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Ben Burr, Executive Director August 29, 2023

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BlueRibbon Coalition (BRC) is writing to provide scoping feedback for the Kootenai OSV Travel Management Plan. BRC is a national non-profit organization that champions responsible recreation and encourages a strong conservation ethic and individual stewardship. We champion responsible use of public lands and waters for the benefit of all recreationists by educating and empowering our members to secure, protect, and expand shared outdoor recreation access and use by working collaboratively with natural resource managers and other recreationists. Our members use motorized and non-motorized means of recreation, including OHVs, OSV's, horses, mountain bikes, snowmobiles, and hiking to enjoy federally managed lands throughout the United States, including those of the Forest Service. Many of our members and supporters live in Montana or travel across the country to visit Montana and use motorized

vehicles to access USFS managed lands throughout Montana. BRC members visit the Kootenai National Forest for motorized recreation, snowmobiling, sightseeing, photography, rockhounding, hunting, wildlife and nature study, camping, observing cultural resources, and other similar pursuits. We would like to add our support to any comment submitted by any other individuals or organizations that advocate for motorized use. BRC members and supporters have concrete, definite, and immediate plans to continue such activities in the future.

Designated Areas

BRC strongly opposes recommending any more wilderness as Montana already has large areas of Wilderness and public lands with the most restrictive management practices.

The plan does not address the loss of access and opening more trails elsewhere therefore the USFS should not be recommending wilderness in these areas because motorized use is already allowed and there is a purpose and need for continued use.

Areas being limited to specific seasons of use should be re-evaluated. These dates that are being proposed are arbitrary and capricious. The USFS should develop reasonable standards that allow OSV use with appropriate conditions rather than a specific start and end date.

User Conflict

"User conflict" is an inappropriate and often misapplied concept that has generally been created and emphasized by anti-OSV advocates who are looking for any opportunity to restrict or eliminate OSV use. Despite their aggressive litigation efforts, there are few, if any, court decisions that have forced an agency to restrict any motorized recreation based on alleged "conflict." Rather, the courts have generally upheld a reasoned agency conclusion designed to address any alleged "conflict." See, e.g., Wild Wilderness v. Allen, 871 F.3d 719, 728-729 (9th Cir. 2017); Pryors Coalition v. Weldon, 803 F.Supp.2d 1184 (D. Mont. 2011), aff'd, 551 Fed.

Appx. 426 (9th Cir. 2013). There are many strategies that can be employed to manage the ever-growing human population that desires to recreate in the National Forest System. We generally support the concept of "shared use." As long as overall visitation numbers are appropriate for the affected resources, motorized and non-motorized users can be compatible with one another so long as individual users understand designations and plan their activities accordingly. There will always be a handful of pathologically disgruntled individuals seeking their own private rejuvenation in the National Forests. These outliers should not dictate policy or use designations, and should be handled in a similar way as children testing parental boundaries.

Contrasted to those using "conflict" in a transparent effort to put a thumb on the scales of management balance, there are legitimate concerns that usually reflect the simple fact there are too many people trying to enjoy the same areas at the same time. These "conflicts" can occur within user groups or modalities as often as they occur between them. The agency should consider strategies to publicize and manage these situations. One option might be to designate non-motorized companion trails along motorized routes or designate/groom non-motorized only trails to Wilderness or non-motorized land classification to reduce conflict of uses. Such efforts might be coupled with a targeted information campaign to direct non-motorized uses to non-motorized land classifications. Another element might be to consider enhanced staging/parking for non-motorized users so as to provide better access to non-motorized areas.

Finally, we have always been and remain strong advocates of an active and effective enforcement program, so that users who violate or choose to remain criminally ignorant of management prescriptions suffer meaningful adverse consequences. All users need to understand and respect the fact that their use of our National Forests is a privilege to be shared with others under the terms established by applicable law.

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OSV Use

BRC supports closing the least amount of acres open to OSV use possible. Although we would like to see no increase in areas closed to OSV use, we believe that the Forest Service should use best available science and only close the minimum amount of acres possible.

Snowmobiling brings in $26 billion annually in the United States. The USFS needs to strongly consider the economic benefits of allowing the maximum amount of area open to OSV possible. Local communities should be able to benefit from OSV use within Panhandle National Forest and the agency should not hinder that income with restrictions.

Statistics show only 10-15% of snowmobile accidents occur on well maintained, groomed trails. BRC supports proactive management of the maximum number of routes possible in order to keep the forest and recreation as safe as possible. These routes also benefit other users. During non winter months other recreation users will use these trails. Snowmobile registrations, gas and taxes are used to create these routes and then benefit other trail users as well.

Wildlife and Habitat

According to the Winter Use Monitoring: Summary of Findings 2014-2020 from the National Park Service in Yellowstone1 regarding the effects on OSV use on wildlife, there is not a significant impact. NPS states, "83% of the observed responses by all groups of wildlife were categorized as no apparent response, 11% look/resume, 3% travel, 1% attention/alarm, and 1% for flight and defense/charge combined." Therefore, there should not be other areas closed to OSV use and proper management techniques should be utilized instead. In addition to this study, we recommend that the USFS include the findings found in the Snowmobile Fact Book published by the International Snowmobile Association.2

Sound can be produced by motorized vehicles but also by a barking dog that is with a hiker or other wildlife. Many studies, like the Yellowstone Winter Use Monitoring show that noise produced by OSV users has no significant impact. Snowmobiles made after 1976 are significantly quieter than previous models.

Roads and Trails

The 2012 Planning Rule requires, "strong emphasis on protecting and enhancing water resources, restoring land and water ecosystems, and providing ecological conditions to support the diversity of plant and animal communities, while providing for ecosystem services and multiple uses." 77 Fed. Reg. at 21163. BRC believes the Forest Service can only achieve these goals through management, and not management through closures. Closures would not support multiple uses.

BRC does not support closures and decommissioning of roads. We believe proper management strategies should be used to provide the maximum number of routes as possible. We believe that every measure possible should be taken to keep these miles open to users.

Many of our members hold organized events that include organized rides in this area. A significant portion of the education mission of organizations like ours and the fundraising that supports organizations like ours comes from these organized events, and we see the continuation of these events as an integral expression of protected rights including freedom of speech and freedom of assembly.

In 2021 the Bureau of Economic Analysis showed outdoor recreation contributed $821 billion. The desire and need for outdoor recreation and meaningful experiences with nature has only increased since then and will continue to increase. Local economies should be able to benefit from this trend as long as the USFS uses proper management techniques.

We are especially concerned that vaguely defined "resource impacts" are used to justify denial of use. The plan should recognize that public demand should be balanced with desired conditions for ecological resources and Constitutionally protected rights. All efforts to mitigate resource impacts should be done through the least restrictive means possible. If motorized over-snow travel and cross-country skiing are currently co-located this should be continued in all cases.

Wildlife and habitat should not be used as a reason to close areas to OSV use. USFS should look to the National Park Service in Yellowstone when making these decisions. USFS is required to use the best available science. Yellowstone National Park concluded a study, "Collectively, studies conducted to date suggest effects of OSV on individual animals have not had measurable detrimental effects."3

We support any additional comments that encourage the USFS to designate the maximum number of routes in this area as open. Many of our members are organizations with extensive on-the-ground experience. We support any comments made by our members.

NEPA

BRC recommends providing a true recreation alternative to analyze the possibility of increasing recreation access to account for the reasonably foreseeable increases in outdoor recreation that are likely to occur in this area. There is nothing that requires the development of a "conservation alternative," yet it is not uncommon to find. A recreation alternative would be viable, the possibility of this alternative exists, and it remains unexamined. NEPA requires agencies to consider a range of viable alternatives, and the recreation interest in this area justifies the

development of a true recreation alternative. That USFS has conditioned itself to believe that it must never expand or enhance recreation access through the planning processes is an inherent and fundamental flaw of this process and a violation of NEPA. This inequitable privilege of one stakeholder's interest over the interests of other stakeholders taints the integrity of the NEPA process. USFS should form a range of alternatives where each of the alternatives accomplishes the goal of the project. The purpose and need of this plan is to create better management strategies, not to simply close and restrict use. Closure is not management. These areas provide a purpose and need for outdoor access that improves physical and mental health for public land users. BRC suggests an alternative that creates more trails and expands on areas that are available to OSV use.

Users with Disabilities

We recommend that the USFS use this planning process to finally begin to reverse its decades-long systematic discrimination against those with mobility impairment-related disabilities.

On his first day in office, President Joe Biden issued an "Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." This executive order established "an ambitious whole-of-government equity agenda" which focuses on addressing "entrenched disparities in our laws and public policies," and mandates a "comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."

Under this executive order, "The term 'equity' means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as ... persons with disabilities...." Historically, there has been no group more greatly marginalized and excluded by public land management policies, and motorized travel management policies in

particular, than people with disabilities. Outdoor enthusiasts with ambulatory disabilities frequently rely on motorized travel as their sole means to enjoy recreating on public lands. Not everyone has the ability to hike into a remote wilderness area, but many such people are still able to drive OSV's, Jeeps, side-by-sides, and ATVs, which are restricted to the designated motorized route network.

Travel management policies focused on "minimizing" the environmental impacts of motorized recreation have resulted in a dramatic decrease in motorized recreation opportunities on public lands over the last 20 years which has disproportionately impacted people with disabilities. Wilderness focused environmental groups with extreme ableist biases have pushed for more and more areas to be closed to motorized recreation and reserved exclusively for hikers, mountain bikers, and other "human powered" and "quiet use" forms of recreation in which many people with disabilities are unable to participate.

Every time motorized routes or areas are closed, people with disabilities that require the use of motorized means to access public lands are barred from those areas forever. There has been

little recourse for such people in the past because the Americans With Disabilities Act does not

require public land management agencies to consider disproportionate effects on the disabled

community, but only requires that they be given access to public lands on equal terms with

everyone else. As a result, the USFS has historically failed to give any real consideration to the

impacts of motorized route closures on the disabled community when developing travel

management plans.

The Biden Administration's focus on equity, however, changes the equation. While the ADA

focuses only on equality of opportunity, equity inherently focuses on equality of outcome. Any

policy that is facially neutral but disproportionately harms a disadvantaged or marginalized

group is considered inequitable. The USFS is therefore required by this executive order and

others mandating that federal agencies consider "environmental justice" in NEPA proceedings to consider whether any route closures in the Kootenai OSV Travel Management Plan would

disproportionately harm disabled users' ability to access public lands.

Any approach to travel management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized access on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing

routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them. It is imperative that the USFS consider the access needs of disabled users in drafting the alternatives for this travel plan and ensure that people with disabilities who depend on motorized means do not lose access.

Recommended Wilderness

BRC opposes any areas being recommended for Wilderness. There is already substantial Wilderness and areas managed as Wilderness within this area. This is the most restrictive form of management and it is unnecessary in this case. The USFS should consider releasing areas of recommended wilderness

The Executive Order on Advancing Equity also recognizes that poverty and inequality can lead to systematic discrimination against historically underserved and marginalized communities. We strongly encourage the USFS to incorporate into their planning the findings of The Slums of Aspen: Immigrants vs. the Environment in America's Eden by Lisa Sun-Hee Park and David Pellow and Billionaire Wilderness: The Ultra-Wealthy and the Remaking of the American West by Justin Farrell. Both of these works document extensively how Western communities surrounded by public land are undergoing significant socioeconomic changes that result in skyrocketing housing costs, use of conservation and land-use restrictions to limit development, and displacement of the local middle and lower classes from Western Communities. Conservation policies and land-use restrictions are the primary tools that the ultra-rich use to disenfranchise the remaining American public from being able to access and enjoy the public benefits of public land. In many cases public lands become the private enclaves for the enjoyment of recreation pursuits and cultural values of the ultra wealthy.

Snow Depth Standards

BRC is concerned that snow depth standards will be implemented in the future of this planning

process because we are seeing it in other plans as well. Snow depth standards represent a significant issue. We acknowledge the difficulty of this issue for the Forest Service, but have concluded that there is no defensible legal requirement or basis for snow depth prescriptions.

There are many practical reasons to avoid inflexible prescriptions. Snow depth is highly variable, depending on numerous weather and site factors. Snow density is a more accurate descriptor of proper conditions than snow depth. Even under uniform or constant snowfall, varying sites will display varying snow depth.

It is obvious, but worth noting, that owners/operators of today's sophisticated and expensive snowmobiles (and groomers) know they are designed to travel over snow, not dirt and rocks. A snow depth requirement is a solution in search of a problem. Snow depth is not an effective or necessary means to protect against "resource damage." Existing practices and common sense address many of the factors that purportedly motivate these prescriptions. For example, groomers are able to raise the grooming apparatus and/or pull in snow from adjacent areas as needed to avoid or enhance grooming over areas with thin snow coverage. Existing regulations provide authority for enforcement officers to take appropriate action should they encounter improper conduct. Resource damage is amply addressed through officer discretion in the field applying existing regulations, rather than an inflexible snow depth requirement. The creation of "minimum snow depths" might encourage a "watchdog" culture intent on finding an excuse for closure. The Forest needs to better anticipate and protect against abuse of the possibility that individual or organizational activists will be capturing, even staging, photographic "evidence" of inadequate snow depth or otherwise trying to force the agency into implementing and enforcing snow depth requirements.

Rather than what might be perceived as inflexible, Forest-wide snow depth prescriptions, the

agency should employ a flexible, adaptive management approach to snow depth and snow coverage/quality attributes. The parties most attuned to these issues are state and local grooming administrators, local governments, and affected users, and their input is essential to any workable system. Considering the broad array of potential issues, the best approach would be to avoid any Forest-wide snow depth prescriptions. There is no regulatory basis or compelling practical need to create such requirements. The Forest, in cooperation with partners and engaged users, can properly address management challenges that may arise in a flexible and site-specific manner.

Not only are these restrictions arbitrary and capricious but they greatly limit snowmobile access. Only 4,372 acres are open to OSV use prior to May 31st once OSV standards are met. These standards should be forest wide. Once these requirements are met and conditions are favorable for OSV use, they should be open for the public to use. Currently, 9,785 acres are open during the longest date range of November 16th-May 31st. Obviously if these dates don't provide adequate conditions safe for OSV's, users will not wish to put their machines in jeopardy. With the proposed action Alternative A, no amount of acreage is open during this timeframe.

Additionally, 142,035 acres are open between November 16th-April 15th currently but 0 acres will be open during that time frame with the proposed action. It is obvious this plan is selected to restrict OSV users access. The USFS must use best available science in making these decisions. The broad reasonings of resource damage and user conflict to not justify such widespread closures.

Conclusion

We would like to close by saying we support "shared use". As long as overall visitation numbers are appropriate for the affected resources, motorized and non-motorized users can be compatible with one another so long as individual users understand designations and plan their

activities accordingly. Indeed, motorized and nonmotorized recreation use often overlap as OHV's often increase accessibility to non-motorized recreational activities such as hiking, camping, equestrian use, etc. We also hold that responsible recreational use of public lands can exist in harmony with ecosystem needs.

BRC would like to be considered an interested public for this project. Information can be sent to the following address and email address:

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1 https://www.nps.gov/yell/learn/news/21030.htm

2 https://snowmobile.org/docs/isma-snowmobiling-fact-book.pdf
3 chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://npshistory.com/publications/yell/winter-use-sci-assessment-2011.pdf