

Tom Buchele, OSB # 081560
Earthrise Law Center
10015 SW Terwilliger Blvd.
Portland, Oregon 97219
Tel: (503) 768-6736
Email: tbuchele@lclark.edu
Attorney for Wild Wilderness

Lauren M. Rule, OSB # 015174
Advocates for the West
3115 NE Sandy Blvd., Suite 223
Portland, Oregon 97232
Tel: (503) 914-6388
Email: lrule@advocateswest.org
Attorney for Winter Wildlands Alliance, Bend Backcountry Alliance

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

**WILD WILDERNESS,
WINTER WILDLANDS ALLIANCE, and
BEND BACKCOUNTRY ALLIANCE,**

Plaintiffs,

v.

**JOHN ALLEN and
UNITED STATES FOREST SERVICE,**

Defendants,

And

**OREGON STATE SNOWMOBILE
ASSOCIATION and
AMERICAN COUNSEL OF SNOWMOBILE
ASSOCIATIONS.**

Defendant-Intervenors.

Case No.: 6:13-cv-00523-TC

**DECLARATION OF SCOTT
SILVER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

DECLARATION OF SCOTT SILVER

1. My name is Scott Silver. I am over the age of eighteen and I make this declaration based on my own personal knowledge.

2. I am the co-founder and Executive Director of Wild Wilderness in Bend, Oregon, a 501(c)(3) non-profit organization created to represent the interests of non-motorized recreationists who seek undeveloped recreation. Wild Wilderness represents people who desire to use forest lands as they are, contrasted with some other recreation-oriented organizations that regularly call upon the Forest Service to provide additional developments or services. Wild Wilderness represents persons seeking to enjoy the wilderness without improvements such as developed, marked or groomed trails.

3. Wild Wilderness is legally incorporated as a non-member organization. We have "supporters" rather than voting members. Approximately 800 persons have signed declarations saying they support the mission of Wild Wilderness and request that we represent their recreational interests consistent with that mission. Wild Wilderness has been directly involved in opposing sno-park expansion in the Deschutes National Forest since 1994, when we mobilized supporters to successfully halt a proposed expansion of the Dutchman Flat Sno-park. We are not opposed to the Forest Service providing additional parking capacity per se. We are opposed to the Service adding capacity without concurrently making provisions to effectively mitigate the additional conflicts that will occur in the surrounding area as a result of the additional snowmobile use the larger sno-park will facilitate. The 1994 Dutchman Environmental Assessment (EA) did not, in our opinion, provide adequate mitigations to offset the impact of additional snowmobile use in the area. The Kapka Decision Notice provides even fewer, if any, mitigations for a project which is larger in scope and which will have even greater negative impacts than the 1994 proposed expansion of Dutchman Sno-park would have had.

4. I have been a resident of Bend, Oregon for the past 19 years and have resided in Central Oregon since 1988. I moved to this area specifically to recreate outdoors, particularly in the Deschutes National Forest. I gave up a career in the biotech industry so that I could live in Bend and spend much of my time recreating in the Deschutes National Forest (DNF).

5. I enjoy snowshoeing, cross-country and backcountry skiing. I have long gone to the DNF and to the Dutchman Flat/Tumalo Mountain area in particular to revel in the peace and quiet of raw nature. I, along with many other Wild Wilderness supporters, seek the experience of mental and physical solitude in the untouched snow without interference from machines. I continue to use the Dutchman Flat and Tumalo Mountain area on days when there are few snowmobilers recreating.

6. I have been using the Kapka Butte area in the DNF since 1989. The terrain, the forest type and snow conditions radically change just west of the Kapka Butte area due to the increase in elevation and proximity to the Cascade Mountain Range. As a result, Tumalo Mountain and Dutchman Flat—both located a short distance up the road from Kapka—have the most readily accessible terrain suitable for skiing without trails. In these areas, there are larger open spaces, better views and more varied terrain. For these reasons, and because it is readily accessible by road, this is the most sought-after recreation zone by backcountry skiers. This area, once my favorite spot to ski, has become so overridden with snowmobilers that I am often displaced because I cannot enjoy the peace and solitude I seek out when I recreation on skis. While I have sought out, and sometimes have found, other areas to ski, these areas are less desirable and less enjoyable for me than the Dutchman Flat and Tumalo Mountain area.

7. As long as twenty years ago, I began seeking out alternatives to recreating in the Dutchman Flat and Tumalo Mountain area because my experience was becoming degraded by

the growing interference of snowmobilers. These alternatives were inferior to what was available in the terrain of the high country, but I found these less desirable snow conditions and inferior views preferable to picking my way around and through snowmobile tracks. Kapka Butte was a portion of relatively undeveloped wilderness that could and often did provide me the outdoor experience I was seeking with fewer snowmobiles.

8. For the past ten years, the Kapka Butte Area has been my primary cross-country skiing area. I access it from the small Vista Butte Sno-park located directly across the road. The Kapka area currently is not and has never been a hub for motorized vehicles. The Kapka area serves predominantly as a place for snowmobilers to pass through on their way to destinations such as Moon Mountain or Elk Lake. In fact, snowmobilers headed in the direction of the Kapka area from Wanoga Sno-Park using their main route (Trail #5) almost all turn off before reaching Kapka Butte. There is a tunnel under the highway, which is located just east of where the Kapka Sno-park would be constructed, that snowmobilers use to access Tumalo Mountain, Dutchman Flat and destinations beyond. Thus, snowmobiles currently traveling from Wanoga to the high country would bypass the Kapka Butte area.

9. The main reason that Kapka Butte became my favored recreational spot is not because it is the best area for backcountry skiing, but because it was one of the very few accessible spots that provided opportunities for the kind of skiing I seek without being overrun by snowmobile traffic. Construction of the Kapka Sno-park will create a hub of snowmobile traffic right next to Kapka Butte, and thus I will be displaced from that area just like I am often displaced from Dutchman Flat and Tumalo Mountain area due to snowmobiles.

10. When employed as a member of Mt. Bachelor Ski Resort's Nordic race crew, I routinely operated a snowmobile as part of my work duties. I am familiar with snowmobiling and am not

opposed to snowmobiles or snowmobilers. I do, however, have problems with snowmobiles using the same areas for recreating as non-motorized recreationists such as cross-country skiers, backcountry skiers and snowshoers. My outdoor experience in the DNF is all too frequently dominated either by snowmobiles buzzing around me or by snowmobile tracks cutting up the fresh snow that I seek. The way I feel about cross-country skiing with snowmobilers is akin to walking through a war zone. Once snow has been torn asunder by snowmobiles, it is no longer usable to me for outdoor recreating. Snowshoeing, cross-country skiing, and backcountry skiing through the trenches that the snowmobile tracks create is never desirable and sometimes downright impossible.

11. Increasing use of the forest by snowmobiles and technological enhancement to these machines continues to degrade my outdoor recreation experience. It has become less and less rewarding for me to drive to the DNF and recreate as a direct consequence of the increasing impact of snowmobilers on the setting. In effect, the reward of engaging in the outdoor activities which I value immensely is, all too often, no longer worth the aggravation of dealing with the associated user conflicts.

12. A very important element of cross-country skiing and outdoor recreating in the area that will be impacted by construction of the Kapka Sno-park is the ability to choose my route. Selecting one's own route is what transforms "cross-country skiing" into "backcountry skiing". The term "backcountry" is not so much a reference to the distance from a parking lot as to the experience that comes as a consequence of self-directed route selection. In an area where a sense of nature prevails, my mental processes are keyed into different opportunities for various routes. If that area has been impacted by snowmobiles, then my mental choices are proscribed and, in effect, made for me by the snowmobiler's chosen route. Thus, my ability to fully enjoy my

outdoor recreation, even if snowmobilers aren't in sight or earshot, is greatly compromised by their tracks.

13. If the Forest Service were to go through with the construction of the proposed Kapka Sno-park, it would wipe out my opportunities to recreate in that area and further degrade opportunities to recreate anywhere within the high country. The enormity of the proposed parking lot would encourage a tremendous influx of motorized recreational activity. It would more than double the parking capacity for those transporting snowmobiles and thus would facilitate far more use of the area by snowmobiles than is currently possible.

14. To speak merely of the enormity of this proposed new sno-park is to understate its true size. To grasp just how large an 180,000+ square foot parking area with the general configuration of the Kapka Sno-park might be, I created an image which I shared with other recreationists, including Wild Wilderness co-founder Dale Neubauer. A true and correct copy of this image is found at AR 17357 and was also attached as an exhibit to our complaint. Starting with an aerial photograph of the main parking lot at Los Angeles International Airport, I overlaid a simplified outline of the Kapka design. Because the Draft Environmental Impact Statement (DEIS) did not include dimensioned drawings, my overlay could not be exact. But the DEIS provided sketches and values for paved square footage and I used that information to create the composite image at AR 17357. I drew my overlay using the distance scale provided with the Google image and double-checked those measurements by assuming that a street travel lane is about 10 feet wide and a parking space is about 8.5 feet wide. Based upon this image and overlay, I simply could not believe the Forest Service's claim that the Kapka Sno-park would hold a mere 70 vehicles, even if those are motorhomes pulling trailers. The image erodes the

Forest Service's credibility as to its claims regarding the size and capacity of the proposed sno-park.

15. Owing to its location at a higher elevation than Wanoga Sno-Park, which currently serves as the primary snowmobile hub along the Cascade Lakes Highway Corridor, and owing to the large pull-through parking lanes which would be provided, snowmobilers will choose to park at the new Kapka Sno-park. Kapka will become base camp for snowmobilers for the whole region. Construction of a sno-park in this location will radically alter the existing snowmobile dispersal pattern and funnel additional use into the portion of the forest already experiencing the highest levels of conflict. With the Kapka Sno-park being located in immediate proximity to the underpass by which snowmobilers access Tumalo Mountain, additional snowmobile traffic is bound to travel in that direction, adding even more snowmobile use and user conflicts to Tumalo Mountain.

16. Furthermore, even if the proposed Kapka Sno-Park does not attract additional users (which it undoubtedly will), it would astronomically increase snowmobile use of the Kapka Butte area. It would, in effect, create a de facto 'motorized recreation only' zone centered around Kapka Butte. Neither I nor other current non-motorized users of the Kapka Butte area would wish to contend with the extreme noise, smell and chaos of this new snowmobile hub.

17. Areas near sno-parks are invaluable to non-motorized recreationists because we cannot travel far under our own power. Unlike snowmobiles, which can easily range 30 or 40 miles from their starting point and cover more than 100 miles in a day, cross-country skiers and especially snowshoers typically get no further than 5 miles from their parked vehicle and rarely travel more than 10 or 12 miles total in a day. More likely, we will travel only a few miles in a day, which means we are bound to stay within a short radius of the nearest sno-park. It is of the

utmost importance to our experience that the snow in this small radius is untrammelled by snowmobilers. The actual ability to move through snow is tremendously impacted by whether a snowmobile has driven on it. Snow that has been cut up or compacted by a snowmobile can be un-skiable, especially on hillsides covered in deep powder.

18. This issue comes down to the difference between the amount of ground which can be covered by motorized versus non-motorized recreationists. There is ample opportunity for dispersal of snowmobilers and ample terrain for their use in parts of the forest located just a few miles (and a few minutes riding time) from sno-parks. By way of contrast, there is limited dispersal of skiers and relatively little area available for use by any but the strongest and fittest skiers. I have not skied to the Wilderness boundary (6 miles in from the Dutchman Sno-park) in several years, though it is a trip I have made many times in years past and would like to make in the future. It is unlikely that I will make the trip again if conflict increases as a consequence of building the Kapka Sno-park.

19. The Forest Service's failure to address the conflicts between motorized and non-motorized users has lead to a situation in which it is difficult for me to fully enjoy my outdoor recreation in the Kapka Butte/Tumalo Mountain/Dutchman Flat area. Because of this failure, the experience that I seek—to get out in untouched nature and enjoy the mental and physical processes of moving through wilderness—is oftentimes severely compromised. On behalf of myself and Wild Wilderness, I have been intimately involved in the Forest Service's proposal to build the Kapka Butte Sno-park. I have submitted comments to the Forest Service in response to its announcement in the Federal Register that it was doing a DEIS on the potential impacts of building the sno-park. I have attended meetings with the Forest Service and written numerous letters to them describing the interests of non-motorized recreationists.

20. In 1995, Wild Wilderness created what we believed to be a fair and equitable long-term solution to the user conflict situation on the DNF. We presented it (what we then called the "Tumalo Backcountry Gateway" concept) to the Forest Service and to the local community where it garnered much public support. We presented that solution (renamed the "Backcountry Recreation Zone") to the Forest Service in our Kapka EA comments, but the agency refused to consider it, saying that it was outside the scope of this project. We cannot see how the mitigation of the user conflict which will result from building a new sno-park at Kapka Butte could be outside the scope of this project, especially when reducing conflict throughout the Tumalo Mountain/Dutchman Flat area had been, until the Forest Service changed tack in 2008, a major focus of what had been a more inclusive, broadly-conceived Kapka winter recreation project.

21. After the Forest Service published its DEIS, I was appalled that it later rescinded it and published an EA and an accompanying Finding of No Significant Impact. This unusual circumstance completely eliminated the opportunity for public involvement regarding the finding of no significance. Public involvement is an essential tool for individuals like myself and for groups like Wild Wilderness to provide input to the Forest Service on its users' needs. Had the Forest Service not skirted its procedural duties under the National Environmental Policy Act and denied me the opportunity to comment on its significance conclusion, I would without doubt have submitted input on behalf of myself and Wild Wilderness. Given that opportunity to provide input, Wild Wilderness could have offered further evidence about why the Kapka Sno-park would have significant effects, and additional options to mitigate such effects.

22. I have been actively and regularly using the Dutchman Flat/Tumalo Mountain/Kapka Butte area in the DNF for over 20 years. I moved to this part of the state specifically so I could recreate there and at other locations that will be impacted if a new sno-park is constructed in the

Kapka area. Although I plan to continue to seek outdoor wilderness recreation in these areas, if the Forest Service's proposed sno-park gets built, my future use and enjoyment of the areas will be decimated. I feel as though I am being completely displaced by the way that the Forest Service is managing the DNF.

23. Aside from my deteriorated cross-country skiing and outdoor recreating experience in the DNF that will be caused by construction of the Kapka Sno-park, a large part of my frustration comes from having our interests ignored by the Forest Service. The Forest Service has said it would try to seek a comprehensive plan to resolve user conflict as best it can, yet it has continued to support snowmobile interests while simultaneously ignoring the needs of non-motorized recreationists. If the Kapka Sno-park comes to fruition, it will certainly be evidence of the Forest Service's refusal to manage the DNF for all of its different user groups.

24. What I hope for is to have the DNF managed in such a way as to create an opportunity on any given day to go to the forest and have a reasonable expectation of having my values fulfilled. That is, of going to the forest and being able to experience wild wilderness without interference from snowmobiles. I hope, after hearing concerns from individuals who seek to enjoy an undeveloped wilderness, the Forest Service realizes that creating the Kapka Butte Sno-park would exacerbate rather than ameliorate the user conflicts in the DNF. As we have said to the Forest Service many times over many years, any sno-park expansion needs to include plans with concrete steps to address the ever-growing problem of user conflict while recognizing and providing for the needs of Wild Wilderness' supporters. I sincerely believe that because Wild Wilderness, unlike other recreation organizations, does not seek additional developments and services, the Forest Service thinks our supporters have no needs and that they have no obligation to provide for the recreational interests Wild Wilderness represents. Our supporters have needs

as valid as those of any other recreational group. We need to have places within the DNF that are undeveloped and accessible and where a sense of nature predominates so that those of us who seek experiences in such an environment can satisfy our recreational and spiritual needs. The Kapka Sno-park will destroy these opportunities in the Kapka Butte area and further degrade them in the Dutchman Flat/Tumalo Mountain area.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct.

September 25, 2013

Date

s/ Scott Silver

Scott Silver