



September 22, 2015

Joe Alexander
Shoshone National Forest
808 Meadow Lane Avenue
Cody, WY 82414

Cc: Olga Troxel, Rob Robertson

Dear Mr. Alexander,

Please accept these comments on behalf of Winter Wildlands Alliance (WWA), the Togwotee Pass Backcountry Alliance, and The Wilderness Society. 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 the Togwotee Pass Backcountry Alliance and Wyoming Wilderness Association in Wyoming. Many of WWA's members use the Shoshone National Forest (SNF) for Nordic and backcountry skiing, snowshoeing and winter hiking.

The Togwotee Pass Backcountry Alliance (TPBA) represents backcountry skiers in Fremont and Teton counties in Wyoming. TPBA advocates for human-powered winter recreation opportunities on Togwotee Pass and TPBA members are frequent visitors to the Shoshone National Forest.

The Wilderness Society (TWS) is a national non-profit organization established in 1935 to "protect wilderness and inspire Americans to care for our wild places." With over 500,000 members and supporters today, TWS prides itself as being the nation's preeminent organization focused on the protection of wildlands and stewardship of the national wilderness system. Our Northern Rockies regional efforts include a Greater Yellowstone Ecosystem program with an office located in Jackson.

TWS is committed to maintaining protections for non-motorized areas defined under the recently approved revised forest plan. As part of this, we have significant interest in over snow vehicle (OSV) travel planning and feel very strongly that a strong compliant OSV plan will complement the new Forest Plan. Consequently, we both concur and support the comments presented in this letter.

We are pleased to see that the Shoshone is collecting public input prior to developing a proposed action for travel management planning. By doing so before officially beginning the NEPA process we hope that the Forest will be able to identify all of the issues at stake and address them in the proposed action. One such issue that is of particular concern to us, which has not received much attention thus far, is the winter side of the travel plan. Over-snow vehicle (OSV) management is an issue of great importance to us and our



members. Unfortunately Winter Wildlands Alliance is unable to attend any of the three travel planning workshops this month. Please accept this letter in lieu of a presentation or comments at one of these workshops. We are looking forward to attending the winter use workshop scheduled for December.

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

¹ Exec. Order No. 11644, § 3(a), 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended by* Exec. Order No. 11,989, 42 Fed. Reg. 26,959 (May 24, 1977).

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.



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

Upon public notice, subpart C permits the Forest Service to grandfather previous decisions made with public involvement that restrict OSV use to designated areas and routes.⁷ Prior to grandfathering existing winter travel management decisions by adopting them on an OSV use map, however, the Forest Service must ensure that those decisions were subject to the executive order minimization criteria and other relevant legal requirements.

Prior to adopting any previous decisions, the Forest Service must ensure that those decisions satisfy the agency’s executive order obligation to locate designated areas and trails to minimize resource damage and conflicts with other recreational uses. In other words, the administrative records for the previous decisions must demonstrate that the agency applied and implemented the minimization criteria when making the designation decisions that would be grandfathered. As the federal court that overturned the previous subpart C made clear, “the Executive Order requires the Forest Service to ensure that *all* forest lands are designated for *all* off-road vehicles” and that all designations are based on application of the minimization criteria.⁸ If previous decisions were not subject to the minimization criteria, the Forest Service may not adopt them on an OSV use map.⁹

In assessing whether previous decisions comply with the executive order minimization criteria, the Forest Service must account for the growing body of case law confirming the substantive nature of the agency’s obligation to meaningfully apply and implement – not just identify or consider – the minimization criteria when designating *each* area and trail, and to show in the administrative record how it did so.¹⁰ Though it has been over four

⁵ 36 C.F.R. §§ 212.81(d), 212.55(b).

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

⁷ 36 C.F.R. § 212.81(b).

⁸ *Winter Wildlands Alliance*, 2013 U.S. Dist. LEXIS 47728, at *32.

⁹ The language of the grandfathering provision does not explicitly require that previous OSV decisions have been subject to the minimization criteria. See 36 C.F.R. § 212.81(b). To the extent the agency interprets the provision to permit adoption of OSV designations that did not apply and implement minimization criteria, the rule itself violates Executive Orders 11644 and 11989 and is facially invalid. See *Winter Wildlands Alliance*, 2013 U.S. Dist. LEXIS 47728, at *32.

¹⁰ An April 17, 2015 memorandum from the Forest Service Washington Office to regional foresters and other agency staff suggests that subpart C simply requires forests to “consider non-motorized users and protection of natural resources” when designating areas and trails for OSV use. That direction is clearly inadequate to satisfy the agency’s obligation under the executive order minimization criteria. As explained below, federal courts including the Ninth Circuit Court of Appeals have repeatedly affirmed the substantive nature of the agency’s obligation to meaningfully apply and implement the criteria. The agency also must be cautious to avoid certain pitfalls. For example, efforts to *mitigate* impacts associated with a designated OSV system are insufficient to fully satisfy the duty to *minimize* impacts, as specified in the executive orders. See Exec. Order 11644, § 3(a) (“Areas and trails shall be *located* to minimize” impacts and conflicts.). Thus, application of the minimization criteria should be approached in two steps:



decades since President Nixon first obligated the Forest Service to minimize impacts associated with off-road vehicle use, including OSVs, the agency has systematically failed to do so. This has led to a string of federal court cases invalidating Forest Service travel management decisions.¹¹ Most recently, the Ninth Circuit Court of Appeals invalidated the decision to allocate approximately 60% of the Beaverhead-Deerlodge National Forest to cross-country OSV use where the record failed to show that the agency applied and implemented the minimization criteria when making those area designations: “[w]hat is required is that the Forest Service document how it evaluated and applied [relevant] data on an area-by-area [or route-by-route] basis with the objective of minimizing impacts.”¹² Although the Ninth Circuit does not include Wyoming, this ruling is the clearest direction the Forest Service has received to date regarding the minimization criteria and we believe it would be prudent for all forests, regardless of location, to take note of this ruling.

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.¹³ That methodology should, at a minimum: provide opportunities for public participation early in the process;¹⁴ incorporate site-specific data, the best available scientific information, and best management practices;¹⁵

first, the agency locates areas and routes to minimize impacts, and second, the agency establishes site-specific management actions to further reduce impacts. Similarly, the Forest Service may not rely on compliance with the relevant forest plan as a proxy for application of the minimization criteria because doing so conflates separate and distinct legal obligations. See *Friends of the Clearwater v. U.S. Forest Service*, No. 3:13-CV-00515-EJL, 2015 U.S. Dist. LEXIS 30671, at *46 (D. Idaho Mar. 11, 2015) (“Merely concluding that the proposed action is consistent with the Forest Plan does not . . . satisfy the requirement that the Forest Service provide some explanation or analysis showing that it considered the minimizing criteria and took some action to minimize environmental damage when designating routes.”).

¹¹ See *WildEarth Guardians v. U.S. Forest Serv.*, 790 F.3d 920, 929-32 (9th Cir. 2015); *Friends of the Clearwater*, 2015 U.S. Dist. LEXIS 30671, at *37-52; *The Wilderness Soc’y v. U.S. Forest Serv.*, No. CV08-363-E-EJL, 2013 U.S. Dist. LEXIS 153036, at *22-32 (D. Idaho Oct. 22, 2013); *Cent. Sierra Envtl. Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1094-98 (E.D. Cal. 2013); *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1071-74 (D. Idaho 2011).

¹² *WildEarth Guardians*, 790 F.3d at 931; see also *id.* at 932 (“consideration” of the minimization criteria is insufficient; rather, the agency “must apply the data it has compiled to show how it designed the areas open to snowmobile use “with the objective of minimizing” impacts).

¹³ *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).

¹⁴ 36 C.F.R. § 212.52(a).

¹⁵ *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



account for site-specific and larger-scale impacts;¹⁶ account for projected climate change impacts, including reduced and less-reliable snowpack and increased vulnerability of wildlife and resources to OSV impacts;¹⁷ and account for available resources for monitoring and enforcement.¹⁸

In assessing whether previous decisions satisfy the minimization criteria and other relevant legal obligations, the Forest Service must ensure that those decisions reflect current circumstances and information. Older decisions generally do not account for the increased speed, power, and other capabilities of current OSV technology, which allow OSVs to travel further and faster into the backcountry and to access more remote areas. Older decisions also may not account for new scientific information on sensitive wildlife and other forest resources and how they are affected by OSV use. They may not account for current recreational use trends, including conflicts between motorized and non-motorized winter backcountry users, known trespass or incursions into wilderness and other restricted areas, and increased noise or air quality concerns in high-use areas. And they may not account for the current and predicted impacts of climate change, which, among other things, is reducing and altering snowpack and increasing the vulnerability of wildlife and other resources to OSV-related impacts.¹⁹ Reliance on previous OSV designations allows the agency to ignore current circumstances and the latest science, precluding the ability to minimize impacts.²⁰

decisions that are intended to minimize conflicts with other winter recreational uses and impacts to wildlife, water quality, soils, and vegetation).

¹⁶ *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).

¹⁷ 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").

¹⁸ *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).

¹⁹ See, e.g., Winter Wildlands Alliance, *Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management*, at 4-5, 10, 13 (Dec. 2014), available at <http://winterwildlands.org/wp-content/uploads/2015/02/BMP-Report.pdf> and attached in Appendix #1.

²⁰ For example, a federal court recently invalidated the Clearwater National Forest's decision to designate ORV routes in important elk habitat where the agency relied on decades-old science addressing the impacts of road density on elk and elk habitat and ignored more modern information on the impacts of both roads and motorized trails. *Friends of the Clearwater*, 2015 U.S. Dist. LEXIS 30671, at *25-30, 50. The court reasoned that the agency's approach would "allow analysis and reasoning to be made in a time-warp as if nothing has changed since 1987." *Id.* at *29. See also Exec. Order No. 11644, § 8(a) (agencies "shall from time to time amend or rescind designations of areas or other actions taken pursuant to this order as necessary to further the policy of this order").



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.²¹ 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.²² Consistent with the closed unless designated open approach, subpart C requires that any areas designated for cross-country OSV use be “discrete,” “specifically delineated,” and “smaller . . . than a ranger district.”²³ Accordingly, the Forest Service may not adopt decisions that fail to specifically delineate discrete areas where cross-country travel is permitted.

II. Forest Plan Use Allocations Do Not Satisfy the Requirements of the OSV Rule

We appreciate that the Shoshone National Forest allocated areas where winter use is allowed in its recently revised Forest Plan. However, these allocations are not a substitute for the area designations that result from winter travel planning. Indeed, relying on forest plan winter motorized use allocations rather than applying the minimization criteria to determine OSV use area designations was at the heart of the case (*WildEarth Guardians vs. USFS*) that the 9th Circuit Court recently ruled on²⁴. It is imperative that the Shoshone go one step further in determining where OSV use is to be permitted on the Forest.

Forest plans are programmatic in nature and do not meet National Environmental Policy Act (NEPA) obligations to take a hard look at the site-specific impacts of motorized route and area designations. Travel planning is a site-specific process through which specific trails and areas are designated for motorized use. 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. For example, although many places on the Forest are allocated for summer motorized use, the specific routes and play areas where wheeled motorized use can occur will be determined during a travel planning. Likewise, although the forest plan allocates places on the Forest as suitable for OSV use, specific area designations must be made during travel planning.

²¹ See 36 C.F.R. §§ 212.80(a), 212.81(a), 261.14.

²² 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).

²³ 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.

²⁴ *WildEarth Guardians v. U.S. Forest Serv.*, 790 F.3d 920, 929-32 (9th Cir. 2015)



The Forest Plan has built a good foundation for over-snow vehicle travel planning but we expect to see additional analysis and more refined OSV area designations during this travel planning process. While the Final Environmental Impact Statement that accompanies the Forest Plan makes note of Executive Order 11644 in relation to roads, there is no mention in the FEIS that this order also applies to OSV areas or trails.²⁵ Likewise, there does not appear to be any indication in the FEIS that the Forest Plan land allocations for winter motorized use were based on the minimization criteria.

To satisfy legal requirements of the OSV Rule during this travel planning process the Forest Service must look closely at the lands allocated for winter motorized use and designate discrete, delineated OSV use areas where OSV impacts on the environment, natural resources, and other uses are minimized. Open areas should have easily enforceable boundaries using topographic or geographic features such as a ridgetop, highway, or watershed boundaries. All other areas that are not determined to be appropriate for open designation must be closed (or limited to designated routes).

III. Winter Travel Planning Best Management Practices

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 Shoshone 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 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.

²⁵ FEIS Ch. 3, page 474



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 and snowshoers 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.

In order to protect fragile soils, alpine environments (such as the Beartooth plateau), and vegetation, the Shoshone should establish a minimum snow depths of 12 inches for grooming roads and 18 inches for cross-country travel. Minimum snow depths can be determined and enforced in a number of ways. We suggest that the Shoshone 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 occur as conditions warrant.²⁶ We also suggest implementing seasonal “bookends” before and after which OSV activity is not allowed regardless of snow depth.

IV. High Lakes Wilderness Study Area

Under the 1984 Wyoming Wilderness Act snowmobiling is allowed within the High Lakes Wilderness Study Area (WSA) “in the same manner and degree as was occurring prior to” 1984. Having skied in the High Lakes area, and hiked in the WSA when snowmobile tracks are still visible on lingering snow, we feel strongly that current snowmobile activity in High Lakes in no way resembles the “manner and degree” of use that was occurring in 1984. However, we believe Forest Service decisions should be based on data, not anecdotes, and Winter Wildlands Alliance is very interested in seeing what information the Forest Service has regarding historical and current snowmobile use in the WSA. The Forest Service is legally obligated to manage snowmobile use within

²⁶ 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



the WSA at 1984 levels, and in a manner that is consistent with what use was in 1984. This obligation was upheld and the requirements of the Wyoming Wilderness Act further defined in a 2006 U.S. District Court ruling concerning helicopter-assisted skiing in the Palisades WSA. In this ruling the judge clarified that the 1984 Wyoming Wilderness Act requires that the Forest Service preserve wilderness character, as defined in the 1964 Wilderness Act, and not authorize any use that would diminish wilderness character as it existed in 1984.²⁷

Snowmobile technology has changed considerably since 1984, to the point where modern snowmobiles bear only a passing resemblance to the machines of the early 1980s. Until the 1990s snowmobiles were generally restricted to packed trails and roads as the earlier machines would easily become bogged down in deep snow. In the mid-1990s, the development of the “powder sled” vastly changed the pattern of snowmobile use. Developments in OSV technology continue to lead to lighter, more powerful, and more agile machines. Modern snowmobiles are able to travel easily through deep snow and up steep slopes. In addition, in recent years we have seen the development of “snow bikes” – dirt bikes modified with snowmobile tracks – which can navigate through tight trees and other areas that snowmobiles cannot reach. Both high-powered mountain sleds and snow bikes are widely used by people recreating in the High Lakes WSA.

Given that 1984-era snowmobiles could only travel off-trail in the most ideal of conditions (on consolidated spring snow if at all), it is extremely unlikely that snowmobiles ventured far from the groomed Beartooth Highway when the High Lakes WSA was established. Therefore, it seems likely that in 1984 there was limited, if any, snowmobile use within the WSA. In contrast, current OSV use within the WSA is common and wide-ranging. As part of the travel planning process we believe it is essential that the Forest Service quantify current OSV use levels as well as provide information on OSV use within the WSA in 1984.

It may be helpful for you to look to Montanan’s Bitterroot National Forest for guidance on how to address snowmobiling within a WSA. Wilderness Study Areas in Montana were established in the Montana Wilderness Study Act of 1977 and, as in Wyoming, snowmobile use is allowed to continue in these areas so long as it is maintained at 1977 levels. The Bitterroot recently completed a travel plan in which the Forest Service had to find a way to quantify historical snowmobile activity and then make a management decision. The Bitterroot concluded that “the limited available data on use levels in the WSAs indicates a substantial increase over 1977 levels”. The Forest Supervisor determined that establishing a limited quota system was not feasible and that the only way to ensure the wilderness character of the WSAs on the Bitterroot was maintained as it existed in 1977 was to close the WSAs to all motorized use.²⁸

²⁷ Greater Yellowstone Coal. v. Timchack, No. CV-06-04-E-BLW, slip op. at 6 (D. Idaho Nov. 21, 2006).

²⁸ Bitterroot Travel Plan draft Record of Decision, page 18. Available at http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/39018_FSPLT3_2444335.pdf



We recognize that the Shoshone is not the Bitterroot (although the two forests have many similarities) and that the Bitterroot's solution to OSV management within WSAs may not be the best solution for the Shoshone. However, regardless of the final outcome of this travel planning process, we believe the first step should be to gather good information. Winter Wildlands Alliance is interested in helping to quantify current snowmobile use within the High Lakes WSA. We have assisted with snowmobile monitoring projects on other National Forests and would like to partner with the Shoshone on something similar if possible. If this is something that you would be interested in discussing further please contact me.

V. Togwotee Pass

During the Forest Plan revision WWA, TPBA, and our members asked repeatedly that a small area on Togwotee Pass, approximately 1 square mile on Two Ocean Mountain, be designated for non-motorized use. The Shoshone's response to this request was that such small-scale designations were not appropriate during the Forest Planning process and as such, the Forest declined to zone any areas on Togwotee for non-motorized use. Travel planning is the time when small-scale decisions are made and so we repeat our earlier request.

The history of skiing on Togwotee Pass is long and dates back nearly eighty years. With a high elevation point of nearly 10,000 feet, Togwotee Pass provides backcountry skiers, cross-country skiers and snowshoers with accessible and quality mountain terrain. Open glades, alpine meadows, bowls, cirques and endless couloirs define the Togwotee region. Togwotee Pass has been the location of several rope tows and more recently a snowcat skiing operation. American Avalanche Institute, Central Wyoming College, and National Outdoor Leadership School use the area for instructing backcountry snowsports enthusiasts in avalanche education, winter camping, and backcountry skiing.

Unregulated motorized winter recreation has degraded the quality and safety of Togwotee Pass for non-motorized recreation. Historically, steeper roadless slopes, ridges, cirques, couloirs and bowls were places where non-motorized users could naturally separate and recreate without the need of designated non-motorized areas. However, modern snowmobiles can negotiate terrain previously inaccessible to them. These advances in snowmobile technology have eroded the natural separation that previously limited conflict between motorized and non-motorized recreationists. Today, backcountry skiers and snowshoers need designated quality non-motorized areas where they are not subjected to the noise, pollution, and safety hazards associated with snowmobile use. A planning process that fairly designates motorized and non-motorized use areas on Togwotee Pass is essential to the travel planning process.

In *Meister v. U.S. Department of Agriculture*, the Sixth Circuit court determined that the Forest Service must supply lands "'needed to provide *quality* recreation opportunities'" (emphasis added by the court) and "It is not enough, therefore, for the Service merely to identify the supply of lands on which an activity can occur. It must instead identify the



supply of lands on which participants in that activity are afforded a 'quality recreation opportunit[y],'"²⁹

For human-powered snowsports enthusiasts traveling from Fremont County, Togwotee Pass – especially the Shoshone side – is the nearest locale that has reliable snow and accessible quality terrain. Located on the Shoshone portion of Togwotee Pass the north side of Two Ocean Mountain has reliably good snow, a variety of terrain, is accessible during the winter and therefore is the ideal location for a winter non-motorized recreation area. Although all of the non-Wilderness lands on Togwotee Pass are deemed suitable for winter motorized use in the Forest Plan, the Shoshone must take a closer look at this area in travel planning and designate specific areas where OSVs are allowed. Restricting winter motorized use on Two Ocean Mountain would help minimize the impact that OSV use on Togwotee has on non-motorized recreationists.

Wind River Nordic groomed a cross-country ski trail in Deception Creek for two winters (2012/13 and 2013/14). While the local snowmobile community generally respected the ski trail and treated it as non-motorized, ultimately frustration with travel management on Togwotee led Wind River Nordic to cease grooming operations. The travel plan is an ideal opportunity to formally designate the area around the Deception Ski Trail as non-motorized and revitalize this valuable recreational resource. Such a designation would be relatively easy to discern on the landscape as the area is bounded by obvious features – the Wind River and highway 287. However, any sort of designation would need to be coupled with enforcement to ensure the ski trail truly provides a non-motorized experience. When the trail was groomed it enjoyed wide community support and provides excellent cross-country skiing opportunity for Dubois residents as well as visitors from near and far. A groomed, non-motorized, trail near Dubois would help diversify and grown the local economy and improve recreational opportunities for forest visitors.

VI. Beartooth Pass

The Beartooth Pass is well-known as a spring and summer ski destination. In late May, when the road opens for wheeled vehicles the Beartooth Pass provides access to thousands of acres of good skiing often as late as July. While many skiers use the Pass as a launching point to access the Absaroka-Beartooth Wilderness, some of the most popular Beartooth Pass ski destinations are roadside areas on the Shoshone National Forest. These include all of the cirques and bowls near the summit of the Pass.

While the Beartooth Pass is closed to cross-country motorized wheeled vehicle use it is not uncommon for snowmobiles to visit the area in late spring or early summer. Allowing snowmobiling when Beartooth Pass is open for the summer season is counter to the Area 3.3b Management Approach, degrades the wilderness experience of spring and

²⁹ Kurt Jay Meister v. U.S. Department of Agriculture and United States Forest Service:
<http://www.ca6.uscourts.gov/opinions.pdf/10a0318p-06.pdf>



summer visitors, and creates a public safety hazard. Snowmobiles travelling up or down on the same slopes as skiers and snowboarders creates a serious safety hazard. In addition, skiers have reported increasing incidents of snowmobiles trespassing into Wilderness on the Line Creek plateau (on the Custer-Gallatin National Forest). A listing of the actual dates for summer versus winter recreation use in the travel plan could clarify when snowmobiling is allowed.

VII. Conclusion

Winter travel management is an important part of the travel planning process and we look forward to working with the Shoshone NF to ensure responsible and balanced winter recreation management that satisfies the requirements of subpart C. We appreciate the opportunity to weigh in with our comments at this stage in the process and we are pleased to see that the Forest is planning a winter travel workshop this December. Please do not hesitate to contact us with any follow-up questions. Thank you for your attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Hilary Eisen".

Hilary Eisen, Recreation Planning Coordinator
Winter Wildlands Alliance

On behalf of:

Darran Wells, President
Togwotee Pass Backcountry Alliance

Dan Smitherman, Wyoming Representative
The Wilderness Society

Sent via email on September 22, 2015 to: jgalexander@fs.fed.us