

1 WESTERN ENVIRONMENTAL LAW CENTER
Matthew K. Bishop
2 103 Reeder's Alley
Helena, MT 59601
3 (406) 324-8011 (tel.)
(406) 443-6305 (fax)
4 bishop@westernlaw.org

5 WESTERN ENVIRONMENTAL LAW CENTER
Sarah K. McMillan
6 Post Office Box 7435
Missoula, MT 59807
7 (406) 728-5096 (tel.)
(406) 443-6305 (fax)
8 mcmillan@westernlaw.org

9 Attorneys for Plaintiffs

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF MONTANA
13 MISSOULA DIVISION

14 WILDLANDS CPR, a non-profit organization;
15 FRIENDS OF THE BITTERROOT, a non-profit
organization,

16 Plaintiffs,

17 vs.

18 TOM TIDWELL, in his official capacity as
19 Regional Forester for the United States Forest
Service, Region One; the UNITED STATES
20 FOREST SERVICE, an agency of the United
States Department of Agriculture; and the
21 UNITED STATES DEPARTMENT OF
AGRICULTURE, a federal department,

22 Federal-Defendants.
23
24

Case No. _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

1 INTRODUCTION

2 1. Plaintiffs bring this civil action for declaratory and injunctive relief
3 against the above named Defendants (U.S. Forest Service or “USFS”) pursuant to
4 the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq., for violations
5 of the Forest Service Decision Making and Appeals Reform Act (“ARA”), 16
6 U.S.C. § 1612, National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et
7 seq., and the Montana Wilderness Study Act (“MWSA”), P. L. No. 95-150, 91
8 Stat. 1243 (1977).

9 2. This civil action arises from USFS’s January 4, 2008 decision (hereafter
10 “the decision”) to issue a categorical exclusion (“CE”) authorizing the grooming
11 of approximately 158 miles of snowmobile trails in the Beaverhead-Deerlodge
12 National Forest’s (the “Beaverhead’s”) Pioneer Mountains *without any* public
13 notice, *without any* opportunity for comment, and *without any* environmental
14 analysis.

15 3. The Beaverhead’s Pioneer Mountains include the West Pioneer
16 Wilderness Study Area (“WSA”) and important habitat for wolverine: one of the
17 most elusive, least understood, and least studied carnivores in the Northern
18 Rockies. USFS estimates that approximately 12 wolverines currently inhabit the
19 Beaverhead’s Pioneer Mountains and that this isolated population is vulnerable to
20 extirpation.

21 4. Despite the potential impacts that snowmobile grooming, increases in
22 snowmobile use, and increased human access in the Pioneer Mountains has on an
23 already vulnerable wolverine population and the associated adverse affects this
24 activity has on the WSA’s wilderness character, USFS asserts that the decision to
25 authorize 158 miles of snowmobile grooming can be categorically excluded from
26 documentation in an environmental assessment (“EA”) or environmental impact
27 statement (“EIS”). USFS also asserts that because they issued a CE for the

1 snowmobile grooming decision, Plaintiffs have no right to receive notice, to
2 comment, or to administratively appeal the decision.

3 5. Wherefore, the Plaintiffs – two organizations dedicated to protecting and
4 restoring wildlife habitat in the Beaverhead and ensuring USFS makes transparent
5 and fully informed decisions regarding the management of our National Forests –
6 are hereby compelled to bring this civil action.

7 JURISDICTION AND VENUE

8 6. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331
9 (Federal Question).

10 7. The Court has the authority to review the USFS’s action and/or inaction
11 complained of herein, and grant the relief requested, pursuant to the APA, 5
12 U.S.C. § 701 et seq. Plaintiffs are challenging a final agency action and have
13 exhausted all available administrative remedies.

14 8. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory
15 Judgment), 28 U.S.C. § 2202 (Injunctive Relief), and 5 U.S.C. § 706 (APA).

16 9. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e).

17 10. There is a present and actual controversy between the Parties.

18 PARTIES

19 11. Plaintiff, WILDLANDS CPR (“Wildlands”), is a 501 (c)(3) non-profit
20 advocacy organization based in Missoula, Montana dedicated to reviving and
21 protecting wild places through road removal, preventing new road construction,
22 stopping motorized vehicle abuse, and promoting sound motorized vehicle use
23 management on our public lands. Wildlands has a long record of working in the
24 public interest on matters regarding National Forest management, including but
25 not limited to work specifically related to snowmobile management on public
26 lands. Wildlands acts as a national clearinghouse for legal, scientific, and technical
27

1 information relating to road, ORV, and snowmobile impacts.

2 12. Plaintiff, the FRIENDS OF THE BITTERROOT (“Friends”) is a 501
3 (c)(3) non-profit organization with over 600 members dedicated to protecting the
4 quality of life in the Bitterroot valley and surrounding National Forests, including
5 the Bitterroot, Beaverhead-Deerlodge, Salmon, and Lolo National Forests.
6 Friends is also focused on ensuring USFS compliance with federal environmental
7 laws such as the National Environmental Policy Act, the National Forest
8 Management Act, and the Endangered Species Act.

9 13. Plaintiffs’ (Wildlands’ and Friends’) members and staff value the ways
10 that humans benefit from protecting native biological diversity, including
11 protecting clean water and fresh air, native wildlife species, habitat, and travel
12 corridors, healthy human communities, sources of medicines and foods, and
13 recreational opportunities. Plaintiffs’ members and staff use the best available
14 science to accomplish their mission through participation in policy formation,
15 administrative processes, legal action, public outreach and organizing, and
16 education.

17 14. Plaintiffs’ members and staff have a specific, concrete interest in
18 protecting and restoring the biological integrity of the Beaverhead’s Pioneer
19 mountains affected by the decision. In fact, the conservation and recovery of
20 native species such as wolverine, and preserving the wilderness character of the
21 WSA is a major focus for Plaintiffs. Plaintiffs prepare and submit comment
22 letters and appeals on various USFS projects, activities, and/or plans (when given
23 the opportunity) that may impact native species and their habitat and WSAs.

24 15. Plaintiffs’ members and staff frequently communicate with various
25 USFS officials, including biologists and other staff members, about public lands
26 management issues on the Beaverhead. Plaintiffs’ members and staff frequently
27 raise concerns to the Beaverhead about the direct, indirect, and cumulative impacts

1 of various land management actions – such as snowmobile grooming – on native
2 wildlife, wildlife habitat, and WSAs (when given the opportunity).

3 16. Plaintiffs’ members and staff have regularly and repeatedly used, the
4 area of the Beaverhead’s Pioneer mountains affected by the decision, and will
5 continue to do so. Plaintiffs’ members and staff use the areas affected by the
6 USFS’s decision for observation, research, photography, nordic skiing,
7 snowshoeing, aesthetic enjoyment, and other scientific, educational, and quiet
8 recreational activities. Plaintiffs’ members and staff derive scientific, recreational,
9 conservation, and aesthetic benefits from using the areas where the trail grooming
10 occurs. Plaintiffs’ members enjoy viewing, studying sign of, and being aware of
11 wildlife in the area and experiencing the wilderness qualities of the WSA. For
12 Plaintiffs’ members and staff, using the area in conjunction with working to
13 restore the biological and natural integrity of the area and, in particular of the
14 WSA, is a key component of their enjoyment of their visits to the area. Plaintiffs’
15 members and staff will continue to fight for the protection and restoration of
16 wolverine populations and habitat in Montana and for the preservation of the
17 WSA’s wilderness character as it existed in 1977. Filing this civil action is part of
18 this effort.

19 17. USFS’s failure to comply with NEPA, the ARA, and the MWSA in
20 issuing a decision to authorize snowmobile grooming on approximately 158 miles
21 of trails in the Beaverhead’s Pioneer Mountains as alleged in this complaint,
22 results in uninformed decisions and creates an increased risk of actual, threatened,
23 and imminent harm to Plaintiffs’ members concrete interests. USFS’s failure to
24 comply with NEPA, the ARA, and the MWSA significantly increases the risk of
25 an unnecessary and avoidable harm to native species like wolverine, the WSA, and
26 Plaintiffs’ members’ and staff’s interests. USFS’s failure to comply with NEPA,
27 the ARA, and the MWSA adversely affects and continues to adversely affect the

1 interests of the Plaintiffs and their respective staffs and members. Plaintiffs bring
2 this action on behalf of themselves and their adversely affected members and staff.
3 If the Court orders the USFS to comply with NEPA, the ARA, and the MWSA as
4 requested by this civil action, then the harm to Plaintiffs' interests would be
5 alleviated.

6 18. Defendant TOM TIDWELL, is named in his official capacity as the
7 Regional Forester for Region One (Northern Rockies) of the USFS. As the
8 Regional Forester, Mr. Tidwell is the federal official with responsibility for all
9 USFS officials' inactions or actions in the Beaverhead challenged in this
10 complaint.

11 19. Defendant UNITED STATES FOREST SERVICE (USFS) is an
12 agency within the U.S. Department of Agriculture that is responsible for applying
13 and implementing the federal laws and regulations challenged in this complaint.

14 20. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE
15 (USDA) is a department of the United States Government with supervisory and
16 managerial responsibility over the USFS and is responsible for applying and
17 implementing the federal laws and regulations challenged in this complaint.

18 19 BACKGROUND

20 The Beaverhead's Pioneer Landscape

21 21. The Pioneer Mountains in the Beaverhead are an island mountain range
22 dominated by high craggy peaks. The topography in the Pioneer Mountains ranges
23 from nearly 10,000 feet high granite peaks to lower, gentler, forested terrain, to
24 mountain meadows.

25 22. The peaks are habitat for alpine blue grass, mountain goats and pika,
26 while in the subalpine forest wolverine hunt squirrels and hoary marmots scramble
27 over the rock slides. The broad, moist, upland slopes with lodgepole pine and

1 douglas fir of the Montane Forest serve as fertile grazing grounds for elk.

2 23. Forest types in the area include lodgepole pine, dry site Douglas-fir,
3 spruce with subalpine fir, and whitebark pine.

4 24. Streams in the Pioneer Mountains flow into the Big Hole and
5 Beaverhead Rivers.

6 Wolverine

7 25. The forest interior of the Pioneer Mountains is one of the few places in
8 the Northern Rockies that provides secure, primary and maternal habitat for
9 wolverine.

10 26. The wolverine (*Gulo gulo*) resembles a small bear with a bushy tail. It
11 has a broad, rounded head; short, rounded ears; and small eyes. Each foot has five
12 toes with curved, semi-retractile claws used for digging and climbing.

13 27. The wolverine's closest relatives are badgers, fishers, otters, weasels,
14 and ferrets which are all fellow members of the Mustelid family. Wolverines are
15 the largest and rarest terrestrial members of this family.

16 28. In winter, wolverines spend much of their time in the coniferous forests
17 of the mountains. In summer, they move up to the rock and talus covered slopes
18 above tree-line.

19 29. Wolverines are opportunistic feeders and consume a variety of foods
20 depending on availability. They primarily scavenge carrion, but also prey on small
21 animals and birds, and eat fruits, berries, and insects. Wolverines have an
22 excellent sense of smell that enables them to find food beneath deep snow.

23 30. Wolverines are able to occasionally kill large ungulates in deep snow
24 conditions when ungulate mobility is impaired. The availability of large mammals
25 is of paramount importance for wolverine survival and reproduction success.

26 31. Wolverine have small litter sizes. The average age at first reproduction
27 for female wolverines is likely three years. By age three, nearly all female

1 wolverines become pregnant every year, but low food availability and resulting
2 energetic constraints cause loss of pregnancy approximately every other year.

3 32. Breeding generally occurs from late spring to early fall. Wolverines
4 reproduce through “delayed implantation” so litters are typically born between
5 February and April and contain one to five “kits.”

6 33. Female wolverines use two kinds of dens for reproduction: (1) natal
7 dens to give birth and raise kits early postpartum; and (2) maternal dens where the
8 kits are raised to weaning. The movement of kits from natal to maternal dens is
9 not well understood, but may be a response to den disturbance, better food
10 availability, predation risk, or deteriorating den conditions.

11 34. Female wolverines use natal dens that are excavated in snow. For this
12 reason, stable snow greater than five feet (ft) deep appears to be a requirement for
13 natal denning, presumably because it provides security for offspring and buffers
14 cold winter temperature. According to U.S. Fish & Wildlife Service (FWS), snow
15 cover during the denning period is essential for successful wolverine reproduction.

16 35. In Montana, natal dens typically occur above 7,874 feet and are located
17 on north aspects in avalanche debris, typically in alpine habitats near timberline.
18 Dens (natal and maternal) are typically used from early February through late
19 April or early May (timing of den abandonment is related to accumulation of water
20 from snow melt in dens, maturation of offspring, and disturbance).

21 36. Post-weaning dens are called “rendezvous sites.” These are areas
22 where females leave kits while foraging, and return periodically to provide food.

23 37. Wolverines naturally occur at low densities, averaging about one
24 wolverine per 58 square miles.

25 38. Based on a 2002-2005 study, USFS’s Rocky Mountain Research
26 Station estimates that there are approximately 12 wolverines in the Beaverhead’s
27 Pioneer Mountains.

1 39. The home ranges of wolverine are very large, but vary greatly
2 depending on availability of food, gender, age, and differences in habitat.

3 40. Wolverines travel long distances over rough terrain and deep snow and
4 must cross unsuitable habitat to achieve connectivity among subpopulations.
5 Major rivers and highways do not appear to be impermeable barriers to wolverine
6 movement. This suggests that genetic interchange between distinct mountain
7 range populations is currently possible.

8 41. The average adult male home range in the Greater Yellowstone Area is
9 311 square miles and the average adult female home ranges in the same area is 128
10 square miles.

11 42. On January 23, 2001, a young male wolverine known as M304 was
12 captured and tracked in the Teton Range in Wyoming. Between March 26 and
13 April 13, 2002 M304 traveled from the Tetons to the Portneuf Range east of
14 Pocatello, Idaho, and subsequently returned to the Teton Range. A week later
15 M304 moved north to Mount Washburn in the northern part of Yellowstone
16 National Park, traveling a minimum of 523 miles during a 42 day period. Over the
17 next 19 months, M304 would travel to several distant locations including Gros
18 Ventre, Wind River, and Salt River ranges in Wyoming and the Centennial Range
19 along the Idaho/Montana border. On January 11, 2004 M304 was killed by a
20 trapper in the Montana portion of the Centennial Range.

21 43. Human-caused mortality from fur-trapping is one of the most
22 significant threats to the survival and recovery of wolverine in Montana.

23 44. Wolverine fur, in particular, is valued for its durability and capacity to
24 resist frost accumulation, making it a popular trim for parka hoods.

25 45. Montana Fish Wildlife and Parks reports that the average price of a
26 wolverine pelt in 2007-2008 was \$280.35.

27 46. Montana is the only state within the contiguous United States that

1 allows the trapping of wolverines. On-going legal trapping in Montana kills an
2 average of 10.5 individual wolverines each year. According to USFS, no other
3 activity has the same potential to cause wolverine populations to become
4 dangerously small or locally extirpated.

5 47. From 2002-2005 at least eight wolverines were killed in the Pioneer
6 Mountains and adjacent ranges, six of which (four males and two pregnant
7 females) were trapped. According to USFS, the trapping of two pregnant females
8 in the Beaverhead's Pioneer Mountains may have had a disproportionately large
9 effect on wolverine demography in the area, including suppressing reproduction.

10 48. USFS reports that because the Beaverhead's Pioneer Mountains are
11 small and isolated, wolverine populations in this area are vulnerable to extirpation
12 because they are less able to compensate for population reductions related to
13 chance events or trapping.

14 49. USFS reports that a combination of low dispersal rates, low fecundity,
15 and annual harvest pressure in the Pioneer Mountains affects the core population
16 of wolverines and not just surplus individuals.

17 50. Other significant threats to wolverine include winter recreation
18 (snowmobiling) and private land development which fractures linkage habitat.

19 51. Snowmobile use displaces wolverines and may reduce reproductive
20 success, especially when it occurs within potential wolverine denning habitat.

21 52. Snowmobiling causes increased energetic expenditures (i.e.,
22 movements away from the activity, including relocating dens in response to human
23 presence), reduced genetic intake (exclusion of foraging areas), and lowered
24 juvenile survival.

25 53. Female wolverines appear to be most sensitive to human presence
26 during the winter denning period.

27 54. Six of the seven natal dens located in the Greater Yellowstone Area

1 occurred in areas without motorized use, i.e., designated wilderness or areas
2 inaccessible by snowmobile.

3 55. At present, USFS considers wolverine inhabiting the Beaverhead's
4 Pioneer Mountains to play an important role in sustaining and recovering regional
5 wolverine populations.

6 56. While wolverine remain in the Pioneer Mountains, they have been
7 extirpated from a significant portion of their historic range (e.g., Southern
8 Rockies, Sierras, Oregon Cascades) including other island ranges in Montana
9 (e.g., Little Belts, Swan Mountains).

10 57. Wolverine remain on the verge of federal listing under the Endangered
11 Species Act.

12 West Pioneer WSA

13 58. The Beaverhead's Pioneer Mountains are home to the West Pioneer
14 Wilderness Study Area (WSA).

15 59. The MWSA of 1977 required the study of certain lands in Montana to
16 determine their suitability for designation as wilderness in accordance with the
17 Wilderness Act of 1964.

18 60. One of the nine areas identified as suitable for wilderness designation
19 was the 148,150 acre West Pioneer WSA.

20 61. The topography of the West Pioneer WSA is generally gently rolling
21 with elevations varying from 6,500 to 9,500 feet. The crest of the West Pioneer
22 Range dominates the area. Approximately 10 cirque lakes lie near the crest and
23 numerous wet meadows adjacent to stream courses dot the landscape. Vegetation
24 consisting of sagebrush and mountain grasslands covers about 20% of the area.
25 Approximately 60% of the area is heavily forested with lodgepole pine. The
26 remaining area contains sedge covered wet meadows and some whitebark pine on
27 the ridgetops.

1 USFS's Authorization of 158 Miles of Snowmobile Grooming in the Beaverhead's
2 Pioneer Landscape

3 62. On January 4, 2008 USFS signed a Decision Memo authorizing the
4 Jackpine Savages Snowmobile Club to groom approximately 158 miles of
5 snowmobile trail in the Beaverhead's Pioneer landscape over a five year period.

6 63. Pursuant to USFS's decision, trail grooming is authorized to begin
7 annually after December 1, when there is adequate snow cover, and to occur "once
8 a week, more or less."

9 64. The grooming includes 61.3 miles in the Pioneer Scenic Byway area,
10 28.9 miles in the Bryant Creek area, 8 miles in the Quartz Hill Vipond Park area,
11 39.3 miles in the Jerry Creek/Fleecer area, and 21 miles in the Mt.
12 Haggin/Seymour areas of the Beaverhead. Approximately 94.8 miles of grooming
13 will occur within the West Pioneer WSA.

14 65. The snowmobile club conducts grooming on the Beaverhead under a 5
15 year Challenge Cost Share agreement with USFS and Montana Fish Wildlife and
16 Parks. The previous agreement expired on May 1, 2007.

17 66. In addition to snowmobile trail grooming, USFS also allows
18 unrestricted, off-trail snowmobile use or "playing" throughout the Beaverhead's
19 Pioneer Mountains including the WSA.

20 COUNT I

21 NEPA VIOLATION

22 67. Plaintiffs repeat and incorporate by reference the foregoing
23 paragraphs.

24 68. USFS has violated, and continues to violate, NEPA and NEPA's
25 implementing regulations by failing to prepare an environmental assessment EA or
26 EIS for its decision to authorize 158 miles of snowmobile grooming in the
27

1 Beaverhead's Pioneer Mountains.

2 69. USFS categorically excluded the decision to authorize 158 miles of
3 snowmobile grooming from analysis and documentation in an EA or EIS pursuant
4 to USFS Handbook (FSH) 1909.15.

5 70. Under FSH 1909.15.30.3 (1), USFS decisions can only be categorically
6 excluded if no "extraordinary circumstances" exist. To determine whether
7 extraordinary circumstances exist, USFS must consider the potential effect of the
8 decision on sensitive species like wolverine, WSAs, and inventoried roadless areas
9 (IRAs) in the action area.

10 71. Pursuant to the FSH (1909.15.05 (Definitions)) and NEPA, considering
11 the "potential effect" of the decision on these resources requires some analysis of
12 the direct, indirect, and cumulative impacts on the environment. 40 C.F.R. §
13 1508.8.

14 72. In determining that no "extraordinary circumstances" exist, USFS never
15 conducted an analysis of the potential direct, indirect, and cumulative effects of
16 the snowmobile grooming decision on wolverine, the wilderness character of the
17 WSA, or IRA.

18 73. USFS's decision to authorize 158 miles of snowmobile grooming in the
19 Beaverhead's Pioneer Mountains has direct, indirect and cumulatively significant
20 impacts on wolverine and the wilderness character of the WSA.

21 74. Snowmobile trail grooming in the Pioneer Mountains increases trapper
22 access which indirectly increases human caused mortality to wolverine.

23 75. Snowmobiling may also displace wolverines and reduce reproductive
24 success, especially when it occurs within potential wolverine denning habitat.

25 76. Snowmobile grooming, in conjunction with increases in snowmobile
26 use and other activities affect the WSA's wilderness character, including the area's
27 ability to provide outstanding opportunities for solitude and primitive recreation.

1 77. USFS’s CE for the decision is “arbitrary, capricious, an abuse of
2 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2)(A).

3
4 COUNT II

5 APPEALS REFORM ACT (ARA) VIOLATION

6 78. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

7 79. USFS did not provide public notice, comment, or the ability to
8 administratively appeal its January 4, 2008 decision to authorize 158 miles of
9 snowmobile grooming in the Beaverhead’s Pioneer Mountains.

10 80. USFS’s denial of Plaintiffs’ right to notice, comment, and to
11 administratively appeal the decision is a violation of the ARA, 16 U.S.C. § 1612.

12 81. The ARA requires USFS to provide notice and opportunity for
13 comment, and administrative appeals for all projects and activities implementing
14 Forest Plans. 16 U.S.C. § 1612 (a).

15 82. USFS’s decision to authorize 158 miles of snowmobile grooming
16 implements the Beaverhead Forest Plan direction to provide a spectrum of
17 recreational opportunities and work with snowmobile clubs to design and develop
18 new recreational opportunities.

19 83. USFS’s failure to provide for notice, comment, and administrative
20 appeal of the decision to authorize 158 miles of snowmobile grooming is
21 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
22 law.” 5 U.S.C. § 706 (2)(A).

23 COUNT III

24 MWSA VIOLATIONS

25 84. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

26 85. USFS’s authorization of approximately 97 miles of snowmobile
27 grooming within the West Pioneers WSA violates the MWSA.

1 86. Pursuant to the MWSA, USFS must manage Wilderness Study Areas,
2 including the West Pioneers WSA “so as to maintain their presently existing
3 wilderness character and potential for inclusion in the National Wilderness
4 Preservation System.” P.L. No. 95-150, § 3 (a), 91 Stat. 1243 (1977). USFS must
5 consider the impact of its decision on the nature, quality, and scope of a WSA’s
6 wilderness character as it existed in 1977. USFS must also maintain, on an on-
7 going basis, the nature, quality, and scope of a WSA’s wilderness character as it
8 existed in 1977.

9 87. USFS’s authorization of approximately 95 miles of snowmobile
10 grooming in the West Pioneers WSA, in conjunction with other activities, is
11 impacting the West Pioneer WSA’s wilderness character beyond what existed in
12 1977.

13 88. In 1977, while snowmobile use in the West Pioneers WSA was
14 unrestricted, actual snowmobile use in the WSA was low, and there were
15 approximately seven miles of marked trails.

16 89. Today, snowmobile continues unrestricted and there are approximately
17 95 miles of marked snowmobile trails in the WSA, all of which are groomed
18 pursuant to the challenged decision. The overall amount of snowmobile use has
19 increased since 1977. Technological advances in snowmobiles since 1977 have
20 also provided access to remote areas of the WSA that were inaccessible in 1977.

21 90. Increases in snowmobile grooming and snowmobile use (both types and
22 amounts) in the WSA since 1977 is having an adverse impact on the WSA’s
23 wilderness character, including the natural integrity and apparent naturalness of
24 the WSA and one’s ability to experience outstanding opportunities for solitude
25 and primitive forms of recreation.

26 91. In authorizing approximately 97 miles of snowmobile grooming in the
27 West Pioneers WSA, USFS failed to consider the direct, indirect, and cumulative

1 impacts of its decision on the nature, quality, and scope of the WSA’s wilderness
2 character as it existed in 1977.

3 92. USFS’s violation of the MWSA is “arbitrary, capricious, an abuse of
4 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2)(A).

5
6 PRAYER FOR RELIEF

7 93. Plaintiffs repeat and incorporate by reference the allegations of all
8 foregoing paragraphs.

9 94. WHEREFORE, Plaintiffs respectfully request that this Court grant the
10 following relief:

11 A. Issue a declaratory judgment that USFS’s inactions and actions have
12 violated, and continue to violate, NEPA, the ARA, and the MWSA as alleged
13 above;

14 B. Issue declaratory judgment that USFS’s violation of NEPA, the ARA,
15 and the MWSA is arbitrary, capricious, an abuse of discretion, or otherwise not in
16 accordance with law under the APA;

17 C. Issue a mandatory injunction requiring USFS to prepare either an EA or
18 EIS for the decision in compliance with NEPA within a reasonable amount of time
19 (not to exceed one year from the date of the order);

20 D. Issue a mandatory injunction requiring USFS to provide notice,
21 comment, and the right to administratively appeal the decision to authorize
22 snowmobile grooming.

23 E. Issue a mandatory injunction enjoining USFS from taking any action in
24 the West Pioneer WSA that diminishes the wilderness character of the area as it
25 existed in 1977.

26 F. Issue such injunctive relief as Plaintiffs may subsequently request or that
27 this Court may deem appropriate;

1 G. Retain continuing jurisdiction of this matter until USFS fully remedies
2 the violations of law complained of herein;

3 H. Grant Plaintiffs their costs and expenses of litigation, including
4 reasonable attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"),
5 28 U.S.C § 2412;

6 I. Grant such other relief as this Court deems just and proper.

7 Respectfully submitted this ____ day of May, 2009.

8
9
10 WESTERN ENVIRONMENTAL LAW CENTER

11 /s/ Matthew Bishop
12 Matthew K. Bishop
13 103 Reeder's Alley
14 Helena, MT 59601
15 (406) 324-8011 (tel.)
16 (406) 443-6305 (fax)

17
18 WESTERN ENVIRONMENTAL LAW CENTER

19 /s/ Sarah McMillan
20 Sarah K. McMillan
21 Post Office Box 7435
22 Missoula, MT 59807
23 (406) 728-5096 (tel.)
24 (406) 443-6305 (fax)

25
26
27 Attorneys for Plaintiffs