



## Winter Wildlands Alliance v. U.S. Forest Service



### Decision Status

On March 29, 2013, U.S. Magistrate Judge Ronald E. Bush of the United States District Court of Idaho issued a Memorandum Decision and Order for this lawsuit in favor of the Winter Wildlands Alliance (WWA). This matter is related to the 2005 Off-Highway Vehicle (OHV) Travel Rule and was remanded to the U.S. Forest Service for compliance with Executive Order 11644, as amended by Executive Order 11989. The Order directs the Forest Service to issue a new travel rule that specifically addresses WWA's concerns about over-snow vehicle travel (snowmobiles), within 180 days. A copy of the Court's Judgment and Memorandum Decision and Order are attached.

### Appeal Status

It is our understanding that Defendants have 60 days to file an appeal to this decision (by May 28). At this point the Defendant (U.S. Forest Service) has not indicated whether or not they intend to appeal Magistrate Bush's decision. Defendant-Interveners including the Idaho State Snowmobile Association, American Council of Snowmobile Associations and Blue Ribbon Coalition, along with the International Association of Snowmobile Manufacturers Association, have indicated they will definitely file an appeal prior to the deadline. Since this issue has far reaching national access implications for winter recreation, it is important that the Forest Service, as primary defendant, appeals this decision to ensure all issues connected to WWA's lawsuit receive a full and proper hearing. Consequently Congressional inquiry and encouragement to the agency regarding its timely filing of an appeal is requested.

### Long-Term Implications if Judge Bush's Decision is Not Overturned or Amended

1. The decision improperly portrays there is currently no regulation of over-snow vehicle use. Some forests do have winter travel plans and every national forest has an existing forest management plan which allocates land use based upon motorized and nonmotorized recreation uses. The truth is that snowmobiling is already heavily regulated, with or without winter travel plans.
2. The Decision invalidates existing winter travel planning requirements and mandates that the Forest Service issue a new travel rule within 180 days. That is an unrealistic timeframe since the agency lacks the funding and staff, in addition to time, to accomplish such an overbearing mandate.
3. The 2005 OHV Travel Rule which has been invalidated made it optional for local Forest to complete winter travel planning. This is because the Forest Service concluded early in the development of the 2005 Rule that impacts from snowmobile use were distinctly different and typically far less, than impacts from wheeled off-highway vehicles. This is because snowmobile trails melt away each year and leave no lasting impacts when compared to impacts left by ATVs, jeeps, dune buggies, and other wheeled OHVs. This ruling discards the agency's scientific conclusions and requires it to completely re-start in respect to travel planning for over-snow vehicles.
4. Magistrate Bush's decision reinterprets the 1972 and 1978 Nixon and Carter Executive Orders regarding OHV access to public lands. This new interpretation is much stricter than previous interpretations followed the past 40 years and consequently puts all OHV access – winter and summer – at risk.
5. This ruling effectively allows activists to now bring lawsuits on the basis of Executive Orders (Eos). This is contrary to well established law that bars private lawsuits to enforce Eos. Until this decision courts have been unanimous that only the White House has the authority to enforce its Eos – not private citizens and not courts – so this action opens the door to countless new legal challenges.
6. The Forest Service is not funded or staffed to issue this new Travel Rule within 180 days – and more importantly it is not funded or staffed to complete detailed winter travel planning at the local level on all national forests across the country in the approximately 27 states where over-snow travel could potentially occur. This unfunded mandate could therefore potentially eliminate or reduce snowmobile access simply since, without funding, local travel plans allowing or regulating over-snow travel will not be produced.