



June 22, 2021

Stanislaus National Forest
Att: Jason Kuiken, Forest Supervisor
19777 Greenley Road
Sonora, CA 95370

Re: Stanislaus NF OSV usage/designation and *Cowpasture* US Supreme Court decision

Dear Mr. Kuiken:

The above Organizations are contacting you regarding the final revised Record of Decision regarding OSV travel on the Forest released on May 25, 2021. It is anticipated to be signed in July 2021. Our concerns are surrounding the asserted basis for management of the Pacific Crest Trail corridor in the revised draft decision and the direct conflict of this position with the 2020 7-2 US Supreme Court *Cowpasture* decision. The Organizations have previously provided a copy of the *Cowpasture* decision to the Forest by correspondence on March 10, 2021 seeking to avoid the situation we are now facing. *The Organizations are in the unusual and uniquely frustrating situation of asking the Forest to apply the interpretation of the NTSA standards with multiple use mandates that the USFS recently **successfully** pursued in the US Supreme Court.* In *Cowpasture*, the US Supreme Court addressed conflicts between provisions for the management of NTSA routes and multiple use mandates. The Court found that where possible conflict in management exists multiple use mandates govern any NTSA trail, and not the application of more restrictive mandates found in the NTSA. We are again including a copy of this decision with this correspondence in the hope of quickly bringing some type of closure to OSV issues on the Stanislaus, as this has now spanned decades.

The Stanislaus NF currently proposed to resolve statutory conflicts in direct opposition to the *Cowpasture* decision, as the Stanislaus NF starts with the most restrictive requirements of the NTSA and then applies them without regard to multiple use management objectives for particular segments of trail. In this planning effort, the Stanislaus has been faced with a situation where isolated NTSA provisions are in conflict with general multiple use provisions for the Forest. These restrictive provisions have sought to be exploited by interests

that are seeking buffers or exclusive use corridors around the PCT. As we have previously argued application of multiple use planning requirements is also supported by the wide range of uses recognized by the NTSA. While the Organizations are aware that the PCT is a comparatively small issue on the Stanislaus NF, the impacts of the precedent set by the Stanislaus NF are significant and cannot be overlooked.

Pursuant to the draft revised ROD currently available, the Pacific Crest Trail is entirely closed to motorized usage¹ and then usage is granted on a case-by-case basis. The application of the most restrictive provisions of the NTSA is deeply concerning and gives rise to two significant forest level concerns. The *Cowpasture* decision addressed the NTSA management and relationship when multiple agencies were involved and agency management dictated the decisions allowed for each agency. In the Stanislaus situation the USFS is both land and trail manager, simplifying the analysis. The *Cowpasture* decision clearly states:

“Sometimes a complicated regulatory scheme may cause us to miss the forest for the trees, but at bottom, these cases boil down to a simple proposition: A trail is a trail, and land is land.”

The Court then continues by clarifying the management of the lands in and around the trail remains subject to general agency jurisdiction as follows:

“The various duties described in the Trails Act reinforce that the agency responsible for the Trail has a limited role of administering a trail easement, but that the underlying land remains within the jurisdiction of the Forest Service.”²

We are aware of no argument that US Forest Service is not subject to multiple use mandates generally or that exclude the PCT from multiple use, and the *Cowpasture* decision clearly identifies that multiple use mandates and processes ***must*** govern NTSA route management. We are not aware of any document or decision that creates such exclusionary corridors or buffer for trails, as all planning documents specifically allow many uses on and around the trail. While the NTSA makes provisions for segments of NTSA routes crossing Wilderness areas and other designations, where usage is prohibited the NTSA also specifically allows motorized usages on the route. This is pinnacle of multiple use management and we are asking for its application on the PCT on the Stanislaus.

¹ See, USDA Forest Service; Stanislaus National Forest; Updated Draft ROD regarding OSV use designations; Anticipated to be signed July 2021 at pg. 12.

² See, US Forest Service et al v. Cowpasture River Preservation Association, 590 US ____; 140 S.Ct 1837 @1847 (2019)

The *Cowpasture* decision is compelling in isolation, however these provisions become even more compelling for Stanislaus OSV decision when it is reviewed more generally. Many of the proponents of applying the most restrictive standards between multiple uses statutes and NTSA interpretations, which result in exclusionary corridors around the PCT for the benefit of certain trail interests in the Stanislaus OSV planning effort, argued this very same position in filings to the US Supreme Court in *Cowpasture*. **THEY LOST in a 7-2 decision.** While we do not believe a detailed list of these interest groups is productive to this discussion, we will vigorously assert that many of the court filings made in *Cowpasture* virtually mirrored the public comments that were made to the Stanislaus on this issue. These Supreme Court filings are available and we would be willing to share them if you should desire. The Supreme Court clearly stated that multiple use plans and mandates must guide the management of all NTSA routes.

Our second concern involves the relationship of the *Cowpasture* decision to the PCT Plan and possible application of the PCT Plan provisions in a manner that conflicts with *Cowpasture*. The PCT is a trail that runs from Mexico to Canada and clearly would be managed for a single use without significant negative impacts. While much of Stanislaus decision asserts to be applying the PCT Plan, it is our position that the PCT Plan has never applied the standard asserted. Rather the PCT plan applies segment by segment standards of multiple uses for the trail as evidenced by specific management standards for motorized vehicles on the trail. Again we must ask why would the USFS have management standards for motorized vehicles in the PCT plan when they are prohibited under the NTSA. The answer is motorized usage has never been prohibited. We have argued this throughout the Stanislaus planning process based on the clear language of the statute and relevant plans, apparently without success. The relationship of the current PCT plan and the *Cowpasture* decision remains unclear but is outside the scope of this planning effort. It is our position that numerous provisions of the existing PCT plan are on questionable legal basis after the *Cowpasture* decision as the PCT plan applies the more restrictive standards. *Cowpasture* which requires application of the lesser restrictive standards for NTSA designated areas. Application of the PCT Plan in a manner to allow the less restrictive standards for each segment resolves conflict around the PCT Plan as well.

*In conclusion, the Organizations are in the unusual and uniquely frustrating situation of asking the Forest to apply the interpretation of the NTSA standards with multiple use mandates that the USFS recently **successfully** pursued in the US Supreme Court.* The PCT is and always has been a multiple use route without buffers and we are asking that it be managed as mandated under the NTSA and *Cowpasture* decision. While the Organizations

are aware that the PCT is a comparatively small issue on the Stanislaus NF, the impacts of the precedent set by the Stanislaus NF are significant and cannot be overlooked.

We are hoping that resolving this direct conflict will speed the final resolution of the Stanislaus OSV planning effort, that has spanned decades and improve recreational opportunities for all users of the Stanislaus. 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 3301 Fairway Drive, Argyle TX 76226. His phone is (518)281-5810 and his email is scott.jones46@yahoo.com.

Respectfully Submitted,



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ORBA Authorized Representative

Fred Wiley
ORBA Executive Director; CNSA Past President



Keith Sweepe, CNSA President

CC: R5; USFS Leadership
Enclosures