



January 13, 2021

Okanogan – Wenatchee NF  
ATT: Kristian Bail, Forest Supervisor  
215 Melody Lane  
Wenatchee, WA 98801

RE: Emergency Order 06-17-04-20-25

Dear Supervisor Bail:

The Organizations are writing to express our **vigorous** opposition to the Emergency Closure Order 06-17-04-20-25 (“The Order”) on the Methow Valley Ranger District, as this situation is neither an emergency or safety concern but is rather a persistent user conflict issue which has been previously addressed with forest plans and travel management for the area. The Organizations vigorously submit processes are in place to address user conflicts and management issues such as those asserted to be the basis of the closure and these processes **must** be used. The long-term nature of the conflicts around usage of the area are directly evidenced by the fact the 1989 Resource Management Plan for the Forest has an extensive public process outlined that is to be used for issues such as this. This document clearly states areas more difficult to access, such as

the closure areas, are provided for motorized usage and clearly states that closures are only to be used as a last resort. None of the process outlined in the forest plan has been undertaken and the fact the process has been in place for more than 30 years directly undermines any claim of emergency concerns being a valid concern in the area.

The Organizations also surprised by the emergency orders, given that safety concerns have been present in the backcountry almost in perpetuity and often can change significantly in very short periods of time. Education of users has always been preferred to closures. Every discussion we have participated in, closures have been avoided due to the possibility of liability being created for the USFS if members of the public are injured or killed outside the closure areas. While every forest in the Country has been overwhelmed with visitation to public lands since the COVID outbreak, we have worked hard to educate many of the new users on backcountry safety issues and challenges to provide high quality recreational opportunities for all multiple uses. The Organizations are also vigorously opposed to the arbitrary nature of the Emergency conditions sought to be remedied, as the exclusion of a single user group simply cannot be justified and stands in stark contrast to the broadly supported emergency closure orders for entire forests for all usages issued throughout the western United States in response to wildfires this summer. The precedent set by this Emergency Order is deeply concerning to the Organizations and their members.

### **1. Who we are.**

Prior to addressing our objections to the Order, we believe a brief summary of each Organization is needed. ORBA is a national not-for-profit trade association of motorized off-road related businesses formed to promote and preserve off-road recreation in an environmentally responsible manner. One Voice is a grassroots Organization that focuses on insuring that local experiences and challenges are conveyed to decision makers in Washington overseeing these areas and issues for resolution. The United Snowmobile Alliance ("USA") is dedicated to the preservation and promotion of environmentally responsible organized snowmobiling and the creation of safe and sustainable snowmobiling in the United States. United Four-Wheel Drive Association ("U4WD") is an international organization whose mission is to protect, promote, and provide 4x4 opportunities world-wide.

The Trail Preservation Alliance ("TPA") is a volunteer organization created to be a viable partner to public lands managers, working with the USFS and the Bureau of Land Management (BLM) to preserve the sport of trail riding and multi-use recreation. The TPA acts as an advocate for the sport and takes the necessary action to ensure that the USFS and BLM allocate a fair and equitable percentage of public lands access to diverse multi-use recreational opportunities. Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization representing approximately 150,000 registered off-highway vehicle ("OHV") users in Colorado seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of multi-use and off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and

recreational qualities for future generations. Colorado Snowmobile Association ("CSA") was founded in 1970 to unite winter motorized recreationists across the state to enjoy their passion and seeks to advance, promote and preserve the sport of snowmobiling by working with Federal and state land management agencies and local, state and federal legislators. California Nevada Snowmobile Association ("CNSA") represents all snowmobilers throughout California and Nevada to promote safety and good will for the snowmobile community and provide a voice for the individual snowmobiler in all matters relating to the sport of snowmobiling. Washington State Off-Highway Vehicle Association is a not-for-profit organization and our objectives are to Pursue, promote, protect and educate responsible off highway vehicle use. WOHVA is an Alliance of Organizations including OHV Clubs; OHV businesses; and supporting Individuals. The Idaho Recreation Council ("IRC") is a recognized, statewide, collaboration of Idaho recreation enthusiasts and others that will identify and work together on recreation issues in cooperation with land managers, legislators and the public to ensure a positive future for responsible outdoor recreation access for everyone, now and into the future. Collectively ORBA, One Voice, USA, U4WD, TPA, COHVCO, CSA, CNSA, WOHVA and IRC will be referred to as "The Organizations" for this correspondence.

**2. RMP provisions provide a detailed outline of public processes and collaborations that must be undertaken prior to any closure and that closures are the last resort for any area.**

The Organizations first objection to the Emergency Order is based on the exceptionally detailed formal public engagement processes that has been provided in the Forest's Resource Management Plan ("RMP") to address situations such as this, and that **NONE** of these processes have been attempted to be used prior to issuance of the emergency order. User conflicts around winter recreational opportunities have been occurring on the Forest since the adoption of the RMP in 1989 as directly evidenced by the unusually explicit provisions in the RMP for management of issues such as this. These RMP provisions are as follows:

**"Snowmobiling opportunities will continue to be provided in partnership with the Okanogan County Snowmobiling Advisory Board.** Emphasis will be placed on groomed routes currently authorized in a Memorandum of Understanding with Okanogan County....

**Potential conflicts between motorized and non-motorized winter recreation activities will be resolved involving the individual users. Separation of users will be used only as a last resort.** Timber management activities and new road access will increase the availability of areas for snowmobiling and cross-country skiing.

Existing helicopter skiing will continue and additional opportunities will **be** considered.

Approximately 202,000 non-wilderness unroaded acres will be available for winter ORV opportunities. Winter ORV use may be restricted if found incompatible with

other objectives. **The difficulty of nonmotorized access into these areas will minimize user conflicts.**

Primitive recreation opportunities are provided in the 626,200 acres of designated wilderness.... Semi-primitive nonmotorized or motorized opportunities will be provided on 202,000 acres in portions of the Liberty Bell, Sawtooth, Tiffany, Mt Bonaparte, Pasayten Rim, and Bodie Mountain Roadless Areas.

Approximately 183,000 acres of Roaded Natural recreation will be provided in the following areas parts of the North Cascades Scenic Highway, the Chewuch/Eightmile, Upper Hethow/Hart's Pass, Middle Salmon Creek-Boulder Creek, Sun Mountain, Twisp River/Blackpine Lake, Loup Blackline Highway, Aka Lake, North Fork Gold Creek, McClure Mountain, 5-Lakes, North Fork Salmon Creek, Sweat Creek, Mt Hull, Toats Coulee, Aeneas Valley, Crawfish Lake, and Summit Lake. Timber yield in these areas outside the North Cascades Scenic Highway will be reduced There will be no scheduled timber harvest in the North Cascades Scenic Highway. " <sup>1</sup>

**We would be remiss in simply stating NONE of these processes and guidelines have even arguably been applied, discussed or analyzed in the issuance of the emergency order.** Local users were shocked when the Order was issued despite the numerous specific mechanisms that are provided for in the RMP for the Forest. This frustration is compounded by the fact that the RMP specifically states less accessible areas are being provided for motorized usage. This is directly contrary to the alleged basis of the Order, as the Order specifically states new motorized usages to less accessible areas is the basis for the closures. It is our experience that motorized usage of this area is not new in any manner as the closure areas is one of the few areas open for motorized usage in this portion of the valley. Given that the RMP process was developed more than 30 years ago also directly undermines any assertion that there is factual basis for declaring an emergency, as this is a known travel management issue and additionally specifically provided for in the RMP.

We would also note comical imbalance of recreational opportunities being provided in the planning area as well. While a majority of the Methow Valley Ranger District is closed to winter motorized usage, none of the District is closed to those pursuing recreational opportunities by other means. Given this horrible imbalance of opportunities on the District, the Organizations believe this was a major driving force in the creation of the above provisions in the RMP. The Organizations submit there is a formal process in place to address issues such as those asserted to be the basis for the emergency, and the Organizations submit this process **must** be used.

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<sup>1</sup> See, USDA Forest Service; Okanogan National Forest – Record of Decision -Resource Management Plan 1989 @pg.18

**3. Winter travel management processes which provide extensive mandatory public engagement processes are in place to address user conflicts in recreational access.**

In addition to the highly specific and unusual formal public processes that are provided for at the Forest level, extensive mandatory public processes are provided for in national regulations to address winter user conflict issues and possible safety concerns. This is reflected in the recently updated Winter Travel Rule that was completed in 2015 by the USFS <sup>2</sup> and is hugely important to many of the Organizations who intervened with the USFS in defense of the legal challenge to the superseded winter travel rule. These Organizations then provided years of effort, detailed information in the development, detailed input of nationally recognized experts and others in the revision of the new Winter Travel Rule. To say the Organizations, have a vested interest in avoiding situations such as this would be an understatement.

The Organizations also believe it is important to note that even before the new winter Travel Rule, perceived user conflicts have been woven throughout the recreational planning efforts since recreation has existed on public lands and these are issues that are specifically addressed in the travel management process since the issuance of the Executive Orders governing the Travel Management Process were issued by President Nixon in 1972. Throughout the development of the new winter travel management rule by the USFS, user conflicts were easily the most common public concern voiced in the planning process. This is also a major concern around the Order as the Organizations and our members directed years of effort into the development of this rule to insure there was a process available to address user conflicts. The fact that this entire nationally mandated process has been avoided with the Order is deeply concerning to the Organizations for this issue alone and the Organizations vigorously assert that these processes **must** be applied.

**4. National USFS regulations on the issuance of Emergency Orders provide no basis to address recreational user conflicts.**

The Organizations have been involved recreational activity in the winter backcountry for decades, and can say with absolute certainty that these recreational opportunities can be some of the most exceptional opportunities available for the public. With these opportunities, there are inherently risks to anyone that pursues these opportunities, regardless of where or how recreational interests are pursued. Many of the winter risks are present in similar levels in developed ski areas as are present in backcountry areas. Users fall and break bones, frostbite for poorly equipped recreational users does not care where they are located, users simply get lost and run into trouble, storms develop faster or stronger than weatherman had predicted. These risks are inherent in pursuing winter recreational opportunities that are knowingly accepted by those users as these risks are present every year. These conditions simply are not an emergency.

The Organizations also express serious concerns around any assertion of an emergency nature of any closure in the Methow Valley as the press release issued on the closure seems to focus on user conflicts in the area as the basis for the emergency. The Organizations are unaware of any

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<sup>2</sup> See, 36 CFR 212 subpart c.

condition that might have developed in the area that would have altered the nature or conditions of the area, such as a wildfire or landslide. User conflict is a factor in travel management and is most effectively dealt with through that process. Again, these mandatory public processes have been completely ignored in favor of a closure order that lacks legal or factual basis. The Organizations would also note that the USFS has extensive regulations regarding management in emergency situations generally outlined in 36 CFR 261 and related regulations issued under FSM 1500 Chapter 1590. While there are numerous issues addressed in these regulations, such as fires and floods, there is no mention of user conflicts or recreational usages being the basis for any emergency closure order authority.

We are also intimately aware that these are opportunities that simply are not inherently safe for numerous reasons that are outside the control of managers and can change rapidly due to changing weather conditions. Programmatically, the lack of safety of users has not been recognized as a basis to exclude the public from any areas, but rather these rapidly changing safety concerns have been the basis for partners educating the public of the risks and letting each member of the public individually accept or decline these risks. The USFS has avoided these types of closures simply due the liability that can result immediately when a safety concern is relied on to close an area and then a member of the public is killed or injured outside the closure area. This immediately causes possible liability for managers based on the accuracy of closures. Any assertion of a safety concern impacting a single winter user group more than other user groups has no basis in fact. Clearly avalanche risks and other risk of injury clearly remain in the closure areas despite the closure of the areas to motorized usages.

The Organizations would be remiss if the potential liability that is created for the USFS as a result of this Order was not raised as potential liability of land managers has always been a major concern in any discussions around winter recreation and covering a wide range of issues ranging from signing, grooming, general safety concerns and avalanches. The USFS has consistently avoided closure order such as this for any reason as the potential liability from this order is immense. Clearly conditions inside the closure order area are similar to those outside the closure order area, which immediately causes legal questions regarding how boundaries were drawn or how were conditions reviewed or monitored to provide a basis for the closure. These questions can be foundational in any challenge to compensate a member of the public who may have been injured.

**5. The National Trail Strategy Core Strategy specially identifies collaboration as the tool to be used in these situations.**

The Organizations would also like to address the immediate conflict in the nature and direction of the Order with the basic direction and intent of the newly released National Trails Strategy, as our members have several years of effort in the development of the new strategy. This new strategy specifically states as follows:

“Sustainable Systems: Collaboratively create and achieve a common vision.

**Challenge:** Many trails are not socially, ecologically, and economically sustainable, including many legacy trails that were not well designed or located and are not being used for their intended purpose. These unsustainable trails—and the proliferation of unauthorized or user-created trails—drain agency resources.

**Aspiration:** Trail systems are sustainably designed, well maintained, used for their intended purpose, and valued and supported by trail users and communities.

**Actions:**

**4.1 Create Shared Understanding:** Invite national/regional/local trail groups to create a shared understanding of how to better balance the desire for more opportunities for current and emerging trail uses with the need for a sustainable trail system.”<sup>3</sup>

Given these specific goals and objectives of the new USFS Trails Strategy, the Organizations vigorously assert the arbitrary nature of the Order and non-existence of public engagement is directly contrary to the guidance and objectives of the new USFS Trails Strategy. This again is a troubling development for the Organizations when processes such as these are simply avoided or disregarded.

**6. Best Available Science on User Conflicts directly weighs against closures.**

The proper management of perceived user has resulted in the creation of many other longer-term problems when decisions reflecting an imbalanced multiple use or when decisions made without public processes are implemented. This concern was recently identified as a major planning issue throughout the western United States. The Western Governors' Association released its *Get Out West* report in conjunction with its economic impact study of recreation on public lands in the Western United States. The *Get Out West* report from the Western Governors' Association also highlighted how proper balancing of recreation is to the development of good management plans based on multiple use principals. The *Get Out West* report specifically found:

"Good planning not only results in better recreation opportunities, it also helps address and avoid major management challenges – such as limited funding, changing recreation types, user conflicts, and degradation of the assets. Managers with the most successfully managed recreation assets emphasized that they planned early and often. They assessed their opportunities and constraints, prioritized their assets, and defined visions."<sup>4</sup>

The Organizations believe our concerns regarding the Methow Valley closure and those expressed in the Western Governor's *Get Out West* report virtually mirror each other. This concern must be addressed in establishing any basis for an emergency claim for the closure of any area.

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<sup>3</sup> See, USDA Forest Service; National Sustainable Trails Strategy pg. 9

<sup>4</sup> *Get Out West Report* at pg. 5.

The Organizations believe that after a brief summary of research into user conflict, the difference in the Methow Valley closure and best available science on the issue will be clear. Researchers have specifically identified that properly determining the basis for or type of user conflict is critical to determining the proper method for managing this conflict. Scientific analysis defines the division of conflicts as follows:

“For interpersonal conflict to occur, the physical presence or behavior of an individual or a group of recreationists must interfere with the goals of another individual or group....Social values conflict, on the other hand, can occur between groups who do not share the same norms (Ruddell&Gramann, 1994) and/or values (Saremba& Gill, 1991), independent of the physical presence or actual contact between the groups.....When the conflict stems from interpersonal conflict, zoning incompatible users into different locations of the resource is an effective strategy. When the source of conflict is differences in values, however, zoning is not likely to be very effective. In the Mt. Evans study (Vaske et al., 1995), for example, physically separating hunters from nonhunters did not resolve the conflict in social values expressed by the nonhunting group. Just knowing that people hunt in the area resulted in the perception of conflict. For these types of situations, efforts designed to educate and inform the different visiting publics about the reasons underlying management actions may be more effective in reducing conflict.”<sup>5</sup>

Other researchers have distinguished types of user conflicts based on a goal’s interference distinction, described as follows:

“The travel management planning process did not directly assess the prevalence of on-site conflict between non-motorized groups accessing and using the yurts and adjacent motorized users.... The common definition of recreation conflict for an individual assumes that people recreate in order to achieve certain goals, and defines conflict as “goal interference attributed to another's behavior” (Jacob & Schreyer, 1980, p. 369). Therefore, conflict as goal interference is not an objective state, but is an individual's appraisal of past and future social contacts that influences either direct or indirect conflict. It is important to note that the absence of recreational goal attainment alone is insufficient to denote the presence of conflict. The perceived source of this goal interference must be identified as other individuals.”<sup>6</sup>

It is significant to note that Mr. Norling’s study, cited above, was specifically created to determine why travel management closures had not resolved user conflicts for winter users of a group of yurts on the Wasache-Cache National forest. As noted in Mr. Norling’s study, the travel

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<sup>5</sup> See, Carothers, P., Vaske, J. J., & Donnelly, M. P. (2001). *Social values versus interpersonal conflict among hikers and mountain biker*; *Journal of Leisure Sciences*, 23(1) at pg. 58.

<sup>6</sup> See, Norling et al; *Conflict attributed to snowmobiles in a sample of backcountry, non-motorized yurt users in the Wasatch –Cache National Forest*; Utah State University; 2009 at pg. 3.



management decisions addressing in the areas surrounding the yurts failed to distinguish why the conflict was occurring and this failure prevented the land managers from effectively resolving the conflict.

The Organizations believe that understanding why the travel management plan was unable to resolve socially based user conflicts on the Wasache-Cache National Forest is critical in the Methow Valley planning decision. Properly understanding the issue to be resolved will ensure that the same errors that occurred on the Wasache-Cache are not implemented again to address problems they simply cannot resolve. The Organizations believe the Order must provide a basis that avoids this failure and move forward with effective management rather than fall victim to the same mistakes again. Unfortunately, the District appears to be falling victim to the same issues as the Wasache-Cache rather than learning from them, since closures are immediately relied upon to address what the Organizations have to believe are a significant amount of socially based user conflicts.

At no point is there any mention of programs or resources to be developed that might be available to address socially based user conflicts. While the Organizations are aware that such a discussion is technically outside the issuance of the Order, the Organizations believe that if a distinction between the different bases for user conflicts had been made in the planning process, this distinction would have warranted a brief discussion of methods for resolution of socially based conflicts through educational programs. The lack of an educational component in planning as a tool to be utilized in conjunction with travel management issues and trail closures, leads the Organizations to conclude that there was a finding at some point in the planning process to the effect that all user conflicts are personal in nature. This type of finding would be highly inconsistent with both the Organizations experiences with this issue and the related science.

As noted above, personal user conflicts only account for a small portion of total user conflicts. While these personal conflicts would be resolved, the overwhelming portion of user conflict results from a lack of social acceptance by certain users and these conflicts would only be resolved with education. The Organizations believe the distinct between personal and social user conflict must be addressed in the public processes required and the levels of closures reviewed to ensure that the levels of closures are not going to result in increased user conflicts. The Organizations believe that increased conflict is a serious risk given the high levels of closures that are currently in place.

## **7. Conclusions.**

The Organizations must object to the Order based on its horribly arbitrary nature and complete lack of factual basis for the Order and the failure of the Forest to engage in established public engagement process in place for more than 30 years. The Organizations are intimately aware that there are numerous formal public processes in place in both forest level and national level regulations to address the concerns that appear to be the actual basis for the Order. None of these public processes have been engaged in any manner prior to the issuance of the Order. We would welcome the USFS engaging in the formal public processes mandating for the resolution of issues such as those asserted to be perceived in the area, as we submit these processes are

the most effective manner to reduce user conflicts in the long term and that the current Order is simply creating unprecedented user conflicts rather than reducing them.

The Organizations would welcome a discussion of how legally required public engagement processes in place will be complied with to address management concerns in this area in order to achieve a plan that balances usages in the entire area. We would welcome engagement of local groups and interests in this effort and would welcome discussions of how the larger landscape level concerns about the issuance of the order could be resolved. If you have questions please feel free to contact either Fred Wiley, ORBA's Executive Director/CNSA Past President at 1701 Westwind Drive #108, Bakersfield, CA. Mr. Wiley phone is 661-323-1464 and his email is fwiley@orba.biz. You may also contact Scott Jones, Esq. at 508 Ashford Drive, Longmont, CO 80504. His phone is (518)281-5810 and his email is scott.jones46@yahoo.com.

Respectfully Submitted,



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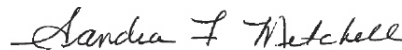
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