



Winter Travel Management on National Forests Under the New Over-Snow Vehicle Rule

Under the Forest Service's new rule governing over-snow vehicle (OSV) use, the agency must designate and display on a map a system of routes and areas where OSVs are permitted to travel based on protection of resources and other recreational uses of the national forests.¹ OSV use outside the designated system is prohibited.² If implemented properly, the rule presents an important opportunity to enhance quality recreation opportunities for both motorized and non-motorized users, protect wildlife during the vulnerable winter season, prevent avoidable damage to air and water quality, and restore balance to the winter backcountry.

Minimization Criteria

Under a pair of 1970s executive orders, federal land management agencies are obligated to locate areas and trails designated for off-road vehicle use to *minimize*:

- (1) damage to soil, watershed, vegetation, and other public lands resources;
- (2) harassment of wildlife or significant disruption of wildlife habitat; and
- (3) conflicts between off-road vehicle use and other existing or proposed recreational uses.³

The Forest Service has codified these "minimization criteria" in its travel management regulations, including in the new OSV rule.⁴ The agency has struggled, however, to properly apply the criteria in its summertime travel management decisions, prompting a suite of federal court cases invalidating many of those decisions.⁵ To avoid a similar scenario in the OSV travel planning context, it is critical that the Forest Service:

- **Minimize** environmental impacts and user conflicts – not just identify or consider them – and show in the administrative record how it did so⁶
- Apply a transparent methodology for meaningful application of *each* minimization criterion to *each* area and trail⁷ that:

¹ 36 C.F.R. § 212.81.

² 36 C.F.R. § 261.14.

³ Exec. Order No. 11,644 § 3(a), 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended by* Exec. Order No. 11,989, 42 Fed. Reg. 26,959 (May 24, 1977).

⁴ 36 C.F.R. §§ 212.55(b), 212.81(d).

⁵ *WildEarth Guardians v. U.S. Forest Serv.*, 790 F.3d 920, 929-32 (9th Cir. 2015); *Friends of the Clearwater v. U.S. Forest Serv.*, No. 3:13-CV-00515-EJL, 2015 U.S. Dist. LEXIS 30671, at *37-52 (D. Idaho Mar. 11, 2015); *The Wilderness Soc'y v. U.S. Forest Serv.*, No. CV08-363-E-EJL, 2013 U.S. Dist. LEXIS 153036, at *22-32 (D. Idaho Oct. 22, 2013); *Cent. Sierra Env'tl. Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1094-98 (E.D. Cal. 2013); *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1071-74 (D. Idaho 2011).

⁶ *WildEarth Guardians*, 790 F.3d at 932 ("consideration" of the minimization criteria is insufficient; rather, the agency "must apply the data it has compiled to show how it designed the areas open to snowmobile use 'with the objective of minimizing'" impacts).

- Provides opportunities for public participation early in the process⁸
- Incorporates site-specific data, the best available scientific information, and best management practices⁹
- Accounts for site-specific and larger-scale impacts¹⁰
- Accounts for projected climate change impacts, including reduced and less reliable snowpack and increased vulnerability of wildlife and resources to OSV impacts¹¹
- Accounts for available resources for monitoring and enforcement¹²
- Apply the minimization criteria *both* to area designations made in land use plans, and to area and trail designations made in specific travel management plans¹³
 - Designated areas must be discrete, specifically delineated, smaller than a ranger district, and located where impacts and user conflicts can be minimized¹⁴
- Approach the substantive duty to minimize impacts in two steps:
 - First, *locate* designated areas and trails to minimize impacts, as required by the executive orders¹⁵
 - Second, establish site-specific management actions to further reduce impacts associated with that designated system

Previous OSV Designation Decisions

Upon public notice, the new OSV rule permits the Forest Service to grandfather previous decisions made with public involvement that restrict OSV use to designated routes and areas.¹⁶ In many instances, however, forests have allocated vast OSV areas essentially by default and without application of the minimization criteria. To the extent the Forest Service intends to grandfather its previous designation decisions, it must ensure that those decisions were subject to the minimization criteria, public involvement, and any other applicable regulatory requirements. In addition, the agency must ensure that previous decisions are not outdated and account for current OSV technological capabilities, current recreational use trends and conflicts between motorized and non-motorized users, new scientific information on wildlife and other forest resources and how they are affected by OSV use, and current and predicted climate change impacts.

⁷ *Idaho Conservation League*, 766 F. Supp. 2d at 1071-74 (agency may not rely on “Route Designation Matrices” that fail to show if or how the agency selected routes with the objective of minimizing their impacts).

⁸ 36 C.F.R. § 212.52(a).

⁹ *Idaho Conservation League*, 766 F. Supp. 2d at 1074-77 (agency failed to utilize monitoring and other site-specific data showing resource damage); *Friends of the Clearwater*, 2015 U.S. Dist. LEXIS 30671, at *24-30, 40-52 (agency failed to consider best available science on impacts of motorized routes on elk habitat effectiveness or to select routes with the objective of minimizing impacts to that habitat and other forest resources).

¹⁰ *Idaho Conservation League*, 766 F. Supp. 2d at 1066-68, 1074-77 (invalidating travel plan that failed to consider aggregate impacts of short motorized routes on wilderness values or site-specific erosion and other impacts of particular routes).

¹¹ 77 Fed. Reg. 77,801, 77,828-29 (Dec. 24, 2014) (Council on Environmental Quality’s revised draft guidance recognizing increased vulnerability of resources due to climate change and that “[s]uch considerations are squarely within the realm of NEPA, informing decisions on whether to proceed with and how to design the proposed action so as to minimize impacts on the environment”).

¹² *Sierra Club v. U.S. Forest Serv.*, 857 F. Supp. 2d 1167, 1176-78 (D. Utah 2012) (NEPA requires agency to take a hard look at the impacts of illegal motorized use on forest resources and the likelihood of illegal use continuing under each alternative).

¹³ Exec. Order No. 11,644 § 3(a); 36 C.F.R. §§ 212.55(b), 212.81(d); *WildEarth Guardians*, 790 F.3d at 930 (forest plan failed to “apply the minimization criteria to *each area* it designated for snowmobile use”).

¹⁴ 36 C.F.R. § 212.1 (definition of “area”).

¹⁵ Exec. Order No. 11,644 § 3(a).

¹⁶ 36 C.F.R. § 212.81(b).