



11:40 am, 8/25/20

**Margaret Botkins**  
Clerk of Court

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

MOUNTAIN PURSUIT,

Petitioner,

vs.

U.S. FOREST SERVICE, et al.,

Respondents.

Case No: 19-CV-199-NDF

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**ORDER DISMISSING CASE**

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This matter is before the Court a second time on Respondents' (USFS) Motion to Dismiss for failure to demonstrate statutory standing under the Administrative Procedure Act (APA). (CM/ECF Document [Doc.] 23). This Court previously found the original complaint filed by Mountain Pursuit deficient to demonstrate standing and granted leave to amend. (Doc. 16). Mountain Pursuit timely filed an amended complaint, complaining that the USFS's management of the Palisades Wilderness Study Area and the Shoal Creek Wilderness Study Area (WSAs) has recognized and designated illegal user-created trails for summer mechanized recreation<sup>1</sup> far in excess of what may have existed in 1984, and failed to protect the wilderness characteristics of the WSAs contrary to law. (Doc. 17 at ¶¶ 71-106).

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<sup>1</sup> Mountain bike and motorized recreation (*e.g.*, ATV, UTV, OHV).

For the reasons stated below, the Court agrees with the USFS that the amended petition suffers the same defects as the original in that it generally complains about 30 years of perceived USFS mis-management of certain trails within the two WSAs which, according to Mountain Pursuit, have suffered increased summer mechanized recreation. These complaints fail to satisfy Mountain Pursuit’s burden of establishing “that [the USFS] took ‘final agency action for which there is no other adequate remedy in court,’” by “identifying specific federal conduct and explaining how it is ‘final agency action. . . .” *Colo. Farm Bureau Fed’n v. U.S. Forest Serv.*, 220 F.3d 1171, 1173 (10th Cir. 2000) (quoting 5 U.S.C. § 704 and citing *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 882 (1990)).

### **Discussion**

The parties are familiar with the procedural history of the case. As noted in the prior Dismissal Order (Doc. 16), Mountain Pursuit’s amended complaint is one for judicial review under the APA. To invoke this Court’s jurisdiction under the APA, Mountain Pursuit must articulate a challenge to final agency action.<sup>2</sup> Further, Mountain Pursuit is subject to the statute which bars civil actions against the United States filed beyond “six years after the right of action first accrues.” 28 U.S.C. § 2401(a).

While somewhat difficult to discern, Mountain Pursuit complains about USFS:

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<sup>2</sup> The APA defines “agency action” as “an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13). Further, to be “final,” the Court considers “whether [the action’s] impact is direct and immediate, . . . whether the action mark[s] the consummation of the agency’s decisionmaking process; and whether the action is one by which rights or obligations have been determined, or from which legal consequences will flow.” *Colo. Farm Bureau*, 220 F.3d at 1173-1174 (internal quotation marks omitted, quoting *Franklin v. Massachusetts*, 505 U.S. 788, 796-97, 112 S. Ct. 2767, 120 L. Ed. 2d 636 (1992); *Bennett v. Spear*, 520 U.S. 154, 178, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997)).

1. Planning decisions that impermissibly tier site-specific and management actions to faulty programmatic National Environmental Policy Act planning documents (Doc. 17, ¶¶ 73, 84, 89, 93, 97);
2. Refusal “to engage in site specific or supplemental planning when faced with information showing negative impacts [to WSAs] of [mechanized recreation]” (*Id.* at ¶ 74);
3. Failure “to take any management action to enforce its nondiscretionary obligations [to manage and protect the WSAs as well as assure mechanized uses occur only on designated routes]” (*Id.* at ¶¶ 75, 77, 82);
4. Recognition and designation of numerous user-created trails within the WSAs for mechanized and mountain bike uses, despite no trails being designated in 1984 (*Id.* at ¶¶ 86, 92, 94);
5. Reliance “on a 2004 Decisional Memo ... to justify a management action that grandfathered into its trail management plan an illegally built mountain bike trail within the WSAs” (*Id.* at ¶ 88);
6. Failure to consult under the Endangered Species Act (ESA) when new information reveals that planning actions have allowed increased motorized uses and impacts in the WSA (*Id.* at ¶¶ 105, 106); and
7. Failure to act on Mountain Pursuit’s 2019 request that it enforce “its nondiscretionary functions under the [Land and Resource Management Plans] . . . to limit motorized and mechanized use and intensity impacts to the wildlife and wilderness characteristics within the WSAs” (*Id.* at ¶ 107).

Relying on this numbering system, numbers 1, 4 and 5 appear to allege “actions,” while numbers 2, 3, 6 and 7 appear to allege failures to act. As to those allegations which appear to allege actions, Mountain Pursuit fails to identify beyond generalization the planning decisions, designations or management action(s) that would constitute a USFS rule, order, license, sanction, relief or equivalent from which “rights or obligations have been determined or from which legal consequences will flow.” *Colo. Farm Bureau*, 220 F.3d at 1173-1174 (citation and internal quotation marks omitted). In short, Mountain Pursuit does not identify the specific federal conduct, decision or action at issue and, because of that, it fails to explain how any of the general allegations relating to numbers 1, 4 and 5 would constitute final agency action.

Turning next to the alleged failures to act, the law is clear. It is Mountain Pursuit’s burden to identify a discrete and legally-required action that the USFS failed to take. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004). While Mountain Pursuit repeats “nondiscretionary” obligations, duties or functions, no discrete legal duty imposed on the USFS is referenced. As an example, Mountain Pursuit references 36 C.F.R. Part 261.13 and Land and Resource Management Plans as requiring motorized and mechanized uses to occur only on designated routes. (Doc. 17, ¶ 82). However, the legal reference applies to the operation of a motor vehicle by the general public, and imposes no discrete nondiscretionary obligation on the USFS.

This Court should not be left to guess as to its jurisdictional basis. Further, it is improper for Mountain Pursuit to suggest an administrative record would “help clarify the decisional documents for the parties and this Court.” (Doc. 25, p. 6). The burden to show

jurisdiction is on Mountain Pursuit. Its suggestion that we first need an administrative record not only has the cart before the horse, but it reinforces the conclusion that Mountain Pursuit cannot specifically identify a cognizable final agency action for judicial review under the APA. Without final agency action, this Court lacks jurisdiction.

IT IS THEREFORE ORDERED that Mountain Pursuit's Amended Complaint for Declaratory and Injunctive Relief is DISMISSED without prejudice.

Dated this 25th day of August, 2020.



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NANCY D. FREUDENTHAL  
UNITED STATES DISTRICT JUDGE