

The Following document is an Affidavit from Robert Dennee, the Lands Program Manager for the Gallatin National Forest in 2007. In the affidavit, Dennee discusses FS historic roads and trails, specifically the Porcupine-Lowline trail, which I did some documentation on with Brad Wilson, [in a previous newsletter](#).

"In situations where continued use of a historical road or trail access route is challenged or closed, Forest Service direction and policy is also to take actions necessary to protect the existing rights to NFS lands.

The Porcupine - Lowline trail system, including Trails #195, #258, #267 and #272, is located on the southwest side of the Crazy Mountains. This system of existing historic trails crosses intermingled private and NFS lands and it continues to provide needed access to NFS lands for public recreation and for administrative purposes."

Dennee then goes on to address the need to perfect the trail access rights and specifically addresses another of the access obstructing landowners involved with the letters to Daines, Perdue, Tidwell, Marten and Erickson - that of Ned Zimmerman. Dennee states they began trying to work with Guth Zimmerman and Ned Zimmerman in 2004. That was 13 years ago.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

MONTANA WILDERNESS ASSOCIATION, et al.,)	CV 07-39-M-DWM
)	
Plaintiffs)	
)	
vs.)	
)	
TOM TIDWELL, et al.,)	
)	
Defendants)	DECLARATION OF ROBERT DENNEE
)	
and)	
)	
TREASURE STATE ALLIANCE, et al.)	
)	
Defendant-Intervenors.)	
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CITIZENS FOR BALANCED USE, et al.,)	CV 07-59-BLG-DWM
)	
Plaintiffs,)	
)	
vs.)	
)	
REBECCA HEATH, et al.,)	
)	
Defendants.)	
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I, ROBERT DENNEE, in accordance with the requirements of 28 U.S.C. section 1746 declare:

1. I am employed by the United States Department of Agriculture, Forest Service as the Lands Program Manager for the Gallatin National Forest. I have been employed in that position since 1992. I also participated in preparing the Gallatin

National Forest Travel Management Plan and associated Environmental Impact

Statement. My responsibilities in this effort included:

(a) I participated in preparing the **“FOREST-WIDE GOALS, OBJECTIVES, STANDARDS AND GUIDELINES”**, in particular GOAL B- Access, and Objectives B-1 through B-9, which contain direction and guidance for providing and maintaining reasonable, legal access to National Forest System (NFS) lands. Detailed Description of the Decision at I-3 – I-10 (Excerpts attached as Appendix A to this Declaration).

(b) I participated in preparing the **“Forest Access Objectives”** and **“Description of Access Needs,”** Detailed Description of the Decision at I-4 – I-8 (Excerpts attached as Appendix A to this Declaration), which lists, displays and describes geographic locations where additional road, trail and trailhead access rights (both public and administrative) to certain NFS lands are needed;

(c) I prepared a comprehensive overview (‘white paper’) that describes the Land Ownership Adjustment Program on the Gallatin National Forest (Excerpts attached as Appendix B to this Declaration);

(d) I prepared a “briefing paper” discussing the fact that Forest Service travel management decisions and restrictions are subject to valid rights and privileges held by private landowners and other authorized parties to use certain NFS roads and trails, for which general public use may be restricted in the travel management process (Excerpts attached as Appendix C to this Declaration);

2. Some of the NFS roads and trails on the Gallatin National Forest (and on the National Forests throughout the western United States) were established in the late 1800s and early 1900s. Since that time, these historic roads and trails have been maintained,

signed, managed and used for Forest Service management purposes and public recreational activities.

3. A portion of this existing road and trail system crosses intermingled private lands. In many cases, these roads and trails provide the only access to adjoining federal lands. Only a portion of the existing roads, and relatively few of the existing trails crossing private lands are covered by recorded easements.

4. It is the Forest Service position that the United States, on behalf of the public, has an easement interest in these roads and trails due to the historic and ongoing public and administrative use and maintenance. The public is the beneficiary of this right of access and the Forest Service defends and maintains that right.

5. The Forest Service continues to work with landowners, public interest groups, local, state and tribal governments, and other Federal agencies to address concerns with public use of roads and trails across private lands.

6. Forest Service direction and policy is to acquire perpetual road and trail easements across non-NFS lands needed to assure adequate management and protection of National Forest resources and values. Federal Land Policy and Management Act of October 21, 1976, Section 205 (43 U.S.C. § 1715); 36 C.F.R. Pt. 212; Forest Service Manual 5460 – Rights-of-Way Acquisition.)

7. In situations where continued use of a historical road or trail access route is challenged or closed, Forest Service direction and policy is also to take actions necessary to protect the existing access rights to NFS lands.

8. The Porcupine - Lowline trail system, including Trails #195, #258, #267 and #272, is located on the southwest side of the Crazy Mountains. This system of existing

historic trails crosses intermingled private and NFS lands and it continues to provide needed access to NFS lands for public recreation and for administrative purposes.

9. In the Gallatin National Forest's Motor Vehicle Use Map, the Forest Service has chosen to identify the Porcupine – Lowline trail system, as well as several other trail systems crossing private lands, because the Forest Service believes the United States has an "easement interest" in this trail system, and the Forest Service has a responsibility to manage this trail system under the Forest's Travel Management Plan.

10. The Forest Service recognizes that easement rights have not been "perfected" on certain portions of the Porcupine – Lowline Trail system, as well as other trail systems crossing private lands. For that reason, the Forest's Travel Management Plan, "Table I-3, Forest Access Objectives", identifies the need to perfect trail access rights across private lands for the Porcupine – Lowline trail system. See Detailed Description of the Decision at I-4, Ibex TPA - Crazy Mountains (Excerpts attached as Appendix A to this Declaration). Perfection could take many forms from quieting title to a pre-existing easement to a new grant to document the historic public use.

11. During recent years (2004 through 2007), the Forest Service (Gallatin National Forest) has made a concerted effort to work cooperatively with the Guths, Zimmermans and other private landowners in the southwest portion of the Crazy Mountains, to address their concerns about the location and public use of the Porcupine – Lowline Trail system across private lands. Forest Service representatives met with landowners Chloris Guth Zimmerman and Ned Zimmerman in 2004 and in 2005, and offered to explore relocation of portions of this trail system to address landowner concerns. In July 2006, the Forest Service scheduled a meeting on site with Ned

Zimmerman to look at potential relocation of the trail system. However, Mr. Zimmerman notified the District Ranger that he was busy with haying and was not available to meet at that time, and he has not contacted the Forest Service to reschedule the meeting.

12. Landowners Chloris Guth Zimmerman and Ned Zimmerman appealed the Decision for the Forest Travel Management Plan (appeal # 07-01-00-0126).

13. In an Appeal Resolution Meeting on February 2007, Deputy Forest Supervisor John Allen, Livingston District Ranger Ron Archuleta, and I met with Chloris Zimmerman, Ned Zimmerman, and attorney Paige Dringman. The Forest Service acknowledged and agreed that the Forest Travel Plan, in and of itself, does not establish nor perfect access rights. The parties mutually agreed that further discussion would be productive toward resolving the appeal and the landowner concerns about the Porcupine – Lowline trail system.

14. As stated repeatedly, the Forest Service remains sincerely interested in working with the Zimmermans and other landowners to address their concerns and to explore solutions, including trail relocation.

Pursuant to the provisions of 28 U.S.C. Sec. 1746 I declare under penalty of perjury that the foregoing is true and correct.

November 16, 2007


ROBERT DENNEE
Gallatin National Forest
Lands Program Manager