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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

WINTER WILDLANDS ALLIANCE,)	
)	Case No. 11-cv-00586
Plaintiff,)	
)	
v.)	
)	COMPLAINT
UNITED STATES FOREST SERVICE,)	
)	
Defendant.)	
_____)	

INTRODUCTION

1. This action challenges the United States Forest Service’s exemption of over-snow vehicles (“OSVs”) from mandatory travel management planning in the 2005 “Travel Management; Designated Routes and Areas for Motor Vehicle Use” Rule (“Travel Management Rule”). This Rule, which directs use of off-road vehicles on Forest Service land, created a loophole that allows the Forest Service to ignore OSVs in its travel management planning despite many environmental impacts and recreation conflicts caused by these machines. The agency has

used that loophole to eliminate consideration of OSVs from its off-road vehicle travel management planning on numerous National Forests in Idaho, such as the Salmon-Challis, Boise, and Idaho Panhandle National Forests, regardless of the high use by snowmobiles in these areas and conflicts with non-motorized recreation users.

2. The 2005 Travel Management Rule violates Executive Order 11644, which directs the Forest Service to issue regulations for use and control of all off-road vehicles, including OSVs, in order to protect national forest lands, promote the safety of all users of those lands, and minimize conflicts among the various uses of those lands. Contrary to the direction of Executive Order 11644, the 2005 Rule exempts OSVs from the requirement that the Forest Service must designate areas as open or closed to off-road vehicles on all Forest Service lands, instead making the control of OSVs completely discretionary on each National Forest.

3. In light of the wide impacts of OSVs on air quality, water quality, wildlife, and other resources, and increasing conflicts with other winter recreationists on many National Forests, Plaintiff Winter Wildlands Alliance (“Winter Wildlands”) and many other groups petitioned the Forest Service to close the OSV loophole in the 2005 Travel Management Rule and require the agency to include OSV use in its travel management planning. The Forest Service, however, denied the petition and continues to allow OSV regulation on each National Forest to be completely discretionary.

4. The Forest Service’s exemption of OSVs in the 2005 Travel Management Rule and its denial of Winter Wildlands’ petition to close the OSV loophole are final agency actions that are arbitrary, capricious, and an abuse of discretion under the Administrative Procedure Act (“APA”), and in violation of Executive Order 11644. Plaintiff Winter Wildlands Alliance thus seeks judicial review of the 2005 Travel Management Rule and the Forest Service’s denial of

Winter Wildlands' petition; and requests declaratory and other relief to remove the OSV exemption from the 2005 Travel Management Rule and require the Forest Service to include OSVs in its travel management planning.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because the action arises under the laws of the United States, including the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* ("APA"); the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; the National Forest Management Act, 16 U.S.C. § 1601 *et seq.* ("NFMA"); Executive Orders 11644 (37 Fed. Reg. 2877) and 11989 (42 Fed. Reg. 26959); and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* ("EAJA"). An actual, justiciable controversy now exists between Plaintiff and Defendant. The requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 701-06.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a substantial part of the public lands and resources at issue are located within this district, and Plaintiff Winter Wildlands Alliance resides in this district.

7. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

PARTIES

8. Plaintiff WINTER WILDLANDS ALLIANCE ("Winter Wildlands") is a national non-profit organization dedicated to promoting and preserving winter wildlands and a quality human-powered snowsports experience on public lands nationwide. It has 1,300 members and 30 affiliated organizations which together have an additional 30,000 members, including many

members who live and recreate in Idaho, including on the Salmon-Challis, Boise, and Idaho Panhandle National Forests, and are adversely affected by OSV activities on these lands.

9. Winter Wildlands' members and staff have a longstanding interest in the management of the Forest Service lands involved in this case as well as the protection of wildlife, undisturbed silence, and other resources that enhance winter recreation. Winter Wildlands' members and staff regularly recreate, enjoy, work, and study during the winter on National Forest lands throughout the country, including on the Salmon-Challis National Forest, the Mountain Home Ranger District, Idaho City Ranger District, and Emmett Ranger District of the Boise National Forest, and the Coeur d'Alene River Ranger District of the Idaho Panhandle National Forest and use areas impacted by OSVs.

10. Winter Wildlands' members and staff derive aesthetic, recreational, health, inspirational and other benefits from their non-motorized snowsport activities on Forest Service land in Idaho and around the nation on a regular and continuing basis and intend to do so frequently in the immediate future, including during winter of 2011-2012. Plaintiff's members' and staff's enjoyment of their non-motorized snowsport activities and interests in enjoying serene, healthy, natural environments during those activities is impaired by the use of snowmobiles.

11. Defendant's violations of law and failure to manage OSV use on National Forest lands adversely and irreparably injures the aesthetic, recreational, health, inspirational and other interests of Plaintiff Winter Wildlands and its members and staff. These are actual, concrete injuries to Plaintiff, caused by Defendant's violations of law, which will continue until and unless this Court provides the relief prayed for in this Complaint.

12. Defendant U.S. FOREST SERVICE is an agency of the United States, within the Department of Agriculture, and is vested with the legal authority and duty to manage the National Forest System.

STATEMENT OF FACTS

Impacts of OSVs

13. Snowmobiles and other OSVs have substantial impacts on a variety of resources, including air quality, water quality, vegetation, and wildlife. OSV use also adversely impacts the experiences of other users of national forest lands, such as those seeking quiet recreation.

14. In recent years, manufacturers of snowmobiles have consistently been increasing the power of the machines, making them able to navigate steeper terrain and deeper snow. Many snowmobiles today are built with 120 to 150-horsepower engines, weigh up to 600 pounds, and can travel at speeds in excess of 100 miles per hour, exceeding the power and acceleration of many automobiles.

15. This trend in increased power has changed the sport, allowing for much farther access into the backcountry and activities such as highmarking—where snowmobiles race up steep slopes toward ridge tops and then quickly turn (before they capsize) and race back down the slope. This trend in increased machine power and thus increased geographic scope of snowmobile activity exacerbates the impacts of snowmobiles on the environment and other recreationists.

16. Snowmobiles emit pollution in the form of carbon monoxide, nitrogen oxides, particulate matter, hydrocarbons, and a variety of mobile source air toxics such as ozone, aldehydes, butadiene and benzene that are known or probable carcinogens. Air pollution from snowmobile exhaust endangers human health in areas of OSV use, particularly because

concentration of emissions increases with elevation and cold. Snowmobiles also generate greenhouse gas emissions that contribute to global warming. As snowmobiles increase in horsepower, they are allowed to emit more pollution under national air regulations, creating greater air pollution per machine and per hour of use.

17. Scientific studies in western forests have shown that in areas receiving heavy snowmobile use, snowmobiles have a substantial adverse impact on ambient air quality, causing health concerns for humans in the affected area. The studies found that snowmobiles account for far more carbon monoxide and hydrocarbon emissions compared to cars and buses, and have caused exceedences of air quality standards for carbon monoxide, hydrocarbons, fine particulate matter, and mobile source air toxins at trailheads and along popular trails.

18. Snowmobile emissions are so high largely because the vast majority of snowmobiles in use continue to use older two-stroke technology in their engines rather than more advanced and efficient four-stroke technology or fuel-injection technology. Non-fuel-injected two-stroke engines are far less efficient at burning fuel, leaving 25-30% of the fuel uncombusted, thus emitting far more hydrocarbons, air toxins, carbon monoxide, and particulate matter than four-stroke engines. The United States Environmental Protection Agency has found that older two-stroke snowmobiles are more polluting than off-highway motorbikes or all-terrain vehicles, and that each such snowmobile produces almost as much pollution as 100 automobiles.

19. In addition to emitting pollution into the air, snowmobiles also deposit emissions directly onto the snow surface. Some of these emissions are retained in the snowpack until it melts in the spring and then are discharged into streams or lakes, which can impair aquatic systems and organisms.

20. Although snowmobiles travel over the snow, they impact vegetation and hydrology through their weight, in particular when performing high-speed turns or jumps, or where an area receives repeated heavy use. Snowmobiles can compact snow on top of vegetation, which causes woody plants to bend and break. Snowmobiles may also break off or damage the above-ground leaders of seedling and sapling trees, run over taller trees, causing deformed growth formation such as multiple stems and leaders, or crush woody shrubs. These impacts can change the predominant plant species over large areas as woody shrubs are crushed and herbaceous plants—which die back in winter and thus are less susceptible to being damaged by snowmobiles—take their place.

21. Studies have also connected snow compaction from snowmobiles to delayed flowering of plants in spring, lower soil bacteria, and inhibited seed germination, dispersal, and growth. And compaction of snow on soils from the physical ruts of snowmobile operation decreases the water retention capability of the soil, resulting in increased runoff, increased erosion, and increased sedimentation in lakes.

22. Snowmobiles impact wildlife. OSVs are noisy and travel at high speeds in areas that are normally secluded in winter. These types of disturbances disrupt animal behavior patterns and add stress to wildlife at a time of year when such stress can be particularly harmful. Additional energy expenditures needed to retreat from or avoid snowmobiles can be critical during winter months when cold temperatures, deep snow, and limited food supplies already cause stress, and may jeopardize an animal's chances of survival or ability to reproduce.

23. Studies of wildlife responses to snowmobiles have documented elevated heart rates, elevated glucocorticoid stress levels, increased flight distance, habitat fragmentation, and community and population disturbance. For instance, it has been widely documented that

snowmobile activity disturbs wintering ungulates like deer and elk through physiological stress, increased movements to avoid machines, and higher energy expenditures.

24. The mere presence of groomed trails may alter animal movement patterns or displace them from habitat, and can provide corridors for predators (such as coyote) that would normally not be there, thereby adversely impacting prey species as well as other predators (such as bobcat or Canada lynx) that were previously insulated from such competition.

25. Snowmobile trails can also impair habitat for subnivean small mammals such as mice and voles that live under the snow in winter. When snowmobiles compact snow, the space between the frozen ground and the snow shrinks and becomes colder or may be blocked entirely, forcing the small mammals up to the surface where they are vulnerable to predation.

26. Numerous Forest Service Sensitive species that are preparing for or undergoing reproduction during the heavy snowmobile months of February to April are found in Idaho and may be adversely affected by snowmobile use. For instance, goshawks are beginning their breeding season with courtship and nest building during this time; pine marten, fisher and wolverine are in their dens giving birth; and bald eagles may be nesting or roosting. Disturbance during this period could result in abandonment of nest sites, dens, and roosting areas, impairing not just the individuals disturbed but also reducing the chance of successful reproduction.

27. Other imperiled species found in Idaho in the winter also may be adversely affected by OSV activity, such as federally Threatened Canada lynx and Grizzly bear as well as Forest Service Sensitive species boreal owl, white-tailed ptarmigan, Lewis' woodpecker, black-backed woodpecker, and three-toed woodpecker.

28. Use of snowmobiles off-trail in play-areas and other parts of the backcountry may cause even greater levels of stress on wildlife because that use is more random and less

predictable and animals cannot habituate to it. Thus, as snowmobiles become increasingly more powerful and are used to intrude farther into the backcountry, adverse impacts to wildlife greatly increase.

29. Last, but not least, snowmobile use impacts other people engaging in non-motorized winter recreation due to the loud noise, odors, and toxic pollution produced by these machines. Winter non-motorized recreationists such as cross-country and backcountry skiers, snowshoers, and winter hikers often seek clean air, solitude, and a quiet natural environment, and thus nearby OSV recreation disrupts their experience.

30. Snowmobile trailheads and trails become polluted with toxic air from snowmobiles, which has an immediate and long-lasting impact on other users trying to engage in human-powered recreation. Snowmobiles traveling at moderate to high speeds can present safety concerns to skiers or snowshoers using the same areas, create high volumes of noise that disrupt the quiet surroundings, and create ruts that make unsafe conditions for cross-country skiers. Snowmobiles also disproportionately consume a limited recreational resource in National Forests--untouched powder snow.

31. Winter recreation use on National Forests has steadily increased, with hundreds of thousands of visitors each year participating in winter recreation activities. Both cross-country skiing and snowshoeing have increased substantially in the last five to ten years and in the western states, annual cross-country skiing and snowshoeing visits outnumber snowmobile visits.

32. Yet despite significant use of National Forests by non-motorized winter recreation users, groomed trails designated for non-motorized recreation use represent a fraction of the trails that are open to motorized use. Furthermore, the vast majority of Forest Service land (outside federally-designated Wilderness, which generally is difficult to access in winter) is open

to motorized use. Only a small percentage of readily-accessible National Forest lands are specifically reserved for backcountry skiers, snowshoers and other visitors who desire a clean and quiet (non-motorized) winter recreation experience.

33. Although non-motorized recreation users can use any groomed trails, many choose not to use trails or areas open to motorized recreation use because snowmobiles ruin their experience. Others use these trails and areas despite the annoyance of snowmobiles due to the paucity of areas that are closed to motorized use, but would prefer to recreate in areas off-limits to snowmobiles.

Off-Road Vehicle Executive Orders

34. In 1972, President Nixon issued Executive Order 11644 requiring the Forest Service to “establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” E.O. 11644, Sec. 1. The order defines an Off-Road Vehicle as “any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.” E.O. 11644, Sec. 2(3). This definition specifically excluded certain categories of vehicles, such as registered motorboats and emergency vehicles, but notably did not exclude snowmobiles. *Id.*

35. The need for this Executive Order was due to the large number of off-road recreational vehicles, including snowmobiles, being used on public lands that were “in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity,” which demonstrated the need for a “unified Federal policy toward the use of such vehicles on the public lands.” E.O. 11644 (preamble).

36. To implement a unified Federal policy, Executive Order 11644 called for the Forest Service to develop and issue regulations to provide for administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted, and set a date by which such designation of *all* public lands shall be completed. E.O. 11644, Sec. 3.

37. The Executive Order stated that the regulations shall direct that the designation of such areas and trails will be based upon the protection of the resources of the public lands, promotion of the safety of all users of those lands, and minimization of conflicts among the various uses of those lands; and these designations shall be located to minimize damage to soil, watershed, vegetation, and other resources, minimize harassment to wildlife or significant disruption of wildlife habitat, and minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring lands, among other requirements. E.O. 11644, Sec. 3.

38. Once the designations were made, the Executive Order also directed the Forest Service to prescribe operating conditions for off-road vehicles to protect resource values, preserve public health, safety and welfare, and minimize use conflicts; inform the public of the designated areas or trails and conditions of vehicle use; enforce the regulations and designations; and monitor the effects of off-road vehicle use on their lands and make amendments to the designations based on that information. E.O. 11644, Sec. 4-8.

39. In 1987, Executive Order 11644 was amended by Executive Order 11989, which directed the Forest Service to immediately close any open areas or trails to off-road vehicle use if the agency determined that such use will cause or was causing considerable adverse effects to soil, vegetation, wildlife, wildlife habitat, or cultural resources. E.O. 11989 (included as Section

9 in E.O. 11644). It also authorized the Forest Service to adopt the policy that Forest Service lands shall be closed to off-road vehicles except those areas or trails specifically designated as open to such use—in other words a policy where lands are closed unless designated open, in contrast with a policy where all lands are open unless designated closed. *Id.*

Travel Management Rules

40. Prior to 2005, the Forest Service regulated all off-road vehicles under regulations adopted pursuant to Executive Orders 11644 and 11989, found at 36 C.F.R. Part 295. These regulations, first established in 1978, called for the Forest Service to use the continuing land management planning process to allow, restrict, or prohibit use by specific vehicle types off roads. 36 C.F.R. § 295.2(a) (2004).

41. As part of the planning process, the regulations required the Forest Service to analyze and evaluate impacts from operation of specific vehicle types on soil, water, vegetation, fish and wildlife, forest visitors and cultural and historical resources. *Id.* If that analysis indicated that the use of one or more vehicle types off roads would cause considerable adverse effects on resources or other forest visitors, use of the affected areas and trails by those vehicle type or types had to be restricted or prohibited until the adverse effects could be eliminated. *Id.* Under these regulations, the general Forest Service policy was that areas were open to off-road vehicle use unless specifically designated as closed in the planning process.

42. The only vehicles exempted from the pre-2005 regulations were emergency vehicles, combat vehicles for defense purposes, registered motorboats, and vehicles authorized by the Forest Service under a specific permit or license. 36 C.F.R. § 295.2(b) (2004). Thus, OSVs were subjected to the regulations under Part 295.

43. Off-road vehicle use increased 109 percent between 1982 and 2000. At the same time, off-road vehicles became more powerful and began entering areas that were previously inaccessible to them. Many of these newly accessible areas were traditionally refuges for human powered recreationists and at-risk species of wildlife.

44. In 2005, the Forest Service repealed the regulations at 36 C.F.R. Part 295 and in their place issued new regulations at 36 C.F.R. Part 212, stating that the new regulations were adopted to better address the increasingly severe impacts that off-road vehicles were having on the National Forests.

45. The 2005 Rule departed from history by splitting the Executive Orders' definition of off-road vehicles into off-highway vehicles ("OHVs") and over-snow vehicles ("OSVs"). The rule closed all lands not designated as open to OHVs, which put an end to the agency's open-unless-closed policy.

46. Specifically, the 2005 regulations require the Forest Service to designate the roads, trails, and areas on National Forest lands that are open to motor vehicle use, and prohibit motor vehicle use off of or outside of those designated roads, trails, and areas. 36 C.F.R. § 212.50. The 2005 regulations contain exemptions for certain vehicles like the prior regulations; but unlike the prior regulations, they also exempt aircraft and OSVs from the Rule. 36 C.F.R. § 212.51(a).

47. Similar to the prior regulations, the 2005 regulations state that, when designating roads, trails, and areas for motor vehicle use, the Forest Service shall consider effects on natural and cultural resources, public safety, recreational opportunities, and conflicts among uses of National Forest lands, with the objective of minimizing: (1) damage to soil, watershed, vegetation, and other forest resources, (2) harassment of wildlife and significant disruption of

wildlife habitat, (3) conflicts between motor vehicle use and existing or proposed recreational uses of National Forest lands, and (4) conflicts among different classes of motor vehicle uses of National Forest lands. 36 C.F.R. § 212.55.

48. The 2005 regulations also require every forest to publish a map showing the roads, trails, and areas open to OHVs, and to monitor effects of motor vehicle use on designated roads and trails and in designated areas. 36 C.F.R. §§ 212.56, 212.57.

49. In place of the mandatory regulations used for OHVs, the Forest Service added a provision to the 2005 Rule that affords the National Forests complete discretion in regulating OSVs rather than requiring Forests to regulate OSVs as they must do for OHVs. 36 C.F.R. § 212.81(a). This provision states that use by OSVs on National Forest lands *may* be allowed, restricted, or prohibited. *Id.* *If* a National Forest proposes restrictions or prohibitions on OSV use, then it must follow the requirements for off-road vehicle designations set forth in the regulations at sections 212.52-57. 36 C.F.R. § 212.81(c). Thus, regulation of OSV use on Forest Service land is completely discretionary under the 2005 Travel Management Rule.

50. The proposed rule and final rule published in the Federal Register for the 2005 regulations acknowledged the need to establish and identify a use system for motor vehicles on each National Forest in light of the increasing off-road vehicle use occurring on National Forest lands. 69 Fed. Reg. 42,381 (July 15, 2004); 70 Fed. Reg. 68,264 (Nov. 9, 2005). The rules stated that such a system was needed to sustain natural resource values through more effective management of motor vehicle use as well as to enhance opportunities for motorized recreation experiences while at the same time preserving areas of opportunity on each forest for non-motorized travel and experiences.

51. The proposed and final rules recognized that off-road motor vehicle use on National Forests had increased in amount and geographic scope in recent years, causing greater impacts to resources, and that off-road vehicles include snowmobiles. The rules also recognized that non-motorized recreation had increased substantially on National Forests since the 1980's.

52. The Forest Service noted that, given the increased pressure from growing numbers of recreation users coupled with advances in recreation technology, it needed to manage for a balance between motor vehicle use and non-motorized recreational activities to maintain forest health and reduce user conflicts. To achieve this, it needed to establish a designated system for motor vehicle use that would provide national consistency and clarity on motor vehicle use within the National Forest system and meet the intent of Executive Order 11644.

53. Yet the Forest Service exempted OSVs from this unified policy on motor vehicle use. In the proposed rule, it stated that snowmobiles were exempted from the mandatory designation scheme because a snowmobile traveling over snow results in different and less severe impacts to natural resource values than wheeled motor vehicles traveling over the ground and thus it may be appropriate for snowmobiles to travel off route. However, because there are impacts associated with snowmobile use, and snowmobiles are included in the definition of off-road vehicle under Executive Order 11644, local officials may regulate OSVs on a discretionary basis.

54. Winter Wildlands submitted comments on the 2004 proposed rule, asserting that snowmobiles should not be exempt from the mandatory off-road vehicle designation scheme due to their widespread conflicts with non-motorized recreation users as well as their environmental impacts. The comments noted that the proposed rule actually reduced regulation of snowmobiles

compared to the earlier regulations, which included snowmobiles in travel management planning.

55. Winter Wildlands also attached the report “Winter Recreation on National Forest System Lands: The Case For Human Powered Snowsports in Forest Management” to their comments. This report described in further detail the conflicts between OSV use and non-motorized winter recreation that were not addressed by the proposed rule, providing numerous examples of such conflicts across the West. It noted extensive public interest in protecting non-motorized recreation on public lands, and that the Forest Service must regulate all off-road motor vehicles, including OSVs.

56. Despite these comments and report describing the many impacts of snowmobiles and the increasing conflicts with non-motorized recreation users across the western United States, the 2005 final rule maintained the OSV exemption.

57. The final rule acknowledged that snowmobiles are “off-road vehicles” under Executive Order 11644 and “motor vehicles” under the 2005 Rule, but because cross-country snowmobile use presents a different set of management issues and environmental impacts, the Forest Service could exempt snowmobile use from the mandatory designation scheme. The Forest Service stated in the final rule that OSVs traveling cross-country generally do not create a permanent trail or have direct impacts to soil and ground vegetation, and therefore should be addressed through separate provisions that were discretionary and would be implemented at the local level. The final rule said nothing about addressing conflicts between OSVs and non-motorized winter recreation users.

Petition to Remove Snowmobile Exemption from 2005 Travel Management Rule

58. In light of escalating concerns about conflicts between snowmobiles and non-

motorized winter recreationists, Winter Wildlands, along with 89 other groups, petitioned the Forest Service in 2010 to amend the 2005 Travel Management Rule to remove the exemption for OSVs and include snowmobiles in the mandatory off-road vehicle planning process.

59. The petition discussed the many impacts of snowmobiles on the environment, such as air pollution and water pollution from snowmobile emissions, harm to soil and vegetation from snowmobiles compacting snow and running over plants, noise pollution, and disturbance of many species of wildlife. Winter Wildlands also attached an appendix to the petition that explained these impacts in greater detail and referenced many scientific articles supporting that discussion.

60. The petition further described concerns about public safety from machines that are extremely powerful and fast, and chronicled conflicts between OSV use and non-motorized recreationists in many western states, attaching numerous letters from the public to the Forest Service complaining about conflicts in recent years. It noted the huge disparity between extensive opportunities for OSV use on Forest Service lands compared to the minimal opportunities for non-motorized recreationists to enjoy quiet and solitude in areas that are closed to motorized use.

61. Winter Wildlands also attached the report “Winter Recreation on Western National Forest Lands” to the petition. This report described the impacts of snowmobiles on the environment and on other recreation users, including noise, air pollution, and safety concerns; the increasing use of snowmobiles on Forest Service lands across the West as well as the increasing use by non-motorized recreationists; the conflicts between the two user groups; and the vast disparity between the large amount of area and trails open to motorized users versus the

very small amount of area and trails closed to motorized use that would be available for quiet non-motorized recreation use.

62. The petition explained that the OSV loophole in the 2005 regulations does not comply with the language and intent of Executive Order 11644, which requires a mandatory designation scheme for use of all off-road vehicles with mandatory standards for designation of areas and trails open to such use. The petition stated that a different set of management issues and environmental impacts does not justify completely exempting OSVs from the mandatory designation scheme and backsliding from the pre-2005 regulation of snowmobiles. The impacts from OSVs to the environment and to other recreation users are real and no less severe or significant than impacts from other off-road vehicles even if the types of impacts are somewhat different.

63. The petition claimed that the rationale the Forest Service stated for needing a uniform policy across National Forests for mandatory management of OHVs applies equally to OSVs—i.e. the need to protect forest resources and reduce conflicts with non-motorized recreation users caused by increasing motor vehicle use. Because the OSV exemption in the 2005 regulations was in direct conflict with Executive Order 11644 and was not supported by a rational explanation, the 2005 Travel Management Rule was arbitrary, capricious, and not in accordance with law.

64. The Forest Service denied Winter Wildlands' petition on March 25, 2011. As a threshold matter, the Forest Service argued that Executive Order 11644 was unenforceable.

65. The Forest Service then claimed that even if Executive Order 11644 was enforceable, it only required the “promulgation of regulations providing for restrictions and prohibitions on motor vehicle use,” and that the Order “does not require agencies to impose

restrictions and prohibitions on motor vehicle use.” In other words, the Forest Service interpreted Executive Order 11644 as allowing, but not requiring, the agency to establish a system of routes and areas designated for off-road vehicle use. Thus, the Forest Service could choose not to regulate any off-road vehicles or any particular type of off-road vehicle if it chose, according to the Forest Service decision denying Winter Wildlands’ petition.

66. The Forest Service also argued in its denial of the petition that its rationale for exempting OSVs from the 2005 Rule was adequate. Because snowmobiles are not used on every National Forest and the impacts of snowmobiles will vary from one forest to another, there is no need for a mandatory national requirement for OSV travel planning. According to the Forest Service, local officials are in a better position to determine whether OSV impacts are a concern on a particular forest.

67. The denial of the petition failed to acknowledge, however, that other off-road vehicles also have varying impacts and varying levels of use from one forest to another. And it did not address the serious concern about widespread conflicts between motorized recreationists and non-motorized recreationists, which applies to OSVs as well as OHVs.

68. The regulations require each National Forest to assess which areas and trails should be open to off-road vehicles and close all remaining areas and trails. Thus, for each National Forest, local officials make the final decisions designating those areas and trails based on site-specific information. The Forest Service did not explain in the petition denial why this process should be different for OSVs than for all other off-road vehicles.

Application of the 2005 Travel Management Rule in Idaho

69. All National Forests in Idaho have undergone or are currently undergoing the travel management planning process pursuant to the travel management regulations and NFMA.

Many of these forests started the process after the issuance of the 2005 Travel Management Rule. While a few forests have included winter recreation use in their travel planning, most have not.

70. For instance, both the Clearwater National Forest and adjacent Nez Perce National Forest are currently preparing travel management plans. While the Clearwater National Forest has included OSV use in its draft plan, the Nez Perce National Forest has not despite similar issues with and impacts from OSV use on the two adjoining forests.

71. Likewise, many of the Forest Service travel management plans that have been completed in Idaho pursuant to the 2005 Rule have excluded OSV use, such as plans on the Salmon-Challis, Boise, and Idaho Panhandle National Forests.

72. The Salmon-Challis National Forest completed a travel management plan for the entire forest in August 2009 but excluded OSV use from its plan.

73. On the Boise National Forest, the individual ranger districts completed their own travel management plans. The Emmett and Idaho City Ranger Districts each completed plans in September 2009 while the Mountain Home Ranger District completed a plan in May 2008, and none of these plans included OSV use.

74. Similarly, the individual districts on the Idaho Panhandle National Forest completed or are working on their own travel management plans. The Coeur d'Alene River Ranger District completed its plan in April 2009, and it too did not include OSV use.

75. Each of these plans designated roads, trails, and areas that are open to wheeled motor vehicle use, with all other areas on the forest or district closed to such use, in compliance with the requirements of the 2005 Travel Management Rule. However, the Forest Service did not make similar designations for OSVs in these areas under the 2005 Rule despite the fact that these forests receive heavy snowfall in winter and have both motorized and non-motorized

winter recreationists frequenting them.¹

76. Winter Wildlands submitted comments during the planning process for each of these travel management plans, noting the need to include OSV use in the plans due to conflicts between motorized and non-motorized winter recreationists in each area. The Forest Service, however, continued to rely on the exemption in the 2005 Travel Management Rule to exclude OSV use from each of these travel plans.

FIRST CLAIM FOR RELIEF
2005 TRAVEL MANAGEMENT RULE EXEMPTION OF OSVs
IS ARBITRARY, CAPRICIOUS, CONTRARY TO LAW
AND AN ABUSE OF DISCRETION

77. Plaintiff hereby realleges and incorporates all preceding paragraphs.

78. This First Claim for Relief challenges the Forest Service's exemption of OSVs from the mandatory travel planning requirements of the 2005 Travel Management Rule, 36 C.F.R. § 212.51(a)(3), as violating Executive Order 11644 (as amended by Executive Order 11989), and for being arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the APA, 5 U.S.C. § 706(2), as exemplified through the Rule's application in Idaho.

79. The 2005 Travel Management Rule's OSV exemption violates Executive Order 11644 by exempting OSVs from its mandatory scheme to designate roads, trails, and areas that are open to off-road motor vehicle use on all Forest Service lands and close all other areas to such use. 36 C.F.R. §§ 212.51(a)(3), 212.81. Such an exemption for OSVs does not comply with the language and intent of Executive Order 11644 directing the Forest Service to issue

¹ Some or all of these areas have winter OSV-use maps, but the maps were not created under the 2005 Travel Management planning process and thus do not comply with the procedures and criteria required by that Rule nor the requirement that all areas not specifically designated as open are closed to use.

regulations to provide for the control and designation of off-road vehicle use, including snowmobiles, on all public lands. The Forest Service has used this exemption to exclude OSV use from travel management planning conducted pursuant to the 2005 Rule on numerous National Forests in Idaho, as alleged above.

80. The 2005 Travel Management Rule's OSV exemption is also arbitrary and capricious under the APA because the Forest Service failed to provide a rational explanation for the OSV exemption. The Forest Service did not justify why the need for regulation of off-road vehicle use does not apply to OSVs when OSVs have impacts to the environment and create conflicts with other recreationists on National Forest lands, including National Forests in Idaho that have excluded OSV use in their travel management plans.

81. Thus, the 2005 Travel Management Rule's OSV exemption is arbitrary, capricious, an abuse of discretion, and not in accordance with law under the APA, which has caused or threatens serious prejudice and injury to Plaintiff's rights and interests.

SECOND CLAIM FOR RELIEF
FOREST SERVICE DENIAL OF PETITION TO AMEND
2005 TRAVEL MANAGEMENT RULE IS ARBITRARY, CAPRICIOUS,
AN ABUSE OF DISCRETION AND CONTRARY TO LAW

82. Plaintiff hereby realleges and incorporates all preceding paragraphs.

83. This Second Claim for Relief challenges the Forest Service's denial of Winter Wildlands' petition to amend the 2005 Travel Management Rule by removing the OSV exemption and remedying the discretionary management of over-snow vehicles on National Forest system lands.

84. The denial of the petition was arbitrary and capricious and contrary to Executive Order 11644. As discussed above, the Forest Service's denial incorrectly stated that Executive Order 11644 is unenforceable; misinterpreted the language and intent of Executive Order 11644;

and did not provide a rational explanation supported by evidence for the OSV exemption in the 2005 Travel Management Rule.

85. Thus, the denial of the petition was arbitrary, capricious, an abuse of discretion, and not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2), which has caused or threatens serious prejudice and injury to Plaintiff's rights and interests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Winter Wildlands respectfully requests that the Court grant the following relief:

A. Declare, hold and adjudge that the OSV exemption in the 2005 Travel Management Rule, 36 C.F.R. § 212.51(a)(3), is arbitrary, capricious, an abuse of discretion and/or contrary to law under Executive Order 11644 and the APA, and reverse and set aside said OSV exemption;

B. Declare, hold, and adjudge that the Forest Service's denial of Winter Wildlands' petition to remove the OSV exemption from the 2005 Travel Management Rule is arbitrary, capricious, an abuse of discretion and/or contrary to law under Executive Order 11644 and the APA, and reverse and set aside said denial;

C. Order the Forest Service to amend the 2005 Travel Management Rule to remove the OSV exemption and to make OSV-use designations mandatory in all its travel management planning in compliance with all of the requirements in the 2005 Travel Management Rule;

D. Enter such other declaratory relief, and temporary, preliminary and/or permanent injunctive relief as may be prayed for hereafter by Plaintiff;

E. Award Plaintiff its reasonable costs, litigation expenses, and attorney's fees associated with this litigation pursuant to EAJA and/or all other applicable authorities; and/or

F. Grant such further relief as the Court deems just and proper.

Dated: November 29, 2011

Respectfully submitted

/s/Lauren M. Rule
Lauren M. Rule
Attorney for Plaintiff