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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

17 SNOWLANDS NETWORK, WINTER)
18 WILDLANDS ALLIANCE and CENTER)
19 FOR BIOLOGICAL DIVERSITY,)
20)
21 Plaintiffs,)
22)
23 v.)
24)
25 UNITED STATES FOREST SERVICE,)
26 an agency of the United States,)
27)
28 Defendant.)

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

NATURE OF ACTION

1. Plaintiffs challenge Defendant U.S. Forest Service’s unlawful practice across numerous national forests in California of implementing actions pursuant to the Over Snow Vehicle Program without having performed the necessary review of the environmental impacts of such actions under the National Environmental Policy Act (“NEPA”). The Over Snow Vehicle Program (“OSV Program”) is a joint effort of the California Department of Parks and Recreation (Off-Highway Motor Vehicle Recreation Division) and the Forest Service to promote OSV recreation on Forest Service land. The Forest Service issues permits and contracts for, manages, funds and implements the OSV Program on its

1 lands.¹

2 2. The Forest Service has failed to conduct the necessary environmental analysis under
3 NEPA to assess the impacts of its OSV Program Activities on federal lands throughout the Sierra
4 Nevada and southern Cascade mountains.

5 3. Forest Service OSV Program Activities include the execution of cost-share agreements
6 with the California Department of Parks and Recreation (“CDPR”); the issuance of permits, contracts, or
7 other authority to third parties to provide trail grooming and related services; the funding of third parties
8 to perform such services; and the performance by Forest Service staff of trail grooming and facilities
9 maintenance as well as other management actions such as the posting of signs and maps, law
10 enforcement, and resource monitoring.

11 4. Snowmobiles emit substantial amounts of air pollution, impact water quality, create high
12 levels of noise, harm vegetation, and adversely impact wildlife. For these and other reasons, they also
13 create conflicts with non-motorized winter recreation users of these same areas, such as cross-country
14 skiers and snowshoers. These impacts have become more significant in the last twenty years as
15 snowmobile use has increased and the machines have become more powerful, allowing them to intrude
16 even farther into the backcountry and into areas they could not previously access.

17 5. Forest Service OSV Program Activities greatly facilitate use of snowmobiles in eleven
18 National Forests spanning the Sierra Nevada and Cascade mountain ranges of California. OSV Program
19 Activities substantially increase the number of snowmobile riders, the distance they ride, and the
20 prevalence of OSV riding in normally remote backcountry areas. Significantly less snowmobiling
21 would occur in the absence of OSV Program Activities, and snowmobiles would not travel as fast or as
22 far into the backcountry absent the groomed trails.

23 6. Due to the adverse impacts of snowmobiles, other governmental agencies that have
24 extensively studied snowmobile impacts — such as Yellowstone National Park — have imposed

25 ¹ As used in this complaint, the term “OSV Program” refers to the entire State-funded program
26 and the term “OSV Program Activities” refers to the Forest Service actions in executing such program
27 that are at issue in this complaint. Also, the terms “OSV”, “snowmobile” and “snowmachine” are used
28 interchangeably.

1 restrictions on the types and number of snowmobiles allowed, and severely limited the areas in which
2 they may be used. The Forest Service has not taken comparable action with respect to snowmobile use
3 in the California national forests.

4 7. Rather than assess and manage the environmental impacts of its OSV Program
5 Activities, the Forest Service has categorically excluded OSV Program Activities from NEPA review in
6 some instances and simply ignored the requirements of NEPA altogether in others. The Forest Service
7 continues OSV Program Activities each year, including execution of cost share agreements with CDPR
8 and issuance of trail grooming permits and contracts to third parties, but has failed to assess the impacts
9 of such activities under NEPA.

10 8. Plaintiffs seek judicial review of the Forest Service's actions to continue permitting,
11 managing, funding and implementing the OSV Program without conducting NEPA analysis, and further
12 declaratory and injunctive relief to require the Forest Service to conduct a full analysis of the direct,
13 indirect, and cumulative environmental impacts of OSV use in the national forests.

14 **JURISDICTION AND VENUE**

15 9. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises
16 under the laws of the United States, including NEPA, 42 U.S.C. § 4321 et seq.; the Administrative
17 Procedure Act, 5 U.S.C. § 701 et seq. ("APA"); the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.;
18 and the Equal Access to Justice Act, 28 U.S.C. § 2412 et seq.

19 10. An actual, justiciable controversy now exists between Plaintiffs and Defendant. The
20 requested relief is therefore proper under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 701-06.

21 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because all or a
22 substantial part of the events or omissions giving rise to the claims herein occurred within this judicial
23 district, and the affected public lands and resources are located in this judicial district.

24 12. The federal government has waived sovereign immunity in this action pursuant to 5
25 U.S.C. § 701.

26 **PARTIES**

27 13. Plaintiff SNOWLANDS NETWORK is a California non-profit public benefit
28 corporation with approximately 500 members that represents the interests of skiers, snowshoers, and

1 other winter recreationists who desire to recreate in areas free from motorized use. Snowlands, its
2 members and staff recreate on national forest lands in California impacted by the Forest Service's OSV
3 Program, are adversely affected by OSV Program Activities, and have been active in contacting the
4 Forest Service to discuss the management and impacts of the OSV Program.

5 14. Plaintiff WINTER WILDLANDS ALLIANCE is a national non-profit organization
6 dedicated to promoting and preserving winter wildlands and a quality human-powered snowsports
7 experience on public lands nationwide. It has 1,300 members and 30 affiliated organizations which
8 together have an additional 30,000 members, including many members who live and recreate in
9 California, including on national forest lands impacted by the OSV Program, and are adversely affected
10 by OSV Program Activities. Snowlands Network is one of the organizations affiliated with Winter
11 Wildlands Alliance.

12 15. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit, public interest
13 corporation, with more than 41,000 members, and with offices in a number of states, including Los
14 Angeles and San Francisco, California. The Center works through science, law, and creative media to
15 secure a future for all species, great or small, hovering on the brink of extinction. Center members and
16 staff have interests in the wildlife species and habitats that are affected by Defendant Forest Service's
17 OSV Program Activities and regularly use the national forests that participate in the OSV Program for
18 recreational and other purposes.

19 16. Plaintiffs' members and staff regularly recreate during the winter on the national forests
20 at issue in this case and use and enjoy areas impacted by the OSV Program. Plaintiffs' members and
21 staff derive aesthetic, recreational, health, inspirational and other benefits from their non-motorized
22 snowsport activities on these forests on a regular and continuing basis and intend to do so frequently in
23 the immediate future, including during winter of 2011-2012. Plaintiffs' enjoyment of their non-
24 motorized snowsport activities is impaired by the use of snowmobiles in those same or near-by areas.

25 17. Defendant's violations of law and failure to manage winter recreation on national forest
26 lands in a manner consistent with the mandates of NEPA adversely and irreparably injures Plaintiffs'
27 aesthetic, recreational, health, inspirational and other interests. These are actual, concrete injuries to
28

1 Plaintiffs, caused by Defendant's violations of law, which will continue until and unless this Court
2 provides the relief prayed for in this Complaint.

3 18. Defendant U.S. FOREST SERVICE is an agency or instrumentality of the United States,
4 and is charged with managing the public lands and resources of the National Forests, in accordance and
5 compliance with federal laws and regulations.

6 **FACTUAL ALLEGATIONS**

7 **California National Forests**

8 19. Eleven National Forests in California participate in the OSV Program. These forests
9 span the southern Cascade and Sierra Nevada mountains from the Oregon border down to Bakersfield,
10 California. The eleven National Forests are: Klamath, Modoc, Shasta-Trinity, Lassen, Plumas, Tahoe,
11 Eldorado, Stanislaus, Inyo, Sierra, and Sequoia.

12 20. The southern Cascade and Sierra Nevada mountains are spectacular ranges, offering
13 scenic beauty, habitat for a wide diversity of plants and animals, fresh water streams and lakes, and
14 opportunities for a variety of recreation. Numerous threatened, endangered, Forest Service Sensitive
15 and other special status plant and animal species live in these high elevation areas, including bald eagles,
16 golden eagles, spotted owls, great gray owls, goshawks, pine marten, pacific fisher, wolverine, Sierra
17 Nevada red fox, mountain lions, and Sierra Nevada snowshoe hare.

18 21. Within these national forests are numerous designated Wilderness areas that are required
19 under law to be maintained in a natural condition and to offer solitude and primitive recreation
20 opportunities, without motorized intrusion. These areas include the Mount Shasta Wilderness (Klamath
21 National Forest), Lassen Volcanic National Park and Caribou Wilderness (Lassen National Forest),
22 Bucks Lake Wilderness (Plumas National Forest), Mokelumne Wilderness (Eldorado and Stanislaus
23 National Forests), Ansel Adams Wilderness and Hoover Wilderness (Inyo National Forest), Kaiser
24 Wilderness and John Muir Wilderness (Sierra National Forest), Carson-Iceberg Wilderness (Stanislaus
25 National Forest), Golden Trout Wilderness and South Sierra Wilderness (Sequoia National Forest).
26 There are also several National Monuments within these national forests, including Giant Sequoia
27 National Monument in Sequoia National Forest.
28

1 **Winter Recreation**

2 22. The California National Forests are very popular recreation destinations for both
3 summer and winter recreation activities. In winter, these activities include downhill and cross-country
4 skiing, snowshoeing, sledding, and snowmobile riding, among others.

5 23. Access for winter recreation on national forest lands occurs where the State, the Forest
6 Service, or another party has provided access to recreation areas via plowed trailheads or turnouts. In
7 recent years, there has been a substantial increase in persons desiring to recreate by ski or snowshoe in
8 the national forests of California, and a subsequent substantial increase in the demand for winter
9 trailheads and areas for clean and quiet non-motorized recreation.

10 24. Under the OSV Program, approximately 34 trailheads provide access to National Forest
11 lands on which there are more than 1,700 miles of groomed OSV trails. The OSV Program facilitates
12 and promotes snowmobile access to more than 8,300,000 acres of national forest land. There are
13 comparatively few trailheads that provide access for solely non-motorized recreation opportunities.

14 **Impacts of Snowmobiles**

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

18 26. In recent years, manufacturers of snowmobiles have consistently been increasing the
19 power of the machines, making them able to navigate steeper terrain and deeper snow. This trend in
20 increased power has changed the sport, allowing for much farther access into the backcountry and
21 activities such as highmarking—where snowmobiles race up steep slopes toward ridgetops and then
22 quickly turn (before they capsize) and race back down the slope. This trend in increased machine power
23 and thus increased geographic scope of snowmobile activity exacerbates the impacts of snowmobiles on
24 the environment and other recreationists.

25 27. Snowmobiles emit pollution in the form of carbon monoxide, nitrogen oxides,
26 particulate matter, hydrocarbons, and a variety of mobile source air toxics that are known or probable
27 carcinogens. Air pollution from snowmobile exhaust endangers human health in areas of OSV use.
28 Snowmobiles also contribute to nonattainment of national and regional air quality standards for ozone,

1 carbon monoxide, and fine particulate matter in California airsheds. Snowmobiles generate greenhouse
2 gas emissions as well that contribute to global warming. As snowmobiles increase in horsepower, they
3 are allowed to emit more pollution under national air regulations, creating greater air pollution per
4 machine and per hour of use.

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

11 29. Snowmobile emissions are so high largely because the vast majority of snowmobiles in
12 use continue to use older two-stroke technology in their engines rather than more advanced and efficient
13 four-stroke technology or fuel-injection technology. Approximately 95% of the snowmobiles that use
14 the trails provided under the OSV Program use older non-fuel-injected two-stroke technology.

15 30. Non-fuel-injected two-stroke engines are far less efficient at burning fuel, leaving 25-
16 30% of the fuel uncombusted, thus emitting far more hydrocarbons, air toxins, carbon monoxide, and
17 particulate matter than four-stroke engines. The United States Environmental Protection Agency has
18 found that older two-stroke snowmobiles are more polluting than off-highway motorbikes or all-terrain
19 vehicles, and that each such snowmobile produces almost as much pollution as 100 automobiles.

20 31. In addition to emissions from snowmobiles themselves, the vehicles that groom the trails
21 and plow the trailheads under the OSV Program also produce emissions that contribute to air pollution,
22 especially fine particulate matter and nitrogen oxides. Those emissions, when combined with the
23 snowmobile emissions at trailheads, parking areas, and along popular trails, create cumulative air quality
24 impacts on these forests.

25 32. In addition to emitting pollution into the air, snowmobiles also deposit emissions
26 directly onto the snow surface. Some of these emissions are retained in the snowpack until it melts in
27 the spring and then discharged into streams or lakes, which can impair aquatic systems and organisms.
28

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

9 34. Compaction of snow on soils from the physical ruts of snowmobile operation decreases
10 the water retention capability of the soil, resulting in increased runoff, increased erosion, and increased
11 sedimentation in lakes.

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

18 36. The mere presence of groomed trails may alter animal movement patterns or displace
19 them from habitat, and can provide corridors for predators (such as coyote) that would normally not be
20 there, thereby adversely impacting prey species as well as other predators (such as bobcat) that were
21 previously insulated from such competition. Effects to wildlife also include accidental or intentional
22 collisions with snowmobiles; and impairment of habitat for subnivean small mammals such as mice and
23 voles that live under the snow in winter.

24 37. The eleven National Forests at issue here provide winter habitat for a variety of Forest
25 Service sensitive species, many of which are preparing for or undergoing reproduction during the heavy
26 snowmobile months of February to April. For instance, goshawks and spotted owls are beginning their
27 breeding seasons with courtship and nest building during this time; pine marten, fisher and wolverine are
28 in their dens giving birth; and wintering bald eagles may be nesting or roosting. Disturbance during this

1 period could result in abandonment of nest sites, dens, and roosting areas, impairing not just the
2 individuals disturbed but also reducing the chance of successful reproduction.

3 38. Use of snowmobiles off-trail in play-areas and other parts of the backcountry may cause
4 even greater levels of stress on wildlife because that use is more random and less predictable and
5 animals cannot habituate to it. Thus, as snowmobiles become increasingly more powerful and are used
6 to intrude farther into the backcountry, adverse impacts to wildlife greatly increase.

7 39. Last, but not least, snowmobile use impacts other people engaging in non-motorized
8 winter recreation due to the loud noise, odors, and toxic pollution produced by these machines. Winter
9 non-motorized recreationists such as cross-country skiers or snowshoers often seek clean air, solitude,
10 and a quiet natural environment, and thus nearby OSV recreation disrupts their experience. Trailheads
11 used to access the OSV Program trails become polluted with toxic air from snowmobiles, which has an
12 immediate and long-lasting impact on other users trying to engage in human-powered recreation.
13 Snowmobiles traveling at moderate to high speeds can present safety concerns to skiers or snowshoers
14 using the same areas, create high volumes of noise that disrupt the quiet surroundings, and create ruts
15 that make unsafe conditions for cross-country skiers. Snowmobiles also disproportionately consume a
16 limited recreational resource in the national forests, powder snow.

17 40. Winter recreation use on national forests in California has steadily increased, with
18 hundreds of thousands of visitors each year participating in winter recreation activities. Data from
19 recent Forest Service visitor use monitoring shows roughly 36% more cross-country ski and snowshoe
20 visits than snowmobile visits across the eleven national forests that participate in the OSV Program. On
21 only three of the eleven individual forests did snowmobile visits outnumber cross-country ski and
22 snowshoe visits. Both cross-country skiing and snowshoeing have increased substantially in the last five
23 to ten years, and data from other sources show an annual double-digit growth in backcountry skiing and
24 snowshoeing.

25 41. Yet despite more visits by non-motorized winter recreation users, more than 1,700 miles
26 of groomed trails and 3,350 miles of ungroomed trails are open to motorized use while only 162 miles of
27 trails are designated for non-motorized use on these eleven forests. Furthermore, the vast majority of
28 Forest Service land (outside federally-designated Wilderness, which generally is difficult to access in

1 winter) is open to motorized use. Only a small percentage of readily-accessible national forest lands are
2 specifically reserved for backcountry skiers, snowshoers and other visitors who desire a clean and quiet
3 (nonmotorized) winter recreation experience.

4 42. Although non-motorized recreation users can use trails provided under the OSV
5 Program, many choose not to because snowmobiles ruin their experience. Others use these areas despite
6 the annoyance of snowmobiles due to the paucity of areas that are closed to motorized use, but would
7 prefer to recreate in areas off-limits to snowmobiles.

8 43. The OSV Program also facilitates the ability of OSVs to travel close to Wilderness areas
9 and thereby facilitates illegal trespass into federally-designated Wilderness. Snowmobiles have been
10 documented intruding into at least nine wilderness areas that occur within these OSV Program forests.

11 **Forest Service OSV Program Activities**

12 44. The OSV Program comprises 26 snowmobile trail systems across eleven national
13 forests, and involves plowing 97 miles of access roads, plowing parking areas and/or maintaining
14 facilities at 34 trailheads, and grooming 1,761 miles of trail on Forest Service lands. Grooming generally
15 begins in mid-December and continues through March, and occurs several times per week on popular
16 trails.

17 45. The Forest Service's OSV Program Activities consist of managing funds disbursed by
18 the State through cost share agreements for operation of the OSV Program, authorizing and/or providing
19 grooming of snowmobile trails, authorizing and/or directly plowing access roads and trailhead parking
20 lots, authorizing and/or providing maintenance of trailhead facilities and warming huts along trails, and
21 conducting management actions such as providing trailside signs, resource protection, monitoring,
22 public education, and law enforcement.

23 46. In most instances, trail grooming and road and trailhead plowing under the OSV
24 Program is conducted by Forest Service staff or authorized by the Forest Service through contracts or
25 permits with private contractors, California Department of Transportation, counties, or volunteers. In
26 limited instances, plowing of roads and trailheads for the OSV Program occurs through direct contracts
27 between California Department of Parks and Recreation ("CDPR") and county agencies with little or no
28 participation by the Forest Service.

1 47. The OSV groomed trail systems on the eleven national forests were developed in the
2 1980's and 1990's. The Forest Service has generally received funds annually or every two years when
3 individual forests apply for grants from CDPR. These funds used to be awarded through competitive
4 grants issued under the State's Competitive Grants and Cooperative Agreements Program until 2005, at
5 which time CDPR began administering the OSV Program funds through cost share agreements with the
6 forests under dedicated funding. These cost share agreements are direct contracts between CDPR and
7 national forests, and through the agreements the OSV Program is implemented.

8 48. For example, a cost share agreement contract between CDPR and the Lassen National
9 Forest states that the Forest Service shall provide all tools, equipment, and labor necessary to perform
10 snow grooming on 430 miles of designated snowmobile trails and roads at least once per week; snow
11 plowing and sanding at five trailheads; refuse collection, restroom maintenance, and sign repair and
12 replacement at five trailheads; law enforcement to enforce laws and regulations and deter incursions into
13 Wilderness and other closed areas; public education; protection of sensitive biological and soil
14 resources; and other miscellaneous duties in exchange for receiving funds from CDPR. The Forest
15 Service also contributes its own funds to help pay for administering and implementing the OSV
16 Program.

17 49. In administering funds for the OSV Program, CDPR must comply with the provisions of
18 the State of California's Environmental Quality Act ("CEQA"). In 2008 and 2009, CDPR had adopted a
19 Negative Declaration with regard to the OSV Program (finding that no further environmental analysis
20 was required under CEQA) but in 2009, CDPR decided to prepare a full environmental impact report
21 ("EIR") for purposes of CEQA compliance. CDPR issued an EIR in 2010 purporting to evaluate the
22 environmental impacts of the OSV Program for ten years, from 2010/2011 through 2019/2020.

23 50. After describing the cost-share agreements and the State's and Forest Service's roles in
24 funding and implementing the OSV Program, the EIR considered effects from continuing the existing
25 OSV Program, as well as effects from the expected growth and expansion of the program over the next
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27
28

1 ten years, on air quality and greenhouse gases, vegetation and wildlife biological resources, hydrology
2 and water quality, noise, and recreation.²

3 51. Although the State determined to perform an environmental analysis under CEQA, the
4 Forest Service has not conducted any analysis under the National Environmental Policy Act (NEPA)
5 assessing the current impacts of the OSV Program. Some national forests have categorically excluded
6 the OSV Program from NEPA analysis, while others have no NEPA documentation at all or only twenty
7 year old NEPA analyses.

8 52. For instance, the Lassen National Forest completed an Environmental Assessment under
9 NEPA in 1989 for its Winter OSV Management, but has never updated this analysis. Similarly, the
10 Eldorado National Forest completed an Environmental Assessment in 1986 for its Silver Bear Snow
11 Trails and Facilities but has no more recent NEPA analysis despite finding in 2002 that new information
12 and changed circumstances, such as new management direction for the forest and new designations of
13 sensitive species, warranted updating the Assessment. Snowmobile use has increased substantially and
14 snowmobile technology has advanced as well, increasing the impacts that snowmobiles are having on
15 the environment compared to twenty years ago.

16 53. The Klamath, Modoc, and Sierra National Forests have no NEPA documentation at all
17 for their OSV Program Activities.

18 54. The remainder of the forests under the OSV Program have sporadically issued decisions
19 categorically excluding OSV Program Activities from analysis in an Environmental Assessment (EA) or
20 Environmental Impact Statement (EIS). A categorical exclusion under NEPA can be used for specific
21 categories of actions that an agency has determined have no significant direct, indirect, or cumulative
22 effects on the environment and thus do not need to be analyzed in an EA or EIS. A categorical
23 exclusion cannot be used, however, if extraordinary circumstances exist, which occurs if there is any
24 potential for significant effects to special resources like Wilderness, wetlands, or threatened,
25 endangered, or sensitive species.

26
27 ² Plaintiffs have challenged the adequacy of the State's EIR under CEQA. Such action is pending in
28 State Court and does not involve issues under NEPA. NEPA and CEQA are separate and distinct
statutes with independent requirements. Plaintiffs do not assert any claims under CEQA in this action.

1 55. The Stanislaus National Forest issued categorical exclusions for its yearly OSV Program
2 Activities in 1994-1997 and 2001. The Shasta-Trinity National Forest issued a decision in 2001
3 categorically excluding its OSV Program Activities for the 2001-2002 winter season. The Sequoia
4 National Forest issued decisions in 2003 categorically excluding its OSV Program Activities from
5 NEPA for that year. There is no other NEPA documentation from other years for these forests.

6 56. The Inyo National Forest issued categorical exclusions for its OSV Program Activities
7 for FY2001, FY2002, FY2004, FY2006, and FY2007. There is no NEPA documentation for 2008-
8 2010. The Inyo contracted with a private firm in 2002 to complete a literature review and assessment of
9 effects of its OSV Program Activities, which discussed effects to vegetation, wildlife, air quality, and
10 water quality; but the Forest Service never used this information to complete a full analysis under
11 NEPA. The Inyo National Forest also noted conflicts between motorized and non-motorized winter
12 recreation users on the forest and the need for an assessment and plan to reduce those conflicts, but that
13 assessment and plan were not completed either.

14 57. The Plumas and Tahoe National Forests issued categorical exclusion decisions for their
15 OSV Program Activities in 2010. These forests have no other NEPA documentation for their
16 snowmobile program activities.

17 58. The categorical exclusion decisions from the various forests used the same rationale for
18 excluding the OSV Program Activities from NEPA analysis. They stated that the OSV Program is
19 categorically excluded from documentation in an EIS or EA because it falls under a category for which
20 such analysis is not required: “Repair and maintenance of roads, trails, and landline boundaries” as per
21 Forest Service Handbook 1909.15 Chapter 32.12(4) and regulation 36 C.F.R. § 220.6(d)(4).³ They also
22 determined that no extraordinary circumstances existed.

23 59. Forest Service documents and the State’s EIR recognize that the OSV Program greatly
24 facilitates snowmobile use on these forests, substantially increasing the number of snowmobile riders,
25 the distance they ride, and the access to normally remote backcountry areas. These documents also
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27 ³ The Tahoe National Forest also noted a second applicable category justifying its CE: “Repair and
28 maintenance of recreation sites and facilities.” No other forest cited this category in their decisions.

1 acknowledge that snowmobiling can affect numerous resources on the forests and cause conflicts with
2 non-motorized recreation users. Some of these impacts occur to special resources such as Wilderness
3 and Forest Service sensitive species. Yet the Forest Service has performed no current NEPA analysis
4 assessing the direct, indirect, and cumulative effects of its OSV Program Activities.
5

6 **FIRST CAUSE OF ACTION**
7 **VIOLATION OF NEPA**

8 60. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

9 61. This First Cause of Action challenges Defendant's violations of the National
10 Environmental Policy Act, 42 U.S.C. § 4321 et seq., and NEPA's implementing regulations in
11 continuing to implement OSV Program Activities without conducting NEPA analysis to assess their
12 environmental impacts. This claim is brought pursuant to the judicial review provisions of the APA, 5
13 U.S.C. § 706.

14 62. As our nation's basic environmental charter, NEPA requires federal agencies to
15 undertake a thorough and public analysis of the environmental consequences of proposed federal
16 actions, including preparing a detailed EIS for all major Federal actions that may significantly affect the
17 quality of the human environment. An EIS must consider a range of reasonable alternative actions and
18 assess site specific and cumulative impacts of these actions. 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. §
19 1502.14. Cumulative impacts are the past, present, and reasonably foreseeable future actions that must
20 be assessed, in combination with the proposed action, to determine the potential for significant impacts
21 to the environment. 40 C.F.R. §§ 1508.7, 1508.25(a)(2).
22

23 63. Under federal regulations, agencies may prepare an EA to assist in the NEPA process.
24 40 C.F.R. §§ 1501.4(b), 1508.9. An EA is a more limited review of environmental factors associated
25 with a federal action, performed to assist the agency in determining whether an EIS is warranted.

26 64. An agency must prepare a supplemental NEPA document when "significant new
27 information becomes available." 40 C.F.R. § 1502.9(c)(1)(ii).

28 65. An agency can avoid its duty to prepare an EIS or EA by finding that an action falls
within a defined categorical exclusion. 40 C.F.R. §§ 1501.4(a)(2), 1508.4. Categorical exclusions are

1 “categories of actions which do not individually or cumulatively have a significant effect on the human
2 environment and which have been found to have no such effect in [NEPA] procedures adopted by a
3 Federal agency.” 40 C.F.R. § 1508.4. In situations that present “extraordinary circumstances,” the use
4 of a categorical exclusion is not allowed. *Id.*

5 66. Under Forest Service Handbook Chapter 1909.15.30.3.2, in determining whether
6 extraordinary circumstances exist, the Forest Service must first determine whether certain resource
7 conditions are present in the action area. Those resource conditions are: a) federally listed threatened or
8 endangered species or designated critical habitat, species proposed for federal listing or proposed critical
9 habitat, or Forest Service sensitive species; b) flood plains, wetlands, or municipal watersheds; c)
10 congressionally designated areas, such as wilderness, wilderness study areas, or national recreation
11 areas; d) inventoried roadless areas; e) research natural areas; f) American Indian and Alaska Native
12 religious or cultural sites; or g) archaeological sites, or historic properties or areas. Then the Forest
13 Service must assess the “degree of potential effect of the proposed action on these resource conditions”
14 to determine whether extraordinary circumstances exist. The Forest Service must demonstrate that there
15 will be no significant effects on any of these special resource conditions to avoid preparing an EA or
16 EIS.

17 67. The Forest Service has violated NEPA and its implementing regulations by continuing to
18 implement, approve, and authorize OSV Program Activities without having any current NEPA analysis
19 to assess the direct, indirect, and cumulative impacts of the OSV Program. Plaintiffs challenge the
20 following actions:

- 21 a. Decisions by the Plumas and Tahoe National Forests to categorically
22 exclude from NEPA review their OSV Program Activities in 2010;
- 23 b. Decisions by the Klamath, Modoc, Shasta-Trinity, Lassen, Eldorado, Inyo,
24 Stanislaus, Plumas, Tahoe, Sierra, and Sequoia National Forests to enter into OSV
25 Program cost share agreements with CDPR in 2010 and 2011 without having any current
26 NEPA analysis for their OSV Program Activities;
- 27 c. Decisions by the Klamath, Modoc, Shasta-Trinity, Lassen, Eldorado, Inyo,
28 Stanislaus, Plumas, Tahoe, Sierra, and Sequoia National Forests to enter into or issue

1 contracts, permits, or other authorities to third parties for trail grooming, road and
2 trailhead plowing, and facilities maintenance, and decisions to undertake grooming,
3 plowing, and other management actions themselves, in 2010 and 2011 without having
4 any current NEPA analysis for these OSV Program Activities.

5 68. With regard to the Plumas and Tahoe National Forests, each forest signed a cost share
6 agreement with CDPR in 2010 but decided to categorically exclude its OSV Program activities from
7 NEPA review. The categorical exclusion used by the Forest Service was for “Repair and maintenance
8 of roads, trails, and landline boundaries.” FSH 1909.15, Ch. 32.12(4); 36 C.F.R. § 220.6(d)(4). The
9 examples given in the Forest Service Handbook for this particular category of activities that can be
10 excluded from NEPA analysis consist of the following:

- 11 (i) Authorizing a user to grade, resurface, and clean the culverts of an established
12 NFS road;
- 13 (ii) Grading a road and clearing the roadside of brush without the use of herbicides;
- 14 (iii) Resurfacing a road to its original condition;
- 15 (iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of
16 the trail; and
- 17 (v) Surveying, painting, and posting landline boundaries.

18 *Id.*

19 69. The Forest Service OSV Program Activities go well beyond the above categories of
20 actions and have an environmental impact that must be assessed and managed through a full
21 environmental analysis. In addition, the Plumas National Forest contains the Buck Lake Wilderness,
22 which experiences trespass from snowmobiles using the OSV Program trails, and both forests provide
23 habitat for Forest Service sensitive species that may be adversely affected by the OSV Program, such as
24 pine marten, wolverine, Sierra Nevada red fox, goshawks, and bald eagles. Thus, extraordinary
25 circumstances preclude use of a categorical exclusion for both forests.

26 70. Plaintiffs allege and believe that the Plumas and Tahoe National Forests have signed or
27 will sign cost share agreements with CDPR in 2011 and will continue their OSV Program Activities
28 without conducting any environmental analysis.

1 71. With regard to the remaining nine forests, Plaintiffs allege and believe that they each
2 signed cost share agreements with CDPR in 2010 and that they have signed or will sign similar cost
3 share agreements in 2011 and will continue OSV Program Activities without conducting any
4 environmental analysis. To the extent the Lassen and Eldorado National Forests completed EAs for
5 their OSV activities, those assessments are outdated and must be supplemented.

6 72. By failing to comply with NEPA for their OSV Program Activities on each of the eleven
7 national forests under the program, the Forest Service has not taken a hard look at the direct, indirect,
8 and cumulative impacts of its OSV Program Activities on the environment in these forests.

9 73. Defendant's decisions to continue the OSV Program and its OSV Program Activities in
10 2010 and 2011 without having first performed lawful and proper environmental review as required by
11 NEPA, are arbitrary, capricious, an abuse of discretion, and not in accordance with law under 5 U.S.C. §
12 706(2), and has caused or threatens serious prejudice and injury to the rights and interests of Plaintiffs
13 and their members.

14 **PRAYER FOR RELIEF**

15
16 Wherefore, Plaintiffs respectfully request that the Court grant the following relief:

17 A. Order, adjudge, and declare that the decisions by the Plumas and Tahoe National Forests
18 to categorically exclude their OSV Program Activities from NEPA review in 2010 violated NEPA;

19 B. Order, adjudge, and declare that the Forest Service's 2010 and 2011 OSV Program cost
20 share agreements with CDPR and actions taken to implement those agreements violate NEPA;

21 C. Order the Forest Service to perform NEPA analysis for its OSV Program on the eleven
22 national forests at issue here;

23 D. Enter such temporary, preliminary, or permanent injunctive relief as Plaintiffs may
24 hereafter specifically seek;

25 E. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated
26 with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 et seq., and/or all other
27 applicable authorities; and/or
28

1 F. Grant such further relief as the Court deems necessary or appropriate to redress the Forest
2 Service's legal violations and protect the public lands and resources of the eleven national forests at
3 issue here.
4

5 Dated this 3rd day of November, 2011.

Respectfully submitted,

6
7 /s/Trent W. Orr _____

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