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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 DALE  
NEUBAUER IN SUPPORT  
OF PLAINTIFFS' MOTION  
FOR SUMMARY  
JUDGMENT**

DECLARATION OF DALE NEUBAUER

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

2. I have been a resident of Bend, Oregon since 1989. I moved to Bend in large part because its surrounding areas, particularly the Deschutes National Forest (DNF), contain my desired recreational opportunities. In particular, I sought an undeveloped winter environment where I could pursue non-motorized recreation in the form of backcountry skiing, snowshoeing and cross-country skiing. The region encompassing Kapka Butte, Dutchman Flat, and Tumalo Mountain is approximately 45 minutes away from my home. I frequent it throughout the year, but especially during the winter months. Historically, I utilized the DNF anywhere from 50-75 days per winter season. That amount has deteriorated substantially over time because of the increasing impact of motorized use in the area, and the shift of a previously rustic (non-motorized) cross-country ski area into a highly developed, groomed skate-ski destination. Backcountry skiers and other non-motorized recreationists seeking an undeveloped recreational experience have been increasingly displaced from the DNF.

3. I am a member and Co-founder of Wild Wilderness (WW), an organization whose mission is to protect undeveloped recreational opportunities for non-motorized recreationists in the DNF. The virtues of undeveloped recreation are dependent upon a relatively trail-free environment, providing one the ability to freely explore and roam. Groomed ski trails, posted directional signs, warming huts, trail side coffee stands, organized race activities, groomed snowmobile trails, and cross-country snowmobile traffic can destroy the ability to simply explore the winter environment.

4. Much of the region surrounding Tumalo Mountain is inventoried Roadless forestland, with few posted ski trails. It is, however, now completely encircled by groomed snowmobile

trails, and the small mountain (more of a butte) is divided into four pie-shaped quadrants of alternating motorized and non-motorized zones. Thus, the two non-motorized zones are completely bounded by snowmobile play areas. In addition, the small non-motorized zone in Dutchman Flat is bisected with a 100' wide snowmobile trail, and, at the insistence of the snowmobile community, the Forest Service inserted a high-speed motorized play area within the Dutchman Flat non-motorized zone.

5. My primary role within WW has been to document the routine motorized infractions into these non-motorized zones, as well as the illegal snowmobile entry into the distant Three Sisters Wilderness. The administrative record in this case contains countless submissions I have made to the Forest Service documenting these violations. AR 14520, 14551, 14642, and 11754 (pictures); AR 11614-15, 14384-85, and 11622 (letters). Additionally, I have attended Forest Service meetings for over 15 years, keeping the agency abreast of the issues of concern of our constituents and offering solutions to the problems of conflict and displacement caused by motorized recreation. As a member of WW and as an active non-motorized recreationist in the DNF, I have been directly involved with the Forest Service in an attempt to resolve these issues.

6. The idea of the 2004 Dutchman Summit (from which the Kapka Proposal arose) was initiated during a meeting I had with (then) Forest Supervisor Leslie Weldon on December 19, 2003. During that meeting I reviewed with her the long history of motorized conflict and the increasing impacts of motorized recreation on skiers and snowshoers. Supervisor Weldon and I discussed having a 'summit' to bring interested parties together to seek resolution to the current and foreseeable problems associated with these high-speed machines.

7. During the Dutchman Summit, however, the snowmobile community made a concentrated effort to dismiss our concerns, and instead framed "the problem" as a lack of

parking. I and other non-motorized representatives did offer cautious support for a new snowmobile parking lot at Kapka Butte – but that support was specifically contingent upon effective mitigating action by the Forest Service to resolve the current level of conflict, and address the increased impact associated with additional snowmobiles operating on the DNF. Mitigation was also needed to offset the redistribution of the machines, because the building of a new snowmobile parking lot in the Kapka Butte area would concentrate more snowmobiles into the very region for which conflict resolution was being sought.

8. Since the mid 1990's, I have been as intimately involved with the Forest Service in its decision-making process as possible. However, when the Forest Service suddenly abandoned its completion of a Final Environmental Impact Statement (EIS) and instead published an Environmental Assessment with an accompanying Finding of No Significant Impact, it arbitrarily ignored 15 years of documented problems, and abruptly shut us out of the public process. This legal action is now the only venue available in our quest for conflict resolution.

9. When the Forest Service issued the Draft EIS for the Kapka Butte Sno-park in 2011, I submitted a 23-page response letter. AR 14351-73. Attached to my response I resubmitted letters I had written to the Forest Service from 1994-2011, totaling 99 pages. AR 14374-472. In detail I described the long history of user conflict problems in the Dutchman Flat/Tumalo Mountain area, and expressed that it was incumbent on the Forest Service to halt the Kapka project if it would not also address these conflicts by creating safe, enjoyable and separate user areas to accommodate motorized and non-motorized recreationists.

10. I also emphasized the need to accommodate undeveloped non-motorized recreation. In years past, other areas in this region did provide for undeveloped recreation, but the Forest Service has permitted these areas to become highly developed – with groomed ski trails, coffee

and food service, organized races, and large public events. I have not disputed the value of the Forest Service providing this to the portion of the public that desires it – but noted that by doing so, it displaces those who do not desire such amenities. In fact, in my letter to the DNF dated June 6, 2006 (in response to the Meissner cross-country ski development project, file code 1950) I stated: *“It is important the Forest Service recognize that the proposed development of the Meissner system will benefit some - while displacing others... The cumulative effect upon the recreationists seeking an undeveloped forest experience must be considered in both the Meissner and Kapka development proposals.”* AR 14442. Snowmobiles and developed cross-country ski trails both displace non-motorized backcountry users, who seek undeveloped areas.

11. If given the opportunity, I would, without doubt, comment on the Forest Service’s Environmental Assessment and its Finding of No Significant Impact. I would use the opportunity to reiterate and explain why the Kapka Butte Sno-park will have significant impacts and specific ways to alleviate user conflict to mitigate those impacts—primarily by creating separate user areas near existing sno-parks. If Kapka were to be built, current non-motorized users will be permanently displaced from the area. The Forest Service could, however, mitigate that loss by creating a suitable area to replace it: that being our previously submitted Tumalo Backcountry Recreation Zone (BRZ). *See* AR 14535. Perhaps, given these detailed suggestions, the Forest Service would modify its proposal to address my concerns and the injury I have experienced as a result of mismanagement of motorized use in the DNF.

12. At the Appeal Resolution meeting in November, 2012, I delivered an aerial photograph of the LAX airport with the dimensions of the proposed Kapka Sno-park overlaid on it (AR17358) that was created by Scott Silver to John Allen, Forest Supervisor of the DNF to demonstrate the vast size of the sno-park.

13. Although representatives of the local snowmobile community have often labeled me (in an effort to discredit me) as an environmental extremist, I am actually a hard-core 'motor head'. For my first 17 years here in Bend I was the lead helicopter mechanic for Air Life of Oregon. I then worked as a Technical Maintenance Representative for a helicopter manufacturer, and am currently employed by Life Flight of Oregon as a regional mechanic. Further, I enjoy motorized recreational vehicles; I currently own, and ride, two vintage Harley Davidsons. Prior to earning my FAA Mechanics License and entering the field of hospital aviation, I worked as a Harley Davidson mechanic. I have, for over 30 years, spent the bulk of my working hours with high-speed, high-horsepower, and high-performance aircraft and ground vehicles. Because of this, I can appreciate the technical aspects of modern snowmobiles (which have quadruple the power-to-weight ratio of my Harleys) and fully understand the enjoyment of riding snowmobiles.

14. My long association with high-powered vehicles has, however, created a need for me to disconnect from them. The pressures and responsibilities of maintaining air ambulances are quite high, and the noise and commotion of operating aircraft can be physically draining. The National Forest is where I seek reprieve from the high-stress environment of my work, and reprieve from the excessive noise and commotion of the airport flight-line. I do not go to the National Forest simply to 'have fun'. I go there to disconnect, to relax, to recharge, and to heal. A quiet winter trip is good for my soul, and necessary for my mental and physical health.

15. The auditory impact of snowmobiles, however, can destroy my enjoyment of the National Forest. The reverberations of a pack of snowmobiles can resonate for miles across an otherwise peaceful setting. Additionally, the high-speed antics of snowmobilers constitute the very commotion I seek to avoid. These antics, however, are not limited to snowmobile play areas, but

are common within the current motorized closures of the DNF, including the Three Sisters Wilderness Area.

16. Safety is another concern of mine that arises from snowmobiles using the same areas I seek out for recreation. These 400-pound machines travel at high speeds and may cross my path at any time with little warning. As a pedestrian on skies in deep snow, it is difficult to quickly move out of the way of a speeding snowmobile, and I fear for my safety when skiing in an area overrun with snowmobiles.

17. I have been regularly visiting the Dutchman Flat and Kapka Butte areas for the past 23 years. I initially chose these places because they were not developed, had few snowmobile or cross-country ski trails, and, of great importance, they were easily accessible from designated parking lots. Thirty years ago, snowmobiles typically lacked the capability to leave the groomed snowmobile trails; they could not handle steep trails or deep snow. As snowmobile technology improved, the trend of snowmobilers doing backcountry (off-trail) snowmobiling greatly increased and brought about significant competition with non-motorized recreationists.

AR14366-69. Areas that historically only backcountry skiers and snowshoers could access are now overrun by these machines. Today, travel is limited not by the machine, but rather by the boldness and skill of the man at the throttle. The progression of displacement from the Dutchman Flat/Tumalo Mountain area has been exacerbated by the Forest Service's failure to address this recognized technological advancement. Construction of the Kapka Sno-park will cause further conflicts and displacement of non-motorized recreationists, including myself, from this area.

18. In addition to my safety concerns, the 'consumption of snow' by snowmobilers can ruin the non-motorized recreationist's experience. The trenches left by snowmobiles can leave a

slope un-skiable. AR 14353-54. These tracks can completely cover shared-use areas and are regularly found in areas that are closed to snowmobiles. *See* AR 14353-55.

19. Many snowmobilers disregard the posted closures, and because the Forest Service lacks the ability to enforce them, the closures frequently exist only on the map. The Forest Service desperately needs to address the capabilities of modern snowmobiles, and develop closure boundaries that are more easily recognized, posted and enforced. Wild Wilderness has repeatedly submitted such proposals, such as the Tumalo BRZ, but the agency has dismissed them. The Kapka Sno-park will increase the number of snowmobiles using the high country and thus more trespass into the non-motorized areas on Tumalo Mountain, Dutchman Flat and Three Sisters Wilderness will inevitably occur.

20. I am convinced that if the Kapka Sno-park gets built, I and other non-motorized recreationists who are seeking an undeveloped winter experience (including a local guide service that leads snowshoe trips up Kapka Butte) will become entirely displaced from the Dutchman/Tumalo/Kapka region. I and other WW members currently utilize the Kapka Butte area when Dutchman Flat and Tumalo Mountain are completely overwhelmed by snowmobiles because Kapka is still 'undeveloped'. If the Forest Service builds Kapka Sno-park, those non-motorized recreationists who, like myself, seek a simpler recreational experience will have nowhere to go in the region. The entire area would become unusable because the values of the forest that we seek will have been replaced with parking lots, groomed ski and snowmobile trails, huts, machinery, noise, and commotion. We will be displaced.

21. Of particular importance to non-motorized users seeking an undeveloped winter experience is having an area to recreate close to the Dutchman Sno-park. Snowmobiles can travel great distances in a day (50-100 miles) whereas on skis or snowshoes we may only be able



to travel a handful of miles in a day. Therefore, non-motorized users like myself have a limited radius from the trailhead and need close-in terrain that maintains the natural, quiet, peaceful and safe qualities that we seek. Just like the disruption and safety concern of having jet-skis in a small lake with swimmers, having snowmobiles driving in areas with pedestrians is of obvious concern. The Kapka Sno-park will add snowmobiles to the few accessible areas available to backcountry users like myself, such as Kapka Butte, Dutchman Flat, and Tumalo Mountain.

22. It was in the mid 1990s that I was skiing along the edge of Dutchman Flat with my two young sons, who were nearly four and six at the time. I had allowed them to explore (lead the way) about 30 paces in front of me when I heard snowmobiles coming down the side of Tumalo Mountain. A moment later, 5-7 snowmobiles burst through the trees, passing immediately in front of and behind my children. A minute variation in time, distance, speed or trajectory of just one of these 400lb machines could have had fatal consequences. Initially I blamed the snowmobilers for this near miss, but later recognized it was the fault of the U.S. Forest Service for allowing these machines in the same vicinity as pedestrians. AR 14352. This 'shared use' equates to allowing dirt bikes on grade school playgrounds.

23. My children and I are not alone in being nearly hit by snowmobiles. It was this incident that compelled me to become actively involved with the process of public lands management. The user conflicts and safety issues we experience today will only be exacerbated in the coming years if the Kapka Sno-park is built. Contrary to the inflammatory hype of some snowmobilers, I do not seek to eliminate snowmobiles from public lands. Rather, I seek resolution to the adverse effects they have upon others and myself. Resolution can be achieved by designating and enforcing separate-use areas for motorized and non-motorized recreationists. This is not an unreasonable request, but rather a societal standard: jet skis are not permitted in public pools,

motorcycles are not permitted on city sidewalks, ATVs are not permitted in school playgrounds, nor dirt bikes in city parks. However, the Forest Service has not included such measures in its Kapka project and thus the new sno-park will increase snowmobile use without addressing the increasing conflicts that will occur in the area.

24. The Kapka Sno-park will degrade the few “undeveloped” recreation opportunities that are close to the trailheads and sno-parks. The current non-motorized zones that experience few snowmobile violations (Meissner for example) are now highly developed with groomed cross-country ski trails and other amenities. And although the Three Sisters Wilderness can offer such undeveloped opportunities, access is often limited to elite skiers with the physical stamina to travel the distance. Thus, the Kapka Sno-park will create additional snowmobile use and displacement of backcountry skiers from the only undeveloped areas that are accessible to most backcountry users.

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25. In closing, it is important to recognize that I am, in fact, an ardent supporter of ‘multiple-use’ on public land: use that includes both the simplistic travel upon snowshoes, and the adrenalin rush associated with twisting the throttle of a 200 horse-power snowmobile. But these machines (that easily travel at speeds not permitted on Oregon highways) have no place in the vicinity of pedestrians. The Kapka Sno-park decision will cause increased snowmobile use in the areas I recreate, degrading my enjoyment of these undeveloped areas, increasing concerns over my safety, and displacing me from areas that I would otherwise use.

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/ Dale Neubauer

Dale Neubauer