



February 14, 2017

Mr. Bryan Donner, District Ranger
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949 Highway 93 North
Eureka, MT 59917-9550

Delivered via U.S. Postal Service and email to comments-northern-kootenai-fortine@fs.fed.us

Re: Comments on Kootenai National Forest's Ten Lakes Travel Management Draft Environmental Impact Statement

Dear Mr. Donner:

Thank you for the opportunity to submit comments on the Draft Environmental Impact Statement (DEIS) for the Kootenai National Forest's (KNF's) Ten Lakes Travel Plan. All literature cited and exhibits referenced in this letter are provided in the version delivered via U.S. Postal Service. This letter incorporates by reference the May 13, 2015 scoping comment letter and all exhibits submitted by our organizations. Members of our organizations have had a strong interest in this area for years, and most of the undersigned groups engaged significantly in both the KNF Forest Plan revision process and the Galton project analysis. Our commitment has not waned.

We are disappointed with the proposed action and believe it misses the mark in several critical ways. First, travel planning presents an important opportunity to restore balance to the winter backcountry but, unfortunately, the proposed action fails to strike this balance. The proposed action leans heavily towards providing motorized and mechanized uses with slim consideration given to primitive recreation and wildlife values. Second, the proposed action falls short of maintaining the Ten Lakes Wilderness Study Area's (WSA's) wilderness character and the area's potential for designation as wilderness as it existed in 1977 as required by the Montana Wilderness Study Act (MWSA) and reaffirmed in recent case law. Our third concern pertains to the rule governing over-snow vehicle (OSV) use and the agency's substantive legal duty to locate areas and trails designated as open to OSV use to *minimize* resource damage and conflicts with winter visitors enjoying non-motorized, quiet forms of recreation. Unfortunately, as detailed below, the proposed action falls terribly short of what is required to comply with these duties and with the plain language of the final OSV rule.

Other concerns detailed in our letter include the DEIS's inadequate range of alternatives, failure to comply with NEPA's requisite hard look analysis, failure to comply with the KNF Forest Plan, and the need to establish a monitoring protocol. With the limited range of alternatives provided in the EIS, we are left with supporting Alternative 4, which we acknowledge is likely restrictive towards non-conforming uses. We encourage the agency to develop a new alternative that falls between Alternatives 2 and 4 that protects a wildland core that significantly reduces non-conforming uses in Season 1 within the WSA.

I. Montana Wilderness Study Act

A. The Proposed Alternative Fails to Maintain the 1977 Wilderness Character and Preservation of WSA for Future Wilderness Designation

i. *The Forest Service's Proposed Action Disregards Federal Court Case Law Outlining MWSA Compliance*

The KNF's proposed action in the Ten Lakes Travel Management Plan DEIS disregards a well-established body of federal court case law providing governing direction for compliance with the MWSA. In a series of cases in which courts have, in various instances, found the Forest Service both to comply with and to violate the MWSA in its management of non-conforming uses within WSAs, federal courts have articulated clear principles to guide statutory compliance. These include:

- The MWSA "imposes two requirements. First, the Service must administer study areas so as to maintain their wilderness character as it existed in 1977. Second, the Service must administer the areas so as to maintain their potential for designation as wilderness areas—i.e., as part of the National Wilderness Preservation System." *Russell Country Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1042 (9th Cir. 2011).
- Regarding the first of these two requirements, the MWSA "requires the Service to maintain a study area's 1977 wilderness character for the enjoyment of current users. Thus, because wilderness character depends in part on the availability of opportunities for solitude, the Service must provide current users with opportunities for solitude comparable to those that existed in 1977." *Mont. Wilderness Ass'n v. McAllister*, 666 F.3d 549, 557 (9th Cir. 2011) (quotations, alteration, and citation omitted).
- When addressing the MWSA's requirement to maintain 1977 wilderness character within a WSA, "any comparison the Service may choose to conduct between the physical extent of motorized use under [a new] travel plan and the extent of such use in 1977 would most sensibly be focused, to the extent practicable, on the area over which use actually occurred in 1977, as opposed to the area in which use was authorized. After all, recreational use most clearly impacts wilderness character in the areas in which it actually occurs, not merely the areas in which it is formally permitted." *Id.* at 558 n.5 (emphasis in original).

- In measuring degradation of 1977 wilderness character within a WSA, where the Service “does not possess complete historical data illustrating changes in the volume of recreational use in the study area over time,” it must “do the best it can with the data it has, not ... ignore the volume of use increase completely.” *Id.* at 559.
- In addressing an increase in non-conforming uses within a WSA since 1977, “the Service might reasonably compensate for an increase in the volume of motorized use by reducing the overall area of impact.” *Id.*
- The MWSA “plainly mandates preservation of a base level [of wilderness character], but does not prohibit enhancing the area’s wilderness character above that level.” *Russell Country Sportsmen*, 668 F.3d at 1042. In other words, “the Study Act simply requires the Service to preserve a study area’s wilderness character against decline. Enhancement of wilderness character is fully consistent with the Study Act’s mandate, although the Study Act does not require it.” *Id.*

Judicial application of these principles in such cases offers a roadmap for the KNF to utilize in determining how it may comply with the MWSA in crafting specific land management prescriptions to manage motorized and mechanized uses within a WSA. The KNF’s proposed action in the Ten Lakes DEIS defies this judicial guidance.

In the Ten Lakes DEIS, the KNF appears to contend that its proposed action would comply with the MWSA’s duty to maintain 1977 wilderness character despite authorizing a massive increase in both the acreage and intensity—i.e., number and frequency of non-conforming uses—beyond 1977 levels during the peak winter snowmobiling season. Specifically, the proposed action would approve motorized use in the action area from December 1 to March 31 each year by as many as 2,500 more snowmobiles than were present in the action area in 1977 (1,000-2,000 in 1977 versus 2,000-3,500 under the proposed action)¹ utilizing 2,700 more acres of the WSA than were used by snowmobilers in 1977 (3,900 acres of use area in 1977 versus 6,600 acres under the proposed action). See DEIS at 69. The KNF claims that allowing such a large-scale escalation in both the intensity and footprint of snowmobile use in the WSA is permissible because, at the same time, the proposed action would implement small-scale enhancements of 1977 wilderness character during the spring snowmobiling and summer mountain biking seasons. Specifically, the proposed action would (1) eliminate spring (April 1-May 31) snowmobile use in the WSA, which the DEIS estimates to have occurred in 1977 at a level of fewer than 500 snowmobilers using fewer than 100 acres, and (2) reduce the level of summer-fall (June 1-November 30) non-conforming uses (motorcycles in 1977, mountain bikes today) by approximately 200

¹ The KNF estimated without any documentary support that of the 1,000 to 2,000 snowmobile users in the project area in 1977, about 30 to 50 percent accessed the Ten Lakes WSA. DEIS at 62 (Table 9).

riders and 7.2 miles of trail (fewer than 100 riders using 15.9 miles of trail in 1977 versus fewer than 300 riders using 8.7 miles of trail under the proposed action). *See id.*²

As set forth below, this MWSA analysis is based on a spurious assessment of the available evidence concerning the levels of non-conforming uses in the Ten Lakes WSA in 1977 and is illegitimate for that reason. But even accepting the KNF's 1977 use numbers for the sake of argument, simple math demonstrates the fallacy of the agency's claim that the proposed action "[o]verall" would maintain 1977 wilderness character in the Ten Lakes WSA. *Id.* Even adopting the net impact methodology apparently adopted by the DEIS analysis, subtracting the level of non-conforming uses involved in the proposed action's modest enhancements of wilderness character during the spring and summer-fall seasons from the level of non-conforming uses involved in the proposed action's dramatic escalation of peak winter snowmobiling activity yields a net increase of as many as 1,800 more non-conforming users in the WSA than existed in 1977, utilizing 2,600 more acres of the WSA than were subject to non-conforming uses in 1977.

This is a far cry from any situation in which federal courts have sustained the Forest Service's management decisions under the MWSA. Where courts have sustained the agency's actions under the MWSA, those actions have uniformly reflected agency decisions to reduce the footprint of non-conforming uses below 1977 conditions as a means of compensating for an increase in the intensity of non-conforming users above 1977 levels. *See Cent. Mont. Wildlands Ass'n v. Kimball*, No. CV 04-175-M-DWM, slip op. at 12-13, 17 (D. Mont. Aug. 29, 2006) (upholding Forest Service management plan that authorized summer motorized travel on 1.5 miles of road in WSA, as compared to 50 miles in 1977, and allowed snowmobile use on 15 percent of WSA, as compared to 21 percent in 1977); *see also Citizens for Balanced Use v. Erickson*, No. CV-IO-17-BU-SHE (D. Mont. June 25, 2012) (upholding Forest Service travel order that further limited snowmobile use in WSA below 1977 level in response to prior court ruling finding agency violated MWSA). By contrast, where—as is contemplated by the proposed action here—the Forest Service has authorized an increase above 1977 levels in the intensity and footprint of non-conforming uses within a WSA, its action has been judicially invalidated. *See Mont. Wilderness Ass'n v. McAllister*, CV 07-39-M-DWM, slip op. at 19-20, (D. Mont. Sep. 30, 2008) (finding and recommendations of magistrate judge) (holding that Forest Service violated MWSA where its travel plan for WSA (1) expanded the footprint of snowmobile use by approximately 3,000 acres above 1977 levels while acknowledging increased intensity of snowmobile use since 1977, and (2) allowed motorcycle and mountain bike use on an aggregate of 168 miles of trails, as compared to 142 trail miles that received regular non-conforming summer uses in 1977, while acknowledging increased intensity of such uses since 1977), *adopted by Mont. Wilderness Ass'n v. McAllister*, 658 F. Supp. 2d 1249 (D. Mont. 2009), *aff'd*, 666 F.3d 549; *see also Greater Yellowstone Coal. v. Timchak*, No. CV-06-04-E-BLW, 2006 WL 3386731, at * (D. Idaho 2006) (holding that Forest Service violated Wyoming Wilderness Act's identical mandate to maintain wilderness character by allowing a ten-fold increase in both the intensity and footprint of helicopter activity within a WSA).

² The KNF also incongruously highlights its prohibition on summer and fall snowmobile use from June 1 through November 30 as a mitigating factor for increased use during winter months. DEIS at 8, 62 (Table 9).

For this reason alone, the KNF's proposed action in the Ten Lakes DEIS would violate the MWSA. Further, as we now proceed to demonstrate, the KNF's MWSA analysis in the DEIS is flawed for numerous additional reasons:

ii. The Forest Service Arbitrarily Calculated and Inflated the 1977 Snowmobile Visitor Baseline

The Ten Lakes DEIS errs in concluding that snowmobile use in the proposed action area approximated 1,000-2,000 visitors in 1977, with about 30 to 50 percent of those users entering the Ten Lakes WSA area. Although the record includes contemporaneous agency documents that attempt to accurately estimate snowmobile use within the Ten Lakes WSA in 1977, the KNF arbitrarily relied on an informal, back-of-the-envelope calculation published in a 1973 local newspaper article and compounded this error by assuming (based solely on anecdotal evidence) that about 30 to 50 percent of all local snowmobilers accessed the Ten Lakes Scenic Area, the precursor to the Ten Lakes WSA. DEIS at 57 (citing DEIS Vols. 4-6, 4-30, 4-31, 4-62, and 4-64 through 4-66); *see also* DEIS Vol. 4-009a (table displaying KNF's calculations for estimating users). As a result, the KNF's proposed alternative would impose an artificially elevated baseline.

By relying on imprecise guesswork, the KNF ignored more credible data placing the baseline much lower. A May 1976 Forest Service report assessing the wilderness characteristics of the Ten Lakes area notes that “[c]ycling and snowmobiling [combined] account for 550 visitor days in the [Ten Lake Scenic] area.” DEIS Vol. 4-6 at 2 (emphasis added). Similarly, a 1974 recreational analysis for the entire 93,600-acre Eureka-Grave Creek Planning Unit (which includes the area that became the Ten Lakes WSA) estimated 627 snowmobile recreational visitor days (“RVD”) (i.e., 1,880 visitor days) throughout the entire Planning Unit. DEIS Vol. 4-24 at 3.³ In sharp contrast to the DEIS's 1977 baseline estimate of 1,000-2,000 “snowmobiles per year,” the 1976 report estimated at best snowmobilers constituted some percentage of 550 visitor days, while the 1974 analysis calculated 1,880 visitor days for an area three times the size of the Ten Lakes WSA. In short, 1970s-era Forest Service documents concluded that a significantly lower number of snowmobile users recreated in the Ten Lakes WSA compared to the estimate the KNF used to calculate the baseline for determining non-conforming use in the Ten Lakes DEIS.

More fundamentally, the KNF's calculations compare apples to oranges, using “snowmobiles per year” as their unit of measurement rather than the more common (for the 1970s to 1990s) RVD. *See* DEIS Vol. 4-9 (describing Ten Lakes DEIS units of measurement for recreational use). An RVD, the Forest Service's de facto unit of measurement for recreational activities until 2000, *see* DEIS at 57; DEIS Vol. 4-8, tracked recreation as one person over a twelve-hour period. DEIS Vol. 4-24 at 3 n.1. The Forest Service ceased using the RVD in 2000 due to the agency's routine artificial inflation of numbers to secure additional

³ The document cited, a 2003 assessment of the Ten Lakes WSA wilderness characteristics, notes that the 1974 Eureka-Grave Creek Planning Unit analysis estimated “visitor days” whereas most other Forest Service user estimates between the 1970s and 1990s used recreational visitor days (“RVD”). *See* DEIS at 57; DEIS Vol. 4-24 at 3 n.1. A visitor day is “someone recreating on the National Forest for some part of the day” while a RVD tracks recreation occurring over a 12-hour period. *Id.*, Vol. 4-24 at 3 n.1. To calculate snowmobile users, the Forest Service considered three visitor days equal to one RVD. *Id.* The 1974 Eureka-Grave Creek Planning Unit analysis estimated 1,880 visitor days, which “equates to 627 recreational visitor days (RVD) ...” *Id.*

funding. DEIS at 57 (describing that “RVDS were used to allocate funding, and as a result were often increased without any supporting data”); DEIS Vol. 4-8 (April 2015 Forest Service email describing same flaws).

The KNF acknowledges that it reviewed the 1970s-era data contradicting the agency’s conclusion in the DEIS. See DEIS at 57 (citing Vol. 4-63, which lists all the documents consulted, including the 1974 and 1976 analyses reporting 1,880 visitor days in the Eureka-Grave Creek Management Unit and 550 visitor days in Ten Lakes Scenic Area for all motorized vehicles). Yet instead of incorporating this relevant agency-compiled data, the KNF attempted to discredit its own 1976 and 1974 snowmobile visitor data by questioning the accuracy of RVDs, using the measurement’s bad reputation as an inflated counting method as an excuse to ignore those results. DEIS at 57.⁴ In its place, however, the KNF relied on highly questionable guesswork and post-hoc recollections from parties with a stake in maintaining an elevated baseline. The irony of the agency’s reliance on such a counting method is that its results far exceed contemporary estimates derived using RVDs—the same calculation approach that the KNF dismisses for inflating user estimates.

Even assuming that “snowmobiles per year” is preferable over RVDs as a calculation method, the agency’s baseline estimates conflict with later numbers derived from actual datapoints collected in the 1980s and 1990s. Using data derived from visitor registers and trail counters the KNF estimated approximately 1,100 snowmobiles per year in 1983, 800 in 1991, and 900 in 1993. DEIS Vol. 4-9 (April 2016 table compiling counts of snowmobiles per year from 1973 through 2015); *id.* Vol. 4-009a (Dec. 2016 table showing agency calculations). These data-driven estimates fall significantly below the agency’s baseline range of estimates for 1973 (1,417 to 2,125 snowmobiles per year). According to the agency, snowmobile use in the action area did not meet or exceed 2,000 snowmobiles until the late 1990s and early 2000s. See *id.* The KNF does not explain the apparent discrepancy between its estimated 1,000 to 2,000 “snowmobile per year” baseline in 1977 and the much lower numbers recorded for the subsequent two decades, and cannot support it.

As stated above, where the Forest Service “does not possess complete historical data illustrating changes in the volume of recreational use in the study area over time,” it must “do the best it can with the data it has.” *Mont. Wilderness Ass’n*, 666 F.3d at 559. But where, as here, the KNF has reviewed agency-generated data dating from 1974 and 1976, and also has compiled snowmobile use records spanning the 1980s and 1990s reflecting lower numbers than its proposed historic baseline, the agency has not done “the best it can with the data it has.” *Id.*

iii. The Ten Lakes Travel Plan DEIS Allows Overall Snowmobile Use, Duration, and Intensity that Exceeds its 1977 Baseline

The Ten Lakes DEIS proposed alternative would explicitly permit increased snowmobile use, intensity, and duration in and around the Ten Lakes WSA as compared to the 1977 baseline. While the Forest Service may, in addressing an increase in non-conforming uses within a WSA since 1977, “reasonably

⁴ It bears noting that the Forest Service understood this risk in 2003 and created a conversion method to help unify units of measurement. See *supra* n.3.

compensate for an increase in the volume of motorized use by reducing the overall area of impact,” *Mont. Wilderness Ass’n*, 666 F.3d at 559, the current proposal fails to meaningfully offset significantly increased snowmobile use throughout the action area. As described below, the Ten Lakes DEIS fails to sufficiently maintain the WSA’s wilderness character as it existed in 1977 and, importantly, reduces the WSA’s potential for designation as wilderness because it increases the motorized use and intensity on large swathes of the Ten Lakes WSA. *Russell Country Sportsmen*, 668 F.3d at 1042.

(1) Increased Use Above 1977 Baseline

The proposed alternative would approve over-snow motorized use in the action area during two seasons. DEIS at 8. In Season 1 (December 1 through March 31) an estimated 2,000-3,500 snowmobilers would be allowed on more than 36,700 acres, including more than 15,800 acres within the Ten Lakes WSA (47 percent of the WSA’s acreage), *id.* at 8, 62, as well as nearly a mile of designated over-snow routes within the WSA open to motorized travel, DEIS at 9 (Table 3); *see also* DEIS Map 4. During Season 2 (April 1 to May 31) snowmobilers would be prohibited from accessing the Ten Lakes WSA, *id.* at 62, but would be able to use regularly-maintained over-snow routes that traverse drainages leading up to the WSA boundary, DEIS Map 5. This proposal would increase usage even beyond the agency’s inflated baseline for historical use, despite the KNF’s claims to the contrary. *See supra* section I(A)(i).

The agency’s proposed offsets would not reasonably preserve the WSA’s wilderness characteristics. First, as discussed above, *supra* section I(A)(i), the proposal permits a net increase in motorized use in both intensity and duration. Second, the proposed alternative would explicitly allow for a new 0.7-mile designated over-snow motorized route through an area of the WSA that is otherwise excluded from motorized use. *See* DEIS Map 4 (illustrating access route through WSA non-motorized use section to Wolverine Lakes from northwest); DEIS at 8, 62 (Table 9). The agency only makes passing mention of the designated over-snow motorized route through the WSA, DEIS at 8, 62, and does not analyze that route’s direct or indirect impacts on the area’s wilderness characteristics, *see* DEIS at 59-65, 68-70. Without a reasoned analysis of how and to what extent that route may impact opportunities for solitude by non-motorized winter users in the otherwise-isolated northwestern portion of the Ten Lakes WSA, the KNF has not adequately considered whether the designated route will maintain the WSA’s wilderness characteristics. *Mont. Wilderness Ass’n*, 666 F.3d at 557; *see also Russell Country Sportsmen*, 668 F.3d at 1042.

(2) The Ten Lakes DEIS Increases Acres Open to Snowmobile Use Within the WSA

The Ten Lakes DEIS proposed alternative also would increase the acreage open to snowmobilers within the WSA. While purporting to limit the accessible acreage from 34,000 acres to 15,838 acres, DEIS at 8, 62, the KNF acknowledges that its proposal would increase the “acres used” in the WSA from 3,900 to 6,600, DEIS at 62. At the same time, the KNF admits that new technology permits snowmobiles to venture farther into the WSA to an extent not contemplated in 1977. DEIS at 65 (citing DEIS Vol. 4-71). This proposal presents two problems: first, the KNF frames its proposed reduction of acreage from

34,000 to 15,838 acres as a reduction below the 1977 baseline when in fact it represents an increase of acres actually used within the WSA from 3,900 to more than 6,600; and second, the agency neglects to account for drastically improved technology that allows snowmobilers to access formerly inaccessible areas, potentially allowing snowmobilers to access the majority of the 15,838 acres authorized for snowmobile travel during Season 1. By increasing the use footprint within the Ten Lakes WSA beyond the acreage used in 1977, the proposed alternative would not maintain the wilderness character but rather degrade it.

First, the agency misleadingly emphasizes that it would reduce authorized snowmobile use in the WSA by about half, when in fact it must assess impacts to the WSA's wilderness character based on actual use. Courts interpreting the MWSA have held that "any comparison the Service may choose to conduct between the physical extent of motorized use under [a new] travel plan and the extent of such use in 1977 would most sensibly be focused, to the extent practicable, on the area over which use actually occurred in 1977, as opposed to the area in which use was authorized. After all, recreational use most clearly impacts wilderness character in the areas in which it actually occurs, not merely the areas in which it is formally permitted." *Mont. Wilderness Ass'n*, 666 F.3d at 558 n.5 (emphasis in original). While the Ten Lakes DEIS acknowledges in passing that the KNF is bound to consider the motorized use baseline as "areas used [in 1977], not just areas that are open" to snowmobiles, DEIS at 41, its impacts analysis highlights how much the proposed alternative will reduce acres authorized for use, DEIS at 59-65, 68-70. The KNF estimated—without any support or reference to documentation—that the proposed alternative would allow snowmobilers to actually use about 6,600 acres in the portion of the WSA open to use under the plan, a 2,700-acre increase from the areas actually used in 1977. DEIS at 62.⁵ So, the proposed alternative actually increases the geographic scope of motorized use in the WSA; it does not, as the KNF claims, restrict it.

Second, because the KNF does not explicitly identify which 6,600 acres may be actually used within the WSA it effectively opens 15,838 acres of the WSA to snowmobile use without sufficient prescriptions on areas of use. By acknowledging that technological advances in the 1990s have "allowed skilled and average riders access to areas they may not have gone with heavier or less powerful machines" and has "vastly changed the pattern of snowmobile use," DEIS at 65, the agency seems to suggest that snowmobiles today could potentially access most if not all of the 15,838 acres authorized for use, not merely the 6,600 acres they presume will be used. By opening this acreage to snowmobiles (regardless of whether the agency estimates without support that 6,600 will be "used", DEIS at 62), the KNF effectively has authorized an exponential increase in acres open to motorized recreation within the WSA—from the 1977 baseline of 3,900 up to 15,838 acres.

⁵ The KNF webpage for the Ten Lakes Travel Plan includes two maps that compare 1977 over-snow motorized use and current over-snow motorized use in the action area. The KNF does not refer to these two maps, but they comprise the only known illustration comparing actual use in the WSA between 1977 and 2017. Neither map appears in the Ten Lakes DEIS or list of maps; the current use map indicates snowmobile use occurs over a much larger area of the WSA than in 1977. *Compare* Map, Ten Lakes Travel Management Plan, 1977 Motorized Over the Snow Use, Jan. 2017, Exh. A. Ten Lakes Travel Management Plan, Current Motorized Over the Snow Area & Use, Jan. 2017, Exh. B.

In either scenario, the Ten Lakes DEIS has expanded the footprint of snowmobile use within the WSA to a level incompatible with the wilderness characteristics that existed in 1977.

(3) The Ten Lakes DEIS Proposes to Concentrate the Season of Use Beyond the 1977 Baseline

The proposed alternative also authorizes over-snow use in the action area for a different time period than that which existed in 1977. The Ten Lakes DEIS proposed action permits snowmobile use, in some form, from December 1 through May 31, DEIS at 8, 62, 69, and would permit access into nearly half of the Ten Lakes WSA between December 1 and March 31, *id.*; *see also supra* section I(A)(iii)(2). Historical sources demonstrate that 1977-era use occurred primarily on low-elevation clearcuts outside the WSA, on snowmobiles with significantly less power and ability to traverse difficult terrain, and almost never into the WSA during the peak winter season but rather in the springtime. In contrast, the KNF intends to concentrate snowmobile use in the WSA during the winter season.

Multiple sources in the KNF's record indicate that the majority of snowmobile recreation occurred in the springtime and in the low-elevation clearcuts lining the Forest Service roads that extend up low-elevation drainages to the Ten Lakes WSA border. *See* DEIS Vol. 4-21, at 6 (1975 Forest Service Multiple-Use Plan for Eureka-Grave Creek Planning Unit, noting that "Grave Creek ... and the Wigwam River area receive extensive use" with "snow-filled roads and clearcuts provid[ing] good access and popular play areas"). *See also* DEIS Vol. 4-35, at 2 (1970 Forest Service Letter, noting that snowmobilers generally stay on logging roads). The 1970s-era snowmobiles—which were too cumbersome and lacked the power to traverse powder snow or difficult terrain—contributed to this phenomenon of recreation in the lower-elevation clearcuts during the spring. DEIS Vol. 4-31, at 1 (recalling springtime rides "anywhere in the clear cuts" and lamenting that "the snowcats at that time [late 1970s] didn't go as good as the modern ones" so riders had to "do most of our rideing [sic] in the morning" before the snow got too soft again); DEIS Vol. 4-97 (remembering that "[t]he older machines didn't do well in deep powder, so the main riding [in the late 1970s] was from February on till late spring when the snow was firmer"); DEIS Vol. 4-32, at 1 ("The machines didn't have the power they do today so we liked for the spring when the snow was hard and we could go anywhere we wanted."). A combination of early snowmobile technology, snow conditions, and the extensive open glades created by the clearcuts meant that most snowmobilers stayed out of the Ten Lakes WSA, with some exceptions in the late spring. *See, e.g.*, DEIS Vol. 4-32 at 1 (recounting that "[e]veryone lived to get up to Wolverine Lakes [in the Ten Lakes Scenic Area] in the spring" when the conditions permitted).

Concentrating use in the winter on the WSA and then on lower-elevation drainages in the spring also clashes with Montana Fish, Wildlife and Parks' 1985 recommendations to limit grooming from January through March to prevent snowmobile use from disturbing big game winter use patterns (in December) and grizzly bear den emergence in the spring. *See* DEIS Vol. 4-70, doc. 4-112 (noting that Grave Creek meadows are important spring foraging sites for recently emerged grizzly bears, and that "big game [need to] establish normal use patterns on the winter range before grooming and snowmobile traffic is encouraged"), *id.*, doc. 4-113 (same). The Ten Lakes DEIS proposed alternative would have the effect of

encouraging snowmobile use in December by permitting groomed access through low-elevation drainages into the WSA, while also mandating that any spring snowmobile use be conducted in meadows and drainages outside the WSA, which will impact grizzly bear den emergence. These factors have the high potential to impact the wilderness character of the Ten Lakes WSA by impacting wildlife and reducing opportunities for solitude in and around the WSA.

iv. The KNF Arbitrarily Equates Extensive Trail Grooming as a Proper Reflection of 1977-Era Access

The chosen alternative would allow grooming on 33.8 miles of Forest Service roads between December 1 and March 31, facilitating access to 15,838 acres—47 percent—of the Ten Lakes WSA. See DEIS at 8, 23; see also *id.*, Map 4. The KNF acknowledges that “there was no grooming in 1977.” *Id.* at 64. That fact alone conflicts with the core principles guiding implementation of the MWSA because it allows snowmobiles a groomed pathway to the Ten Lakes WSA boundary that did not exist in 1977. See *Russell Country Sportsmen*, 668 F.3d at 1042 (articulating two requirements: that the Service administer study areas so as to maintain their 1977-era wilderness character; and to maintain their potential for designation as wilderness areas in the future). The KNF’s finding that no grooming existed in 1977 should guide its final decision.

Yet the KNF justifies its decision to permit continuation of the grooming practice because grooming allegedly replicates the “access into and through the WSA” that was authorized at the time Congress passed the MWSA, and therefore “has not significantly changed the extent of access” that existed prior to 1977. DEIS at 64. Contrary to this assertion, however, the evidence in the agency’s record indicates only occasional use of the Ten Lakes WSA by snowmobilers in 1977 due to factors beyond mere accessibility, namely: the power and range of 1977-era snowmobiles and the general preference to recreate in clearcuts outside the WSA boundary. Moreover, the record indicates that grooming has expanded exponentially since it was first practiced in 1982, encouraging additional use well beyond that which existed in 1977.

(1) Prior to 1977 snowmobiles did not routinely access areas within the Ten Lakes WSA

Prior to 1977, OSV users accessed the WSA, if at all, through open glades created as a result of “extensive clearcutting” along Forest Service roads performed in the 1950s and 1960s. DEIS at 64. These earlier logging projects contributed to Ten Lakes WSA’s unique configuration, which spans ridgelines and high-alpine lakes but excludes the drainages flowing out of the high country. See also DEIS Map 2; see also *id.* at 63, citing DEIS Vol. 4-34, at 7 (1974 Univ. of Montana School of Forestry report on Ten Lakes Area, describing Ten Lakes WSA configuration as “an octopus-shaped piece of land with slender arms” thanks to extensive road-building and logging in all the low-elevation drainages).

Snowmobilers in that era primarily recreated in the clearcut areas of national forest that extend, like lobes, up low-elevation drainages to the Ten Lakes WSA border. See DEIS Vol. 4-21, at 6 (1975 Forest Service Multiple-Use Plan for Eureka-Grave Creek Planning Unit, noting that “Grave Creek ... and the Wigwam River area receive extensive use” with “snow-filled roads and clearcuts provid[ing] good access

and popular play areas”). *See also* DEIS Vol. 4-35, at 2 (1970 Forest Service Letter, noting that snowmobilers generally stay on logging roads).

Two factors limited snowmobile access into the Ten Lakes WSA. First, snowmobiles did not have sufficient power to carry riders into the high country unless spring snow conditions permitted access, so they remained in the low-elevation clearcuts. *See, e.g.*, DEIS Vol. 4-32, at 1 (“The machines didn’t have the power they do today so we liked for the spring when the snow was hard and we could go anywhere we wanted.”); DEIS Vol. 4-31, at 1 (recalling springtime rides “anywhere in the clear cuts” and lamenting that “the snowcats at that time [late 1970s] didn’t go as good as the modern ones” so riders had to “do most of our rideing [sic] in the morning” before the snow got too soft again); DEIS Vol. 4-97 (remembering that “[t]he older machines didn’t do well in deep powder, so the main riding [in the late 1970s] was from February on till late spring when the snow was firmer”). *See also supra* section I(A)(iii)(3).

Second, the Ten Lakes Scenic Area, which includes Wolverine, Bluebird, and Paradise Lakes, *see* DEIS Map 2, remained closed to motorized vehicles from 1966 through at least 1976, *see, e.g.*, DEIS Vol. 4-24, at 1-2; *id.* Vol. 4-35, at 2; *id.* Vol. 4-50, at 2; *id.* Vol. 4-60; *id.* Vol. 4-114, at 4 (documents noting the prohibition against snowmobile use in Ten Lakes Scenic Area in the early 1970s); *see also* Exh. C (June 23, 1966 Forest Service Memorandum recommending closure of Ten Lakes Scenic Area to motorized vehicles); Exh. D (Feb. 22, 1971 notice memorializing August 26, 1966 closure).⁶ The KNF produced no empirical evidence of actual use in the Ten Lakes Scenic Area between March 1976 and November 1977, when Congress passed the MWSA. *See Mont. Wilderness Ass’n*, 666 F.3d at 558 n.5 (actual use, not formal authorization of non-conforming recreational use, forms baseline for determining whether activity is consistent with MWSA’s requirement to maintain 1977 wilderness character within a WSA). Instead, to establish actual use, the KNF only references unsubstantiated user estimates derived from a 1973 news article, DEIS Vol. 4-30, and post-hoc recollections from individuals with an interest in ongoing snowmobile use, *see, e.g.*, DEIS Vol. 4-32, at 1 (recounting that in the years after 1968 “[e]veryone lived to get up to Wolverine Lakes in the spring”). These generalized statements aside, the agency produces

⁶ The KNF fails to reconcile the question of whether the 1975 Eureka-Grave Creek Planning Unit Final Environmental Impact Statement (FEIS) ever officially opened the Ten Lakes Scenic Area to snowmobile use in 1976. A 2003 Forest Service Wilderness Characteristic Assessment for Ten Lakes WSA memorialized an August 26, 1966 order closing Ten Lakes Scenic Area to snowmobiling, and noted that the restriction lifted on March 8, 1976, when the Forest Service authorized snowmobile use over 99.5 percent of the future Ten Lakes WSA based on the agency’s conclusions in the 1975 Eureka-Grave Creek Land Use Plan FEIS. *See* DEIS Vol. 4-24, at 1-2. While the 1975 Eureka-Grave Creek Planning Unit Land Management Plan Final Environmental Impact Statement (“Eureka-Grave Creek Land Use Plan FEIS”) purportedly spurred the agency to amend the motorized travel ban in March 1976 to allow snowmobiles in the Ten Lakes Scenic Area, DEIS Vol. 4-24, at 1-2, contemporary agency materials cast doubt on the KNF’s assertion. A March 24, 1983 letter from the Forest Service’s Land Management Planner indicates that Eureka-Grave Creek Planning Unit FEIS merely “clarified” that the 1966 travel ban should not have prohibited snowmobiles, though the FEIS did not reverse the 1966 decision. *See* Exh. E (March 24, 1983 Forest Service Memorandum regarding use of motorized vehicles in the Ten Lakes Scenic Area). The March 1983 letter includes a timeline reflecting “information from the Ten Lakes file regarding restrictions on the use of motorized vehicles,” which notably omits the March 8, 1976 order that the Forest Service relies upon in lifting snowmobile restriction and instead concludes that the December 1981 Forest Travel Plan finalized the decision opening the Ten Lakes Scenic Area to motorized vehicles. *See id.*

no data supporting its claim that in order to maintain actual use patterns from 1977 it must groom extensively in order replicate access to the Ten Lakes Scenic Area.

Thus, despite the MWSA's mandate for the Forest Service to maintain the Ten Lakes WSA's wilderness character and potential for future wilderness designation, *Russell Country Sportsmen*, 668 F.3d at 1042, the agency has failed to reveal evidence in its own record that would suggest that facilitating snowmobile access to 47 percent of the WSA by grooming nearly 34 miles of trails aligns with actual recreational use in 1977.

(2) Records Produced in the DEIS Signal that Grooming Did Not Occur Until 1982 and Was Subsequently Expanded in Both Frequency and Mileage

Putting aside the fact that snowmobiles did not routinely enter the Ten Lakes WSA prior to 1977, the information in the DEIS does not support its conclusion that grooming merely replicates the extant conditions in 1977. Instead, the record demonstrates that the Forest Service sought to initiate a grooming program beginning in 1982, which it significantly expanded over the ensuing decades to facilitate an increase in access and user numbers to the Ten Lakes WSA well beyond the 1977 baseline.

The KNF's record indicates that by 1982 the agency "ha[d] been attempting to develop a snowmobile program for several years" in the area, and believed that the "grooming program will be a major step in developing the winter recreational facility that we are trying to establish on the Grave Creek Road" which the agency hoped would include "a parking area, unloading ramps, interpretive signs and the other things we hope to have operational by next year [i.e. 1983]." DEIS Vol. 4-70, doc. 4-107 at 1-2.⁷ See also *id.*, doc. 4-108 at 1 (March 1982 Forest Service Letter to MFWP requesting additional three groomings of the trail to "further assist and attract additional users" to Grave Creek and the Ten Lakes WSA); *id.*, doc. 4-110 at 1 (March 1983 Forest Service Letter to Montana Fish, Wildlife and Parks ("MFWP") noting that "[t]he district has been in the process to enhance established snowmobile use on the trail" by adding more services at the trailhead and contracting with Lincoln County, Montana to formalize snowplowing services).

In January 1982, the Forest Service first sought MFWP's one-time assistance to groom Grave Creek/Wigwam trail from the Birch Creek parking area to Clarence Creek, and then up a "short segment" of Stahl and Clarence Creek Roads. DEIS Vol. 4-70, doc. 4-107 at 1 (January 1982 Forest Service Letter requesting MFWP assistance); *id.*, doc. 4-110 at 1 (March 1983 Forest Service Letter to MFWP thanking agency for grooming efforts, and map denoting locations of marked snowmobile trails, including the Grave Creek/Wigwam and Stahl/Clarence Creek trails).⁸ See also *id.*, Vol. 4-24 at 7. By March 1982 the Forest Service augmented its grooming schedule, requesting three annual groomings of the trail, one in the early winter and two more spaced throughout the season. *Id.*, doc. 4-108 at 1 (March 1982 Forest Service Letter to MFWP). In 1989 the KNF extended grooming up Grave Creek Road to Big Therriault

⁷ The cited volume in the record, DEIS Vol. 4-70, contains twenty discrete documents, hand-labeled and individually numbered. References to this volume will include the hand-written labels to distinguish the documents from one another.

⁸ Early documents refer to Stahl and Clarence Creek trails as one combined trail, but later documents clarify that Stahl and Clarence Creek comprise two trails of four miles each. DEIS Vol. 4-70, doc. 4-119 at 1.

Lake, DEIS Vol. 4-24 at 7, for a total of 25 groomed miles along Grave Creek Road, DEIS Vol. 4-70, doc. 4-119 at 1 (confirming groomed mileage).

By 1990, the Ten Lakes Snowmobile Club began managing trail grooming and was permitted to maintain not only Grave Creek/Wigwam and Stahl/Clarence Creek trails, but also seven miles of Williams Creek Road. DEIS Vol. 4-70, doc. 4-116 at 1; *id.*, doc. 4-117 at 1. Moreover, the KNF authorized two groomings per month from January through March, as opposed to three annual groomings as originally allowed in 1982. *Compare id. with* DEIS Vol. 4-70, doc. 4-108 at 1 (March 1982 Forest Service Letter to MFWP). The following year, Ten Lakes Snowmobile Club received authorization to groom an additional two miles of trail to Weasel Lake. *Id.*, doc. 4-119 at 1 (Sept. 1991 grooming authorization request). *See also id.*, doc. 4-120 (same) and doc. 4-121 (Forest Service acknowledgment of additional grooming). Moreover, the Ten Lakes Snowmobile Club drastically increased grooming frequency between 1990 and 1995; a May 1995 request letter seeks permission to groom “the same trails listed in last seasons [sic] permit ... [e]qualling 41 miles total[:] 33 miles approximately seven times per week, 8 miles 7.5 times seasonally.” DEIS Vol. 4-70, doc. 4-123 at 1; *see also id.*, doc. 4-125 (May 1996 letter requesting same).

Far from indicating an effort to maintain the wilderness character by offering opportunities for solitude comparable to those available in 1977, *Mont. Wilderness Ass’n*, 666 F.3d at 557, the record indicates that the KNF actively authorized grooming to allow snowmobilers the chance to venture farther into areas that abut the Ten Lakes WSA.

v. The KNF Arbitrarily Calculated the 1977 Visitor Baseline for Motorcycle Use to Justify its Proposed Mechanized Designations

We have concerns with how the KNF established the 1977 baseline condition for mechanized use in the WSA. Mountain bike use is a new use since 1977, but the Forest Service’s Northern Region FSM Supplement No. 2300-2008-1, section 2329 permits mountain bike use to be aggregated with 1977 motor-bike use if wilderness character is maintained. DEIS at 3, 9, and 32-33. The KNF claims that 15.9 miles of trail were open to motor vehicles in 1977. DEIS at 9. What is the source for this? The KNF also claims that there were less than 100 motor-bike visitors to the WSA in 1977. DEIS at 62, Roadless Table 9. What is the source for this estimate and what methods did the KNF use to make this estimate? The DEIS provides no rationale which effectively makes its baseline determinations arbitrary.

Additionally, we do not understand why the agency is using miles of trail and acres open as metrics to establish the baseline condition for mechanized in the WSA as opposed to intensity of use. DEIS at 62, Roadless Table 9. That 12,874 acres and 15.9 miles of trail were available for motor-bike use in the WSA in 1977 does not inform whether, how, and the degree to which the area was actually being used and wilderness character was being impacted. As stated in section I(A)(iii)(2), the KNF should be relying on areas actually used by motorbikes in the WSA in 1977, not areas authorized for this use.

vi. The proposed action would not maintain the WSA’s 1977 wilderness character as it pertains to natural integrity

Wildlife is an important value when considering the natural integrity of an area’s wilderness character. The Bitterroot National Forest’s Travel Management Plan Final Environmental Impact Statement

acknowledged snowmobile use impedes the natural integrity of WSAs by causing stress to wintering wildlife; the Bitterroot Travel Plan FEIS went on to analyze the impacts on wildlife within the WSA in each alternative. See Bitterroot Travel Management Planning Project FEIS at 3.3.11. In particular, OSV use can have significant adverse impacts on wildlife by increasing stress at a time when animals are highly vulnerable, facilitating competition, causing displacement and avoidance, and effectively reducing the amount of available habitat as species generally seek to avoid encounters with motorized vehicles (Switalski 2016a; Mullet 2014).

The proposed action would allow an increase in both the number of snowmobilers and the acreage in snowmobile use in the WSA compared to the 1977 baseline. Specifically, the proposed action would allow for an increase in 2,700 acres and a potential increase in 2,500 snowmobilers in the WSA compared to the 1977 baseline (i.e., 1,000 to 2,000 snowmobile users in the project area in 1977, about 30 to 50 percent accessed the Ten Lakes WSA). See Roadless Table 11 at 69; *see also supra* sections I(A)(i), I(A)(iii)(2). These increases in use will certainly have a negative impact on wintering wildlife when compared to existing conditions in 1977. When considering wildlife as part of natural integrity, this increase in use would impair the WSA's wilderness character beyond the 1977 baseline. To ensure compliance with the MWSA, the proposed action must go much further to limit the acreage available for snowmobile use in Season 1 in order to offset the impacts to wildlife from a significant increase in use levels.

In addition, the DEIS does not even consider the impacts on wildlife when analyzing the natural integrity of the WSA's wilderness character, which is a significant oversight.

vii. The proposed action would not maintain 1977 wilderness character as it pertains to solitude and primitive recreation

The Ninth Circuit Court of Appeals affirmed the need to preserve the area's ability to provide solitude, which depends on a user's perception of others around him. See *Mont. Wilderness Association*, 666 F.3d at 558 (The preservation of the area's physical measures are necessary, and "an area's ability to provide solitude, as required by the Wilderness Act, depends on a current user's perception of other users around him," defined by the number or intensity of users); *see also* EIS at 53. A user might well perceive noise from OSVs as impeding her solitude.

Unfortunately, the DEIS inconsistently assessed and applied the impacts that noise from OSVs has on wilderness character. On the one hand, the DEIS states that noise from OSVs disrupts the natural quiet that is important to the opportunity to experience solitude. DEIS at 64. The DEIS goes on to state that "[e]ven with the development of four-stroke snowmobiles, noise remains a major detriment to the peace, quiet and natural sounds that are an integral part of the experience backcountry skiers, snowshoe and other quiet users seek on public lands (vol. 4-71)." *Id.*

The DEIS elsewhere, however, when walking through the Wilderness Attribute Rating System, dismisses the impact that noise has on wilderness character:

- Solitude – “The presence, volume, and type of other users and the sounds and smell have all been identified as affecting the personal subjective sense of solitude. All of these effects are temporary in nature, and do not affect the attributes of an area that create a sense of solitude.” DEIS at 59.
- Primitive recreation – “The physical parameters of an area that foster a sense of remoteness, including...sounds associated with civilization, would not change with travel management decisions about appropriate uses of trails in any alternatives.” DEIS at 59.

We are confounded at how the agency can assert that noise from OSVs can degrade the natural quiet that is integral to wilderness character but then dismiss noise as not affecting solitude and primitive recreation, two important wilderness attributes.

In addition, we disagree with the Forest Service’s claims that impacts from noise have reduced 94% due to a decrease in noise from earlier to later models of OSVs. DEIS at 65. We acknowledge that advances in snowmobile technology have helped reduce the noise level, or decibel level, of snowmobiles, but we contend that the overall impacts on quiet recreational users associated from OSVs due to noise has actually increased in the WSA. Most snowmobilers today still use two-stroke engines, many modified to maximize power. Noise from snowmobiles, even modern four stroke engines, travels across large distances. Higher levels of use by machines that can travel further distances diminish the opportunity to find solitude. Noise from OSVs inside the WSA will travel across the landscape thereby diminishing opportunities to find solitude in the remaining portions of the WSA set aside for non-motorized uses. Furthermore, the topography of the Therriault and Wolverine lake areas – principal snowmobile destinations with the Ten Lakes WSA – form convex basins that can act to amplify and project engine noise across long distances.

Colorado State University and the Wildlife Conservation Society are developing a GIS based model that can measure how sound propagates across a landscape, considering important variables such as the source of the noise, topography, vegetation, and temperature. The model will be able to measure sound propagation from both two and four stroke engines. This information will be useful in terms of understanding the extent to which the noise from a single snowmobile can disseminate across the landscape. Once the model is complete, we intend to run it for the planning area and submit the findings to the KNF. We expect the KNF to treat this information as new information and include it in the project record for consideration in the planning process.

viii. The proposed action would not maintain the WSA’s potential for designation as wilderness areas as it existed in 1977

Many areas do not receive serious consideration for wilderness designation once motorized and mechanized use becomes established. Motorized and mechanized users are often fundamentally at odds with wilderness designation, and these constituencies will advocate for and defend these uses. The Forest Service has only to review the volumes of testimony on Congressional Wilderness hearings to observe that established use of motor vehicles is regularly given as a reason for not designating new

wilderness areas. In the Bitterroot Travel Plan Record of Decision (ROD), the agency articulates how allowing non-conforming uses in an area heightens the inability to maintain wilderness character:

Additionally, allowing uses that do not conform to wilderness character creates a constituency that will have a strong propensity to oppose recommendation and any subsequent designation legislation. Management actions that create this operating environment will complicate the decision process for Forest Service managers and members of Congress. It is important that when the wilderness recommendations are made to Congress that they be unencumbered with issues that are exclusive to the wilderness allocation decision ... In response to the DEIS, the Forest received a number of comments from members of the mountain biking community, both local and national, regarding prohibiting mechanical transport use, including bicycles, in the RWAs. They feel that mountain bikes do not physically impact these areas, nor do they have the same impacts as motorized vehicles ... prohibiting bicycles and other types of mechanical transport acknowledges there are impacts on the social and biotic environment that do not show as physical “scars” on the land, but which are inconsistent with the wilderness character I am responsible for maintaining.

Bitterroot Travel Plan ROD at 26. Thus, the agency reduces not only wilderness character by allowing motorized and mechanized vehicles use in the WSA but also the potential for statutory wilderness designation.

The proposed action’s snowmobile designations in Season 1 would not maintain the WSA’s potential for designation as wilderness areas as it existed in 1977. The proposed action would designate 15,838 acres across the eastern portion of the WSA for OSV use in Season 1. The proposed action would allow for an estimated 2,000-3,500 snowmobilers—a two-to-threefold increase in OSV use above the DEIS’s inflated 1977 levels – to recreate in this portion of the WSA in Season 1. *See supra* sections I(A)(i), I(A)(iii)(2). This substantial increase in users would effectively eliminate the ability for this portion of the WSA to be designated by Congress. The remaining portion of the WSA not designated for OSV use in the proposed action would be so oddly shaped that it would be nearly impossible to designate as wilderness.

The proposed action’s mechanized designations in Season 3 and OSV designations in Season 1 would further frustrate the potential to designate the WSA as wilderness. In the southernmost lobe of the WSA (Gibraltar Ridge area), the KNF is proposing to designate Trails 333 and 335 for mechanized use in Season 3 (June 1 – November 30). Designating these trails for mechanized use could eliminate the potential for this 4,000-acre lobe to be designated wilderness. The removal of this 4,000-acre area and the 15,838 acres across the eastern portion of the WSA would leave only about 14,000 acres (or 41%) of the WSA free of non-conforming uses. Leaving less than half of the Ten Lakes WSA free of motorized and mechanized designations would not maintain the area’s potential for designation as wilderness in violation of the MWSA.

It is important to highlight here the recent travel decision in the Bitterroot National Forest that included two WSAs designated under the MWSA. The Bitterroot National Forest (BNF) went through a similar

exercise as the KNF. The BNF attempted to document the level and location of snowmobile use as it existed in 1977. Like the KNF, quality data to substantiate this use was not available so the BNF attempted to estimate use levels based on what limited data was available, making significant assumptions. After going through this exercise, the BNF concluded that “[a]fter careful consideration of the available historic regional, state, and national data for use levels of summer and over-snow motorized vehicle and bicycle use, I am not able to determine use levels in 1977 with any reasonable degree of confidence. Bitterroot Travel Plan ROD at 25. The Supervisor ultimately closed the WSAs to snowmobile use and offered the following rationale:

After carefully considering the available options for maintaining the wilderness character in the Sapphire and Blue Joint WSAs as it existed in 1977, I have decided to close these areas to snowmobiling and other over-snow vehicle uses. I am also prohibiting summer motorized use and bicycling as well. I believe we have an obligation to manage WSAs for those social and ecological characteristics to preserve wilderness character. *These actions assure that Congress’ intent for these areas will be honored while preserving their potential for inclusion in the National Wilderness Preservation System.*

Bitterroot Travel Plan ROD at 25 (*emphasis added*).

We agree with the BNF’s conclusion. Even where the Forest Service does not have adequate quantitative data to fully address the questions of volume and intensity of non-wilderness uses, the agency must protect wilderness character from the impact of its management decisions. Where information is limited, it is unacceptable to use insufficient data to answer the question. In other words, an absence of user data is not an excuse to ignore the requirement under the MWSA to protect wilderness character. The BNF ultimately felt that the lack of data limited their decision space regarding what level of non-conforming uses in the WSAs would be allowable under the MWSA. Since the KNF is unable to accurately determine use levels as it existed in 1977, we believe a significant reduction in non-conforming use in the WSAs is necessary to assure that wilderness character as it existed in 1977 is maintained while preserving the WSA’s potential for inclusion in the NWPS.

B. Important factors that the KNF failed to properly consider when assessing wilderness character

There are important factors related to use levels in the WSA that the KNF must properly consider to maintain the WSA’s 1977 wilderness character. To inadequately consider these factors would result in the KNF’s failure to comply with the MWSA’s requirement to maintain or restore 1977 wilderness character and NEPA’s requisite hard look analysis.

i. Technological advances in snowmobiles have transformed accessibility

The DEIS inconsistently assessed and applied the advances in snowmobile technology between 1977 and today. It provides evidence that 1977 technology was vastly different than today’s, yet does not apply that understanding in a rational or consistent way when evaluating impact to wilderness character over

the winter season.

The DEIS states, “[u]ntil the 1990’s, snowmobiles were generally *restricted to packed trails and roads* as the earlier machines would *easily* become bogged down in deep snow.” DEIS at 65 (*emphasis added*). However, according to the International Snowmobile Manufacture’s Association, “today’s snowmobiles bear little resemblance to earlier models,” DEIS Vol 4-71 at 2 (2006 Winter Wildlands Alliance analysis of motorized and non-motorized opportunities and access on federal public lands, quoting ISMA website), because of “the development of the ‘powder sled’” in the mid-1990’s, which “*vastly* changed the pattern of snowmobile use,” DEIS at 65 (*emphasis added*). The Forest Service admits that “[t]hese advances in technology have also allowed skilled and average riders access to areas they may not have gone with heavier or less powerful machine. In addition, new development such as motor bikes with front skis can travel through smaller openings than traditional snowmobiles.” DEIS at 65. In fact, “improvements in snowmobile technology allowing users to access difficult terrain” has “increased [snowmobile use] by approximately 3,100 acres within the WSA since 1977.” DEIS at 58.

The DEIS has established Season 1 as December 1 to March 31. It is commonly understood that mountain snow does not consolidate until very late February or even into March at higher elevations. It is highly unlikely that 1977 snowmobiles, which the DEIS explains as being much less powerful, ventured far off Forest Service roads in the Ten Lakes area until March, and if they did they would have been restricted to areas near roads, such as clear cuts. *See supra* section I(A)(iii)(3). Access into the higher basins and terrain would have been all but impossible *until snow conditions firmed up* substantially later in the winter season near the end of the proposed Season 1.

Thus, the actual terrain or geography available to snowmobilers in the Ten Lakes WSA in 1977 would have been more closely similar to that presented in the Alternative 4. Thus, the assumption and conclusion under Alternative 1 that the analysis area was used extensively and through most of Season 1 appears to be without merit.

Further, given that today’s snowmobiles, when compared to 1977, are more powerful and can access more difficult terrain in more diverse snow conditions and that over-snow bikes didn’t exist in 1977 why is it appropriate to use the same estimate for 1977 and today that only 30%-50% of over-snow nonconforming users access the WSA? With the increased snowmobile capacity and new over-snow bikes it seems more likely that a higher percentage of current over-snow nonconforming users access the WSA than did in 1977.

ii. Grooming facilitates new winter biking opportunities that did not exist in 1977

In section I(A)(iv) of this letter, we demonstrate that the KNF’s assertion that grooming facilitates the same level of access in the WSA as clearcuts that existed in 1977 is arbitrary. In addition, the KNF failed to consider the fact that groomed roads in the WSA have essentially paved the way for a new use in the area: over-snow biking. The first mass-produced fat-tire/over-snow mountain bike (the Surly Pugsley) was released in 2005. Even if these bikes had been used for winter riding in 1977, they would not have been able to access the WSA because they require previously hard-packed – and preferably groomed –

snow in order to be ridden. Therefore, grooming in the WSA has invited a new user group that could not possibly have accessed the WSA via the clear cuts in 1977. The KNF must properly consider the impacts that grooming has on the WSA's wilderness character. As an aside, the DEIS should consider how OSV use in general facilitates fat-tire biking. Although grooming encourages fat-tire biking just as it encourages OSV use, it is not required for fat-tire riding as long as the snow has been packed down in some manner. OSV use, regardless of whether it is on a groomed route or not, facilitates fat-tire biking.

iii. Events that did not exist in 1977 impact overall usage in proposed action area

Since the WSA was designated in 1977, the KNF has been authorizing two over-snow nonconforming use events near the WSA and WSA access points. The KNF started permitting one of these events back in the mid-1990s and the other in 2013. With the improved access, promotion and motivation offered by these events, which did not exist in 1977, it is reasonable to assume that these events are attracting more snowmobilers to the WSA than did in 1977. With this, we are confounded at how the KNF could use the same estimate for 1977 and today that only 30%-50% of over-snow nonconforming users access the WSA. It seems more likely that a higher percentage of over-snow nonconforming users access the WSA today than did in 1977 as a result of these events. At the very least, these events bring in an additional 130-250 visits to the area annually.⁹ In 1995, the Ten Lakes Snowmobile Club estimated that a single event brought up to 75 riders to the WSA at one time. DEIS at 65. Further, these events serve to promote snowmobile use in the area generally, leading to snowmobile users visiting the area other than when these events are held. Nonetheless, the KNF arbitrarily dismisses these events as not increasing use levels in the WSA.

iv. Reduction in snowmobile opportunities outside of the WSA since 1977

The KNF notes that, "there was considerable vegetation management, surrounding but outside of the Ten Lakes WSA prior to 1977." DEIS at 47. The KNF acknowledges elsewhere in the DEIS that snowmobiling activity that occurred in the project area in 1977 took place in the clearcuts themselves, which provided large-scale "play areas" for the snowmobiles that existed at that time. See DEIS at 42 referencing a 1975 EIS ("The snow-filled roads and clear-cuts provide good access and popular play areas.") The KNF also acknowledges that these areas have since been eliminated or greatly reduced because of the regrowth of vegetation. See DEIS at 58 ("Areas that are used have changed slightly in size and location since 1977. This is mainly due to vegetation changes, with revegetation of clearcuts."). This means that these openings that existed outside but adjacent to the WSA that were once popular among snowmobilers no longer exist because of revegetation. With the reduced play area opportunities outside the WSA, it seems likely that a higher percentage of over-snow nonconforming users access the WSA today than did in 1977 to access the high elevation play areas that have not been affected by vegetation regrowth. It is therefore arbitrary for the KNF to use the same estimate for 1977 and today that only 30%-50% of over-snow nonconforming users access the WSA.

v. Snowmobile use numbers provided by snowmobile club

⁹ One event has 50 participants and the other has 80-200 participants. Together, these two events have 130-250 participants. DEIS at 65.

The Ten Lakes Snowmobile Club provided reports, provided in their application for state-funded “Recreational Trails Grants,” regarding the number of users of groomed trails in the Ten Lakes analysis area. The Club reports state in 2005 there were 3,500 users, in 2006 there were 3,200 users, in 2007 there were 4,800 users, in 2008 there were 5,300 users, no report in 2009, in 2010 there were 3,351 users, and in 2011 there were 5,069 users. DEIS Vol 4-64 and 4-65. This would indicate a range of 3,200-5,300 users per year, which is considerably higher than the KNF estimate of 2,000-3,500 users in Alternative 1, the existing situation alternative. How was information from the Club regarding the number of over-snow nonconforming users of groomed trails used in the DEIS?

II. Executive Order Minimization Criteria

The minimization criteria were initially referenced in Executive Order No. 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972), as amended by Executive Order No. 11989, 42 Fed. Reg. 26959 (May 24, 1977). They require the Forest Service, when designating routes and areas open to motorized travel, to: 1) minimize damage to soil, watershed, vegetation, or other resources of the public lands; 2) minimize harassment of wildlife or significant disruption of wildlife habitats; and 3) minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands. These minimization criteria were codified in the 2005 Travel Management Rule, as amended by the 2015 Over-Snow Vehicle Rule.

The OSV Rule requires each National Forest unit with adequate snowfall to designate and display on an OSV use map (OSVUM) a system of areas and routes where OSVs are permitted to travel; OSV use outside the designated system is prohibited. 36 C.F.R. §§ 212.81, 261.14. Thus, rather than allowing OSV use largely by default wherever that use is not specifically prohibited, the rule changes the paradigm to a “closed unless designated open” management regime. This paradigm shift entails significant changes in how snowmobiles are managed on National Forest lands. Forests must apply and implement the minimization criteria when *designating* each area and trail where OSV use is permitted, not as a means of justifying existing management. 36 C.F.R. §§ 212.81(d), 212.55(b). Any areas where cross-country OSV use is permitted must be “discrete, specifically delineated space[s] that [are] smaller . . . than a Ranger District” and *located* to minimize resource damage and conflicts with other uses, including management to maintain wilderness character. 36 C.F.R. §§ 212.1, 212.81(d), 212.55(b).

The DEIS states that the selection of routes and areas in the proposed action was based on maintaining the 1977 existing condition for wilderness qualities of solitude and opportunities for primitive recreation. DEIS at 101. While we agree that the Forest Service is legally obligated to manage OSV and mechanical use within the WSA to maintain the 1977 existing condition for wilderness qualities of solitude and opportunities for primitive recreation, these are not the only legal obligations that the Forest Service is under during travel management. OSV routes and areas must be located to comply with the minimization criteria.

Application of the criteria requires the Forest Service to minimize impacts — not just identify or consider them — when designating areas or trails for OSV use, and to demonstrate in the administrative record how it did so. This duty was recently confirmed by the Ninth Circuit Court of Appeals in *WildEarth Guardians v. U.S. Forest Service* in which the Court held that the agency must “apply the minimization criteria to each area it designated for snowmobile use” and “provide a more granular minimization analysis to fulfill the objectives of Executive Order 11644, which the [Travel Management Rule] was designed to implement.” *WildEarth Guardians v. U.S. Forest Service*, 790 F.3d 920 (9th. Cir. 2015). More specifically, the Court held that “mere ‘consideration’ of the minimization criteria is not enough.” The Forest Service must show not just that impacts have been studied, but specifically demonstrate how effective each of the alternatives presented in the DEIS is in minimizing impacts from OSVs. As one of the first forests in the nation to implement the new OSV rule, it is critical that the KNF properly apply the minimization criteria. Yet the DEIS contains the same types of deficiencies that the Court found lacking in the Beaverhead-Deerlodge plan. Likewise, we find it worrisome that throughout the DEIS the KNF routinely states that the travel management rule requires consideration of the impacts OSV use will have on a particular resource (*see, e.g.*, DEIS at 81, 84-87, 89), but in actuality, the OSV Rule requires that these impacts be *minimized*. Mere “consideration” is an approach that the Courts have rejected as inadequate.

The DEIS does not contain any description or identification of discrete open areas, or explanation of how such areas have been located to minimize impacts. Although DEIS Appendix 1 addresses minimization criteria compliance and gives the appearance of further analysis, upon closer inspection one finds that it simply cross-references effects findings in the DEIS. *See* DEIS at 330 (stating that the DEIS found no effects to soil or water resources). Neither the DEIS nor Appendix 1 contain the required granular analysis showing how specific areas and trails have been located to minimize impacts. For example, regarding conflicts between uses, the DEIS compares the amount of acreage open for OSV use in each alternative as a basis for determining whether and how each alternative “minimizes” impacts to quiet recreation, but fails to show how particular areas or trails have been located to minimize these conflicts. Appendix 1 simply summarizes these findings (*see* DEIS at 333-335) but fails to dig deeper. With regards to minimizing impacts to other uses, the DEIS should identify where other uses are occurring within the project area and explain how OSV open areas and designated routes have been located to minimize impacts to these uses.

A. Wildlife

Appendix 1 is also insufficient in regards to explaining how the minimization criteria have been applied in regards to wildlife. It simply summarizes the DEIS findings, which rely on reductions in the acreage open to OSVs and fail to show how specific areas and routes have been located to minimize impacts to wildlife. DEIS at 331-332. The big game analysis in the DEIS relies on a reduction in areas where OSV use can occur and shorter seasons reducing potential disturbance as a substitute for locating routes and areas in a manner that minimizes impacts to big game. And, while much of the deer and elk winter range on the forest does not overlap with the project area, the DEIS states that 54% of moose winter range would be open to OSV use under alternative 2 during Season 1. DEIS at 221, 226-227. The DEIS does not explain how allowing OSV use across the majority of moose winter range meets the

requirements of the minimization criteria. Likewise, for bighorn sheep, the DEIS acknowledges that the project may impact individuals or their habitat, but concludes that it is not likely to contribute to a trend toward federal listing or cause a loss of viability. While this is an important consideration under NFMA, it does not show compliance with the minimization criteria.

Appendix 1 states that it is illegal in Montana to harass wildlife from snowmobiles (DEIS at 330-331) but fails to note that harassment for purposes of the minimization criteria encompasses more than just intentional harassment as defined under the state statute. “Harassment” under the minimization criteria includes displacement from preferred habitat, auditory disturbance, and other ways in which motor vehicles may impact wildlife species. There is a great deal of scientific literature detailing ways in which motorized use impacts wildlife, from songbirds to elk to grizzly bears, and the DEIS should describe how each designated OSV area and trail, in each alternative, was (or was not) located to minimize these impacts. For some species, such as ungulates, this may be as simple as explaining how the boundaries of open areas have been located to avoid crucial winter ranges or how season dates have been set to minimize OSV impacts during the parturition season, but the DEIS fails to do even this.

The DEIS considers project impacts to listed species in light of species viability according to FSM 2670. It does not demonstrate how areas and trails were located to *minimize* impacts to sensitive wildlife and their habitat, as required. For example, the DEIS is insufficient in regards to its analysis of impacts to grizzly bears. First, it is not enough to simply “consider” how areas and routes may impact bears (or other species), they must be located to minimize these impacts. See DEIS at 140 (“both over-snow areas and route locations were considered in alternative development” Second, the DEIS relies on reducing the acreage open to OSV use as a proxy for reducing potential disturbance to grizzly under each action alternative. DEIS at 117, 118-119, 130, 132, 137-138. Decreases in the overlap of OSV open areas and grizzly denning habitat is important, but not enough. There must be a granular analysis and explanation of how areas and trails were located to minimize disturbance and other impacts to bears. The DEIS relies on this same faulty approach for lynx – it rationalizes that all action alternatives result in fewer acres and routes, and a reduced season, of snow compacting activities, (DEIS at 142, 150-152, 160) and then specifically, yet incorrectly, states that the minimization criteria has thus been met. DEIS at 158, 174. In regards to wolverine, the DEIS concludes that there will be no effect associated with travel management planning because the plan does not alter persistent spring snow or impact trapping mortalities. DEIS at 176-177, 184. However, a recent literature review completed for Winter Wildlands Alliance documents a variety of ways in which winter recreation can impact wolverine. See Exh. F (“Literature review pertaining to motorized winter recreation impacts to wolverine, lynx, and fisher in northern Rockies, specifically the Salmon-Challis National Forest.”) These impacts may trigger behavioral changes leading to elevated stress levels and decreased reproductive capacity

B. Conflicts Between Uses

The DEIS fails to consider how current management – much of which would be carried forward in Alternatives 1, 2 and 3 – has led to conflict between uses. Minimization of this conflict is a key component of the OSV Rule and this includes conflict between motorized use and managing an area to maintain wilderness characteristics. The DEIS does not describe how the location of designated trails

impacts wilderness character within the project area, nor does it provide any explanation of how trails have, or could, be located to minimize impacts. Likewise, the DEIS provides no discussion of how designated OSV use areas with non-motorized designations will impact these areas, or how the boundaries of OSV use areas have been located to minimize impacts to other land management uses or recreational uses.

C. Natural Resources

The DEIS states that forest resource specialists have been unable to identify any OSV-caused damage to soil, watershed, or vegetation resources in the project area. DEIS at 330. Given that there is currently no monitoring plan in place to identify these impacts, and given that such impacts may be subtle and/or cumulative, we are not surprised by this finding. We are surprised, however, to see that the DEIS does not put a monitoring plan in place to gain a better understanding of impacts. In the DEIS the KNF looks at the impacts of this project on natural resources purely from the standpoint of vegetation and road building – failing to account for more nuanced impacts that will arise from the project. Just because the project will not alter the forest transportation system does not mean that it will not impact forest resources.

OSV use can negatively impact water quality, soils, vegetation, and other natural resources in the forest (Switalski 2016b). Given what we know about how snowmobiles can potentially impact these resources, the Forest Service must consider these impacts when designating routes and areas for OSV use.

A recent University of Montana study estimates that, in Montana, snowmobiles burn an estimated 4.3 million gallons of gasoline each season (University of Montana 2014). Given that the vast majority of snowmobiles used on Forest Service lands have 2-stroke engines, and that 2-stroke engines are notoriously inefficient, we can estimate that hundreds of thousands of gallons of unburned fuel are deposited directly onto Montana's snowpack each year. Unburned fuel contains many toxic compounds including ammonium, nitrate, sulfate, benzene, and toluene, all of which then accumulate in the snowpack (Switalski 2016b at 9). Spring runoff discharges these accumulated pollutants as a pulse into the soil, groundwater, and surrounding waterbodies. *See id.* While it is difficult to document these impacts through casual observation alone, when one actually looks for impacts they find them. For example, a recent study found snowmobiles are polluting a tributary of Lake Tahoe, CA. Examining 168 different semi-volatile organic compounds (SVOC), researchers found eight to 20 times greater loadings on snowmobile trails than background levels (McDaniel 2013). McDaniel further reported that highly toxic and persistent polycyclic aromatic hydrocarbons (PAHs) had increased two to six times the background level in a nearby stream.

Given the amount of fuel that snowmobile use in Montana consumes, it is clear this form of recreation is also a substantial source of emissions with negative impacts on air quality. This impact is specifically documented on Forest Service lands in a study on the Medicine-Bow National Forest. Researchers have previously documented a decline in air quality with increased snowmobile activity (Musselman 2007). They measured higher ambient concentrations of CO₂, NO_x, NO, and NO₂ at a snowmobile staging site

and found significantly higher concentrations of these air pollutants on days with significantly more snowmobile activity. The researchers concluded that snowmobile exhaust was degrading air quality.

OSVs impact vegetation either through directly crushing and breaking vegetation, or through a number of indirect mechanisms. When traveling off-trail, snowmobiles often run over trees and shrubs and can cause damage or death – often with minimal snowmobile traffic. Although these impacts may not be environmentally significant when they occur in robust forest environments, they can be very significant when they occur in sensitive forest habit, such as high mountain slopes or meadows. In addition, these impacts tend to be cumulative and may take several years of monitoring before their effects are apparent.

For example, a 2009 study on the Gallatin National Forest found 366 acres of trees damaged by snowmobiles on timber sale units - slowing forest regeneration (Winter Wildlands Alliance 2009). Trees such as whitebark pine (*Pinus albicaulis*), found only at high elevations and declining across its range, may be vulnerable to snowmobile damage. Trampling has also been found to result in a reduction in plant productivity, changes in the plant community, and a reduction in plant diversity (Stangl 1999).

Snow compaction from OSV activity reduces the insulating air spaces and conducts cold air to the ground. These lower temperatures can reduce plant density and composition, reduce productivity and growth, delay seed germination and flowering, as well as affecting decomposition rates, hummus formation and microbial activity (Davenport and Switalski 2006). These impacts ultimately can change community structure and reduce the availability and duration of spring wildlife foods. Stangl (1999).

The science and policy mandate are clear, OSVs impact air and water quality and the Forest Service must designate routes and areas in a manner that minimizes these impacts. To do so, the KNF should avoid designating trails in areas with important, sensitive or impaired resources and should not designate areas with these resources as open to OSVs unless the impacts of motorized recreation can be minimized. Switalski 2016b at 11. These areas may include water bodies, wetlands, riparian areas, meadows, and alpine habitat.

The Forest Service should not rely wholly on generalized design features and mitigation measures to meet the minimization criteria – doing so fails to demonstrate a granular analysis of how areas and routes were located to minimize impacts and the public has no assurance that these measures are enforceable. Again, to meet the minimization criteria the Forest Service must specifically locate *each* open area and trail in a manner that minimizes impacts and describe this process in the EIS. Generalized design features are part of this, and mitigation is an important second step, but alone these are not enough to comply with the Travel Management Rule.

To properly apply the minimization criteria and meet the requirements of the OSV Rule, we suggest that the KNF take the following approach, and document each step in the FEIS:

1. Identify those areas where OSV use is prohibited (such as designated Wilderness areas) or cannot occur due to physical limitations (such as cliffs, thickly-treed forests, etc.); areas which

are closed to motorized vehicles under the governing Forest Plan documents; and areas where OSV use is clearly incompatible with existing uses, such as administrative areas, operating campgrounds, and areas leased for other uses.

2. Identify areas where OSVs must be prohibited to meet the minimization criteria – including areas where this is conflict with non-motorized winter recreation and other areas where OSV use should not be allowed due to resource concerns (areas such as crucial winter range or other important wildlife habitat, steep slopes prone to erosion, low-elevation areas that do not receive sufficient snow, etc.)
3. Determine where there is a demand for designated trails. If there is a demand for designated trails within the areas identified above, determine whether it is possible to locate trails in a manner that minimizes impacts, or locate trails outside of the areas identified above.
4. Determine appropriate boundaries for OSV open areas outside of the areas identified above. Locate open areas where there is a demand for OSV use and define boundaries based on identifiable features such as ridgelines, roads and rivers. All OSV use areas should have at least one public access point from an established and plowed parking area.

D. The DEIS Relies on Unenforceable and Non-specific Mitigation Measures

Rather than conducting the required area-by-area and route-by-route analysis, the DEIS relies primarily on mitigation measures – namely education and enforcement – to reduce the impacts of OSV use under the action alternatives and satisfy the minimization criteria. Indeed, the DEIS states that “[t]he effectiveness of travel management decisions relies upon education, voluntary compliance, monitoring uses of the area, and re-evaluation if non-compliance occurs.” DEIS at 109. However, this statement is missing a crucial component of effective and successful travel management decisions – engineering. A well-designed (engineered) travel plan makes education, compliance, and monitoring work much better down the road.

The DEIS fails to provide a meaningful assessment of the effectiveness of planned-for monitoring and education efforts other than to say that the OSVUM and MVUM will be the tool used, alongside visitor education and additional enforcement. The Ninth Circuit has squarely rejected this sort of reliance on “plan-wide data” and “generalized statements in the EIS that it designed [ORV] allocations” to protect various resources to demonstrate compliance with the minimization criteria. *WildEarth Guardians*, 790 F.3d at 930. More broadly, efforts to *mitigate* impacts associated with a designated OSV system are insufficient to fully satisfy the duty to *minimize* impacts, as specified in the ORV executive orders: “areas and trails shall be *located* to minimize” impacts and conflicts. Executive Order 11644, § 3(a) (emphasis added). Here the initial system design element of locating areas and trails to minimize impacts is missing. While establishing site-specific management actions and mitigation measures is an important part of the overall effort to designate a motorized system that minimizes impacts, it does not satisfy the obligation to apply relevant data to locate areas and trails to minimize impacts in the first instance.

Finally, to the extent the KNF does rely on mitigation measures to partially satisfy its substantive minimization criteria obligation, it must ensure that those measures will be implemented and effective in reducing impacts. The DEIS does not address how the KNF will respond if monitoring reveals that

motorized or mechanical use is causing resource damage, wildlife harassment, or degradation of wilderness character. The final plan should include the following details: how the agency will determine if and where damage is occurring, specific monitoring protocol (how often, where, by whom, using what indicators, etc.), damage thresholds, and plans for obtaining the funding necessary to meet education and enforcement needs.

III. National Environmental Policy Act

A. Purpose and Need

The Purpose and Need statement in the DEIS is insufficient because it fails to address relevant direction in the Forest Plan or clearly state that this project must comply with revised Subpart C of the Travel Management Rule, the Over-Snow Vehicle Rule.

The Purpose and Need statement for this project should be rephrased to read: “The purpose of this project is to develop a travel management plan (over-snow and mechanized) for the Ten Lakes Wilderness Study Area to comply with the terms of the 2007 Settlement Agreement with the Montana Wilderness Association and to maintain wilderness character and the potential for inclusion in the National Wilderness Preservation system (NWPS) that existed in 1977 (MA1c-DC-AR-01). *An additional purpose of this project is to develop an over-snow travel management plan that complies with revised Subpart C of the Travel Management Rule (the Over-Snow Vehicle Rule), including the requirement to locate designated areas and trails in a manner that minimizes impacts to forest resources, wildlife, and other uses. In addition, this project will identify Recommended Wilderness within the Ten Lakes Wilderness Study Area.* This action responds to the goals and objectives outlined in the 2015 Forest Plan.” (emphasis indicates requested addition).

The KNF’s Forest Plan specifically “defers” making a decision on recommended wilderness for the Ten Lakes and Whitefish Divide areas until travel planning is complete. See KNF Forest Plan ROD at 11 (“Therefore, per the Reviewing Official’s instructions and the consideration of these public concerns, I will defer making any changes regarding recommended wilderness in the Ten Lakes and Whitefish Divide area until travel management planning initiated under the 2007 Montana Wilderness Study Area (MWSA) Settlement Agreement has been completed.” (emphasis added)). The DEIS, however, declines to consider recommending lands for wilderness as part of the Ten Lakes travel planning process. The DEIS states: “Recommended wilderness revisions to Congress is not part of purpose and need for this project, is not a proposed action, and is not analyzed in this report.” DEIS at 33. The KNF certainly has the discretion to amend its Forest Plan and recommend lands for wilderness as part of this travel planning process. The current planning process is a prime opportunity to address this direction that is in the KNF’s Forest Plan ROD. We therefore request that the KNF revisit its decision to not consider recommending lands for wilderness as part of the current travel planning process. We request that the KNF expand its purpose and need statement to expressly consider amending the Forest Plan and recommending qualifying lands for wilderness.

B. Range of Alternatives

i. *The DEIS fails to analyze a reasonable range of alternatives*

The DEIS does not include a proper range of alternatives. Alternatives 2, 3, and 4 would designate as open for OSV use 46%, 60% and 0% of the WSA during Season 1, respectively. In terms of the larger planning area, the KNF is proposing that either at least 57% of the project area be open to cross-country travel during season 1 (Alternative 2) or 1% of the project area be open (Alternative 4). To provide a proper range, the KNF must provide an alternative that fills in the range between Alternatives 2 and 4. *Compare California v. Block*, 690 F.2d 753, 765, 768-69 (9th Cir. 1982) (despite considering an alternative that allocated 100% of inventoried roadless areas to wilderness, “it was unreasonable for the Forest Service to overlook the obvious alternative of allocating more than a third of the RARE II acreage to a Wilderness designation”), *with Mont. Wilderness Ass’n v. Connell*, 725 F.3d 988, 1004-05 (9th Cir. 2013) (range of alternatives that included opening between 0 and 10 of 10 existing airstrips, with three intermediate options, was reasonable). *See, e.g., Council on Environmental Quality, NEPA’s Forty Most Asked Questions*, 46 Fed. Reg. 18,026 (Mar. 23, 1981) (“When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90, or 100 percent of the Forest to wilderness.”).

While our organizations do not necessarily think the entire project area should be closed to OSV use during season 1, we also believe that the project record does not support Alternative 2. Within the range of alternatives presented in this DEIS we have little choice but to support Alternative 4. This is the only Alternative that complies with the MWSA and is supported by the project record. In addition, Alternative 4 is the only alternative that complies with the minimization criteria in the Travel Management Rule. While Alternative 4 could be considered onerous and restrictive towards mechanized and mechanical uses in the WSA, the KNF provides the public no other option than Alternative 4 that actually satisfies the law.

As the KNF develops this new intermediate alternative, we request that the agency take a landscape approach to protect the WSA. To do this, we request that the KNF draw upon the adjacent IRA lands to restore wilderness character and protect wildlife values throughout the planning area. Specifically, the Blacktail Creek IRA is an important area that, if protected and managed appropriately, could maintain and restore wilderness character of the WSA. The Blacktail Creek IRA is surrounded by the WSA, was recommended for wilderness in KNF’s 1987 Forest Plan, is important for landscape connectivity, DEIS Map 15, and is integral to maintaining wilderness character within the WSA’s northern core.

The Tuchuck IRA on the east side of the planning area is adjacent to recommended wilderness on the Flathead National Forest and part of a contiguous 80,000-acres roadless country made up of the Tuchuck, Thompson-Seton and Mt. Hefty IRAs. Furthermore, the Whitefish Range Partnership, a local collaborative group that included snowmobile users, unanimously agreed to recommend these roadless areas as wilderness to the Flathead National Forest as part of that Forest Plan revision process, which is

currently underway. On the KNF, the Tuchuck IRA is only a small sliver of land, heavily timbered with no trails. Difficult to traverse across by mechanized users, this area should be recommended as wilderness. We request that the KNF manage this area for non-motorized and non-mechanized uses in the Ten Lakes Travel Plan to maintain its wild character, primitive uses, wildlife habitat, and aid in the restoration of the WSA's wilderness character.

While Alternatives 2 and 4 do not allow motorized use in the Tuchuck IRA, none of the alternatives propose to protect the two adjacent IRAs from both motorized and mechanized uses. We request that the KNF develop a new action alternative that, among other things, prohibits motorized and mechanized uses in the Blacktail and Tuchuck IRAs and assesses adjacent IRAs for the same. Doing so will help address the WSA's irregular shape and achieve compliance with the MWSA by taking landscape level approach to protect the wilderness and wildlife values across the Ten Lakes planning area.

We turn now to the warming hut proposed in Alternative 4. While we recognize the proposed warming hut in Alternative 4 is meant to replace access to Wolverine Cabin, a newly constructed facility with (likely) greater snowmobiler capacity than Wolverine Cabin will have impact on the WSA. This hut will ensure two facilities remain in the project area, both of which will have degrees of impact to wilderness character of the WSA (sights, sounds and solitude). We, furthermore, have concerns that the warming hut will facilitate trespass into the WSA, and we have little certainty that the KNF will monitor and manage the inevitable trespass.

While we have significant concerns about the DEIS's limited range, we do want to point out here that we are pleased the KNF included an alternative (Alternative 4) in the DEIS that would close nearly all the project area to OSV use. This alternative represents a true baseline for comparison of alternatives, and we commend the KNF for including it.

ii. Alternative 3 is not legally viable and should be removed from further study

We also point out that Alternative 3 is not a legally viable alternative in that it does not comply with the MWSA and therefore does not meet the purpose and need of this project. See DEIS at 81 and 82 (Roadless Tables 14 and 15, respectively, showing that Alternative 3 fails to maintain presently existing (1977) wilderness character and degrades wilderness character). Given this, the KNF should not seriously consider implementing this alternative and should remove it from further study. *Westlands Water Dist. v. U.S. Dep't of Interior*, 376 F.3d 853, 868, 871 (9th Cir. 2004). If the KNF wishes to analyze an alternative that maximizes OSV and mechanical use, it must still do so within the confines of what is legally viable. Therefore, such an alternative should reflect no more than the maximum amount of use allowed under the MWSA.

iii. Alternatives considered but eliminated from detailed study

There were several alternatives that were eliminated from consideration, three of which we address here.

First, the KNF eliminated from detailed study an alternative that would include the Whitefish Range. The KNF's rationale for eliminating this alternative is that "[t]he KNF is committed to completing travel planning in the Whitefish Divide, but feels a more pressing need to meet the terms of the 2007 Settlement Agreement." DEIS at 17. Actually, with or without the Settlement Agreement, the KNF has a responsibility to manage the WSA to meet laws and regulations and manage wilderness character. Nevertheless, because a no-action decision was made in the 2015 Forest Plan, we would like the KNF to complete travel planning in the Whitefish Divide area without another 10-year delay. We therefore request that the KNF establish a timeline for initiating travel planning in the Whitefish Divide.

Second, the KNF eliminated from detailed study an alternative that stops grooming completely. We disagree with the elimination of this alternative and request that the DEIS include an alternative that eliminates grooming of OSV routes. Grooming facilitates access to and increased use of the WSA and the DEIS acknowledges that elimination of grooming outside of the WSA would improve wilderness character. See DEIS at 18 ("Eliminating over snow grooming, while occurring outside of the WSA, would improve wilderness character by potentially reducing the number of over snow vehicles."). Additionally, we are perplexed and completely disagree with the KNF's statement that grooming outside of the WSA helps maintain the "presently existing wilderness character" from 1977. Trail grooming clearly contributes to a reduction of wilderness character because:

- It provides direct and numerous access points to the very edges of the WSA;
- It did not occur in 1977 and clearcuts do not translate to grooming, which we discussed earlier in this letter, see *supra* sections I(A)(iii)(3) and I(A)(iv); and
- Many, if not most snowmobilers today, use the groomed trails around the WSA to access the WSA and not as a primary recreation destination.

Not only should the KNF analyze an alternative that eliminates grooming, the final decision should not include any grooming. Otherwise the final decision will not comply with the MWSA.

Third, an alternative to add wheeled motorized use was rightfully eliminated under the justification that it would introduce a "new user group" to Ten Lakes. The inclusion of winter mechanized use in this DEIS also introduces a "new user group" to the WSA that was not actively using the WSA in 1977. Any proposed winter mechanized use in the WSA should be based on factors raised in section I(A)(v).

C. The DEIS Fails to Take the Required Hard Look at Certain Impacts

NEPA dictates that the Forest Service take a "hard look" at the environmental consequences of a proposed action, including its direct, indirect, and cumulative effects. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989); 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.16, 1508.7, 1508.8. The required hard look encompasses effects that are "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8.

In section I(B) of this letter, we identify several important factors that the agency failed to consider in the DEIS when determining the wilderness character of the WSA as it existed in 1977 and studying the impacts each alternative will have on wilderness character.

D. The KNF Failed to Use Accurate, Reliable Data in the DEIS

NEPA and the Data Quality Act require thorough consideration of the impacts of permitting uses using quality science and reliable data and methodologies. To satisfy the “hard look” requirement, an EIS must rely on high quality information and ensure the scientific integrity of its analysis. *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005). However, this DEIS fails to take a hard look at impacts to wilderness characteristics.

Pursuant to the Data Quality Act of 2000 and corresponding Office of Management and Budget and U.S. Department of Agriculture guidelines, the Forest Service is obligated to “ensur[e] and maximiz[e] the quality, objectivity, utility, and integrity of information [it] disseminat[e].” Public Law. No. 106-554, § 515, 114 Stat. 2763 (Dec. 21, 2000). This duty applies broadly to any substantive analyses or documents prepared in conjunction with regulatory activities, including travel planning. USDA, Office of the Chief Information Officer, Information Quality Activities, Regulatory, available at: <http://www.ocio.usda.gov/policy-directives-records-forms/guidelines-quality-information/regulatory> (describing pertinent data quality standards and information subject to those standards) (last visited Jan. 31, 2017). To satisfy its data quality obligation, the Forest Service must, among other things, “identify[] known sources of error and limitations in . . . data obtained from or provided by third parties;” “[e]valuate data quality and, where practicable, validate the data against other information when using or combining data from different sources;” and “[p]rovid[e] transparent documentation of data sources, methodology, assumptions, limitations, uncertainty, computations, and constraints.” *Id.*

The KNF failed to use high quality, objective, useful, and verifiable data in the DEIS to determine impacts to resources and make sound decisions. As discussed in section I(A)(ii), we are particularly concerned about the quality of the information that the KNF relies upon to determine the WSA’s wilderness character as it existed in 1977. The KNF bases its 1977 use estimate on two sources: a 1973 newspaper clipping from the *Tobacco Valley News* and a draft Ten Lake Usage Report prepared by the citizens of Eureka, Fortine and Trego. DEIS at 57. We have several significant concerns with the use of these sources as the principal pieces of information for establishing 1977 wilderness character in the WSA:

- The estimate in the newspaper article is clearly a rough guess. How did the reporter estimate that there are approximately 400 snowmobilers in the area? How did the reporter estimate that an average of 250 of these people go out snowmobiling once a week in the Eureka area? What methods did the reporter use to offer his estimate for the article? The article was not written with any scientific rigor or even intended to be remotely accurate. Rather, the columnist was simply attempting to demonstrate to his readers that snowmobiles positively impact the local economy.
- If we are following the KNF’s rationale in the EIS, the agency attempts to substantiate the use of estimate provided in the *Tobacco Valley News* article by using a draft Ten Lakes Usage report, prepared by local citizens in Eureka, Fortine, and Trego which lists 260 people known to have

snowmobiled in the WSA in the 1970's. DEIS at 57 and Vol 4-62. How does a list of 260 people known to have snowmobiled in the WSA at some point in the 1970s substantiate the Tobacco Valley News article's estimate that 250 people went out once a week in 1973?

- Even accepting the article's estimate of 250 people snowmobiling each week in the area, the KNF takes this number and assumes that 30%-50% of these people were extensively using the WSA? Why is it rational to assume that 30%-50% of the 250 snowmobilers were visiting the WSA? The WSA was generally more difficult to access with the snowmobile technology available at that time. The first article provided in Vol 4-30, also from 1973 and in the same newspaper, highlights 7-8 difference locations in the region that are good for snowmobiling. The KNF presumes that between these 7-8 locations, 30%-50% of snowmobilers were visiting the Ten Lakes WSA. This assumption is extremely speculative.

IV. Forest Plan Consistency

The National Forest Management Act (NFMA) requires all subsequent agency action to be consistent with the governing Forest Plan. 16 U.S.C. § 1604(i). As a subsequent agency action, the Ten Lakes Travel Management Plan must be consistent with the KNF Forest Plan. The Ten Lakes Travel Management project area falls within the Tobacco Geographic Area, which includes the following (relevant) desired conditions:

- GA-DC-WL-TOB-01. Low levels of human disturbance allow for denning activities of wide-ranging carnivores that are sensitive to human disturbance (e.g., grizzly bear), and for summer use by big game in the Ten Lakes, Thompson Seton, and Marston Face areas.
- GA-DC-WL-TOB-03. In the Therriault and Krinklehorn BMUs the current levels of security core habitat, open motorized route densities, and total motorized route densities are also the desired condition.
- GA-DC-AR-TOB-01. Recreation opportunities are maintained or improved in the Ten Lakes area. An updated study for the Ten Lakes Wilderness Study Area is completed including the identification of specific areas and routes to provide a variety of winter and summer non-motorized and winter motorized recreation opportunities. Monitoring of use is an integral part of the recreation program for the Ten Lakes area.

KNF Forest Plan at 90-91. To meet these desired conditions, the Ten Lakes Travel Management Plan must ensure that OSV use within the project area does not disturb denning bears or wolverine and that mountain bike trails are located to avoid impacts to big game in the Ten Lakes, Thompson Seton, and Marston Face areas. In addition, to meet GA-DC-AR-TOB-01, the KNF must do more than designate areas and routes for motorized and mechanized use. Non-motorized, non-mechanized summer and winter recreation opportunities must also be maintained or improved. To do so, the KNF must consider how OSV and mechanized designations will impact other recreational uses and find ways to improve primitive recreation activities within the project area. Finally, the FEIS and final plan must include more details about how the KNF plans to monitor recreation use in the Ten Lakes area – otherwise this project will not be compliant with the Forest Plan.

The 2015 KNF Forest Plan appropriately recognized the impact of non-conforming uses on wilderness character and the potential for inclusion in the NWPS. The KNF Forest Plan ROD describes the potential affect clearly stating:

I have included this decision to align uses with the desired conditions to provide non-motorized and non-mechanized opportunities for exploration, solitude, risk, challenge, and primitive recreation within the revised Plan recommended wilderness areas. Continuing the uses could affect the wilderness character and potential for the areas we analyzed to be included in the National Wilderness Preservation System...

Kootenai Forest Plan ROD at 12. The WSA falls within Forest Plan Management Area (MA) 1c, which includes forest plan standards stating that OSV and mechanized uses are not allowed except where it maintains wilderness character as it existed in 1977 as well as the potential for inclusion in the NWPS. See KNF Forest Plan at 49-50 (standards MA1c-STD-AR-01 & -02). The proposed action is inconsistent with these standards. As discussed in section I, the proposed action would not maintain wilderness character as it existed in 1977. Given that the proposed action violates the MWSA, by extension, it would also violate the KNF's Forest Plan standards MA1c-STD-AR-01 & -02 for the WSA.

Finally, as we addressed in section III(A), which addressed the purpose and need, this project must address wilderness recommendations to be consistent with the Forest Plan.

V. Monitoring and Enforcement of OSV and Mechanized Use

Unless the KNF dramatically changes how it manages the Ten Lakes WSA, the agency should anticipate increases in non-conforming uses within the WSA. These increases will pose challenges to the KNF as they will perpetuate its non-compliance with the MWSA. Therefore, monitoring of OSV and mechanized uses, and enforcement of the travel plan, will be an extremely important aspect of plan implementation. We understand that the KNF monitors a number of resource conditions on the forest due to requirements in the Forest Plan. However, while the DEIS states that all alternatives would require "similar resources for education, information, monitoring and enforcement for proposed changes," DEIS at 98, and that "the effectiveness of travel management decisions relies upon education, voluntary compliance, monitoring uses of the area, and re-evaluation if non-compliance occurs," *id.* at 109, the DEIS does not describe how monitoring or enforcement of this travel plan will be achieved. The DEIS must include specific monitoring plans and enforcement protocols.

Formal monitoring actions should include monitoring of recreation trends that impact recreation conflicts, including the extent of OSV impacts to wilderness values and nonmotorized users, through such trends as changes in use levels, changes in types of machines (such as developments of new forms of OSVs which may have different or new impacts), and changes in use patterns. The DEIS should also explain how the KNF will adjust to and prepare for an increasing population and likely future increases in

non-conforming use of the WSA. For example, will the agency continue to shrink opportunities – both in acreage and/or temporally – to offset an increase in non-conforming uses within the WSA? If not, how does the KNF plan to ensure compliance with the MWSA as non-conforming uses increase?

We encourage the agency to develop a monitoring protocol for measuring use levels in the WSA, for a legally defensible plan. We also encourage the agency to establish a trigger point in use levels in the final travel plan that, if exceeded, will facilitate reductions in use. Finally, we encourage the KNF to describe any enforcement needs that will be required to ensure the public complies with the new travel management plan. The agency should anticipate what additional enforcement resources will be necessary to ensure compliance so that it can adequately implement the new plan.

VI. Conclusion

This winter planning process presents an opportunity to design, designate, and implement a winter travel plan that restores the 1977 wilderness character of the Ten Lakes WSA, as well as restore balance to the whole planning area in a manner that protects natural resources, wildlands, wildlife, and primitive recreation. We remain deeply concerned that alternatives presented in the DEIS, including the proposed action, fail to comply with the MWSA and the plain language of the subpart C regulations and the executive order minimization criteria. We hope that the forest will correct these deficiencies, and we are eager to assist in that endeavor.

Thank you for your consideration, and please contact us with any questions.

Sincerely,



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