclusion. Callahan Creek and Ross Creek were only raised during the objection process. Thus, they are not mentioned in the DEIS or Appendix F addressing WSRA, nor are they mentioned in the 2013 FEIS or Appendix E, but appear for the first time in the 2015 Errata Appendix E.

C. Creation of New RWAs in the Revised Forest Plans.

78. One of the revision topics of focus was evaluation of additions to RWA. These are areas that are not Congressionally designated Wilderness, but which the Forest Service has studied under the criteria of the Wilderness Act and has determined meet the criteria for designation as Wilderness by Congress. The RWA analysis in the Forests started with the list of "inventoried roadless areas" (IRAs), and then applied a "capability, availability, needs" assessment whether each of the IRAs was suitable for RWA status. From the list of "suitable" IRAs various Forest Service personnel chose which of the suitable IRAs should be imbued with RWA status.

79. Forest Service-wide guidance exists for RWA inventory and evaluation. In particular, this guidance is outlined in Chapters 70-73 of the Land Management Planning Handbook in Forest Service Handbook section 1909.12. The process by which RWA are established in land management planning has four (4) steps: inventory, evaluation, analysis, and recommendation. *Id*. at 70.6

80. Early and during each step of this process, the agency shall provide opportunities for public participation/collaboration and intergovernmental coordination. *Id*. at 70.61.

81. The inventory step involves application of the "size" and "improvement" criteria. *Id*. at 71.2. The "size criteria" require a suitable area to contain 5,000 acres or more, with smaller areas capable of qualifying if they meet certain exceptions. *Id*. at 71.21.

82. To qualify as potential wilderness an area must meet both sets of "improvements criteria" which include "road" and "other" improvements categories. The agency guidance reminds of the Wilderness Act criteria, that inventory areas include only those places "where the earth and its community of life are untrammeled by man...further defined to mean an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation…." *Id*. at 71.22 (quoting 16 U.S.C. § 1131(c)).

83. In Forests west of the 100th meridian, the "road improvements" criteria require that an inventory area can only have maintenance level 1 roads, or roads that are maintenance level 2 or will be reclassified to maintenance level 2, provided that they do not meet identified "exclusion criteria." *Id*. at 71.22a

84. The "other improvements" criteria require the agency to note the presence of identified factors, but provide that lands with other improvements can still be an inventory area "where the other improvements or evidence of past human activities are not substantially

noticeable in the area as a whole…." The "other improvements" include airstrips, vegetation treatments, timber harvest areas, permanent structures, areas of mining activity, and other evidence of human activity or influence. *Id*. at 71.22b.

85. The "evaluation" step of the process is described in Chapter 72. Again, this step is guided by the statutory definition of wilderness, and generally requires the agency to evaluate: (1) "the degree to which the area generally appears to be affected primarily by the forces of nature;" (2) "the degree to which the area has outstanding opportunities for solitude or for a primitive and unconfined type of recreation;" (3) whether an area less than 5,000 acres may still qualify under specified conditions; (4) "the degree to which the area may contain ecological, geological, or other features of scientific, educational, scenic, or historical value;" and (5) manageability factors. *Id*. at 72.1.

86. The "analysis" step is described in Chapter 73, which requires the Responsible Official to identify certain specific attributes of each inventory area included in one or more alternative in the planning process. *Id*. at 73.

87. The "recommendation" step contains certain required language describing the "preliminary administrative recommendation" that RWA status represents. *Id*. at 74. Plan components shall be tailored to "provide for managing areas recommended for wilderness designation to protect and maintain the ecological and social characteristics that provide the basis for each area's suitability for wilderness recommendation." *Id*.

88. The Draft ROD states that the 1987 Kootenai Forest Plan established total RWA of 102,500 acres, comprised of Scotchman Peaks (36,100 acres), Ten Lakes (32,800 acres), and additions adjacent to the existing Cabinet Mountain Wilderness (33,600 acres). KFP Draft ROD at 9.

89. The DEIS alternatives indicate that RWA management area (MA1b) would be 76,500 acres under "no action" Alternative A, and 110,200 acres, 214,800 acres, and 36,100 acres under Alternatives B, C and D, respectively. KFP DEIS at Table 5, p. 35.

90. The Draft ROD proposes adoption of Alternative B Modified, which would designate RWA at Scotchman Peaks (35,900 acres), Roderick (23,500 acres), Whitefish Divide (16,000 acres), and Cabinet Mountain additions (29,900) for a total RWA of 105,300 acres. KFP Draft ROD at 9-10.

91. Various participants objected to the RWA evaluation and proposed decision, including challenges to the assessment methodology and individual aspects of the analysis finding wilderness character to be either present or lacking for multiple IRAs.

92. The Objection Response addressed the RWA evaluation/designation objections in Attachment 2, which consists of issues "that provide opportunities to improve and strengthen the planning record" but which apparently do not rise to the level of the issues that resulted in more detailed "instructions" of the primary Objection Response. See, KFP Objection Response, Attachment 2, p. 1.

93. The Final ROD iteration of Alternative B Modified designates 89,300 acres as RWA, consisting of Scotchman Peaks (35,900 acres), Roderick (23,500 acres), and Cabinet Mountain additions (29,900 acres). The Whitefish Divide (16,000 acres) was removed from the RWA status it would have received under the Draft ROD, due to "lack of local public support…in conjunction with ongoing travel management planning in the area." The Final ROD also modified the RWA status of the Ten Lakes Wilderness Study Area ("WSA"), identifying 26,000 acres with RWA status within the 34,000 acre WSA. KFP Final ROD at 11-12.

94. The KFP RWA methods, data and analysis are summarized in FEIS Appendix C. The primary focus of this analysis is on the "availability, capability, needs" assessment.

95. This methodology, in large part, appears guided by an 18 page document entitled "KIPZ Forest Plan Revision; IRA Evaluation for Wilderness; Evaluation Methodology and Process; Version 7/26/05" that was apparently generated during the process of revising the Kootenai and Panhandle ("KIPZ") National Forests.

96. The 18 page KIPZ methodology document contains broad, sweeping, and sometimes inconsistent direction on management and assessment. The document indicates the standards were adapted from the White River National Forest in Colorado, which it calls the Area Capability Assessment (ACA). The ACA identifies 19 separate elements and a "high", "medium" and "low" setting for each. A cumulative "high" rating indicates a positive finding of wilderness character, a "low" rating is not consistent with wilderness character.

97. Some of the ACA elements and criteria are internally inconsistent. For example, on the "provides challenge and adventure" element, a "high" score equates to "terrain generally rugged;" a medium score equates to "terrain typical for general forest area;" and "low" equates to "terrain more gentle and rolling." Similarly, for the "scenic features" element, "high" includes "peaks or rocky formations considered spectacular from the rest of the forest…;" "medium" has "a peak or formation that stands out" while "low" means "terrain is typical of the forest or surrounding area…." But for recreation elements, such as "hiking opportunities" a "high" rating equates to "terrain is gentle and vegetation open to allow easy cross-country travel" and "low" is "terrain is steep or vegetation too dense (including down material) that cross-country travel is difficult."

98. The "skiing and snowshoeing opportunities" element seems similarly puzzling. As for hiking a "high" rating equates to "terrain is gentle and vegetation open to allow easy cross-country travel." The next component apparently addresses winter accessibility, and a "high" rating is assigned if "area is easily accessible in winter by motorized vehicles." Indeed, a "low" rating is actually indicated if "area is difficult or rarely accessed by snowmobile."

99. There is an ACA element that specifically addresses "snowmobiling opportunities." Here, in apparent contrast to the skiing and snowshoeing opportunities element a "high" rating equates to "terrain is steep or vegetation too dense that cross-country travel is difficult" and "low" is "terrain is gentle and vegetation open to allow easy cross-country travel." Regarding snowmobile use, a "high" rating exists if "snowmobile use prohibited, or if allowed, rarely used;" "medium" is "snowmobile use restricted to two months or less, or on half or less of the area;" and "low" equates to "snowmobile use is permitted."

100. There is no actual data or tangible information contained in Appendix C, or elsewhere, that allows the public to understand or evaluate the agency's analysis and conclusions for RWA. Appendix C contains, at most, narrative discussion that partially describes or states conclusions about the assessment criteria.

101. The evaluation process culminates in Table 60 in Appendix C to the KFP FEIS, which summarizes the ratings and suitability determination for each RWA. Perusing Table 60, and excluding any areas with a "low" rating, which seems to disqualify an area for RWA status, reveals a seemingly random array of conclusions on RWA suitability. For example, five (5) areas are given all "high" ratings for capability, availability and need. Of these, three (3) are deemed suitable, while two (2) are deemed unsuitable. There are a total of (12) areas receiving one "high" and two "medium" ratings, of which six (6) are deemed suitable and six (6)

unsuitable for RWA status. Despite the aforementioned examples of areas apparently "higher rated" wilderness character, there is one area (Barren Peak) that is rated in the FEIS as scoring "medium" on all indices, yet is deemed suitable for RWA status.

102. The capability, availability, and needs criteria are vague, indefinite, not capable of objective or independent review, and internally contradictory.

103. The ultimate conclusions on RWA additions did not track or properly apply guiding criteria in the Wilderness Act or Forest Service Handbook.

D. Treatment of the Ten Lakes WSA.

104. The Ten Lakes WSA presents a unique management challenge, as a result of the specific prescriptions established directly by Congress through the Montana Wilderness Study Act of 1977, Pub. L. No. 95-150, 91 Stat. 1243 (1977) ("MWSA"). The MWSA directs, in part, that the Ten Lakes WSA and other Montana WSAs "shall, until Congress determines otherwise, 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." *Id*. at § 3(a).

105. The Ten Lakes WSA is comprised of 34,000 acres, ranging from 4,000 to 8,000 feet in elevation. The "size and configuration of the area is such that many people hike in and out the same day." KFP DEIS at 312. Based on interpretation of various authorities, including the MWSA and Forest Service Manual 2329, the Kootenai has allowed, and continues to allow, oversnow motorized vehicle use consistent with that existing in 1977, and mountain bike use on trails that had established motorized bike use in 1977. KFP FEIS at 466.

106. Within and/or adjacent to the Ten Lakes WSA are the Ten Lakes RWA and Ten Lakes Contiguous RWA, which collectively can include as many as 34,600 acres. See, *id*. at 454.

107. The Final ROD indicates that 26,000 acres within the Ten Lakes WSA will be overlaid with RWA status. Final ROD at 12.

108. Aside from this "contingent" RWA designation, it appears that the KNF recognizes it must comply with the MWSA, which "will continue to require the Forest to maintain the area's wilderness character as it existed in 1977...while awaiting congressional action." *Id*.

109. The designation of RWA within the Ten Lakes WSA is unnecessary in light of the MWSA, and creates potential conflict and/or need for clarification at such time as Congress revisits its direction for the Ten Lakes WSA. There is no rational basis for redundant designation of 26,000 acres within the WSA as RWA.

E. Changes to Recommended Wilderness Management.

110. Management of "wilderness-like" lands such as IRAs, RWAs and WSAhas long been a topic of focus and controversy involving diverse, sometimes polarized interests.

111. There is no plain statutory guidance governing management of RWA's in the Kootenai, Panhandle, or elsewhere in the National Forest System. The Wilderness Act itself does not impose procedural or substantive direction on the agency for RWA's or lands not designated by Congress as part of the Wilderness Preservation System. Nor does NFMA provide guidance for RWA's, aside from the statement that Forest Plans shall "provide for outdoor recreation (including wilderness)…." 16 U.S.C. § 1604(g)((3)(A). In some instances Congress has specified "interim" management guidelines for specified potential wilderness, as in the

MWSA. None of the aforementioned authorities specifically address the Kootenai or Panhandle RWA's.

112. Prior to adoption of the Revised Forest Plans, the applicable legal guidance for management of RWAs is found in the 1987 Forest Plans, which essentially directed that RWAs be managed to protect wilderness character, while allowing for continuation of existing uses, even those uses that might not be allowed in Congressionally-designated Wilderness. Under a combination of site-specific decisions or historical practices, certain portions or routes within RWAs have received use by motorized vehicles, and more recently by mechanized vehicles, like mountain bikes. These uses are not allowed in formally designated Wilderness, but can and do occur in RWAs.

113. At some point existing guidance was apparently deemed lacking or inadequate. The Northern Region Office of the Forest Service began to evaluate a new policy to guide management actions involving RWA's in forests within the Northern Region.

114. Plaintiffs, their members and partners have long interacted with Forest Service personnel within the Northern Region regarding Forest management, in project planning, and in appeals and litigation, most often as co-defendants seeking to uphold a challenged agency authorization of continued motorized access, and as Forest visitors and users. Agency personnel have periodically described or intimated the existence of some overarching Regional guidance for RWA management.

115. In these discussions about RWA management policy, Plaintiffs questioned proposed restrictions of motorized or mechanized use in RWA's, or sought formal recognition and/or continuation of such use. In most instances, these discussions occurred in the face of special interest efforts to restrict or eliminate motorized or mechanized use in RWA's. During

these discussions Plaintiffs were informed that it was the Northern Region policy to manage RWA's as Wilderness, and that future project-level actions would reflect this policy.

116. In the late 1990's and early 2000's agency personnel provided to Plaintiffs regular but slightly varying accounts of the purported Northern Region RWA policy. Plaintiffs on multiple occasions requested copies of the RWA Policy and sought to schedule meetings with the Northern Region Forester or other staff to discuss it. These discussions were followed by occasional correspondence, which hinted at, but never revealed, actual written instruction to Northern Region personnel on RWA management.

117. Finally, in October, 2007, Plaintiff representatives received a letter from then-Regional Forester Tom Tidwell which revealed written Northern Region guidance on RWA management. That letter contained an enclosure, consisting first of a two-page memo entitled "Consistency in Land and Resource Management Plans" identifying the "Topic: Management of recommended wilderness." The footer of that document says "Mgnt of Recommended Wilderness" and is dated "9/24/2007". The "guidance" section states:

> If it is determined that the area is best suited to motorized or mechanized recreation, the area should not be recommended for wilderness. If it is determined that the best future use is inclusion in the National Wilderness Preservation System, the desired condition (dc) should reflect that. If there are established uses that are incompatible with that dc, such as motorized or mechanized recreation, forest should choose to implement one of the following actions:
>
> 1. Pursue a non-motorized/non-mechanized approach to management of the area through travel planning
> 2. Adjust management area boundary to eliminate the area with established uses
> 3. Not recommend the area for wilderness designation.

Management of Recommended Wilderness dated Sept. 24, 2007.

118. This guidance and related circumstances were addressed by some Plaintiffs in the context of a travel management plan issued in 2011 by the Northern Region's Clearwater National Forest, in *Idaho State Snowmobile Association v. U.S. Forest Service*, Case No. CV-12-447-BLW (D.Idaho) ("ISSA"). That case was filed on August 29, 2012. On October 3, 2014, Defendants filed a Motion for Entry of Stipulated Settlement and Proposed Order of Dismissal. On February 26, 2015, the Court entered a Memorandum Decision and Order conditionally approving the settlement, and a final Judgment was entered on April 8, 2015.

119. In support of the Stipulated Settlement in *ISSA*, then-Regional Forester Faye Krueger filed a declaration which stated, in part, that RWA management direction is established in the relevant Forest Plan and Forest Service Manual section 1923.03, which states:

> A roadless area being evaluated and ultimately recommended for wilderness or wilderness study is not available for any use or activity that may reduce the area's wilderness potential. Activities currently permitted may continue, pending designation, if the activities do not compromise wilderness values of the roadless area.

See, *ISSA*, Declaration of Faye Krueger, Doc. No. 48-3 at ¶ 3.

120. Ms. Krueger's declaration continued to describe how some Forest Plans "considered unregulated motorized uses in RWA's to be consistent with applicable management direction, reasoning that if Congress designated the area as Wilderness, such non-conforming, but transitory, uses would cease and the areas wilderness potential would be re-established." *Id.* at ¶ 4. In other units, "Forests considered the applicable FSM and Forest Plan direction as requiring maintenance of wilderness character as it existed when the area was recommended for designation in the Forest Plan and have limited expansion or development of non-conforming uses." *Id.*

121. Ms. Krueger further stated, "[i]n an attempt to provide more consistent analysis and consideration of the issue of RWA management, the regional office for the Northern Region prepared guidance regarding analysis and management of RWA's. This "consistency" guidance was never intended to establish new policy or binding direction but rather provide for more consistent analysis and consideration of the issues surrounding RWA management…." *Id.* at ¶ 5.

122. Ms. Krueger acknowledged, "[i]t has recently come to my attention, however, that there is some confusion regarding the guidance document with some Forests misinterpreting the guidance as providing management direction for RWA's. Indeed, some public comments on proposed forest plan revisions regarding RWAs for the Kootenai National Forest and the Idaho Panhandle National Forest evidenced a similar misunderstanding. This was never the intent of the guidance and the applicable management direction for RWA's was, and remains, the applicable Forest Plan and the direction of the Forest Service Manual." *Id.* at ¶ 6.

123. In the declaration, Ms. Krueger concluded "[i]n order to avoid any misperception regarding the role of the "consistency" direction in its decision regarding management of RWA's on the Clearwater National Forest, the Forest Service seeks a voluntary remand of that portion of the Clearwater National Forest Travel Management Plan related to management of the RWA's on the Clearwater. Remand would allow the Forest Service [to] make a decision regarding the RWA's based on a record which clearly reflects applicable management direction." *Id.* at ¶ 7.

124. Ms. Krueger specifically identified the Kootenai planning effort as providing evidence of the "confusion" surrounding the "consistency guidance." In fact, the 2013 FEIS "Introduction" to the Chapter 3 section entitled "Designated Wilderness, Wilderness Study Area, Recommended Wilderness" states that RWA management "should be consistent in protecting

and preserving the wilderness character (R1 Consistency Paper)" which directs that in RWAs "the desired condition is to protect wilderness character by: [a]llowing only non-motorized, non-mechanized recreation year around…." KFP FEIS at 463. There is no corresponding discussion, and no mention of the "consistency guidance," in the much shorter "Introduction" to the same section of the DEIS. See, KFP DEIS at 311.

125. The FEIS makes clear that the Kootenai did not meaningfully consider whether "non-conforming" motorized or mechanized use might continue in any RWA or any portion of an RWA. Rather, "[a]ll four alternatives recommend wilderness and this MA designation would preclude the designation of trails for motor vehicle use" and that "[m]otor vehicle use would not be allowed in these areas." KFP FEIS at 469.

126. Similarly, the Panhandle did not consider in any alternative whether to allow continuation of motorized or mechanized use within RWA or any portion of an RWA. Rather, the Panhandle provided in every alternative that [m]otorized and mechanized travel on trails and winter motorized use would be prohibited in areas recommended for wilderness designation." PFP FEIS at 488.

127. The only variations in RWA management in the alternatives considered in detail during the Revised Forest Plans process involved differing acres of RWA by alternative. There was no alternative that provided for continuation of existing motorized or mechanized use which does not compromise wilderness values of any RWA. Under every alternative RWA designation will create an immediate and inflexible prohibition on all motorized and mechanized use.

128. Ms. Krueger's declaration in ISSA was dated October 2, 2014. Any evolution that it may have reflected or prompted within the Forest Service thus occurred long after the Plans Revision process was established and the agency's commitment to a management approach

was formed. Even the Objection Response, dated September 8, 2014, preceded Ms. Krueger's declaration. The only step in the Plans Revision Process that came after the declaration was the Final ROD and Errata to the FEIS.

129. The Objection Responses each conclude, based on "extensive discussions with the regional office," that the "Consistency Paper" was not improperly elevated to binding policy, and "does not remove the discretion of the Forest to consider various management approached consistent with FSM 1923.03." Objection Responses at 9.

130. Each Objection Response continues, "[h]owever, [KNF/IPNF] may have given the impression in the FEIS that it relied on the R1 Consistency Paper without further independent review in making management decisions about recommended wilderness. Thus, further explanation of [KNF's/IPNF's] rationale would help to provide additional support for this decision." *Id.*

131. The Objection Responses presented "Final Instructions" regarding RWA, which included an instruction to "[c]larify in the record any reference to the "R1 Consistency Paper" to reflect that the paper is not binding policy, but instead is a reference tool…." This was followed by an additional bulleted instruction to "[c]larify in the record how [KNF/IPNF] gave independent consideration to Forest-specific issues pertaining to [RWA] decisions. In doing so, [KNF/IPNF] should provide a more detailed explanation of the nature of impacts from motorized and mechanized uses to wilderness capability and availability."

132. The January, 2015, KFP Final ROD refers to the Objection Response instructions, and indicates in an Appendix that the RWA instructions are addressed in the Final ROD pages 21-23, the errata to the FEIS, and "project record document 02580." Final ROD at Appx. 1, p. 46.

133. The KFP Final ROD acknowledges "concern over the allowed uses" in RWA and states "[t]he Revised Plan includes desired conditions and standards for these areas that are incompatible with motorized and mechanized use." KFP Final ROD at 22. The ROD thus includes "the site-specific decision to restrict over-snow vehicle use and mechanized use (mountain biking) within [RWA]." *Id*. at 22-23. Then-Regional Forest Krueger advised "I am including this prohibition because these uses impact wilderness character and, over time, could potentially lead to these areas no longer being suitable for wilderness designation." *Id*. at 23.

134. The KFP Final ROD also contains discussion about "forest-specific issues" in apparent response to this instruction from the Objection Response. The Final ROD stated that the Kootenai addressed, citing appendix C to the FEIS, the site-specific impacts of motorized/mechanized use "and discussed why continuation of some uses would compromise wilderness values" of RWA. *Id*. In specific reference to mountain biking, the Final ROD states "the analysis examined how mountain biking can lead to user conflicts and resource impacts and gave adequate consideration to site-specific trails…." *Id*.

135. Appendix C to the KFP FEIS is entitled "Wilderness Evaluation" which, among other things, outlines the method the Kootenai used to evaluate "capability, availability and need" for specified areas in determining their Wilderness suitability. These assessments were apparently conducted by a handful of unidentified specialists, ranking areas on various criteria on a 3-point high, medium or low scale. There are three distinct assessments, each using a high-medium-low scale, for capability, availability, and need.

136. The assessments are summarized in Table 60, entitled "Summary of Suitability Evaluation" for the identified IRAs. The table identifies the name of each IRA, a listing of the "suitability ratings" (i.e. low, medium or high) on each of the capability, availability, and need

indices, a conclusion "Y" or "N" as to whether the IRA should be an RWA, i.e., be recommended by the Forest Service for Wilderness designation by Congress, and a short "notes" section providing further explanation. KFP FEIS at Appx. C, pp. 139-141.

137. There is no data, numeric measures, or other tangible evidence presented in Appendix C. All that exists is narrative presentation of the evaluation criteria, the 3 point ratings for each area, and the short descriptions in Table 60. There is no way to determine where a use/attribute transitioned from low to medium to high on any criterion, or to independently assess the accuracy of the underlying data, assessment methodology, or conclusions of the specialist team.

138. There is no mention of mountain biking in the capability, availability, or need assessments. "Mechanized use" is mentioned one time in Table 60, in the notes for the Thompson Seton IRA.

139. Motorized wheeled vehicle use is not mentioned in Table 60. "Existing over-snow motorized use" is mentioned in the notes for twelve (12) of the 43 IRAs described.

140. The Panhandle discussion of RWA in the PFP Final ROD tracks verbatim the discussion in the KFP Final ROD. See, PFP Final ROD at 20-22.

141. The PFP discussion about "forest-specific issues" in response to the instruction from the Objection Response is essentially verbatim to the KFP language. The PFP Final ROD stated that the Panhandle addressed, citing appendix C to the FEIS, the site-specific impacts of motorized/mechanized use "and discussed why continuation of some uses would compromise wilderness values" of RWA. *Id.* at 22. In specific reference to mountain biking, the PFP Final ROD states "the analysis examined how mountain biking can lead to user conflicts and resource impacts and gave adequate consideration to site-specific trails…." *Id.*

142. Appendix C of the PFP tracks the KFP EIS, but does not have the same tabular summary as is presented in Table 60 in the KFP Appendix C. Perusing the area-by-area discussion in the PFP allows one to summarize the "capability," "availability" and "needs" ratings for each of the 48 Panhandle IRAs, as well as the final recommendation and discussion. See, PFP FEIS Appx. C, at pp. 134-198.

143. As for the Kootenai, the Panhandle Appendix C contains no data, numeric measures, or other tangible evidence supporting its findings. All that exists is narrative presentation of the evaluation criteria, the 3 point ratings for each area, and the descriptions for each area. There is no way to determine where a use/attribute transitioned from low to medium to high on any criterion, or to independently assess the accuracy of the underlying data, assessment methodology, or conclusions of the specialist team.

144. There is virtually no mention of recreation use or means of access in the Panhandle Appendix C, aside from mention of the "road" or "trail" network for many areas. See, e.g., Mallard Larkins Roadless Area discussion at PFP FEIS Appx. C, p. 158 (recommended for wilderness in all action alternatives) ("[t]he area is generally accessible by moderate to low standard gravel and dirt roads….Interior access, with some exceptions, is provided over a network of approximately 280 miles of low standard, fire control and administrative trails."). The PFP Appendix C contains little or no mention of motorized or mechanized vehicle use, or the impact of such use on any resource or on wilderness character.

145. The 2015 Errata to the KFP FEIS includes a section for KFP FEIS Appendix C, which consists of a single sentence addressing the Barren Peak area.

146. The 2015 Errata to the KFP FEIS does contain a modified response to comment, which is presented under Appendix G. That response states "[w]e agree that restricting

motorized or mechanized use in MA1b [RWA] is not based on science related to impacts on physical resources. The restrictions in MA1b were based on the desired conditions…and the wilderness character and potential for the area to be included in the National Wilderness Preservation system remain intact [sic] until Congressional action is taken." The discussion then cites FSM 1923.03, and advises "[t]he FEIS page X discloses how the effects of continuing motorized and mechanized uses would be inconsistent with meeting desired conditions in MA1, 1b, and 4 and may have adverse effects on outstanding opportunities for solitude or primitive and unconfined recreation." 2015 Errata to KFP FEIS at Appx. G, p. 87; 2015 Errata to PFP FEIS at Appx. G, p. 89.

147. The same modified response to comment goes on to address the "Region 1 white paper" which it characterizes as providing "additional guidance" which is quoted verbatim, which "was considered during the analysis but does not represent binding policy." *Id*.

F. Consideration of Municipal Watersheds and GLID Requests for Coordination.

148. GLID is an irrigation district formed under and operated in accordance with Montana Code Annotated, Title 85. As such, GLID is a public corporation for the promotion of the public welfare. Mont. Code Ann. § 85-7-109 (2014). A public corporation is a Montana political subdivision. Mont. Code Ann. § 2-9-101(5) (2014). GLID is comprised of approximately 250 members who irrigate roughly 3,00 acres of land within Lincoln County, Montana. GLID is empowered to and does construct, administer and oversee water diversion and conveyance works, and to otherwise address the appropriation, ownership, lease, conveyance of water, and other related activities. Mont. Code Ann. § 85-7-1904 (2014).

149. Portions of the Kootenai Forest are within municipal watersheds for the community of Eureka, Montana and other neighboring political subdivisions, specifically including areas within the "Whitefish Divide" management area.

150. GLID-administered lands and facilities are located adjacent to, and are affected by, Kootenai National Forest lands and waters arising from or traveling through the Kootenai National Forest. Management, mismanagement, or lack of management on the Forest can directly and concretely affect GLID property, as well as the property of owners of land included within GLID.

151. The Forest Service must apply certain regulatory prescriptions to municipal watersheds, managing them under multiple use management principles. 36 C.F.R. § 251.9.

152. NFMA directs the Secretary of Agriculture, and thus the Kootenai National Forest, to "develop, maintain, and, as appropriate, revise land and resource management plans…coordinated with the land and resource management planning processes of State and local governments and other Federal agencies." 16 U.S.C. § 1604(a).

153. GLID formally requested to exercise its rights to coordinate under NFMA. The Kootenai National Forest, through written correspondence and its failure to formally meet with GLID, did not conduct coordination as that process is required under NFMA and controlling law.

154. In part, the Forest Service failed to address GLID's requests based on the belief that GLID was not a "county" or otherwise a "state or local government" under NFMA.

155. The Forest Service additionally rejected GLID's requests based on the apparent belief that GLID lacked authority to exercise jurisdiction over federal land, that GLID attempts to do so were preempted by federal law, and that GLID had a full opportunity to participate in the NEPA process along other interested publics.

156. GLID did participate to the extent it was able to in the KFP process, by attending public meetings and submitting written comments/objections. However, this participation was not identical to that outlined in NFMA for local governments but was rather in accordance with the same procedures available to the general public.

COUNT ONE: VIOLATION OF WSRA-NEPA-APA
(KNF - Determination of WSRA Eligibility)

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

158. WSRA and applicable regulations direct the manner in which agency decisions can be made to add, administer and manage river/stream segments for eligibility and designation under the Wild and Scenic Rivers System.

159. NEPA further addresses the procedures by which agencies like the Forest Service must discharge their duties under statutes like WSRA.

160. The KFP process did not comply with the aforementioned legal requirements, by committing errors that include, but are not necessarily limited to, misapplying WSRA requirements and eligibility criteria, by adding to the Final ROD water bodies identified for inclusion in the WSRA System that were never identified for inclusion in any alternative, by failing to allow proper public review/comment on potentially included water bodies, and related errors.

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

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

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

COUNT TWO: VIOLATION OF NFMA-APA
(KNF - Deficient Process and Decisions for Inclusion of Areas as Wilderness)

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

165. The manner in which lands may be considered for addition to the Wilderness System is identified through the definitions and criteria established by Congress through the Wilderness Act.

166. Congressional direction has been interpreted through chapters 70-74 of the Land Management Planning Handbook and other aspects of the Forest Service Handbook. These provisions, along with those in the Wilderness Act, are binding on the Forest Service.

167. The criteria and procedures used for determining wilderness suitability in the Forest Plans Revision process were vague, subjective, internally contradictory, and not rationally connected to the factors established by Congress and/or the Forest Service Handbook in determining the suitability of any area for possible designation as Wilderness.

168. Even where some of the wilderness suitability evaluation criteria were correctly identified, those criteria were applied in the Revised Forest Plans process in an arbitrary manner, which did not involve objective presentation of data or provide an interested member of the public the ability to understand or question the agency's methodology or ultimate conclusion for

any area. The agency did not describe specific data, areas, uses, or otherwise document the narrative findings in Appendix C of the FEIS that allegedly form the basis for eventual decisions on wilderness suitability of identified areas.

169. The agency's specific determinations to find the Roderick and Scotchman Peaks IRAs to qualify for RWA status are arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with applicable law.

170. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

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

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

COUNT THREE: VIOLATION OF WILDERNESS ACT-APA
(KNF/IPNF - Management of RWA as Wilderness)

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

174. The Wilderness Act provides the exclusive means by which Federal lands can be designated and managed as Wilderness.

175. Congress has not delegated to the Forest Service, through the Wilderness Act, NFMA, or otherwise, the power to impose Wilderness management prescriptions or

proscriptions in RWA's or elsewhere through administrative regulation, decision, or other final agency action.

176. The Final RODs and Revised Forest Plans represent an illegal attempt by Defendants to designate and manage lands as Wilderness in the absence of suitable action or authorization by Congress.

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

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

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

COUNT FOUR: VIOLATION OF NFMA-APA
(KNF/IPNF - Failure to Conduct Site-Specific Analysis Supporting Travel Management Decisions)

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

181. NFMA and its implementing regulations, including the Travel Management Rule, require the Forest Service to act accordance with specified procedures and guiding principles in

making management decisions affecting access to the National Forest System and the Kootenai National Forest.

182. The Final RODs and Revised Forest Plans impose inflexible restrictions on motorized and mechanized travel, most notably in RWA's, which are arbitrary and capricious, contrary to available information, not supported by substantial evidence, or otherwise not in accordance with law.

183. Defendants' actions described above are made reviewable through the APA and are arbitrary, capricious, or otherwise not in accordance with law; without observance of procedure required by law; or otherwise in violation of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

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

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

COUNT FIVE: VIOLATION OF NEPA-APA
(KNF/IPNF - Inadequate Range of Alternatives)

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

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

188. The Revised Forest Plans, as presented in the DEIS, considered in detail four (4) alternatives, denominated Alternatives "A" through "D." In response to public comment and evolution of the planning process, an Alternative B Modified was developed, which was eventually adopted.

189. Every one of these alternatives prohibited motorized or mechanized vehicle travel in RWAs. There was no alternative, not even the "no action" alternative, which would allow for continuation of motorized/mechanized travel in RWAs.

190. The pre-decisional status quo included motorized and mechanized vehicle travel in at least some RWAs.

191. Binding agency guidance allows for the possibility that existing motorized/mechanized vehicle travel might continue in RWAs so long as the continuation of such use does not compromise wilderness values in the relevant area.

192. No alternative allowed for the possibility that existing motorized/mechanized use that has not compromised and does not compromise wilderness values in any RWA(s) might continue.

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

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

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

COUNT SIX: VIOLATION OF NFMA-APA
(KNF - Failure to Coordinate and Address Municipal Watersheds)

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

197. Portions of the Kootenai Forest are within municipal watersheds for the community of Eureka, Montana and other neighboring political subdivisions, specifically including areas within the "Whitefish Divide" management area.

198. The Forest Service must apply certain regulatory prescriptions to municipal watersheds, managing them under multiple use management principles. 36 C.F.R. § 251.9.

199. NFMA directs the Secretary of Agriculture, and thus the Kootenai National Forest, to "develop, maintain, and, as appropriate, revise land and resource management plans…coordinated with the land and resource management planning processes of State and local governments and other Federal agencies." 16 U.S.C. § 1604(a).

200. This coordination process requires specific procedures beyond those afforded to the general public in the planning process, including providing notice to state/local governmental agencies, reviewing said agencies' planning and land use policies and documenting the results of such a review, meeting with agency officials, seeking input regarding management concerns and areas where additional input is needed, and giving consideration to the effect of Forest Service management on nearby lands, including those managed by the state and/or local governmental entities.

201. GLID is an irrigation district formed under and operated in accordance with Montana Code Annotated, Title 85. Under Montana law, GLID is a public corporation for the promotion of the public welfare. Mont. Code Ann. § 85-7-109 (2014). A public corporation is a Montana political subdivision. Mont. Code Ann. § 2-9-101(5) (2014). GLID is a "local government" entity under NFMA.

202. GLID formally requested to exercise its rights to coordinate under NFMA. The Kootenai National Forest, through written correspondence and its failure to formally meet with GLID, did not conduct coordination as that process is required under NFMA and controlling law.

203. In part, the Forest Service failed to address GLID's requests based on the belief that GLID was not a "county" or otherwise a "state or local government" under NFMA.

204. The Forest Service additionally rejected GLID's requests based on the belief that GLID lacked authority to exercise jurisdiction over federal land, that GLID attempts to do so were preempted by federal law, and that GLID had a full opportunity to participate in the NEPA process along other interested publics.

205. These statements, assuming they are true, do not address the specific duties set forth in NFMA and applicable regulations.

206. The Forest Service did not acknowledge, let alone satisfy, its duty to consider impacts to municipal watersheds associated with Forest Plan Revision.

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

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

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

COUNT SEVEN: VIOLATION OF THE APA
(KNF/IPNF - Violation of Arbitrary and Capricious Standard of Review)

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

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

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

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

REQUEST FOR RELIEF

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

1. Declare unlawful and set aside the Final RODs and Revised Forest Plans;

2. Declare unlawful and set aside the Northern Region RWA Policy;

3. Remand the applicable matters inadequately addressed in the RODs and Revised Forest Plans for further analysis and action in accordance with applicable law;

4. Award the Plaintiffs their reasonable fees, costs, and expenses of litigation as allowed by the Equal Access to Justice Act, 28 U.S.C. § 241 *et seq.* and other applicable law or rule of court; and

5. Grant such further and additional relief as the Court deems just and proper.

DATED this 12th day of November, 2015.

REEP, BELL, LAIRD, SIMPSON & JASPER

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