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### Compliance with Minimization Criteria, Subpart C, Travel Management Rule

The Forest Service is required to actively undertake the Travel Management, Subpart C – over-the-snow (OSV) analysis (rather than passively undertake analysis as originally intended by the agency) because of a ruling by the US District Court for the District of Idaho dated March 29, 2013. The Travel Management Rule was adopted by the Forest Service in December 2005 in large part to comply with Executive Order 11644 as amended by EO 11989. The Subpart C Final Rule was issued in January 2015 in response to the changes mandated by the US District Court.

Travel Management decisions throughout the country have faced numerous legal challenges. The courts have generally required the Forest Service to delineate how the minimization criteria as defined by the two executive orders have been applied during the analysis process. The minimization criteria are largely defined by EO 11644 as follows:

1. Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.
2. Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.
3. Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.
4. Areas and trails shall not be located in officially designated Wilderness Areas or Primitive Areas. Areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.

The minimization criteria as amended by EO 11989 refer solely to requirements for closure in the case of occurrences of considerable adverse conditions caused by motorized travel.

In regards to Subpart C over-the snow (OSV) travel analysis, the Forest Service must consider compliance with the minimization criteria in EO 11644. In order to best accomplish this requirement, the Forest Service must analyze and determine the answers to the following questions, based on the best available science:

- A. Does the current OSV system comply with the criteria to minimize damage to soil, watershed, vegetation, or other resources of the public lands?
- B. Is the current OSV system located in areas that minimize harassment of wildlife or significant disruption of wildlife habitat?
- C. Are existing OSV areas and trails located to minimize conflict between OSV use and other existing or proposed recreational uses of the same of neighboring lands, taking into account noise and other factors?

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D. Are existing OSV areas and trails located in officially designated Wilderness or Primitive Areas?

Since the Final Rule delineating Subpart C analysis requirements issued in January 2015 states; *"OSVs do not make direct contact with soil, water, and vegetation; whereas most other types of motor vehicles operate directly on the ground. Unlike other types of motor vehicles traveling cross-country, OSVs generally do not create a permanent trail or have a direct impact on soil and ground vegetation"*, OSV travel in existing systems must be concluded to already comply with criteria #1 of EO 11644. OSV travel minimizes damage to soil, watershed and vegetation by the very nature of recreation occurring solely when snow blankets the landscape.

In regards to wildlife and wildlife habitat, a good example is the Sierra Nevada Yellow-legged Frog. Per US Fish and Wildlife; *"This species tends to spend the winter at the bottom of frozen lakes, emerging shortly after snow melts. In years of heavy snow, they may only be active for about 3 months."* Many animals, including the black bear, marmot, chipmunk and ground squirrels found in the Sierra Nevada hibernate to conserve energy during the long winters. Per the California Department of Fish and Wildlife; *"...black bear begins hibernating [and] can doze for many months with a body temperature of 88°F or higher... By contrast, the body temperature of smaller hibernators such as marmots, chipmunks, and ground squirrels may drop below 40°F. These smaller creatures are known as the "true hibernators" while bear inactivity has been termed "seasonal lethargy." For simplicity, we will refer to the inactivity of bears during the winter as hibernation."*

The seasonal nature of OSV recreation minimizes harassment and disruption of wildlife because recreationists are active solely during the time of hibernation for many if not most species in the Sierra Nevada. The low winter temperatures and corresponding snow cover in mountainous areas insure compliance with minimization criteria #2 as defined in EO 11644.

The analysis regarding the placement and designation of OSV areas and trails brings both criteria #3 and criteria #4 to the forefront, as they are directly related. In regards to criteria #4, every forest in Region 5 already complies with this component of the minimization criteria in EO 11644. None of the current systems designated for OSV recreation in Region 5 forests are located in Wilderness, recommended wilderness or primitive designations. Therefore minimization criteria #4 has already been met.

The determination of compliance with criteria #4 then assists to determine how best to meet the requirements of minimization criteria #3 – the ideal location of OSV to minimize potential use conflict between OSV and other recreational uses. Knowing where OSV travel is prohibited from occurring allows the Forest Service to prioritize where non-motorized over snow recreation should occur in order to minimize potential use conflict. The agency must prioritize non-motorized over-the-snow recreation in those areas where OSV travel is prohibited. All designated Wilderness, recommended wilderness, inventoried roadless areas and primitive non-motorized areas must be specifically designated as premier non-motorized over-the-snow recreation destinations. By applying and marketing these areas as ideal locations for non-motorized forms of over snow recreation, the Forest Service has the opportunity to encourage this use where no motorized forms of recreation are allowed, thereby minimizing any occurrence of noise and

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maximizing opportunity for non-motorized solitude. Non-motorized forms of recreation during all seasons are allowed to travel cross country through all areas of a forest. However defining premier non-motorized destinations in areas where motorized travel is prohibited will insure compliance with EO 11644, and allow non-motorized users to choose their preferred recreation experience by either traveling to premier destinations or by choosing to recreate in shared use areas.

The Subpart C Final Rule issued in January 2015 states; *"the Responsible Official has the discretion to determine whether to regulate OSV use and to establish a system of routes and areas where OSV use is allowed unless prohibited or a system of routes and areas where OSV use is prohibited unless allowed...The NFS is not reserved for the exclusive use of any one group, nor must every use be accommodated on every acre...It is entirely appropriate for different areas of the NFS to provide different opportunities for recreation."*

Use conflict and user conflict have become a matter of ideology rather than innate incompatibility. Both non-motorized and motorized users have the same goal when enjoying over snow recreation. Yet the expectation of experience solely consistent with ideology creates the user conflict. Both the 2005 Travel Management Rule and the 2015 Subpart C Final Rule are silent on designating premier areas for non-motorized recreation, but do not prohibit this definition. It is completely inside the scope of the rule and insures compliance with minimization criteria.

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## Eldorado Objections

1. Background – the role of snowmobiles in California Forests
2. Snow Depth – need for scientific measurement
3. PCT – arbitrary crossings, Forest Service liability, enforcement problems, lawsuit potential
4. DEIS: information shared from Lassen and Tahoe National Forests
5. Winter Wildland lack of accurate data, spurious information
6. User Conflict, achieving minimization criteria

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