

Judge upholds ban on motorized travel in Badger-Two Med

By **KARL PUCKETT** • Tribune Staff Writer • January 22, 2011

U.S. District Judge Sam Haddon has upheld a decision by the U.S. Forest Service banning four-wheelers and snowmobiles in a wild island of backcountry known as the Badger-Two Medicine Area.

In a ruling filed Thursday in Great Falls, Haddon said the U.S. Forest Service's 2009 adoption of the Badger-Two Medicine Travel Plan, which included the motorized access restrictions, was not flawed, as a lawsuit to overturn it had alleged.

The lawsuit, brought by motorized-use interests, was dismissed.

Among several legal arguments Haddon rejected was that the travel plan violated the establishment clause of the First Amendment, which states "Congress shall make no law respecting an establishment of religion."

As part of its reasoning in implementing the ban, the Forest Service said motorized recreation would interfere with traditional Native American religious practices such as vision quests. Badger-Two Medicine carries cultural significance to Blackfoot tribal members.

"The result (of the travel plan) is not, as claimed by the plaintiffs, a cathedral for the Blackfoot religion," Haddon wrote. "Rather, any individual, regardless of religion, may access Badger-Two Medicine by motorized (albeit limited) and non-motorized means.

"The decision is devoid of any informed and reasonable perception that it endorses religion," he wrote.

The U.S. Forest Service based its decision to restrict motorized use on a number of "secular" purposes, too, Haddon noted, including protecting water and soil quality, as well as habitat for wildlife and fish.

The new travel plan went into effect on Oct. 1.

It limited access by wheeled motor vehicles to all but 8 miles and banned snowmobiles. Haddon's decision keeps those restrictions in place.

"I think the decision is a good one for the health of the land and wildlife habitat in the Badger-Two Medicine country," said Gene Sentez of Choteau, a member of the Montana Wilderness Society, which intervened on the side of the Forest Service.

Sentez, who works for outfitters, said Badger-Two Medicine is so wild that sometimes clients mistakenly think they are in the Bob Marshall Wilderness.

All-terrain vehicle use in Badger-Two Medicine "snuck up" on the Forest Service, Sentez said.

"Now it's quiet again, and it's back like it was 25 to 30 years ago," he said.

Badger-Two Medicine is located in the northern third of the forest's Rocky Mountain Ranger District and is surrounded by the Bob Marshall Wilderness, Glacier National Park and the Blackfoot Indian Reservation.

Up until the ban, it was a favorite destination of both drivers of four-wheelers and snowmobiles, as well as Montanans favoring quieter recreation.

Fred Hodgeboom, president of Montanans for Multiple Use, one of the plaintiffs in the lawsuit, said he was disappointed in the ruling.

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public lands for multiple-use purposes," he said. "What we're seeing is a gradual, incremental and cumulative shutdown of our national forest to the average citizen who needs motorized access."

Dave Cunningham, a spokesman for the Lewis and Clark National Forest, said 700 miles of motorized trail remain open elsewhere on the forest, while 400,000 acres are open to snowmobiles.

"We're glad to have moved through this part of the process," Cunningham said of the decision.

Kyle Nelson, an attorney in Bozeman representing the plaintiffs, said he needed to study the opinion more and talk with his clients before deciding whether to appeal.

Clifford and Julie Fortune, Theo P. and Dianna Crawford, Arley Jolliffe, DeWayne Blackman, Larry Brown, the Montana Trail Vehicle Riders Association, the Capital Trail Vehicle Riders Association and Montanans for Multiple Use were the plaintiffs in the lawsuit.

"We still want to get a better understanding what the opinion is saying other than, 'We lose,'" Nelson said.

The 9th U.S. Circuit Court of Appeals would handle any appeal.

In his ruling Haddon also rejected arguments that the travel plan violated federal laws by not providing balanced opportunities for motorized and nonmotorized groups and failing to perform an analysis of the economic and social impacts of the ban as well as its cumulative affects on motorized recreation.

"It feels like hope," Kendall Flint, a physician from East Glacier who lives in the Badger-Two Medicine Area, said of Haddon's ruling.

He described the decision as a pause in "the unstoppable movement" of roads and development into wild country.

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A district judge rejected a suit that sought to overturn the Forest Service's travel plan for the Badger-Two Medicine Area. The suit alleged that the plan violated the First Amendment.(FOREST SERVICE PHOTO)

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