



August 6, 2018

Submitted to comments-pacificsouthwest-eldorado@fs.fed.us

Laurence Crabtree, Forest Supervisor
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RE: Eldorado National Forest OSV Designation DEIS Comments

Dear Forest Supervisor Crabtree and ID Team:

Please accept these comments from the BlueRibbon Coalition/Sharetrails.org (BRC) in regards to the Draft Environmental Impact Statement (DEIS) for the Eldorado National Forest Over-Snow Vehicle (OSV) Use Designation Project. We will summarize, at the outset, that the Eldorado should revise its analysis and issue a Draft Record of Decision based on Alternative 4, but without minimum snow depth prescriptions. If you have questions or require further information about this submission or intervenor-defendants' role please contact Paul Turcke (pat@msbtlaw.com or 208-331-1800) and the information listed below.

BRC has a unique perspective and longstanding interest in motorized vehicle use and management of the National Forest System, including for OSV. BRC was a defendant-intervenor in *Snowlands Network et al. v. U.S. Forest Service*, Case No. 11-CV-2921-MCE (E.D. Cal.). BRC submitted comments on this project dated April 20, 2015 and November 16, 2015. We remain committed to a leadership role and continuing presence in ongoing OSV management of the Eldorado National Forest.

BRC is a nonprofit corporation that champions responsible recreation and encourages individual environmental stewardship. BRC has members in all 50 states, including California. BRC members use various motorized and non-motorized means to access public lands, specifically including winter use of the Eldorado National Forest. BlueRibbon has a long-standing interest in the protection of the values and natural resources addressed in this process, and regularly works with land managers to provide recreation opportunities, preserve resources, and promote cooperation between public land visitors. We note that the California Forests receiving OSV use are at various stages of completing OSV designations, with the Eldorado following behind the Tahoe, which is analyzing DEIS comment, and the

Lassen, which released a Draft Record of Decision in March, 2018. Where appropriate, we will refer to these processes.

We have reviewed the DEIS and Alternative 2 (Proposed Action) (Volume 1 – Summary – Table S-1, viii) (the “PA”) that would make the following designations:

- 1) 435,600 acres of NFS lands are designated for OSV use, in the Amador, Georgetown, Pacific and Placerville Areas
- 2) 58 miles of designated trails (the existing Silver Bear Trail System) are available for grooming for OSV use
- 3) 12 inches would be the minimum snow depth for cross-country OSV use
- 4) 12 inches would be the minimum snow depth for grooming to occur on the Silver Bear Trail System
- 5) 6 inches would be the minimum snow depth for OSV use to occur on the Silver Bear Trail System
- 6) Areas designated for OSV use would be at least 500 feet from the Pacific Crest Trail
- 7) Two (2) designated OSV trails would cross the Pacific Crest Trail to provide connectivity between areas designated for OSV use

BRC maintains that the efforts of OSV recreation opponents to remove the “snowmobile exemption” from the 2005 Travel Management Rule were largely designed to spark more formalized OSV planning rather than to address any purported regulatory void. While adopted through procedures that may be different than those stated in the amended Subpart C, the fact is that OSV use has been specifically considered and regulated by Forest Service units for years. These designations on the Eldorado have been appropriately established and have generally contributed to an effective winter recreation program.

BRC has reviewed the PA and urges the agency to make changes, including some changes that incorporate elements from Alternative 4, in a Draft Record of Decision and Final EIS as needed to reflect our comments and/or concerns.

Pacific Crest Trail buffers and crossings

The Pacific Crest Trail (“PCT”) is a non-motorized trail that runs north-south through the western U.S. and along the crest of the Sierra Nevada Mountain Range in California. There are meaningful portions on Forest Service lands including about 26 miles on the Eldorado Forest. DEIS at 57. The treatment of the PCT in the Eldorado DEIS deviates substantially from the Lassen/Tahoe, and is unacceptable to BRC.

The Eldorado PA would impose 500 foot buffers prohibiting OSV use around the PCT, with designation of only two (2) crossings to connect open areas. DEIS at 60. This prescription deviates significantly and unjustifiably from those in the Lassen/Tahoe.

We particularly wish to emphasize the Lassen Draft ROD discussion of this issue, which cogently concluded a 500 foot PCT buffer “was largely a solution in search of a problem.” Lassen Draft ROD at 7. That discussion continued:

Policy direction on this issue is unclear at best. But most significant in my decision is that we have received no reported use conflicts along the PCT during the winter months. Much of that stems from the fact that the PCT receives very few travelers during winter months due largely to the amount of snow covering the trail throughout much of the forest. Moreover, the Pacific Crest Trail Association itself does not recommend hiking on the trail during the winter months, largely for safety reasons.

Id. Any PCT “problem” on the Eldorado seems even more elusive than on the Lassen, since the Eldorado contains only 26 miles of the PCT, of which 15 miles are in Wilderness. DEIS at 58.

We recognize there has been a call from some special interests for buffers along the PCT which would prohibit OSV travel. We strongly oppose PCT buffers, for the reasons we have previously stated and which were summarized in the Lassen Draft ROD. We strongly urge you to revise the PA to reflect the Alternatives 1 and 4 treatment of this issue, which decline to impose PCT buffers adjacent to areas designated for OSV use. Relatedly, we ask you to reconsider whether the two proposed crossings of the PCT are adequate, in light of the significantly higher numbers of crossings proposed by both the Lassen and Tahoe Forests.

Recommendation - Designate an appropriate number of PCT crossings for OSV, while avoiding creation of any non-motorized PCT buffers.

Snow Depth Standards

Snow depth standards represent another significant issue in the California OSV designation processes. The Eldorado DEIS imposes minimum snow depth requirements under every alternative, including the “no action” alternative. DEIS at 28 (Table 10). The PA contains minimum snow depth prescriptions of 12 inches for cross-country use, 12 inches for grooming to occur on designated OSV trails, and 6 inches “for OSV use on the groomed Silver Bear Trail System.” *Id.*

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. The *Snowlands* settlement does not address the question of snow depth, but only a process by which the agency will evaluate designation of routes for grooming and under Subpart C. Those now revised Subpart C regulations at 36 CFR part 212 provide for OSV designations addressing class of vehicle, seasons of use, and specified designation criteria from Subpart B. Nowhere is snow depth included in this regulatory checklist. In fact, snow depth language was considered by the agency and intentionally left out of Subpart C. See, 80 Fed.Reg. 4507 (Jan. 28, 2015). Instead, the Final Rule carefully settled on addressing this subject by stating that roads, trails and areas for OSV use “shall be designated...where snowfall is adequate for that use to occur, and, if appropriate, shall be designated by class of vehicle and time of year....” *Id.* at 4511; 36 C.F.R. § 212.81(a).

The Eldorado DEIS does not present a sufficient rationale to impose the stated minimum snow depth prescriptions. This discussion is essentially the same as presented in the Lassen process. For example, the Forest Service admits “[i]n multiple reviews of best available scientific data, specialists determined that there is little or no science to support a universal snow depth for protecting multiple resources.” Lassen RFEIS at 85 (emphasis added); Eldorado DEIS at 41-42. In fact, “skiers actually may have a greater effect than OSV’s because skis have a greater footload (weight per surface area) in

comparison to an OSV track.” *Id.* The discussion suggests that the primary basis for the 12 inch depth figure is the SHPO programmatic agreement (“PA”) and the California Parks/Recreation grooming guidance. *Id.* Neither of these would form a defensible rationale. The grooming restrictions have no applicability to cross-country designations. The PA “was developed for heavy equipment, such as loggers and skidders, conducting logging operations.” Lassen RFEIS at 404. The same discussion theorizes that snowmobiles “exert only 0.5 pound of pressure per square inch, versus four-wheel drive vehicles, which exert 30 pounds per square inch.” *Id.* Yet the Lassen Forest openly admits “our monitoring does not differentiate between OHV and OSV impacts.” *Id.* at 856. This approach, characterized as one that “best protects natural and cultural resources,” is euphemistic overkill, not remotely connected to any conceivable impact that snowmobiles might actually have on any site/resource.

There are many practical reasons to avoid inflexible prescriptions. Snow depth is highly variable, depending on numerous weather and site factors. The final Subpart C rule actually reflect a more intelligent choice by employing “adequate” to describe the necessary snowfall, because snow density is a more accurate descriptor of proper conditions than snow depth, yet both terms are subsumed within the term “adequate” snow conditions. 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. See, e.g., 36 CFR § 261.15 (prohibiting certain activities in the use of “any vehicle off National Forest System, State or County roads” including in violation of noise standards, creating excessive smoke, carelessly or in a manner that endangers any person/property, or “in a manner which damages or unreasonably disturbs the land, wildlife, or vegetative resources”). 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. We are concerned that the possibility of snow depth “violations,” however they might be interpreted, will imply some nondiscretionary duty to cite operators in violation of criminal provisions at 36 CFR part 261. We do not believe that the agency intends such illogical results, or intends to create any constraint on the informed discretion of field personnel conducting law enforcement or monitoring activity.

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. We are concerned that the Forest Service has taken the bait toward becoming unnecessarily

involved in this topic. Snow depth should be avoided, and discussed in a final decision in a manner that properly characterizes snow depth considerations, broad agency discretion, and ample ability within that discretion utilizing existing tools/practices to protect against resource damage and fulfill all management responsibilities.

Considering the broad array of potential issues, the best approach would be to avoid any Forest-wide snow depth prescriptions. There is not 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 flexible and site-specific manner.

Recommendation – Resist the suggestion to create inflexible snow depth prescriptions, offer clarification on interpretation and implementation but formally establish an “adequate snow depth” standard that tracks the applicable standard of Subpart C.

Range of Alternatives

The Eldorado DEIS improperly includes minimum snow depth prescriptions in every alternative. This violates NEPA in two different ways.

NEPA “is our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. NEPA embodies a Congressional desire “to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of future generations of Americans.” 42 U.S.C. § 4331(a). NEPA’s operative EIS requirement is triggered by federal action which may “significantly affect[] the quality of the human environment....” *Id.* at § 4332(2)(C) (emphasis added). The “human environment” “shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” 40 C.F.R. § 1508.14. NEPA is a purely procedural statute designed to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b).

(a) Failure to include an “adequate snow depth” alternative

First, the DEIS omits any consideration of a viable alternative that would eschew inflexible snow depth requirements in favor of tracking the explicit regulatory language requiring “adequate” snow depth. An agency’s compliance with NEPA is subject to judicial review under APA 706(2). Courts generally look to see if the agency took a sufficiently “hard look” and will approve an EIS if “the EIS process fostered informed decision-making and public participation.” National Parks & Conservation Ass’n v. U.S. Dept. of Transp., 222 F.3d 677, 680 (9th Cir. 2000). Critical to NEPA’s procedural scheme is the mandatory duty to consider in an EIS a sufficient range of alternatives to the proposed action. 42 U.S.C. § 4332(C). This discussion of alternatives “is the heart” of an EIS. 40 C.F.R. § 1502.14. A reviewing court applies a “rule of reason” to determine if the range of alternatives considered was sufficient. Friends of Yosemite Valley v. Kempthorne, 520 F.3d 1024, 1038 (9th Cir. 2008). The “existence of a viable but unexamined alternative renders the [EIS] inadequate. An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action, and sufficient to permit a reasoned choice.” Alaska Wilderness Recreation & Tourism Ass’n v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995).

Through the evolution of the California OSV designation projects the topic of snow depth has received particular attention. Again, the snowmobile community supports consideration of the concept of snow depth, and a common sense recognition that snowmobiles and related vehicles like groomers need to be operated on “adequate” snow coverage. Our concern, at this point in the designation process, is that inflexible, Forest-wide minimum depth “requirements” are arbitrary, unsupported by science, yet capable of abuse or misapplication. As discussed above, the wisdom has become more apparent of the agency’s choice in revising Subpart C to focus on “adequate” snow depth. An alternative incorporating that language is not only viable, but should carry some presumptive weight before the very agency that created it.

(b) Improper “no action” alternative

Additionally, the DEIS “no action” alternative violates NEPA. In an EIS the agency “shall...(d) Include the alternative of no action.” 40 C.F.R. § 1502.14(d). There should be little dispute that the correct interpretation of “no action” here “is ‘no change’ from current management direction or level of management intensity.” Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, 46 Fed.Reg. 18026 (March 23, 1981).

The “no action” alternative in the Eldorado DEIS incorrectly states that minimum snow depth “requirements” exist under “current management.” DEIS at 28 (Table 10). This stands in contrast to the no action alternatives in the Tahoe (Tahoe DEIS at xvii) and the Lassen (Lassen RFEIS at xi). In fact, each of these Forests has a different definition of “current management” in its “no action” alternative. We are not aware that any California Forest has issued an order or otherwise formalized a snow depth requirement. The Eldorado DEIS lacks meaningful discussion of this issue, simply stating that for Alternative 1 a minimum snow depths of 12 inches is required for OSV cross-country and trail use, and a minimum snow depth of 18 inches is required for OSV trail grooming to occur. DEIS at 16. The discussion fails to explain what actions or decisions have been taken, by which agency(s), such that these conclusions accurately reflect current management direction.

Recommendation – Revise or clarify the range of alternatives, to properly define the “no action” alternative and to provide for a viable alternative that would decline inflexible snow depth requirements in favor of “adequate” snow depth as might be clarified in guidance or through adaptive management.

Modification of Area Prohibitions

BRC appreciates that the PA would authorize continuing OSV access on 435,600 acres of NFS lands. Some of our earlier suggestions were incorporated into the areas designated for OSV travel, but other areas were not. BRC would like to see refinements to some of designations, to better reflect practical considerations or historical practice.

Specifically, we would like to changes to allow OSV use in the following areas:

- Caples Creek Recommended Wilderness
- Primitive High Country
- Loon Lake Winter Recreation Area (addressed by Forest Order 03-89-04)
- Area near the Carson-Emigrant NRT from Horse Canyon Saddle to Caples Lake Trailhead (addressed in Forest Order 03-88-03)

-Little McKinstry, Shadow Lake, Rockbound, July Flat, Bryan Meadow, Devils Lake, Hidden Lake, and Little Indian Valley

Recommendation – Modify the areas designated for OSV use to include the above-described prescriptions from Alternative 4.

Restore Loss of Historic OSV Opportunity

The PA fails to provide for continuing OSV opportunity on a substantial territory that has historically been available for OSV use. Specifically, the PA would designate 435,600 acres for OSV use, a 23,000 acre decrease from current management. DEIS at vi (Table S-1). BRC believes the PA should adopt the designations in Alternative 4 which would allow presently-available acreage to be designated for continuing OSV use.

Reductions or omissions of OSV use should not be based on predictions, such as for areas of lower elevation. We understand that snowfall is light or sporadic in these areas. Still, the Forest Service doesn't need to create rules to address this situation. The fact is there are times, if only occasional instances, where sufficient snow falls for OSV use in these areas. Any resulting OSV use is uniquely prized by local enthusiasts. There is no harm in allowing for the possibility of this occasional use to continue.

Recommendation – To the maximum extent possible, the Final EIS and Record of Decision should reflect current or historical use as identified in Alternative 4.

Conflict of Uses

BRC believes the agency may have based various closure tenets of the PA on the “conflict of uses” issue. At the outset, we note there appear to be relatively few purported winter use conflicts on the Eldorado Forest. DEIS at 53-54. Without disclosing any evidence or basis for the conclusions, the DEIS limits the universe of “known conflicts” between “motorized and non-motorized uses” to areas “near Iron Mountain Sno-Park and around Anderson Ridge, Caples Lake, Loon Lake (near the beginning of the Rubicon Jeep trail) and Blue Lakes.” *Id* at 54. This conclusory discussion further states there are “potential conflicts between wheeled over snow vehicles and non-motorized use at Loon Lake and the western end of the Mormon Emigrant Trail.” *Id*.

“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.

Recommendation – Agency review of the aforementioned aspects of Conflicts of Uses and Shared Use should allow for additional acres being designated for OSV use, and related management actions.

Encourage Robust Stakeholder Involvement

BRC believes it is important to encourage ongoing engagement with local OSV clubs, concessionaires, and OSV rental companies to review functionality of the OSV program for issues such as needs for seasonal or permanent stream crossings (e.g. installing half culverts, OSV bridges), connectivity, trails for both beginner and skilled riders, looped opportunities, and adequate open or play areas where new OSV users can practice and improve their skills. The best program elements or concepts are only as good as their tailored application to the needs of a particular area or user community.

BRC also encourages the agency, along with all stakeholders, to review and update the outreach and signing as needed for route identification, Wilderness boundaries, painted parking lines and vehicle circulation at staging areas, notification of users entering a fee area, and related issues. Recreation management, and particularly OSV/winter management, is often more of an exercise in social engineering than addressing physical resource impacts. Many “impacts” to the human environment could be avoided if users were better informed and given a range of recreation options.

Recommendation – Include a narrative in the Record of Decision and/or subsequent documents about the Forest’s commitment to collaboration.

Specific Comments on Affected Resources

We wish to amplify our above-stated comments through attention to particular discussions in chapter 3 of the DEIS. These are not intended to provide exhaustive analysis or to substitute our judgment for the agency, but to earmark fundamental points.

-OSV Assumptions (DEIS at 40-41; 47): We appreciate the efficiency of creating certain use assumptions. Some of these are valid, but we caution against relying excessively on this technique, particularly to fill a void on technical subject matter. In many instances, defensible conclusions must turn on specific data/analysis evaluating actual, valid data on use and site/species factors.

-User Conflict (DEIS at 53-54): The cited pages unfortunately reflect typical of discussion of conflict throughout the California Forests OSV designation processes thus far. Again, this discussion lacks scientific rigor and is purely generic, narrative discussion. Particularly troubling is the reliance on “Snowlands” as a technical authority on the nature and prevalence of “conflict” over winter recreation uses.

-OSV Use in IRAs (DEIS at 57-58): We note that OSV use is presently allowed in many IRAs, and appropriately so. There is no inherent incompatibility between OSV use and IRA suitability, particularly given the remoteness of many IRAs and transient nature of any snowmobile impacts. IRAs, and even RWAs, are not Wilderness and should not be managed as Wilderness.

-Minimization (DEIS at 63): We are concerned that the DEIS does little more than make occasional reference to minimizing effects, without sufficient detail clarifying how the minimization criteria were considered and applied to specific designations for specific sites. See, e.g., *WildEarth Guardians v. Montana Snowmobile Ass’n*, 790 F.3d 920 (9th Cir. 2015); *Idaho Conservation League v. Guzman*, 766 F.Supp.2d 1056 (D. Idaho 2011).

-Noise (DEIS at 67-78): the analysis inappropriately implies that “non-motorized users seeking a quiet recreation setting” are legally entitled to an experience “that is not influenced by the sound of motorized users.” DEIS at 68; see also, DEIS at 75 (“OSV noise may continue to impact opportunities for solitude within the Mokelumne Wilderness and the Caples Creek Recommended Wilderness Area...”). Congress routinely passes Wilderness legislation that provides for continuing military overflights, motorized access for inholdings, administrative use, and similar “carve outs” from any ideologically pure conception of Wilderness.

-Soil Resources (DEIS at 79-87): We generally conclude with the common sense proposition that OSV use occurs “over snow that protects the ground” and the conclusion that “it is unlikely that OSV use has a significant direct impact” nor “cumulative effects” upon soils. *Id.* at 85.

-Water Resources (DEIS at 88-109): The presentation and discussion of assumptions generally makes clear that OSV use is a trivial factor in any possible hydrologic impacts. We particularly emphasize the standard-setting research in Yellowstone National Park (DEIS at 95-96), in which water bodies adjacent to roads far more heavily traveled than any Eldorado site displayed trivial impacts from OSV emissions. This research authoritatively debunked a massive anti-OSV disinformation campaign.

-Terrestrial Wildlife (DEIS at 110-169): We appreciate the Eldorado DEIS effort to limit generic or narrative discussion about adverse OSV effects on wildlife, focusing instead on specific analysis of particular species of concern in the Forest. There is still some discussion of “general” effects to unspecified wildlife (DEIS at 116-117) and we reiterate our prior objection to this level of analysis being used as the basis for any site-specific decision.

-Wolverine (DEIS at 118-121): It is questionable whether wolverine are even present in the Forest. DEIS at 118-119. This exemplifies the shortcomings of the wildlife analysis. To the extent a

discussion of potential impacts to wolverine is warranted, it should include the most recent and focused research led by Copeland and others in the Rocky Mountains. See, <https://www.roundriver.org/wolverine>. This ongoing research represents not only the state of the art, but also a unique collaboration between diverse project partners including National Forests, U.S. Fish and Wildlife Service, state wildlife managers, local communities, academicians, conservation organizations, and state snowmobile associations. This developing body of research is clarifying the limited impacts that OSV use has on wolverine, and effective techniques to address the potential for those few impacts that might exist.

-Marten (DEIS at 122-128): Marten are not meaningfully present in the Forest, with potential habitat present but “no known marten den sites identified.” DEIS at 122. OSV use is a trivial threat compared to other forest-altering activities discussed. DEIS at 123-124. Heavy reliance on research by Gaines is woefully inadequate, as it reflects generalized discussion across a broad range of forest types and species, and emphasizes impacts such as from “harassment” in the form of hunting/trapping, which is not legal in California. DEIS at 125.

-Raptors (DEIS at 129-143; 159-162): We will not unnecessarily belabor consideration of owls and goshawks. The obvious greatest threat to these species is associated with “high-severity stand-replacing fires” and stressors other than OSV use. DEIS at 131. OSV users tend to avoid areas with significant tree cover, which mitigates if not prevents any meaningful prospect of adverse effects to raptors associated with limited OSV travel.

-Western Bumble Bee (DEIS at 165-166): Our anecdotal evidence from OSV enthusiasts riding in the dead of winter indicates they do not have meaningful encounters with Bumble Bee individuals, queens, colonies or habitat. See, DEIS at 166. This is the epitome of wildlife non-issues.

-Amphibians/Aquatic Resources (DEIS at 170-194): For starters, these amphibian species of particular concern in present-day California, at most, “potentially occur” within the project area. DEIS at 173. The discussion of “direct effects” thankfully notes the obvious – that direct effects would be “nonexistent to extremely infrequent as amphibians are typically dormant during the winter, and OSVs would have to travel through water to collide with fish and other aquatic species.” DEIS at 179. The discussion then turns to potential “indirect effects” that might result from “changing hydromorphology, snow compaction and impaired water quality...” *Id.* We appreciate the agency’s diligence in evaluating these topics. We concur in the conclusion that the above-mentioned Yellowstone studies are the best evidence demonstrating that there is no plausible claim of impaired water quality attributable to Eldorado OSV use. DEIS at 180-181. Similar conclusions are amply supported disclaiming any meaningful impacts from snow compaction or pollutants. *Id.* at 181-183. Despite the foregoing, not to mention common sense, the required determinations err on the side of procedural caution, reflecting conclusions of “may affect, not likely to adversely affect” the relevant species. We agree this is an appropriate conclusion that should cut any figurative wind from the sails of a preservationist challenge targeting these species.

-Air Quality (DEIS at 221-236): We note that the OSV contribution to pollutants of interest is trivial, 0.05 percent for CO, less than 0.01 percent for NOx, and 0.08 percent for PM. DEIS at 232. Air quality is a legitimate topic of concern in California, but restriction of 2,329 annual visitors on snowmobiles to the Eldorado cannot be rationally targeted under the guise of improving air quality.

-Cultural Resources (DEIS at 236-238): The Eldorado discussion here is refreshingly short and logical compared to its equivalent for some of the other Forests. We agree with general conclusion that there is virtually no prospect of direct, indirect or cumulative effects under the NHPA or to cultural resources.

-Socioeconomics (DEIS at 244-256): We note that OSV users have a disproportionate contribution relative to other winter recreationists, and that “changes to OSV opportunities on the Eldorado NF have the potential to measurably affect economic contributions associated with national forest recreation.” DEIS at 248. These potential impacts are inaccurately downplayed in the effect analysis, where the agency predicts no change from the PA compared to the existing condition. DEIS at 252. This is erroneous because it appears based entirely on the total acreage designated for continuing OSV use, but fails to consider the potential effect of an inflexible and/or aggressively enforced snow depth limitation. In other words, the socioeconomic assumption that OSV use would decrease no more than 5 percent because that is the extent of the acreage reduction is dramatically flawed. The socioeconomic analysis must be revamped and/or the Eldorado needs to make clear that fears are unjustified that snow depth requirements will be vigorously implemented in a manner that significantly restricts present OSV use.

Recommendation(s) – Improve upon and/or expand the noted topics.

CONCLUSION

We ask that appropriate changes be made to address our concerns, and recommend the agency issue a Draft Record of Decision based upon Alternative 4. We appreciate this opportunity to participate in the management process and to work alongside the Forest Service to improve the winter recreation program on the Eldorado National Forest. Please consider our comments, and do not hesitate to contact us in this designation process as well as the ongoing management effort.

Respectfully submitted,



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