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21 **IN THE UNITED STATES DISTRICT COURT
22 FOR THE EASTERN DISTRICT OF CALIFORNIA**

23 BACK COUNTRY HORSEMEN OF
24 AMERICA, BACKCOUNTRY HORSEMEN
25 OF CALIFORNIA, GOLD COUNTRY
26 TRAILS COUNCIL, FOREST ISSUES
27 GROUP, and THE WILDERNESS SOCIETY,

28 *Plaintiffs,*

vs.

UNITED STATES FOREST SERVICE,

Defendant.

Civ. Case No. []

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Violations of the Administrative
Procedure Act, Forest Service regulations,
and National Environmental Policy Act)

INTRODUCTION

1. Plaintiffs Back Country Horsemen of America, Backcountry Horsemen of California, Gold Country Trails Council, Forest Issues Group, and The Wilderness Society respectfully file this suit challenging the decision of the United States Forest Service to permit Class 1 electric bicycles (“e-bikes”) on the Tahoe National Forest, including the identification of approximately 132 miles of non-motorized trails in a list of recommended Class 1 e-bike trail opportunities, as arbitrary and capricious and not in accordance with law.

2. This is a civil action for declaratory and injunctive relief, arising under the laws of the United States, including the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*; Forest Service Travel Management regulations, 36 C.F.R. Part 212; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; and implementing regulations established pursuant to these federal statutes.

3. Plaintiffs seek a declaration that the Forest Service's decision to permit Class 1 e-bikes on designated non-motorized trails on the Tahoe National Forest, without the appropriate public notice, comment, and environmental review process, violates federal law and is otherwise arbitrary and capricious.

4. Plaintiffs additionally seek injunctive relief to redress the injuries caused by these violations of the law.

5. Should Plaintiffs prevail, Plaintiffs will seek an award of costs, attorneys' fees, and other expenses under the Equal Access to Justice Act, 22 U.S.C. § 2412.

JURISDICTION

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question).

7. The Forest Service's decision to permit Class 1 e-bikes on non-motorized trails on the Tahoe National Forest comprises final agency action subject to judicial review under 5 U.S.C. § 704.

8. This Court may issue declaratory relief pursuant to 28 U.S.C. § 2202.

9. This Court may issue injunctive relief pursuant to 28 U.S.C. § 2201, 5 U.S.C. § 702, and 5 U.S.C. § 706.

1 10. An actual, justiciable controversy exists between plaintiffs and the Forest Service.

2 **INTRADISTRICT ASSIGNMENT**

3 11. Venue in this Court is proper under 28 U.S.C § 1391(1)(b).

4 12. The lands at issue in this dispute are located in Nevada County, among others, in
5 California. The final agency action challenged in this action took place in Nevada County,
6 California. Pursuant to Local Rule 120(d), intradistrict assignment to Sacramento, California
7 is appropriate.

8 **PARTIES**

9 13. Plaintiff BACK COUNTRY HORSEMEN OF AMERICA (“BCHA”) is a national
10 non-profit educational and service organization dedicated to protecting and promoting the
11 common-sense use and enjoyment of saddle and pack stock in America’s backcountry and
12 wilderness areas. Members of the BCHA utilize virtually all National Forests included in the
13 Forest Service System for pack and saddle stock recreation. In addition, the BCHA through
14 its various local units is an active volunteer participant in preserving and maintaining pack
15 and saddle stock trails located on National Forest System lands. Members of BCHA commit
16 thousands of hours annually in volunteer time and service towards maintenance of the
17 existing trails on National Forests across the country. BCHA volunteers contributed 322,125
18 hours working to maintain trails on public lands in 2018 alone. Those hours equate to an in-
19 kind value of \$12.1 million in trail work donated to local and federal land managing agencies.
20 Since 1995, the in-kind contribution of BCHA volunteer efforts has exceeded \$140 million.
21 As visitors and users of National Forest lands, BCHA members are personally connected
22 with helping to maintain the health and integrity of these lands. BCHA members travel on
23 Forest Service lands for many reasons, including the personal joy and exhilaration of
24 primitive and unconfined travel, appreciation of the natural forest settings, and the
25 connection with an earlier time in American history that this form of travel provides. BCHA
26 members are significantly impacted by the Forest Service’s decision to open trails on the
27 Tahoe to e-bikes, without proper public input and an assessment of the environmental
28 impact of that decision. Chief among these would be an assessment of the potential social

1 impacts of the agency's introduction and promotion of e-bike use on non-motorized trails
2 shared by hikers, equestrians, etc. Equestrians, in particular, often will choose to avoid trails
3 where there is a potential for encounters with fast-moving bicycles. Their selection among
4 trails available in a given area is based, in large part, on safety concerns and the sometimes
5 unpredictable response of their horses or mules in the event of a surprise on-trail encounter.
6 The use of e-bikes, and their potential for travel at relatively high speeds, elevate the
7 potential for such surprise encounters. The decision to open trails to e-bikes, and to
8 recommend many trails specifically as e-bike "opportunities," has and will continue to result
9 in many trails currently designated for pack and saddle stock use becoming either unfit for
10 such use, less accommodating for such use, or less desirable by equestrians for such use.
11 Additionally, this decision will interfere with BCHA members' enjoyment of traversing
12 natural forest settings with a historic mode of travel. The requested relief in this litigation
13 would redress the harm suffered by BCHA, BCHA staff, and BCHA members resulting
14 from the Forest Service decision challenged herein.

15 14. Plaintiff BACKCOUNTRY HORSEMAN OF CALIFORNIA ("BCHC") is the
16 California chapter of BCHA. BCHC volunteers donated 108,293 hours of service last year to
17 maintain horse camps and trails, including trails located within the Tahoe National Forest.
18 The BCHC chapter located closest to the Tahoe National Forest, BCIHC's Mother Lode
19 Unit, last year contributed 5,195 hours of volunteer labor, mostly directed to projects within
20 the Tahoe and El Dorado National Forests. The members that comprise BCHC, its Mother
21 Lode Unit and their families, also enjoy recreational horseback riding on trails throughout
22 the Tahoe National Forest. These trails are used by horsemen and women to both hunt and
23 view wildlife; to access scenic vistas, favorite picnic spots, fishing holes and campsites; and,
24 in general, to enjoy the quiet and tranquility of the national forest. The ability to access trails
25 that provide an escape from the motorization and mechanization of modern society is one
26 reason Backcountry Horsemen use and enjoy non-motorized trails within the Tahoe
27 National Forest. System trails on the Tahoe National Forest enjoyed by BCHC members
28 include many of the non-motorized trails on which the use of e-bikes recently has been

1 authorized by the Forest Service. The Forest Service's decision to allow e-bikes on non-
2 motorized trails across the national forest constitutes a direct threat to BCHC's mission and
3 work, and impairs the quiet enjoyment of BCHC members on the Tahoe. The requested
4 relief in this litigation would redress the harm suffered by BCHC, BCHC officers, and
5 BCHC members resulting from the Forest Service decision challenged herein.

6 15. Plaintiff GOLD COUNTRY TRAILS COUNCIL ("GCTC") is a non-profit
7 volunteer organization, founded in 1981 by a group of Nevada County citizens to address
8 the need for non-motorized trails in the county and surrounding foothills. GCTC has
9 partnered with the Forest Service and other local and state agencies to provide funding,
10 volunteer strength, and energy to plan, build, and maintain non-motorized trails and
11 equestrian campgrounds. GCTC members visit the national forests to enjoy non-motorized
12 trail opportunities as equestrians, hikers, mountain bikers, and backpackers. GCTC provides
13 construction, maintenance, and monitoring of equestrian campgrounds, trails, and staging
14 areas, maps and trail education materials, and volunteer trail patrols to greet and educate
15 users about responsible trail use on public lands, in partnership with the Forest Service. This
16 year, GCTC has provided approximately 3000 hours of volunteer effort this year in Tahoe
17 National Forest, and donated over \$5000 in materials. The Tahoe National Forest's
18 allowance of e-bikes on non-motorized trails constitutes a direct threat to GCTC's work on
19 the Tahoe. There was no notification to GCTC, other stakeholders, or the public in Tahoe
20 National Forest via any medium, including verbally, electronically or via print media that
21 class 1 e-bikes were allowed on non-motorized trails. GCTC discovered this decision purely
22 by chance. GCTC members had no time to prepare for safety issues associated with allowing
23 class 1 e-bikes on non-motorized trails that GCTC is responsible for patrolling and
24 maintaining. There were no impact studies to access the effect of the interaction of high-
25 speed e-bikes with hikers and equestrians. In addition to class 1 e-bikes, GCTC members are
26 already seeing class 2 or class 3 e-bikes with throttles on the non-motorized trails. There has
27 been no indication from the Forest Service regarding how this law enforcement issue will be
28 addressed. The requested relief in this litigation would redress the harm suffered by GCTC,

1 GCTC officers, and GCTC members resulting from the Forest Service decision challenged
2 herein.

3 16. Plaintiff FOREST ISSUES GROUP (“FIG”) is a non-profit organization made of
4 local citizens committed to healthy national forests, with a particular focus on the Tahoe
5 National Forest and the impacts of federal management. FIG provides community
6 education and public review of Forest Service management. FIG believes that many hiking
7 trails on the forest must be restricted to non-motorized use, including those currently
8 proposed for e-bike use. Non-motorized bicycles traveling rapidly downhill on trails already
9 pose unnecessary risks to hikers and equestrians. To add an additional risk from wheeled
10 vehicles going rapidly uphill on those trails will add additional challenges. In our experience,
11 it is the hiker that must jump out of the path of the approaching cycle. The requested relief
12 in this litigation would redress the harm suffered by FIG, FIG staff, and FIG members
13 resulting from the Forest Service decision challenged herein.

14 17. Plaintiff THE WILDERNESS SOCIETY (“TWS”) is a national non-profit
15 conservation organization devoted to protecting wilderness and inspiring Americans to care
16 for wild places. TWS contributes to better protection, stewardship, and restoration of public
17 lands, preserving the nation’s rich natural legacy for current and future generations. TWS
18 works to ensure sound management of our shared national forests, bringing to bear
19 scientific, legal, and policy guidance to land managers, communities, local conservation
20 groups, and state and federal decision-makers. TWS staff and members enjoy the Tahoe
21 National Forest for recreational activities including hiking, backpacking, mountain biking,
22 skiing, wildlife viewing, and camping, and for the aesthetic, spiritual, and wildlife values and
23 opportunities it provides. TWS has invested significantly in the Tahoe over the years,
24 including participating in summer and winter travel management planning—even intervening
25 to successfully defend the Forest’s Motor Vehicle Use Map from litigation by motorized
26 interest groups. In anticipation of an upcoming forest plan revision, TWS also recently
27 conducted an intensive inventory and evaluation of over 214,000 acres of roadless lands on
28 the Tahoe that are suitable for inclusion in the National Wilderness Preservation System.

1 More generally, TWS has worked for decades to influence and implement long-standing
2 travel management laws and policies that help ensure higher quality recreational experiences
3 for both motorized and non-motorized users, prevent avoidable resource damage, alleviate
4 public safety concerns and conflicts between users, and benefit local economies by
5 encouraging visitation and tourism. The Tahoe National Forest's allowance of e-bikes on
6 non-motorized trails constitutes a direct threat to both TWS's local work on the Tahoe and
7 its national work. TWS staff and members who recreate on the Tahoe will be harmed by the
8 use of e-bikes on trails where a non-motorized experience is anticipated. The wilderness
9 character and potential of areas included in TWS's inventory of lands suitable for inclusion
10 in the National Wilderness Preservation System will be reduced by the use of e-bikes on
11 non-motorized trails in those areas, causing harm to TWS's work to achieve conservation
12 protections for those lands. The requested relief in this litigation would redress the harm
13 suffered by TWS, TWS staff, and TWS members resulting from the Forest Service decision
14 challenged herein.

15 18. Defendant UNITED STATES FOREST SERVICE ("Forest Service") is an agency
16 within the U.S. Department of Agriculture. The Forest Service manages the Tahoe National
17 Forest.

18 SUMMARY OF LAW

19 Administrative Procedure Act

20 19. The Administrative Procedure Act confers a right of judicial review on any person
21 that is adversely affected by agency action. 5 U.S.C. § 702. Upon review, the court shall
22 "hold unlawful and set aside agency actions ... found to be arbitrary, capricious, an abuse of
23 discretion or otherwise not in accordance with law." 5 U.S.C. § 706(2).

24 Travel Management Rule

25 20. The Forest Service promulgated the Travel Management Rule on November 9, 2005.
26 70 Fed. Reg. 68,264 (Nov. 9, 2005), *codified at* 36 C.F.R. Part 212, subpart B (2018).

27
28

1 21. One purpose of the Travel Management Rule was to confine public motorized use to
2 a designated system to prevent adverse impacts on natural resources and conflicts with other
3 recreational uses.

4 22. The Travel Management Rule defines “motor vehicle” broadly as “[a]ny vehicle
5 which is self-propelled,” excluding only vehicles operated on rails, and wheelchairs and other
6 devices suitable for indoor use by mobility-impaired persons. 36 C.F.R. § 212.1.

7 23. On numerous occasions, the Forest Service has correctly and explicitly recognized
8 that e-bikes—which by definition have a motor and therefore are “motorized”—are motor
9 vehicles subject to the Travel Management Rule. For example, in response to comments on
10 the agency’s 2015 winter travel management rule (subpart C of the Travel Management
11 Rule), the Forest Service stated that “[n]ew technologies that merge bicycles and motors,
12 such as e-bikes, are considered motor vehicles under § 212.1 of the Travel Management
13 Rule.” 80 Fed. Reg. 4500, 4503 (Jan. 28, 2015). In September 2019 press releases for a
14 number of National Forests, the U.S. Forest Service Region 1 stated that it “considers e-
15 bikes as motorized vehicles and therefore does not allow their use on non-motorized
16 National Forest System roads and trails.”

17 24. After the U.S. Department of Interior released a new policy on August 29, 2019
18 reclassifying e-bikes as non-motorized vehicles and setting forth a new process by which
19 agencies within the Department of Interior can expand e-bike access on lands they manage,
20 the U.S. Department of Agriculture circulated an internal policy document affirming that the
21 Forest Service, by contrast, continues to classify and manage e-bikes as motorized vehicles.
22 U.S. Dep’t of Agric., Office of the Sec’y Rollout Plan, Internal Letter on e-Bike Use on
23 National Forests and Grasslands (2019). According to the document, “[t]he Forest Service
24 manages e-bikes as motorized vehicles,” and Forest Service officials “may make special
25 designations to allow e-bike use on non-motorized trail [sic] *in accordance with the Travel*
26 *Management Rule.*” *Id.* (emphasis added).

27 25. The Travel Management Rule requires that all motor vehicle use on National Forest
28 System lands be managed according to vehicle class designations. 36 C.F.R. § 212.51. Motor

1 vehicle use not in accordance with such designations and off designated roads and trails or
2 outside designated areas is prohibited. *Id.* at §§ 212.50(a), 261.13.

3 26. Designations and revisions of designations under the Travel Management Rule
4 require advance notice, opportunity for public comment, publication, coordination with
5 governmental entities, and inclusion on Motor Vehicle Use Maps (MVUMs). 36 C.F.R. §§
6 212.51–212.54. Any such designation or revision must be made in accordance with the
7 general and specific criteria set forth in the Travel Management Rule, taking into account,
8 *inter alia*, natural and cultural resources, public safety, and conflicting uses. 36 C.F.R. §
9 212.55.

10 27. The Travel Management Rule contains general and specific criteria the Forest Service
11 must consider and apply when designating roads, trails, and areas for motor vehicle use on
12 National Forests. 36 C.F.R. § 212.55(a).

13 28. In designating trails and areas, the Forest Service must consider and apply specific
14 criteria with the objective of minimizing damage to forest resources, harassment of wildlife,
15 disruption of wildlife habitat, and conflicts between motor vehicle use and existing or
16 proposed recreational uses of the Forest. 36 C.F.R. § 212.55(b). These specific criteria are
17 often referred to as the “minimization criteria.” The Forest Service must not only consider
18 these minimization criteria, but affirmatively demonstrate how it evaluated and applied the
19 minimization criteria in any decision designating trails and areas for motor vehicle use with
20 the objective of minimizing impacts and conflicts.

21 29. General criteria include effects on natural and cultural resources, public safety,
22 provision of recreational opportunities, access needs, conflicts among users of the Forest,
23 and the availability of resources for necessary administration and maintenance. 36 C.F.R. §
24 212.55(a).

25 30. The Travel Management Rule requires public involvement in the designation of
26 National Forest System trails for motor vehicle use. 36 C.F.R. § 212.52(a). The Travel
27 Management Rule requires the Forest Service to give advance notice to allow for public
28 comment on proposed designations and revisions. *Id.* at §§ 212.52(a), 212.54.

1 31. The Travel Management Rule prohibits motor vehicle use off designated roads and
2 trails and outside designated areas. 36 C.F.R. §§ 212.51(b), 261.13.

3 32. The Travel Management Rule requires the Forest Service to monitor the effects of
4 motor vehicle use in areas designated for such use. 36 C.F.R. § 212.57.

5 **National Environmental Policy Act**

6 33. The National Environmental Policy Act (“NEPA”) directs all federal agencies to
7 assess the environmental impact of proposed actions that significantly affect the quality of
8 the human environment. 42 U.S.C. § 4332(2)(C).

9 34. The Council on Environmental Quality has promulgated uniform regulations to
10 implement NEPA that are binding on all federal agencies. 42 U.S.C. § 4342; 40 C.F.R. §§
11 1500 *et seq.*

12 35. NEPA requires federal agencies to prepare an Environmental Impact Statement
13 (“EIS”) when a major federal action is proposed that may significantly affect the quality of
14 the environment. 42 U.S.C. § 4332(2)(C), 40 C.F.R. § 1501.4(a)(1).

15 36. An EIS is a “detailed written statement” that “provide[s] full and fair discussion of
16 significant environmental impacts and shall inform decisionmakers and the public of the
17 reasonable alternatives which would avoid or minimize adverse impacts or enhance the
18 quality of the human environment.” 40 C.F.R. §§ 1508.11, 1502.1.

19 37. The EIS requirement under NEPA is meant to ensure that agencies take a “hard
20 look” at the potential environmental consequences of their actions, and to promote
21 informed public participation.

22 38. If an agency is unsure if an action will have a significant effect on the human
23 environment, it must prepare an Environmental Assessment (EA) to determine if an EIS is
24 required. 40 C.F.R. § 1501.4.

25 **FACTS**

26 39. The present designation of motorized and non-motorized trails across the Tahoe
27 National Forest, and the governing Motor Vehicle Use Map, is the outcome of the public
28 process mandated by the Travel Management Rule.

1 40. Plaintiffs have participated in the public process for designating motorized and non-
2 motorized trails across the Tahoe National Forest.

3 41. E-bikes are bicycles that include both an electric motor and pedals for pedaling.

4 42. E-bikes may be powered by the electric motor, pedaling, or both.

5 43. E-bikes are commonly classified under a 3-class system.

6 44. Class 1 e-bikes are “pedal-assist” bikes. “Pedal assist” means that the electric motor is
7 engaged by pedaling rather than with a separate throttle control. The rotation of the pedals
8 triggers the motor on Class 1 e-bikes.

9 45. The motor on a Class 1 e-bike may generate one hundred percent of power going to
10 the wheels.

11 46. Class 1 e-bikes are capable of reaching 20 miles per hour with minimal pedaling.

12 47. Class 1 e-bikes are capable of exceeding 20 miles per hour, but cease to provide
13 motor assistance above 20 miles per hour.

14 48. The motor in Class 1 e-bikes allows riders to travel further and faster with less
15 exertion over time than by pedaling alone.

16 49. On or around June 24, 2019, the Forest Service announced “extended additional
17 opportunities” on the Tahoe National Forest for Class 1 e-bikes. This announcement was
18 posted on the Tahoe National Forest website. A screenshot of this announcement is
19 attached to this complaint.

20 50. According to the Tahoe National Forest website, the Tahoe National Forest is
21 “extending opportunities for Class 1 [electric bike] riders to use recommended non-
22 motorized trails across the forest.” The Tahoe National Forest website lists approximately
23 132 miles of non-motorized trails on the Tahoe National Forest as “recommended trail
24 opportunities” for Class 1 electric bike riders.

25 51. The Forest Service now allows the public to ride Class 1 e-bikes on non-motorized
26 trails on the Tahoe National Forest.

27 52. The Forest Service has explicitly invited the public to ride Class 1 e-bikes on non-
28 motorized trails on the Tahoe National Forest.

1 53. The Forest Service did not provide public notice or solicit public comment prior to
2 making its decision allowing Class 1 e-bikes on non-motorized trails on the Tahoe National
3 Forest.

4 54. The Forest Service did not provide public notice or solicit public comment prior to
5 publishing the list of “recommended trail opportunities.”

6 55. The Forest Service did not conduct an environmental analysis pursuant to NEPA, or
7 solicit public comment on that analysis, prior to making its decision allowing Class 1 e-bikes
8 on non-motorized trails on the Tahoe National Forest.

9 56. Equestrian riders, backpackers, hikers, trail runners, and mountain bike riders—
10 including Plaintiffs’ staff and members—seek out non-motorized trails on the Tahoe
11 National Forest to get away from fast-moving motor vehicles and enjoy a quiet, natural
12 environment.

13 57. The use of e-bikes on non-motorized trails will deter other individuals—including
14 Plaintiffs’ members, staff, and supporters—who visit the Tahoe to enjoy the peaceful
15 surroundings of an ecosystem undisturbed by motorized vehicles.

16 58. The use of e-bikes on non-motorized trails jeopardizes the quiet enjoyment of
17 Plaintiffs and causes them to avoid trails already established for non-motorized uses on and
18 in proximity to the newly recommended e-bike trail opportunities.

19 59. The decision to allow the use of e-bikes on non-motorized trails on the Tahoe
20 National Forest increases the risk of motorized trespass onto the Pacific Crest National
21 Scenic Trail, which multiple non-motorized Tahoe National Forest trails bisect.

22 60. By allowing the use of e-bikes on non-motorized trails on the Tahoe National Forest,
23 and publishing a list of recommended e-bike trail opportunities on non-motorized trails, the
24 Forest Service is creating conflict among users that did not exist before.

25 61. Because it failed to conduct the requisite environmental analysis of allowing
26 motorized e-bikes on nonmotorized trails, the Forest Service did not assess either the
27 environmental consequences or user conflicts of allowing the use of e-bikes on non-
28 motorized trails on the Tahoe National Forest.

1 62. The use of e-bikes on non-motorized trails in areas suitable for inclusion in the
2 National Wilderness Preservation System degrades the wilderness character and potential of
3 those areas.

4 63. On September 9, 2019, Plaintiffs sent a letter to the Forest Service highlighting the
5 legal, conservation, and multiple competing use problems caused by allowing e-bikes on
6 non-motorized trails on the Tahoe National Forest without a public process. Plaintiffs did
7 not receive a reply to this letter.

8 **CLAIMS FOR RELIEF**

9 **FIRST CLAIM FOR RELIEF**

10 **The decision to allow Class 1 e-bikes on non-motorized trails on the Tahoe
11 National Forest violates the Travel Management Rule.**

12 64. Plaintiffs incorporate by reference all preceding paragraphs.

13 65. E-bikes are “motor vehicles” within the meaning of the Travel Management Rule.

14 66. Non-motorized trails are by definition designated for non-motorized travel only.

15 67. When it decided to allow e-bikes on trails presently designated for non-motorized
16 use, the Forest Service did not comply with the process for designating or revising
17 designations under the Travel Management Rule.

18 68. Unless and until the relevant trails are designated for e-bike use through the process
19 set forth in the Travel Management Rule, e-bike use on non-motorized trails is prohibited.
20 36 C.F.R. §§ 212.50(a), 261.13.

21 69. The Forest Service’s decision to allow e-bikes on designated non-motorized trails is
22 arbitrary and capricious, and not in accordance with law. 5 U.S.C. § 706(2)(A). In the
23 alternative, the Forest Service’s failure to comply with its own travel plan, its decision
24 approving the travel plan, its travel rule, and the Tahoe National Forest MVUM constitutes
25 agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706(1).

26 70. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
27 litigation pursuant to the Equal Access to Justice Act (“EAJA”). 28 U.S.C. § 2412.

SECOND CLAIM FOR RELIEF

The decision to allow Class 1 e-bikes on non-motorized trails on the Tahoe National Forest without public notice and opportunity for public comment violates the Travel Management Rule.

71. Plaintiffs incorporate by reference all preceding paragraphs.

72. The Travel Management Rule requires that “[a]dvance notice shall be given to allow for public comment … on proposed designations and revisions” to designations of trails for motorized or non-motorized travel. 36 C.F.R. § 212.52.

73. The Forest Service announced the decision to allow Class 1 e-bikes on non-motorized trails on the Tahoe National Forest through an undated change to the Tahoe National Forest website on or around June 24, 2019.

74. The Forest Service did not provide advance notice to the public of its decision to allow Class 1 e-bikes on non-motorized trails on the Tahoe National Forest as required by the Travel Management Rule.

75. The Forest Service did not allow for public comment concerning its decision to allow Class 1 e-bikes on non-motorized trails on the Tahoe National Forest.

76. The Forest Service's decision to allow Class 1 e-bikes on non-motorized trails on the Tahoe National Forest without advance notice and opportunity for public comment deprives Plaintiffs of their legal rights under federal law to participate in decisionmaking concerning the designation of trails for motorized and non-motorized use.

77. The Forest Service's decision to allow Class 1 e-bikes on non-motorized trails on the Tahoe National Forest without providing advance notice to the public and opportunity for public comment violates the procedure required by the Travel Management Rule.

78. The Forest Service's decision to allow Class 1 e-bikes on non-motorized trails on the Tahoe National Forest without advance notice and opportunity for public comment is unlawful because it did not observe procedure required by law. 5 U.S.C. § 706(2)(D).

79. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to EAJA. 28 U.S.C. § 2412.

THIRD CLAIM FOR RELIEF

The Forest Service failed to comply with NEPA in allowing e-bikes on non-motorized trails on Tahoe National Forest.

80. Plaintiffs incorporate by reference all preceding paragraphs.

81. The Forest Service failed to evaluate its decision to allow e-bikes on non-motorized trails in the Tahoe National Forest through the procedures set forth by NEPA and its implementing regulations.

82. NEPA requires that the Forest Service analyze every major federal action it undertakes which may have significant effects on the human environment.

83. The decision to allow e-bikes on non-motorized trails on the Tahoe National Forest is a federal action.

84. The decision to allow e-bikes on non-motorized trails on the Tahoe National Forest may have significant effects on the human environment.

85. The CEQ has defined “effects” to include, *inter alia*, ecological, aesthetic, economic, and social effects. 40 C.F.R. § 1508.8. The CEQ regulations require that the significance of effects be analyzed in terms of context and intensity. 40 C.F.R. § 1508.27. Context refers to the scale of the action and the effects it will have on society as a whole, on the affected region, interests, and locality. *Id.* § 1508.27(a). Even actions with purely local effects may be significant. *Id.* Intensity refers to the severity of an action’s impact. *Id.* § 1508.27(b). Intensity may depend on, *inter alia*, the extent of a project’s impact on public health or safety, and whether the action might violate federal laws designed to protect the environment. *Id.*

86. The decision to allow e-bikes on non-motorized trails on the Tahoe National Forest may have substantial ecological, aesthetic, economic, and social effects on the Tahoe National Forest.

87. These effects meet several of the intensity factors set forth in the CEQ regulations.

88. Allowing e-bikes on non-motorized trails on the Tahoe National Forest threatens conflicts with competing uses and therefore impacts public health and safety.

1 89. As set forth in the first and second claims for relief, the decision to allow e-bikes on
2 non-motorized trails on the Tahoe National Forest violated the Travel Management Rule,
3 which was designed to protect the environment.

4 90. If the Forest Service is unsure whether the decision to allow e-bikes on non-
5 motorized trails on the Tahoe National Forest will have a significant effect on the human
6 environment, it must prepare an Environmental Assessment (EA) to determine if an EIS is
7 required. 40 C.F.R. § 1501.4.

8 91. The Forest Service prepared neither an EIS nor an EA, nor formally concluded that
9 its decision to allow e-bikes on the Tahoe National Forest is not a major federal action that
10 will have a significant effect on the human environment.

11 92. The Forest Service's failure to comply with NEPA has deprived Plaintiffs and other
12 stakeholders of their legal right to weigh in through a public process.

13 93. The Forest Service's decision to allow e-bikes on non-motorized trails in the Tahoe
14 National Forest without complying with NEPA is arbitrary, capricious, and not in
15 compliance with NEPA. 5 U.S.C. § 706(2)(A).

16 94. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this
17 litigation pursuant to the EAJA. 28 U.S.C. § 2412.

18 PRAYER FOR RELIEF

19 Based upon the foregoing, Plaintiffs respectfully request that the Court:

20 1. Declare that the Forest Service violated the Administrative Procedure Act and the
21 Travel Management Rule, in deciding to allow e-bikes on non-motorized trails on the Tahoe
22 National Forest;

23 2. Declare that the Forest Service violated the Administrative Procedure Act and the
24 Travel Management Rule, in deciding to allow e-bikes on non-motorized trails on the Tahoe
25 National Forest without providing public notice and opportunity for public comment;

26 3. Declare that the Forest Service violated the National Environmental Policy Act in
27 deciding to allow e-bikes on non-motorized trails on the Tahoe National Forest without
28 analyzing the environmental impacts of doing so;

- 1 4. Declare that e-bikes remain prohibited on non-motorized trails on Tahoe National
- 2 Forest unless and until the Forest Service cures the violations of federal law set forth herein
- 3 to the satisfaction of this Court;
- 4 5. Set aside the decision of the Forest Service to allow e-bikes on non-motorized trails
- 5 on Tahoe National Forest;
- 6 6. Issue a mandatory injunction ordering the Forest Service and its agents to close all
- 7 non-motorized trails on Tahoe National Forest to e-bikes, unless and until the violations of
- 8 federal law set forth herein have been corrected to the satisfaction of this Court;
- 9 7. Issue a mandatory injunction ordering the Forest Service and its agents to remove the
- 10 list of "recommended trail opportunities" from the Tahoe National Forest website;
- 11 8. Award Plaintiffs their costs of litigation, including reasonable attorney fees under the
- 12 Equal Access to Justice Act. 28 U.S.C. § 2412.; and
- 13 9. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

14
15 Date: October ##, 2019. Respectfully submitted,

16 _____/s/

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Counsel for Plaintiffs

District	Trail Route	Name	Mileage	Rating
10E09	HIGH GRADE TRAIL	1.5	Easy	
10E13	PLUM VALLEY DITCH	5.2	Moderate	
10E12	PLUM DITCH TIE	0.2	Easy	
System Total			24.8	
Downieville Motorized Single-track Trail Network				
11E08	BUTCHER RANCH	6.0	Most Difficult	
11E07	THIRD DIVIDE	3.3	Moderate	
11E03	PAULEY CREEK	2.8	Most Difficult	
10E08	FIRST DIVIDE	3.2	Most Difficult	
11E33	SECOND DIVIDE	5.9	Most Difficult	
11E29	GOLD VALLEY RIM	5.3	Most Difficult	
11E10	BIG BOULDER	5.4	Most Difficult	
11E68	LAVEZZOLA CREEK	6.5	Most Difficult	
10E07	CHIMNEY ROCK	4.0	Most Difficult	
11E02	EMPIRE CREEK	4.0	Most Difficult	
09E03	HALLS RANCH	5.3	Most Difficult	
09E07	FIDDLE CREEK RIDGE	5.8	Most Difficult	
System Total			57.5	
SUGARPINE Motorized Single-track Trails				
ARRD	11E43	HUMBUG (LOOP 5)	17.2	Most Difficult
	11E44	CODFISH (LOOP 6)	15.3	Most Difficult
	System Total			32.5

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FRCP 7.1, Plaintiffs Back Country Horsemen of America, Backcountry Horsemen of California, Gold Country Trails Council, Forest Issues Group, and The Wilderness Society state that they have not issued shares to the public and have no affiliates, parent companies, or subsidiaries issuing shares to the public.

/s/

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