



March 15, 2016

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Submitted online.

Re: Pre-Scoping Comments on Inyo National Forest Over-Snow Vehicle Use Designation

Dear Erin and the OSV planning team,

Thank you for the opportunity to provide pre-scoping comments on the Inyo's Over-Snow Vehicle planning process and your consideration of our comments. Winter Wildlands Alliance (WWA) is a Boise, Idaho-based nonprofit national advocacy organization representing the interests of human-powered winter recreationists across the U.S. Our mission is to promote and preserve winter wildlands and a quality human-powered snowsports experience on public lands. WWA represents over 50,000 members and 40 grassroots partner organizations in 11 states, including organizations involved in Inyo travel planning: Friends of the Inyo, Friends of the Eastern Sierra Avalanche Center, and Snowlands Network. Many of WWA's members use the Inyo National Forest for Nordic and backcountry skiing, snowshoeing, climbing, mountaineering, and winter hiking.

Winter Wildlands Alliance has a vested interest in winter travel planning and is participating in travel planning efforts throughout California and the West. Due to our involvement in a number of winter travel planning processes, we can bring lessons learned from other planning efforts to the Inyo. These lessons learned can, in turn, help the Inyo to avoid pitfalls that we have seen in other planning efforts. One such pitfall is the trend we have seen in forests releasing detailed proposed actions at the start of the scoping period. When the Forest Service publishes a detailed proposed action the public views it as a draft plan and this can prejudice their comments and the entire process.

The scoping period should be an opportunity to solicit public comment and gather information to inform a range of alternatives, without the undue influence of a detailed proposed action. Rather than describing a detailed management plan, the proposed action should explain the Over-Snow Vehicle Rule and subpart C requirements and lay the groundwork for public understanding of the process. Given that the OSV Rule is so new and because it will bring a significant management change, it is vital the public understand the legal and procedural sideboards within which winter travel planning will occur. The Proposed Action can explain the decision-making process and begin a public conversation about winter travel management on the Inyo National Forest.



I. Over-Snow Vehicle Rule Background

In response to the growing use of dirt bikes, snowmobiles, all-terrain vehicles, and other off-road vehicles (ORVs) and corresponding environmental damage and conflicts with non-motorized users, Presidents Nixon and Carter issued Executive Orders 11644 and 11989 in 1972 and 1977, respectively. The executive orders require federal land management agencies to plan for ORV use to protect other resources and recreational uses. Specifically, the executive orders require that, when designating areas or trails available for ORV use, the agencies locate them to:

- (1) minimize damage to soil, watershed, vegetation, and other resources of the public lands;
- (2) minimize harassment of wildlife or significant disruption of wildlife habitats; and
- (3) minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands.¹

Thirty-three years after President Nixon issued Executive Order 11644, the Bush Administration – citing unmanaged recreation as one of the top four threats facing the national forests – published the Travel Management Rule in 2005. The rule codified the executive order “minimization criteria,” but it specifically exempted OSVs from the mandatory requirement to designate areas and trails in accordance with the criteria.² Winter Wildlands Alliance successfully challenged the exemption in federal court. In the resulting 2013 decision the court determined that subpart C of the rule violated the mandatory executive order requirement that the Forest Service designate a system of areas and routes – *based on the minimization criteria* – where OSVs are permitted.³ The court directed the agency to issue a new rule consistent with the executive orders. The Forest Service finalized the revised subpart C in January of 2015.

The new rule requires each national forest unit with adequate snowfall designate and display on an OSV use map a system of areas and routes where OSVs are permitted to travel; OSV use outside the designated system is prohibited.⁴ Thus, rather than allowing OSV use largely by default wherever that use is not specifically prohibited, the rule changes the paradigm to a “closed unless designated open” management regime. Forests must apply and implement the minimization criteria when designating each area and trail where OSV use is permitted.⁵ Any areas where cross-country OSV use is permitted must be “discrete, specifically delineated space[s] that [are] smaller . . . than a Ranger District” and located to *minimize* resource damage and conflicts with other recreational uses.⁶

¹ Exec. Order No. 11644, § 3(a), 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended by* Exec. Order No. 11,989,

² 36 C.F.R. §§ 212.51(a)(3), 212.55(b).

³ *Winter Wildlands Alliance v. U.S. Forest Service*, No. 1:11-CV-586-REB, 2013 U.S. Dist. LEXIS 47728, at *27-36 (D. Idaho Mar. 28, 2013) (explaining that OSV “designations *must* be made and they *must* be based on the [minimization] criteria”) (emphasis in original).

⁴ 36 C.F.R. §§ 212.81, 261.14.

⁵ 36 C.F.R. §§ 212.81(d), 212.55(b).

⁶ 36 C.F.R. §§ 212.1, 212.81(d), 212.55(b).



To satisfy the Forest Service's obligation under the executive orders, the agency must apply a transparent and common-sense methodology for meaningful application of each minimization criterion to each area and trail.⁷ That methodology should, at a minimum: provide opportunities for public participation early in the process;⁸ incorporate site-specific data, the best available scientific information, and best management practices;⁹ account for site-specific and larger-scale impacts;¹⁰ account for projected climate change impacts, including reduced and less-reliable snowpack and increased vulnerability of wildlife and resources to OSV impacts;¹¹ and account for available resources for monitoring and enforcement.¹²

The new OSV rule requires the agency to "designate" specific areas and routes for OSV use, and prohibits OSV use outside of the designated system.¹³ In other words, subpart C requires forests to make OSV designations under a consistent "closed unless designated open" approach and not to designate areas as open essentially by default.¹⁴ Consistent with the closed-unless-designated-open approach, subpart C requires that any areas designated for cross-country OSV

⁷ *Idaho Conservation League*, 766 F. Supp. 2d at 1071-74 (agency may not rely on "Route Designation Matrices" that fail to show if or how the agency selected routes with the objective of minimizing their impacts).

⁸ 36 C.F.R. § 212.52(a).

⁹ *Idaho Conservation League*, 766 F. Supp. 2d at 1074-77 (agency failed to utilize monitoring and other site-specific data showing resource damage); *Friends of the Clearwater*, 2015 U.S. Dist. LEXIS 30671, at *24-30, 40-52 (agency failed to consider best available science on impacts of motorized routes on elk habitat effectiveness or to select routes with the objective of minimizing impacts to that habitat and other forest resources); see also Winter Wildlands Alliance, *Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management* (Dec. 2014), available at <http://winterwildlands.org/wp-content/uploads/2015/02/BMP-Report.pdf> and attached as Appendix #1 (BMPs provide guidelines, based on peer-reviewed science, for OSV designation decisions that are intended to minimize conflicts with other winter recreational uses and impacts to wildlife, water quality, soils, and vegetation).

¹⁰ *Idaho Conservation League*, 766 F. Supp. 2d at 1066-68, 1074-77 (invalidating travel plan that failed to consider aggregate impacts of short motorized routes on wilderness values or site-specific erosion and other impacts of particular routes).

¹¹ 77 Fed. Reg. 77,801, 77,828-29 (Dec. 24, 2014) (Council on Environmental Quality's revised draft guidance recognizing increased vulnerability of resources due to climate change and that "[s]uch considerations are squarely within the realm of NEPA, informing decisions on whether to proceed with and how to design the proposed action so as to minimize impacts on the environment").

¹² *Sierra Club v. U.S. Forest Serv.*, 857 F. Supp. 2d 1167, 1176-78 (D. Utah 2012) (NEPA requires an agency to take a hard look at the impacts of illegal motorized use on forest resources and the likelihood of illegal use continuing under each alternative).

¹³ See 36 C.F.R. §§ 212.80(a), 212.81(a), 261.14.

¹⁴ While the draft rule would have permitted OSV use to be "designated as allowed, restricted, or prohibited," the Forest Service subsequently determined that this would have permitted inconsistent management approaches, with corresponding confusion among users and enforcement difficulties. The agency abandoned that approach in the final rule, explaining that "it would be clearer for the public and would enhance consistency in travel management planning and decision-making if the Responsible Official were required to designate a system of routes and areas where OSV use is prohibited unless allowed" (i.e., marked open on a map). 80 Fed. Reg. 4500, 4507 (Jan. 28, 2015).



use be “discrete,” “specifically delineated,” and “smaller . . . than a ranger district.”¹⁵ Accordingly, the Forest Service may not adopt decisions that fail to specifically delineate discrete areas where cross-country travel is permitted.

In the Environmental Impact Statement for the winter travel plan the Forest Service must describe how each designated area and trail has been located to comply with the minimization criteria and this analysis must be performed at a granular level. The Executive Orders direct the Forest Service to establish “rules requiring application of minimization criteria ‘for designation of the *specific areas* and trails on public lands on which the use of off-road vehicles may be permitted.’”¹⁶ In a recent Ninth Circuit court case, *WildEarth Guardians vs. U.S. Forest Service*¹⁷, the court explained that the Travel Management Rule “requires the Forest Service to apply the minimization criteria to *each area* it designated for snowmobile use” to “provide a more granular minimization analysis to fulfill the objectives of Executive Order 11644.”¹⁸ The court was very clear on this point, stating there is “nothing . . . that allows the Forest Service to designate multiple areas for snowmobile use on the basis of a single forest-wide analysis and general decision making principles.”¹⁹

II. Winter Travel Planning Best Management Practices

Both the Forest Service and Winter Wildlands Alliance have published Best Management Practices to guide winter travel management planning. The Forest Service’s 2012 Best Management Practices for Water Quality Management on National Forest System Lands addresses ways in which forests should manage off-road vehicles, including over-snow vehicles, to protect water resources. This document calls for forests to institute minimum snow depths, stating that forests should “Specify the minimum snow depth for each type or class of over-snow vehicle to protect underlying resources as part of any restrictions or prohibitions on over-snow use.”²⁰ Defining a minimum snow depth will also help the winter travel plan be adaptive in the face of climate change. The snow season is changing and having flexibility built into the plan is key for ensuring that the impact of winter motorized use is minimized regardless of when that use occurs.

In order to protect fragile soils, alpine environments, and vegetation, the Inyo should establish a minimum snow depth of 12 inches for grooming roads and 18 inches for cross-country travel.²¹ This minimum snow depth is in line with what the Inyo, Sierra, and Sequoia have proposed as

¹⁵ 36 C.F.R. § 212.1 (definition of “area”). Proper application and implementation of the executive order minimization criteria almost certainly would not result in designation of open areas even close to the size of a ranger district.

¹⁶ Exec. Or. No. 11644, § 3 (emphasis added)

¹⁷ *WildEarth Guardians*, 790 F.3d at 930

¹⁸ 790 F.3d at 930 (emphasis in original)

¹⁹ *Id.*

²⁰ USFS 2012. *National Best Management Practices for Water Quality Management on National Forest System Lands. Volume 1: National Core BMP Technical Guide. Rec. 7 –Over-Snow Vehicle Use.* Available at http://www.fs.fed.us/biology/resources/pubs/watershed/FS_National_Core_BMPs_April2012.pdf

²¹ See Winter Wildlands Alliance Best Management Practices, <http://winterwildlands.org/wp-content/uploads/2015/02/BMP-Report.pdf>



part of the Forest Plan revision.²² Minimum snow depths can be determined and enforced in a number of ways. We suggest that the Inyo follow the example of other national forests with minimum snow depth requirements. On these forests official snow depth measurements are taken by USFS personnel until the snowpack is at sufficient depth. Measurements are available at District offices and it is the user's responsibility to check and see whether the snow is deep enough to allow OSV use. On forests where the snow pack varies throughout the winter season additional measurements should occur as conditions warrant.²³

The Forest Service BMPs also recommend setting seasonal "bookends" before and after which OSV use is not allowed. The BMPs state: "Specify season of use to be at times when the snowpack is expected to be of suitable depth conditions."²⁴ Having set dates for the winter season allows the forest to more effectively enforce the travel plan.

Winter Wildlands Alliance has published a more comprehensive set of Best Management Practices that address more than just water quality. The attached document, *Best Management Practices for Winter Travel Management*, provides many management tools to help minimize or mitigate OSV impacts to other uses, wildlife, and the environment. This document also provides ideas for monitoring, adaptive management, and enforcement of winter travel plans. In addition to attaching this document, we wanted to highlight some best management practices in this letter.

As you are no doubt aware, enforcement is the key to any successful management or travel plan. Therefore, it's important to designate OSV routes and areas that are within the agency's enforcement capabilities. One way to do this is to utilize clear boundaries such as ridgelines, roads, and rivers when defining areas open to OSV use. Clear boundaries help users understand where they are allowed to go and complement mapping efforts. In addition, topographical features can help to buffer acoustic impacts from OSVs on wildlife or non-motorized visitors.

Many people visit the Inyo in the winter with the expectation that they will experience silence or natural soundscapes, and it is important that this opportunity be afforded to those who cannot travel deep into the Wilderness. In order to ensure that there are places on the landscape where both people and wildlife can escape the sound of snowmobiles it is important for the Forest Service to consider how sound travels when designating motorized and non-motorized areas. Many of the terrain features that lend themselves to natural boundaries, such as ridgelines and rivers, can also help to buffer noise. By using these types of terrain features to demarcate motorized and non-motorized areas the Forest Service will be able to better enforce travel regulations and non-motorized areas will be quieter.

²² Sierra, Sequoia, and Inyo National Forests, *Detailed Proposed Action*, p. 56 (Aug. 2014), available at http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/3403_FSPLT3_2325964.pdf

²³ See for example, Tongass NF MVUMs: <http://www.fs.usda.gov/detail/tongass/maps-pubs/?cid=stelprdb5430063>. Emergency closures due to low snow conditions can be communicated via online media channels, as with this example from the Chugach NF: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5441982.pdf

²⁴ *Id.*



Due to concerns with air pollution, particularly at OSV staging areas or where OSV use is concentrated, we recommend separating motorized and non-motorized winter recreationists to the extent possible. Separate parking areas for motorized and non-motorized users will help skiers and snowshoers limit their exposure to snowmobile exhaust. Separating parking areas will also help to relieve congestion as snowmobile trailers take up considerably more space than passenger cars and trucks, often leaving little or no room for non-motorized users to park at trailheads. Designating trails for non-motorized use gives skiers, snowshoers and other non-motorized users the option to avoid snowmobile exhaust and other issues that cause conflict between non-motorized and motorized winter trail users.

We recommend designating OSV areas with limited access points so that it is easier for the Forest Service to monitor use and interact with visitors. This concept was best described by a snow ranger on the White River National Forest, who likened an ideal OSV area to a hand. You want the access point to be at the “wrist” versus having five different access points at each “finger”. This approach results in the same acreage available for OSV use but it is much easier for the Forest Service to monitor visitation and enforce seasonal or snow depth closures.

III. Forest Plan Revision

The fact that the Inyo is simultaneously revising its Forest Plan and writing a winter travel management plan presents unique challenges. Forest planning is a large-scale decision making process in which general areas of the forest are deemed suitable or not suitable for certain activities with the understanding that future NEPA analysis is needed to make further management designations for specific areas. Travel planning, meanwhile, is a site-specific process through which specific trails and areas are designated for motorized use. These trails and must be within the motorized allocations that are defined in the Forest Plan. It may be difficult to determine where to locate specific routes and areas for OSV use when the Forest Service is also determining which general areas of the forest will be available for motorized use in the first place.

The forest plan revision process is the proper avenue for determining the management of roadless conservation areas as well as areas under consideration for recommended wilderness, eligible Wild and Scenic Rivers, or similar protective designations. We want to ensure that these protective designations are not precluded because of OSV designations. Likewise, it is important that the Forest Service consider how plan components for threatened species management could possibly be influenced by OSV planning and ensure that travel planning designations are not at odds with conservation plans or other species management plans. It is difficult to make this happen when the planning processes overlap.

The Inyo National Forest has an opportunity to create a winter travel management plan that balances all forms of winter recreation – from snowmobiling to backcountry skiing, cross-country skiing, snowshoeing and other non-motorized uses – and it is important that the Forest Service consider motorized designations within the larger context of other management goals and obligations. This should not be a planning process that focusses solely on OSVs but rather one that considers how to balance OSV recreation with human-powered winter recreation, wildlife conservation, and natural resource protections. We look forward to working with you



and other stakeholders to create a robust and sustainable winter travel management plan that fits within the revised forest plan.

Sincerely,

A handwritten signature in dark ink, appearing to read "David Page", is written over a light blue circular background.

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