



**File Code:** 1570  
**Date:** March 22, 2019

Dear Objector:

This letter is a combined response to the objections to the Bitterroot National Forest Travel Management Planning Project, specifically the closing of 121<sup>1</sup> miles of trail within the Sapphire and Blue Joint Wilderness Study Areas to mechanized use (i.e. bicycles). This objection period was ordered by Judge Dana Christensen in his decision regarding *Bitterroot Ridge Runners v. USFS* (9:16-CV-00158-DLC). The Court ordered the Forest Service “to: (1) conduct an objection response period with respect to these additional miles of trails in the Sapphire and Blue Joint WSAs; (2) take the objections into consideration; and (3) either modify the Final Environmental Impact Statement and Final Record of Decision accordingly, or show that the eligibility of the total 110 miles of mechanized use closure in WSAs is permissible under the APA.”

During the objection period, over 3200 objections were received, of which 2900 were form letters. As the Objection Reviewing Officer, I have read all written objections received along with any suggested remedies. In addition, I reviewed the Environmental Impact Statement (EIS), Record of Decision (ROD), the project file, and the comments submitted on the project. My review of the objections was conducted in accordance with the administrative review procedures found at 36 CFR 218, Subparts A and B.

The regulations allow the parties to meet in order to seek to resolve issues (36 CFR 218.11(a)). A meeting was requested by, and held with, Bitterroot Backcountry Cyclists (BBC) and the International Mountain Biking Association (IMBA) on March 4, 2019, in Missoula. Representatives from Friends of the Bitterroot and Montana Wilderness Association were also present. During this meeting, objectors brought forward for further discussion their proposed resolution (remedy) to close trails in the Wilderness Study Areas (WSAs) to bicycles during hunting season, and/or allow cycling on specific trails in the WSAs. This resolution was proposed in their written objection as well, and is discussed as Issue 7, below. The meeting also included discussion initiated by the Bitterroot Backcountry Cyclists presentation of local use data and description of the unique experience single-track riding provides. During the meeting the Friends of the Bitterroot recognized the issues are complex.

As specified at 36 CFR 218.11(b), I must provide a written response to objections; however, this response need not be point by point. Based on my review, most of the issues raised required no specific action on the part of the Forest as the record showed compliance with law, policy, or regulation in the project response to comments, the analysis, or the 6/29/18 Order in *Bitterroot Ridge Runners v. USFS*.

<sup>1</sup> The court also asked the Forest Service to clarify the miles of trails closed within the WSAs. Page 9 of the ROD states, “Motorized/mechanical transport, including bicycles, will be prohibited in the Sapphire and Blue Joint Wilderness Study Areas for both summer and over-snow use. This will include the closure of Trail #39 (Chain of Lakes) to these uses.” The ROD further states, on page 12, that the decision will “result in the prohibition of bicycles from approximately 68 miles of recommended wilderness areas (RWAs) and approximately 110 miles in . . . WSAs.” In calculating the miles of closures with the WSAs (p. 12 of the ROD), the Forest Service inadvertently omitted the two-track mileage of Trail 39 (3.35 miles) and Trail 313.5 (6.8 miles). Therefore, the total mileage closed to bicycles is approximately 121 miles. All closures were analyzed and accounted for in the FEIS (Chapter 3.3 and Appendix I) and ROD despite this omission. The approximately 121 miles of closures with the WSAs includes 22.3 miles of overlap with trails within the recommended wilderness portion of the Blue Joint WSA.



## Response to Objection Issues

**Issue 1 NEPA/FEIS**

Several objectors alleged the U.S. Forest Service violated NEPA by failing to analyze impacts from mountain biking to wilderness character of the Blue Joint and Sapphire Wilderness Study Areas.

**Response:** Upon review of the Final Environmental Impact Statement (FEIS) for the Forest Travel Management Plan, I find the Forest adequately assessed the effects of bicycles on wilderness character. See FEIS, pages. 3.3-13 to 3.3-61.

This issue was brought up in *Bitterroot Ridge Runners v. USFS*. On page 28 of Judge Christensen's 6/29/18 decision, he says the "Court defers to the Forest Service's rationale that the social impacts, including the feeling of being in an undeveloped setting, are sufficient to support its decision to close RWAs and WSAs to bicycle transport. See AR 00525, 00560-62 (explaining that wilderness character is "free from modern human manipulation and impacts"), and 00512 (discussing the impacts of noise on the natural environment). Thus, given that bicycle use was not occurring in 1977 but has grown exponentially since then, AR 00209-11, it was not arbitrary and capricious for the Forest Service to prohibit bicycles in areas that may be suitable for designation as wilderness."

Judge Christiansen has ruled that the Forest Service has not violated NEPA with this Travel Plan.

**Issue 2 Data**

The objectors contend the data used in the FEIS and analysis of increased use within the WSAs since 1977 was based on national trends and not local data. Objectors acknowledge that mountain bike use has increased since 1977 but argue that use levels are low and not enough to warrant closure.

**Response:** The CEQ regulations for implementing NEPA (40 CFR 1500) give direction on how agencies are to handle Incomplete and Unavailable Information (1502.22).

The Forest Service acknowledges it had less than complete data on use. However, Judge Christensen has already ruled on this issue in *Bitterroot Ridge Runners v. USFS*, and found that the FS appropriately limited use in WSAs to maintain wilderness character (6/29/18 Order, p. 18).

**However, during the resolution meeting new information/data on local use was provided. I am instructing the Forest to consider the local data and information provided as part of its assessment of the resolution proposal.**

**Issue 3 Montana Wilderness Study Act**

Objectors contend the intent of the MWSA was not to close these areas to motorized and mechanized use. Objectors state that when the MWSA was drafted, congressional hearing records show that it was never the intent of the law to prohibit uses that were occurring at the time of passage (motorized and mechanized recreation).

**Response:** Nothing in the act itself prohibits the Forest Service from barring certain uses within these Wilderness Study Areas (AR 8969). The act instructs the Secretary of Agriculture to review the lands designated in the Act as to their suitability for preservation as wilderness and report the findings to the President. Until Congress acts on the areas, the MWSA instructs the Secretary to administer these areas so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.

The objectors quote congressional hearing records from the time the MWSA was established. It is clear from those records that the Act did not directly prohibit certain uses that were occurring at the time of establishment. However, since 1977, multiple court cases have clarified how the agency shall manage these areas until they are either added to the Wilderness preservation system or released from study. The Ninth Circuit found in *Montana Wilderness Ass'n v. McAllister*, "the Service must ensure that the study area's overall 1977

wilderness character is not degraded, there is no requirement that it replicate 1977 conditions precisely.” In *Bitterroot Ridge Runners vs. USFS*, the court ruled on page 19, “Because the Forest Service has broad authority to manage and protect wilderness character, the Court gives deference to the Forest Service as to what factors - social, ecological, or otherwise --have the largest impact on its decision to close WSAs to all uses other than hiking and horseback.”

#### ***Issue 4 Trail maintenance***

Objectors state that without trail maintenance by mountain bikers, the trails will become impassable and other user groups will be unable to use these trails, therefore, essentially closing the areas to all user groups. Objectors also contend that poor trail conditions diminish wilderness character.

**Response:** Trail maintenance is addressed in the FEIS. The Forest highly values its partnership with BBC and other partners and volunteers. However, the objection point is not relevant to the decision of whether or not mountain bike use in a WSA is appropriate. The Forest plans to continue cooperative trail maintenance with BBC, other partners and volunteers and include mountain biking trails as part of future proposals where appropriate.

#### ***Issue 5 Forest Service Manual***

Objectors assert the agency should apply Chapter 70 of the Forest Service Manual (FSM) to manage mountain biking within the WSAs.

**Response:** Chapter 70 of Forest Service Manual (FSM) is guidance to use during revision of a Land and Resource Management Plan (Forest Plan). The Bitterroot Travel Management plan record of decision is not a Land and Resource Management Plan decision. However, I did find in my review of the final decision that concepts from chapter 70 were addressed and cited in the ROD on pages 25-27. Specifically the documentation discloses how the analysis and decision took into account the following guidance from Chapter 70: 1. Enhance the ecological and social characteristics that provide the basis for wilderness designations; and 2. Continue existing uses, only if such uses do not prevent the protection and maintenance of the social and ecological characteristics that provide the basis for wilderness designation.

#### ***Issue 6 Motorized vs Mountain Bike Use***

Objectors contend the analysis in the FEIS is insufficient because impacts to wilderness character are not separated by motorized and mechanized. Objectors assert motorized use is more impactful to wilderness character because of noise and smell.

**Response:** Judge Christensen has ruled that the Forest Service provided sufficient rationale to close RWAs and WSAs to bicycle transport. See Issue 1.

#### ***Issue 7 Options to full closure***

Objectors contend the Forest Service did not fully explore options other than full closure, and that complete closure of the WSAs was not necessary. They purport a permit system or seasonal restrictions could have been used to lessen impacts to wilderness character.

**Response:** Rationale for closing WSAs to mechanical transport (bicycles) is addressed in the ROD (pp. 24-25) and includes how the FS considered a permit or quota system. The FS applied the 9<sup>th</sup> Circuit ruling regarding types and volume of use in MWSAs. (See Administrative Record documents AR 40921, AR 40941, AR 40961, AR 40986. Also, in the FEIS, Section 3.3-13 to 3.3-61 for analysis of effects to WSAs.)

A U.S. Ninth Circuit Court of Appeals ruling (*Citizens for Balanced Use and Montana Wilderness Association et al. v. McAllister*, December 2011, D.C. No. 9:07-cv-00039) had a direct bearing on the Responsible Official's decision regarding the use of motorized/mechanical transport in WSAs. The court ruled that the Forest Service must consider how the wilderness character of the relevant wilderness study area, particularly

the opportunities for solitude it offered, has been maintained despite an increase in the volume of motorized and mechanized recreation in the (Hyalite/Porcupine/Buffalo Horn) WSA since 1977.

At the objection resolution meeting, BBC proffered a resolution proposal that would limit bicycle use to certain trails within the WSAs during certain defined periods of the year. They assert that overall bicycle use under this proposal could be monitored so that total use would not exceed the amount of motorized use that was occurring in 1977 thus maintaining the wilderness character of the areas. Because this proposed resolution is new information, the Bitterroot National Forest Supervisor should have the opportunity to consider the proposed resolution and whether it warrants modification of the Record of Decision. **I am instructing the Forest Supervisor to consider the proposed resolution and either affirm the existing ROD or modify the ROD if he decides to incorporate some or all of the proposed resolution.**

#### ***Issue 8 Allow mechanized but not motorized in WSAs***

An objector asserts that trails within WSAs should be open to mountain bikes but closed to motorized use. They assert aggregate use should not go above 1977 levels now that motorized use is not allowed.

**Response:** See response to Issue 7. **In addition to the instruction outlined in the response to Issue 7, I am instructing the Forest Supervisor to clearly articulate his rationale in the final Record of Decision that correlates the level of motorized use believed to be existing in 1977 with proposed mechanized use in the proposed resolution proposal. The ROD should be as specific as possible regarding how the effects to wilderness character from 1977 motorized use levels correlate or compare to the effects from mountain bike use as described in the resolution proposal.**

#### ***Issue 9 User Conflict***

An objector contends that the FEIS failed to analyze and consider minimizing conflict between bikers and motorized users.

**Response:** The Travel Rule's "minimization criteria" (36 CFR 212.55(b) includes considering effects with objective of minimizing (3) "conflicts between motor vehicle use and existing or proposed recreational uses". See ROD page 18. Conflict of use is not the same thing as user conflict.

As stated in FEIS Appendix F, response to comments, "The nature of conflict of use as it relates to this travel planning effort is about forest users and their personal values and the fact that personal values shape preferences, for which activities are appropriate and desirable on public lands, not actual, physical confrontation between users in the field." Clearly, the Forest cannot dictate tolerance. The highly visible presence of the Forest's OHV Ranger during the summer months has resulted in decreasing instances of user conflicts.

In addition, effects to minimization criteria including user conflicts and conflict of use are analyzed and disclosed in Section 3.2 *Recreation and Trails*, pages 3.2-31-33 of the FEIS.

#### ***Issue 10 Does not meet Purpose and Need***

Objectors contend that closing the WSAs to mountain bikes fails to achieve the purpose and need of addressing conflicts between motorized and nonmotorized uses, improving quality of the recreational experience and integrating resource considerations into the route system.

**Response:** The purpose and need for the Bitterroot Travel Planning Project is discussed in the FEIS on pages 1-7 through 1-11, in the ROD pages 2-3. The Travel Plan provides a wide range of recreation opportunities. There are a variety of roads and trails available throughout the Forest for all types of uses. The Forest recognizes that not all uses can be accommodated on all units of land – which means that certain uses will be restricted in some areas. The rationale for closing WSAs to motorized/mechanized and conflicts of uses are addressed in the ROD on pages 20-25, where it displays how the 9th Circuit ruling regarding types and volume of use in WSAs is being applied on the Bitterroot National Forest.

### ***Issue 11 Horse Impacts***

Objectors argue that horseback riders and horses are more impactful to trails than mountain bikes. They contend that they cause significantly more trail damage, leading to rutting, trail widening, and erosion.

**Response:** It is true mountain biking may not be as impactful on the landscape as other uses; however, there are other effects to wilderness character associated with these types of uses. Mechanical Transport is defined by 36 CFR 293.6 as: “any contrivance which travels over ground, snow, or water on wheels, tracks, skids, or by floatation and is propelled by a nonliving power source contained or carried on or within the device.” This includes, but is not limited to, sailboats, hang gliders, parachutes, bicycles, game carriers, carts, and wagons. It does not include wheelchairs when used as necessary medical appliances. It also does not include skis, snowshoes, rafts, canoes, sleds, travois, or similar primitive devices without moving parts (FSM 2320.5(3))

Horse travel is considered a primitive mode of travel and is consistent with maintaining wilderness character, as well as a long-established activity in 1977.

### ***Issue 12 Science and Wilderness Character***

Objectors contend that scientific research (Hennings et al. 2017, Thurston & Reader 2001, Bjorkman 1998, Pickering et al. 2010, and Taylor & Knight 2003) shows that mountain biking does not cause significant degradation of wilderness character.

**Response:** Thurston & Reader 2001, Pickering et al. 2010, and Bjorkman 1998 do *not* address wilderness character. They address impacts to vegetation and soils. Taylor and Knight (2003) investigated the interactions of wildlife and trail users (hikers and mountain bikers) at Antelope Island State Park in Utah. Hennings 2017 is a literature review focused on better understanding the trade-offs between different types and levels of recreational access in an urban area, particularly focused on the effects of recreational activities on wildlife and water quality. None specifically address the aspects of wilderness character.

This issue was addressed in *Bitterroot Ridge Runners vs. USFS*, “The Court gives deference to the Forest Service as to what factors – social, ecological, or otherwise-have the largest impact on its decision to close WSAs to all uses other than hiking and horseback.” (6/29/18 Order, p. 19).

### ***Issue 13 Loss of Single-track Riding***

Objectors contend the impacts of closing the WSAs to mountain biking were not fully analyzed and disclosed. Objectors feel that including the 660 miles of coincident routes as the total amount of trails available to mountain bikers obscures the magnitude of trail loss.

**Response:** The Forest acknowledges that some users may feel a loss of experience biking on a closed road versus a single-track trail. Coincident routes are discussed in the FEIS on pages 3.2-18 to 3.2-19. The discussion is mainly focused on motorized travel; however, it does discuss that these routes are part of the National Forest Trail System and therefore are considered and managed as trails.

Rationale for closing WSAs to mechanical transport (bicycles) is addressed in the ROD on pages 24-25. A U.S. Ninth Circuit Court of Appeals ruling (*Citizens for Balanced Use and Montana Wilderness Association et al. v. McAllister*, December 2011, D.C. No. 9:07-CV-00039) had a direct bearing on the Responsible Officials decision regarding the use of motorized/mechanical transport in WSAs. The court ruled that the Forest Service must consider how the wilderness character of the relevant wilderness study area, particularly the opportunities for solitude it offered, has been maintained despite an increase in the volume of motorized and mechanized recreation in the Hyalite/Porcupine/Buffalo Horn WSA since 1977.

The Forest is actively working with BBC to create more single-track opportunities at Lake Como and on the lands acquired from Darby Lumber, as well as the upcoming proposal for Mud Creek. The Forest Supervisor is directed to continue to work with BBC in good-faith to find additional primitive mountain biking opportunities.

**Issue 14 Supplemental EIS Needed**

Objectors contend that a Supplemental EIS should have been prepared that analyzed the impacts of closing the trails within the WSAs to mountain biking because changes made between the draft and final EIS were substantial enough to warrant supplementation.

**Response:** This issue was raised in *Bitterroot Ridge Runners vs. USFS*. On pages 28-29 of Judge Christensen's decision, he says "The Court also finds that the increase in WSA closure to bicycles in the ROD does not require a supplemental NEPA analysis. NEPA requires that an agency supplement a draft EIS if the agency makes "substantial changes in the proposed action that are relevant to environmental concerns [.]"

**Issue 15 Violation of Recreation Opportunity Spectrum**

Objectors contend that closing WSAs to mountain biking is a violation of the ROS and the mission to provide varied recreational experiences.

**Response:** Application of the ROS was done during development of the original Bitterroot Forest Plan. The Travel Plan does not change land use allocations; it maintains the recreation opportunities as allocated in the Forest Plan.

A similar issue was brought up in *Bitterroot Ridge Runners vs. USFS*. On pages 20-21 of Judge Christensen's decision, it states "A Forest Plan operates as somewhat of a zoning ordinance, "defining broadly the uses allowed in various forest regions, setting goals and limits on various uses (from logging to road construction), but does not directly compel specific actions, such as cutting of trees in a particular area or construction of a specific road" and "Moreover, the Court does not agree that the Forest Plan "commands" continued current uses regardless of their impact on wilderness character. Instead, the Forest Service appropriately analyzed the current uses and determined that they would detract from wilderness character, as indicated by the Forest Plan directive. See AR 00901 (finding that maintaining current motorized and mechanical use would have seasonal and short term effect on animal movement, migration, and dispersal); AR 00512-13 (finding that users often complain about motorized use); AR 00563-617 (discerning the various impacts to wilderness characteristics of RWAs and WSAs.)"

**Summary**

In conclusion, I have taken the objections into consideration and reviewed the assertions that the project violates various environmental laws, regulations, policies, and the Forest Plan. My review finds the project is in compliance with applicable laws and the Forest Plan, and this objection process has furthered the intent of the Administrative Procedures Act. The Responsible Official may reaffirm the Travel Management Decision by showing the eligibility of the total 121 miles of mechanized use closures in WSAs is permissible under the APA or modify the decision in light of BBC's proposed objection resolution, and new information, as appropriate. In either case the Forest must provide clear rationale for its course of action. Also, I am directing the Forest Supervisor to continue to meet with BBC to explore primitive backcountry cycling opportunities on the Bitterroot National Forest.

My review constitutes the final administrative determination of the Department of Agriculture; no further review from any other Forest Service or Department of Agriculture official of my written response to your objection is available (36 CFR 218.11(b)(2)).

Sincerely,



WILLIAM AVEY

Objection Reviewing Officer

Cc: Matt Anderson, Cody Hutchinson