

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Silver Spring, MD 20910, )

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Plaintiffs, )

v. )

Civ. No. \_\_\_\_\_

GALE NORTON )  
 Secretary, U.S. Department of the Interior )  
 1849 C Street, N.W. )  
 Washington, D.C. 20240, )  
 )  
 and )  
 )  
 FRAN MAINELLA )  
 Director, National Park Service )  
 1849 C Street, N.W. )  
 Washington, D.C. 20240, )  
 )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This case challenges the National Park Service's ("Park Service") November 18, 2002 decision to delay implementing a long-planned phase-out of snowmobile use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller Parkway ("the Yellowstone Parks") without conducting any review under the National Environmental Policy Act ("NEPA"), 42 U.S.C. ' 4321 et seq., and the agency's unreasonable delay in connection with a Rulemaking Petition seeking a ban on snowmobiles and groomed trails throughout the Park System. By failing for almost four years to respond to the Rulemaking Petition, defendants are unreasonably delaying agency action in violation of the Administrative Procedure Act ("APA"). 5 U.S.C. § 706. In addition, by issuing a Final Rule on November 18, 2002 which delays by yet another year any changes to snowmobile use in the Yellowstone Parks, the defendants are violating NEPA, the APA, the Park Service Organic Act and the Yellowstone Act, 16 U.S.C. ' ' 1, 22, several Executive Orders, and the agency's own regulations

and binding management policies, as well as a 1997 Settlement Agreement with The Fund for Animals approved by this Court ("the 1997 Settlement ").

### **JURISDICTION**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. ' 1331.

### **PARTIES**

3. Plaintiff The Fund for Animals ("The Fund") is a national nonprofit membership organization headquartered in New York City and Silver Spring, Maryland. The Fund is committed to preserving animal and plant species in their natural habitats, and to preventing the abuse and exploitation of both wild and domestic animals.

4. Many of The Fund's over 200,000 members and supporters joined the organization to obtain adequate representation of their interests in safeguarding wild animal and plant species, including species found in units of the National Park System, such as Yellowstone and Grand Teton National Parks. Many members of The Fund devote substantial recreational and professional time to enjoying the flora and fauna in these areas, and have traveled and will continue to travel to these areas to observe, photograph, protect and otherwise enjoy plants and animals in their natural habitat. The Fund brings this action on behalf of its members, and to safeguard its own organizational interest in protecting the wildlife in these areas. The interests of the Fund and its members in protecting the wildlife in units of the Park System, including the Yellowstone Parks, and in using the Parks as an enjoyable place to recreate and observe, study, and photograph wildlife are harmed by the defendants' failure to comply with NEPA, the APA, the 1997 Settlement, and other federal laws and regulations, because

snowmobiles and groomed trails -- trails of packed snow -- have numerous adverse impacts on the wildlife, environment, and winter visitor experience in these areas.

5. Plaintiff Bluewater Network ("Bluewater") is a national environmental organization protecting public waters, lands, and ecosystems. Bluewater fights against the damage caused by motorized recreation, including snowmobiles, jetskis and off-road vehicles, oil and shipping industry practices, and other types of marine pollution. In January 1999, Bluewater and 60 other organizations, representing more than a million members and supporters, submitted a Rulemaking Petition to the Park Service seeking a ban on snowmobile use and trail grooming in all units of the National Park System.

6. Many of Bluewater's members and donors frequently visit and will continue to visit units of the National Park System where snowmobiling is permitted, and are adversely affected by the Park Service's management of winter use in those areas. The interests of Bluewater and its members in protecting and enjoying the wildlife and environment in units of the Park System, and in using the Parks as an enjoyable place to recreate and observe, study, and photograph wildlife are harmed by the defendants' failure to comply with NEPA, the APA, and other federal laws and regulations, because snowmobiles and groomed trails have numerous adverse impacts on the wildlife, environment, and winter visitor experience in these areas.

7. Plaintiff Public Employees for Environmental Responsibility ("PEER") is a national nonprofit charitable organization with local, state, and federal resource professional members. PEER's mission is to monitor natural resource management agencies and organize agency employees to advocate for sound environmental policies.

8. PEER members work at, and frequently recreate at, many units of the National Park System where snowmobiling is permitted, and are adversely affected by the Park Service's management of winter use in a number of those areas. This includes the approximately 50 PEER members living in Wyoming, and the approximately 120 members living in Montana, many of whom not only recreate in these areas, but some of whom also work as employees at Yellowstone National Park, Grand Teton National Park and other areas. Among other concerns, these employees have experienced breathing difficulties, headaches, nausea, dizziness and hearing loss due to their exposure to the pollution and noise emitted from snowmobiles. The interests of PEER and its members in a healthy work environment, and in protecting and enjoying the wildlife and environment in units of the Park System, including the Yellowstone Parks, are harmed by the defendants' failure to comply with NEPA, the APA, and other federal laws and regulations, because snowmobiles and groomed trails have numerous adverse impacts on Park Service employees, as well as the wildlife, environment, and winter visitor experience in these areas.

9. Plaintiff Ecology Center ("Center") is a non-profit environmental organization based in Missoula, Montana with at least 25 members residing in the Greater Yellowstone area in Montana, Wyoming and Idaho. The Center is dedicated to protecting roadless and wilderness values, ecological integrity and biological diversity in the Northern Rockies of the United States and to facilitating other groups to provide similar protections in this and other ecosystems throughout the United States and other countries. Many Center members and supporters routinely recreate in and around Yellowstone and Grand Teton National Parks. These parks are of immense value as a place to cross-country ski, hike, bicycle, climb, observe and photograph wildlife, and to conduct research.

10. These experiences and opportunities have been adversely impacted by motorized winter use in these areas, including the sights, sounds, and smells of thousands of snowmobiles, and the impacts of snowmobiles and groomed snowmobile trails on a number of species, such as bison, grizzly bear, gray wolves, and lynx. The interests of the staff of the Center and its members and supporters in protecting the wildlands and wildlife in these Parks and in using these areas as enjoyable places to recreate and observe, study, and photograph wildlife and their habitat are harmed by the defendants' failure to comply with NEPA, the APA, the 1997 Settlement, and other federal laws and regulations, because snowmobiles and groomed trails have numerous adverse impacts on the wildlife, environment, and winter visitor experience in these areas.

11. Plaintiff Walt Farmer is a resident of Jackson, Wyoming. Mr. Farmer, a member of The Fund for Animals, has been an outspoken advocate for wildlife and wildlands in the Greater Yellowstone Ecosystem for many years. He has attended, and continues to attend, public meetings, and has submitted public comments on a variety of environmental and wildlife issues, including winter use in Yellowstone and Grand Teton National Park, and the surrounding public lands. He also receives considerable pleasure and enjoyment from his personal time spent in Grand Teton and Yellowstone. He often hikes in the Parks in order to enjoy and observe the wildlife, wildlands, and serenity of these areas, and he intends to continue to participate in these activities in the future. In the winter months, Mr. Farmer snowshoes in the Yellowstone Parks. However, the snowmobiles and groomed trails have adversely impacted his ability to enjoy the Parks in the winter, due to the sights, sounds and smells of these machines, as well as to the substantial adverse impacts of snowmobiles and groomed trails on wildlife, including bison, Park lands, other Park users, hydrology, and vegetation, all of which offend his

aesthetic enjoyment of the region. Mr. Farmer's interests in protecting wildlands and wildlife in these areas, and in using them as an enjoyable place to recreate and observe, study, and photograph wildlife, are harmed by the defendants' failure to comply with NEPA, the APA, the 1997 Settlement, and other federal laws and regulations, because snowmobiles and groomed trails have numerous adverse impacts on the wildlife, environment, and winter visitor experience in these areas.

12. Plaintiff George Wuerthner, a naturalist and writer with a strong background in biology, resides in Richmond, Vermont. Mr. Wuerthner has lectured and taught courses concerning a variety of issues related to Yellowstone, including a course on winter ecology for Prescott College. He guides natural history tours in Yellowstone, and has authored two books about Yellowstone, Yellowstone: A Visitor's Companion and Yellowstone: The Fires of Change. He also recently completed a two year study on the biological attributes of the Greater Yellowstone Ecosystem with a focus on Yellowstone.

13. Mr. Wuerthner has spent many hours hiking, climbing, cross-country skiing, and observing and photographing wildlife in Yellowstone and Grand Teton National Parks, and he intends to continue these activities in the future. Mr. Wuerthner's enjoyment of the Parks in the winter has been adversely affected by snowmobiles and groomed trails and their impact on Park wildlife and Park ecology. He is concerned about the impacts of snowmobiles and groomed trails on bison, elk, deer, grizzly bears, wolves, and other species in the Parks. Mr. Wuerthner's interest in protecting wildlands and wildlife in these areas and in using them as an enjoyable place to recreate and observe, study, and photograph wildlife are harmed by the defendants' failure to comply with NEPA, the APA, the 1997 Settlement, and other federal laws and regulations, because snowmobiles and groomed trails have numerous adverse impacts on the wildlife, environment, and winter visitor experience in these areas.

14. Plaintiff Phillip Knight, a resident of Bozeman, Montana, is an environmentalist dedicated to protecting the wildlands and wildlife of the Northern Rockies ecosystem. Among other things, Mr. Knight has been an outspoken opponent of the slaughter of Yellowstone bison since the late 1980s. For two decades, Mr. Knight has received considerable pleasure and enjoyment from recreating in Grand Teton and Yellowstone Parks. In addition to cross-country skiing in the winter, Mr. Knight enjoys climbing, bicycling, hiking, and observing and photographing the wild places and wildlife in the Parks, and he intends to continue to recreate in these Parks in the future. Mr. Knight also works periodically as a guide/naturalist in Yellowstone and Grand Teton, both in winter and summer, and he makes part of his living from sharing and describing the natural wonders of Yellowstone and Grand Teton to people from all over the United States. His personal experiences and his work have been adversely affected by winter use, including the sights, sounds and smells of snowmobiles and groomed trails, and the effects of winter use on many species of wildlife, including bison, elk, moose, subnivean wildlife, grizzly bears, wolves, and coyotes. Mr. Knight's interest in protecting wildlands and wildlife in these areas, and in using them as an enjoyable place to recreate and observe, study, and photograph wildlife, are harmed by the defendants' failure to comply with NEPA, the APA, the 1997 Settlement, and other federal laws and regulations, because snowmobiles and groomed trails have numerous adverse impacts on the wildlife, environment, and winter visitor experience in these areas.

15. Plaintiff Richard Meis, a resident of Bozeman, Montana, is an ardent conservationist who has enjoyed cross-country skiing, boating, hiking and wildlife observation in Yellowstone and surrounding Park areas in the past, and intends to continue these activities in the future. His winter experiences in these areas have been adversely impacted by the sights, sounds, and smells of

snowmobiles and groomed trails. He is also concerned about the adverse affects of snowmobiling on Park ecology and wildlife. His interest in protecting wildlands and wildlife in these areas and in using them as an enjoyable place to recreate and observe wildlife are harmed by the defendants' failure to comply with NEPA, the APA, and other federal laws and regulations, because snowmobiles and groomed trails have numerous adverse impacts on the wildlife, environment, and winter visitor experience in these areas.

16. Defendant Gale Norton is the Secretary of the Interior and is the official ultimately responsible for all activities in units of the National Park System.

17. Defendant Fran Mainella is the Director of the National Park Service and is the official directly responsible for the supervision, management and control of the units of the National Park System.

## **STATUTORY FRAMEWORK AND FACTS GIVING RISE TO PLAINTIFFS' CAUSES OF ACTION**

### **I. Statutory and Regulatory Framework**

#### **A. Park Service Acts And Regulations**

18. The Park Service Organic Act, passed in 1916, created the National Park Service to "promote and regulate" the public use of our national parks, "by such means and measures" as necessary to conform to the "fundamental purpose" of the parks to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same [so as to] leave them unimpaired for the enjoyment of future generations." 16 U.S.C. ' 1. Congress reaffirmed this commitment in 1970, instructing that the Park Service shall not administer the parks "in

derogation of the values and purposes for which these various areas have been established . . . ." 16 U.S.C. ' 1-a-1.

19. The Yellowstone Act of 1872 states that the Park Service must provide for "the preservation, from injury or spoilation, of all timber, mineral deposits, natural curiosities, or wonders, within the park, and their retention in their natural condition." 16 U.S.C. ' 22 (emphasis added).

20. In furtherance of these mandates, Park Service regulations prohibit "disturbing" wildlife from its "natural state." 36 C.F.R. ' 2.1(a)(1)(i). Existing regulations also prohibit snowmobile use unless such use is "consistent with the parks' natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources." 36 C.F.R. ' 2.18(c) (emphasis added).

21. Similarly, the Park Service's binding Management Policies provide that "[t]he impairment of park resources and values may not be allowed," and that such an impairment exists where the impact of a particular activity "would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values." Park Service Management Policies 2001 ("Park Service Policies"), at § 1.4.4 and 1.4.5. Furthermore, the Policies provide that, among the "park resources or values" which must not be impaired are "[t]he park's scenery, natural, and historical objects, and wildlife, and the processes and conditions that sustain them, including [ ] natural visibility, [ ] natural landscapes and smells; [and] water and air resources . . . ." *Id.* § 1.4.6.

**B. Executive Orders**

22. In 1972, President Nixon signed Executive Order ("EO") 11644, which provided for the regulation of off-road vehicles, including snowmobiles, on public lands. EO 11644 (Feb. 8, 1972). The EO instructs the public lands agencies to promulgate regulations to "protect[ ] the resources of the public lands," including locating off-road use "to minimize harassment of wildlife or significant disruption of wildlife habitats" and "minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands." Id., § 3. The EO also provides that, in National Parks, off-road vehicles such as snowmobiles shall only be permitted if they "will not adversely affect [the Parks'] natural, aesthetic, or scenic values." Id., § 3(a)(4).

23. In 1977, President Carter amended this EO by adding language requiring that where off-road vehicles cause "considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas," "the respective agency head shall . . . immediately close such areas or trails to the type of off-road vehicle causing such effects . . ." EO 11989 (May 24, 1977). The Park Service's 2001 binding Management Policies specifically provide that "snowmobile use is a form of off-road vehicle use governed by EO 11644 (as amended by EO 11989)." Park Service Policies, § 8.2.3.2.

### **C. The National Environmental Policy Act**

24. NEPA is the "basic national charter for protection of the environment." 40 C.F.R. ' 1500.1(a). Its purpose is to "help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." Id. at ' 1500.1(c). Under NEPA, federal agencies are required to prepare an environmental impact statement ("EIS") regarding all "major Federal actions significantly affecting the quality of the human

environment . . . ." 42 U.S.C. ' 4332(C). This EIS must describe (1) the "environmental impact of the proposed action," (2) "any adverse environmental effects which cannot be avoided should the proposal be implemented," (3) any "alternatives to the proposed action," (4) "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity," and (5) "any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." Id.

25. Under NEPA's implementing regulations -- promulgated by the Council for Environmental Quality ("CEQ"), an agency within the Executive Office of the President -- in order to determine whether to prepare an EIS federal agencies must ordinarily at least prepare an Environmental Assessment ("EA"). 40 C.F.R. ' 1501.4. The EA is a public document that analyzes the agency's determination whether an EIS is necessary, and includes a brief discussion of "the need for the proposal, of alternatives . . . , [and] of the environmental impacts of the proposed action and such alternatives . . . ." Id. at ' ' 1501.4(c), 1508.9. If, as a result of an EA, an agency determines an EIS is not necessary, it must issue a Finding of No Significant Impact ("FONSI") detailing the reasons the action will not have significant impacts on the environment. Id. at §§ 1501.3(e); 1508.13.

26. The CEQ regulations also provide that, "[u]ntil an agency issues a record of decision . . . no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives." 40 C.F.R. ' 1506.1(a). **Relevant**

## **Facts**

### **A. The Park Service's Failure To Properly Regulate Snowmobiles And Groomed Trails In The National Park System**

**1. The Adverse Impacts Of Snowmobiles And Groomed Trails**

**a. Impacts On Wildlife**

27. Snowmobiles and groomed trails have numerous adverse impacts on many forms of wildlife in units of the National Park System. These impacts include direct harassment as wildlife flee the sights, sounds and smells of snowmobiles, as well as indirect effects on species already trying to cope with the added challenges of surviving through the winter.

28. In Yellowstone, the groomed trail system -- i.e., the trails created by using machines to pack 25-foot wide snowroads on top of the road system through the Park -- also adversely impacts wildlife, such as bison, who use the trails as energy efficient winter travel routes. Bison use of the groomed trails directly and indirectly facilitates their emigration from Yellowstone into Montana and Wyoming where they are often killed by federal and state officials, due to unsubstantiated fears of potential health risks to neighboring livestock. Last year alone, more than 200 bison were killed in this manner.

29. In addition to this direct impact, snowmobiles and the groomed trails have an indirect effect on bison population dynamics, movements, distribution, and habitat use. Other species, such as elk, moose, coyotes, and deer also use the groomed trails, and, their population dynamics, movements, distribution, and habitat use patterns may also be adversely affected.

30. Snowmobiles and groomed trails also have negative impacts on species protected under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531, et seq. In Yellowstone, snowmobiling and groomed trails have adverse impacts on grizzly bears, gray wolves, Canada lynx, and bald eagles - all federally protected species. For example, grizzly bears, which are listed as a threatened species in

the contiguous United States, inhabit Yellowstone National Park. The bears' ability to access and eat carrion when they emerge from winter dens has been disrupted by snowmobiles and the groomed trails, due to the use of the trails by bison, elk, and other ungulates, as well as the bear's avoidance of carcasses near the trails.

31. In addition, winter use adversely affects the gray wolf, which is also protected under the ESA. In 1994, the federal government introduced an "experimental" population of the gray wolf into Yellowstone, a population which is considered threatened. 16 U.S.C.

' 1539(j)(2)(C)(i). The effects of winter activities on the gray wolf may include displacement from suitable habitat, disruption of feeding and breeding activities, and alteration of movements. The federally protected bald eagle is adversely impacted in similar ways. Snowmobiles and groomed trails also adversely impact the Canada lynx because they allow other animals, such as coyotes and bobcats, access to lynx habitat that they otherwise would not be able to reach, and therefore increase competition for the lynx's primary prey -- snowshoe hares.

**b. Pollution And Noise Impacts**

32. Snowmobiles also emit large amounts of pollution and noise, which has adverse impacts on wildlife, the environment, visibility, Park Service employees, and other winter use visitors. Almost all of the snowmobiles used recreationally in the National Park System are powered by two-stroke engines, which generate dangerous levels of airborne toxins, including nitrogen oxides, carbon monoxide, ozone, particulate matter, aldehydes, 1,3 butadiene, benzenes, and persistent polycyclic aromatic hydrocarbons. Several of these compounds are listed as "known" or "probable" human

carcinogens by the Environmental Protection Agency ("EPA"). Snowmobiles with four-stroke engines also emit significant amounts of pollution.

33. A two-stroke snowmobile produces more smog-forming pollution in one hour than a modern car creates in one year. Consequently, as EPA recently explained, "[w]ithin national parks, emissions from snowmobiles in particular contribute to ambient concentrations of fine PM [Particulate Matter], a leading cause of visibility impairment," 67 Fed. Reg. 68,242 68,245 (2002), and as a result snowmobiles create a haze in areas of the Yellowstone Parks during the winter. According to the Montana Department of Environmental Quality, the approximately 1,000 snowmobiles entering West Yellowstone on a busy day release a volume of hydrocarbon emissions which approximate the emission of 3 million cars.

34. Due to snowmobile use, in Yellowstone carbon monoxide levels have exceeded federal and state ambient air quality standards. In light of the volume of airborne pollution spewed by snowmobiles, in November 2002, EPA issued regulations under the Clean Air Act requiring certain minimal improvements in snowmobiles over the next decade. 67 Fed. Reg. 68,244. Even assuming implementation of these regulations is not delayed, none of these improvements are required to begin until 2006. Id. at 68,382.

35. According to EPA, snowmobiles also discharge "up to a third of the unburned air and fuel mixture [ ] out of the exhaust," directly into the environment. 67 Fed. Reg. at 68,282. Unburned fuel contains many toxic compounds including benzene, toluene, xylene, and can also include the suspected human carcinogen MTBE. In Yellowstone alone, this translates into more than 50,000 gallons of fuel in one winter entering the environment as unburned, raw pollution.

36. Snowmobiles are also exceedingly noisy. The level of noise generated from one snowmobile -- which can exceed 100 dBA -- approximates the noise of a jetliner flying only 1,000 feet in the air. According to EPA, regular exposure to this level of noise can cause permanent hearing loss, and the large numbers of snowmobiles used in certain parks, such as Yellowstone, generate many times this volume of noise, which can be heard from miles away. In Yellowstone visitors are forced to hear the sounds of snowmobiles throughout a substantial area even beyond the snowmobile travel corridors.

37. As a result, snowmobiles have numerous adverse impacts on other users of the Park System, particularly those using the Parks for the solitude, quiet, beauty, and pristine qualities that are unique to our national park areas. Snowmobiles also have significant adverse impacts on Park Service employees, who are exposed to various health risks including asthma, chest pain, and other health problems. At Yellowstone, for example, park rangers have experienced dizziness, nausea, headaches, breathing difficulties, and hearing loss due to exposure to snowmobiles and their emissions. These problems have been so severe that Yellowstone now supplies fresh oxygen to employees working near snowmobiles, and this winter these employees will be fitted with special devices to protect against hearing loss.

## **2. The Park Services' Regulation of Snowmobiles**

38. In furtherance of EO 11644, in 1973 the Park Service promulgated a regulation providing a general prohibition on snowmobiles in the National Park System, except where individual parks have specifically authorized such use. 38 Fed. Reg. 4406 (Feb. 14, 1973). The next year,

Yellowstone National Park issued specific regulations authorizing snowmobile use within the Park. 39 Fed. Reg. 16,151 (May 7, 1974). Over the following years, numerous other parks expressly authorized the use of snowmobiles.

39. In 1983, the Park Service amended its general snowmobile regulations by requiring that snowmobiles be prohibited unless their use is "consistent with the park's natural, cultural, scenic and aesthetic values . . . and will not disturb wildlife or damage park resources." 48 Fed. Reg. 30,286 (1983). Nonetheless, more than 35 national parks and a number of other park unit areas have expressly authorized snowmobile use.

**3. Bluewater Network's January 1999 Rulemaking Petition To Ban Snowmobiles And Trail Grooming From The National Parks And The Park Service's Failure To Take Action**

40. In January 1999, plaintiff Bluewater Network ("Bluewater") and 60 other organizations submitted a Rulemaking Petition to the Department of Interior, seeking regulations that would prohibit snowmobiles and trail grooming in units of the National Park System. Detailing the many ways in which these vehicles and trails cause adverse human health effects, pollute the air and water, harass and harm wildlife, and otherwise degrade the environment, and explaining precisely how, as a result, snowmobiles and groomed trails are inconsistent with the various statutes and other protective mandates which are supposed to govern the management of the Parks, Bluewater asked the Park Service to issue a Proposed Regulation to prohibit recreational snowmobiling and trail grooming, or, at a minimum, to publish a Federal Register notice seeking public comment on the Rulemaking Petition. Over the following two months, Bluewater Network submitted two supplements to their original Petition.

41. In June 1999, the Assistant Secretary of the Interior for Fish, Wildlife and Parks, Donald Barry ("Assistant Secretary"), in a letter to Bluewater Network, explained that the petition raised "valid concerns [that] warrant consultation with the other agencies mentioned in your petition." The Assistant Secretary further explained that to address those concerns the Park Service planned to review existing documentation on the impacts of snowmobiles and to conduct monitoring studies to collect additional data. Finally, the letter explained that the review would be completed before the 1999-2000 winter season, and that the Park Service would provide Bluewater with a Report of its findings once the review was completed.

42. Over the following year, the Park Service engaged in a thorough review of the adverse impacts of snowmobiles in the National Park System, and issued several reports, entitled "Air Quality Concerns Related to Snowmobile Usage in National Parks," "Potential Water Quality Concerns Related to Snowmobile Usage," and "Effects of Winter Recreation on Wildlife of the Greater Yellowstone Area." These reports confirmed the information contained in Bluewater's Petition, demonstrating the numerous adverse impacts of snowmobiles on the air, water, and wildlife within the National Parks. In September 2000, the General Accounting Office issued its own report.

43. In addition, the Park Service undertook a survey concerning the use and impacts of snowmobiles in the more than 40 park areas where snowmobiling occurs, and, in early 2000, the agency held a "Snowmobile Summit" in Washington, D.C., to further explore the appropriate response to the Petition. These fact-gathering exercises revealed that the parks where snowmobiling was permitted had never taken a close look at the many adverse impacts these vehicles were causing.

44. In April 2000, Assistant Secretary Barry issued a Memorandum to the Director of the Park Service setting forth a number of Departmental findings concerning snowmobiles, based on all the information that had been collected. The Memorandum explained that the Interior Department had concluded that "recreational use of snowmobiles in our national parks is capable of disturbing wildlife, polluting the air and water of the parks, exceeding the Service-wide noise standards . . . and generating conflicts with other visitors' winter experience in the parks." In light of these adverse impacts, the Memorandum explained that "snowmobiling in parks such as Yellowstone has demonstrated its capability for generating unacceptable environmental impacts and being inconsistent with applicable Federal laws, Executive Orders and Service regulations."

45. As a result, the Memorandum concluded that, "it is clear that most, if not all, of the recreational snowmobile use now occurring in the National Park System is not in conformity with applicable legal requirements," and, thus, "a favorable response to the Petition is warranted." In particular, the Memorandum explained that the Department of Interior and the Park Service "have concluded that all parks which currently allow recreational snowmobile use under a special regulation promulgated pursuant to 36 C.F.R. § 2.18 should repeal these special regulations immediately and halt recreational snowmobile use, unless they otherwise qualify for [a] limited exception . . . as expeditiously as possible." Several specific parks were exempted from this directive, including Yellowstone National Park, which was in the middle of a separate planning process concerning winter use.

46. In August 2000, the Associate Director of the Park Service issued an agency Memorandum further detailing the Park Service's plans to revise its snowmobile regulations. This Memorandum stated that the agency intended to issue a Proposed Rule by September 2000, which

would begin the process of amending the agency's snowmobile regulations to comply with the findings in the April 2000 Memorandum from the Assistant Secretary.

47. By late September 2000, the Park Service had prepared a Draft of a Proposed Rule as called for in the August 2000 Memorandum. That Proposed Rule provided for a repeal of the general regulation authorizing Parks to promulgate Special Regulations permitting snowmobile use, see 36 C.F.R. § 2.18, and the replacement of that regulation with a new regulation providing for the prohibition of snowmobiling unless expressly authorized in a Park's enabling legislation, or under certain other extremely limited circumstances.

48. More than two years later, and almost four years after Bluewater submitted its Rulemaking Petition, the Park Service has never issued any Proposed Rule changing the regulation of snowmobiles throughout the Park System. As for individual parks, with the exception of a Proposed Rule amending the designation of snowmobile routes in Rocky Mountain National Park, which has never been finalized, the Park Service has made no progress involving the regulation of any individual park units covered by the Assistant Secretary's April 2000 Memorandum. Nor has the Park Service ever responded directly to Bluewater Network, indicating whether it is granting or denying the Rulemaking Petition, which sought a ban on both snowmobiling and groomed trails throughout all of the Parks.

**B. The Park Service's Failure To Properly Regulate Snowmobiles And Groomed Trails In Yellowstone National Park and Surrounding Park Areas**

49. Yellowstone National Park, part of a forested plateau near the headwaters of the Yellowstone and Snake Rivers, is the nation's first national park, established in 1872. Famous for its

wildlife, geyser basins and canyons, Yellowstone lies mostly in northwestern Wyoming, but also occupies parts of Montana and Idaho. Grand Teton National Park, six miles south of Yellowstone, includes portions of the Teton mountain range, as well as the Jackson Hole valley. The two parks are connected by the John D. Rockefeller Memorial Parkway ("Rockefeller Parkway"), a separate national parkway administered by the Superintendent of Grand Teton.

50. As recently as thirty years ago, there were virtually no winter visitors to the Yellowstone Parks. Facilitated by a series of Park Service actions in more recent years, winter use of these areas has increased dramatically. Hundreds of thousands of visitors now come to these Parks during the winter, and, in recent years, an average of more than 90,000 snowmobiles entered Yellowstone, Grand Teton and the Rockefeller Parkway. On peak days, more than 1,000 snowmobiles are entering Yellowstone through the West entrance alone, and a total of more than 1,750 snowmobiles are driven through Yellowstone, Grand Teton and the Parkway.

51. During the winter months, the Park Service grooms hundreds of miles of trails throughout Yellowstone and in Grand Teton and the Rockefeller Parkway. In Yellowstone, from approximately December to March each year, the Park Service or its contractors regularly pack a 25-foot wide path in the snow over the paved road system to ensure that snowmobilers and snowcoach operators have constant and convenient access to the Park. That portion of the Continental Divide Snowmobile Trail which runs through Grand Teton is similarly packed, as is a route running parallel to the road in the Rockefeller Parkway.

**1. The Fund For Animals' Lawsuit And Settlement Agreement**

52. In May 1997, The Fund for Animals and several other groups and individuals filed suit in this Court challenging the Park Service's failure to comply with NEPA, the ESA, and other statutes in connection with winter use in Yellowstone and Grand Teton National Parks. Plaintiffs asked the Court to enjoin the Park Service from permitting snowmobile use or road packing activities, until the agency came into compliance with these statutes by preparing an Environmental Impact Statement ("EIS") and undertaking consultation with the FWS on the impacts of winter use on federally protected species.

53. The Park Service subsequently offered to settle plaintiffs' claims, including preparing an EIS on winter use and consulting with the FWS under the ESA. The Park Service also proposed to conduct an experimental closure of a road segment in the park to all winter use, in order to conduct research on the impacts of groomed roads and winter use on the environment and wildlife in Yellowstone, including the impact of the groomed roads on the movements of bison during the winter.

54. In September 1997, the parties submitted a Settlement Agreement to the Court ("the 1997 Settlement"). The 1997 Settlement provided that the Park Service "will prepare a comprehensive environmental impact statement ("EIS"), pursuant to NEPA, addressing a full range of alternatives for all types of winter visitor use, including snowmobiling and trail grooming, in the Parks and considering the effects of those alternatives on the Parks' environment." The Agreement further provided a schedule by which the agency would complete the EIS, and issue a Record of Decision ("ROD") determining how the winter use management of the Yellowstone Parks would be altered in light of the EIS, before the 2000-2001 winter use season.

55. The 1997 Settlement further provided that the Park Service must prepare a Biological Assessment concerning the impacts of winter use on grizzly bears and the gray wolf, and required that,

once completed, the agency must request "formal consultation" with the Fish and Wildlife Service ("FWS"), a process that culminates with the FWS's preparation of a Biological Opinion.

56. Finally, the Agreement provided that, "[t]o obtain information for various planning efforts in the Parks," the Park Service is "studying the effects of groomed snowmobile trails on bison," and that, "to further these studies," the agency would propose the closure of one or more segments of the Yellowstone trail system to trail grooming and other winter use. The Agreement further provided that the "proposed alternative" in the EA would provide for a 14 mile closure during the winter of 1997-98, and closing at least 14 additional miles of the trail system during the winters of 1998-99 and 1999-2000.

57. In October 1997, the Court held a hearing concerning the 1997 Settlement, at which time the Court decided that, rather than dismiss the action in light of the Settlement, the Court would keep the case on its calendar to ensure that it could be enforced. Accordingly, on October 29, 1997, the Court issued an Order approving the 1997 Settlement, but declining to dismiss the case.

**2. The Park Service's Refusal To Use Road Closures In Order To Study The Impacts of Groomed Trails And The Fund For Animals' Second Suit**

58. Soon after the 1997 Settlement was approved, the Park Service issued an Environmental Assessment ("EA") proposing the closure of a groomed road segment in Yellowstone the following winter, explaining that such a closure would permit the agency to collect useful data needed for the preparation of the EIS, including the study of bison movements in the winter. In addition, in response to a Court Order in another suit concerning the emigration of bison from Yellowstone, the Park Service issued a report concerning the use of road closures as a means to keep

Yellowstone's bison herd from emigrating from the Park to private land in Montana, where they are routinely slaughtered in large numbers by state and federal officials. That report explained that road closures in certain parts of Yellowstone "may impede or prevent bison movement to the west and north boundaries" of the Park.

59. In January 1998, the Service issued its final EA and FONSI on road closures. Although the final EA stated that further study of groomed trails is necessary, the Park Service nonetheless reversed course on its plans to undertake road closures, and instead decided that it would continue to groom the entire trail system at least until the EIS was completed.

60. In light of this decision, The Fund for Animals' plaintiffs filed a new action alleging that the Park Service was violating the 1997 Settlement because, by refusing to close any trails, it would be impossible to complete an EIS that properly evaluated the impact of these trails, and that, in any event, the Park Service had failed to provide any coherent rationale for its refusal to follow through with its proposal.

61. Although the Court explained that plaintiffs were presenting "very compelling arguments to attack the EIS as not being comprehensive," the Court ultimately ruled that plaintiffs' claims were premature, on the grounds that, "[w]hat is not final is whether the decision to not close trails will produce an EIS not in compliance with the settlement agreement and with NEPA," since the EIS was not yet complete.

62. To date, the Park Service has never implemented a closure of any segment of the groomed trail system in Yellowstone, in order to collect useful data or for any other purposes.

### **3. The Park Service's First Yellowstone EIS And ESA Consultation**

### **On Winter Use**

63. In October 1999, the Park Service issued a Draft EIS regarding winter use. The Draft outlined six alternatives to the Park Service's present approach, each concerning changes to the regulation of snowmobiling and trail grooming over the following several years. In response, the EPA submitted comments explaining that each of the alternatives that permitted snowmobile use to continue in the Yellowstone Parks might put these areas out of compliance with the Clean Air Act's National Ambient Air Quality Standards ("NAAQS") for carbon monoxide. EPA also explained that permitting snowmobile use to continue would not comply with EO 11644.

64. Plaintiff The Fund for Animals and many others submitted comments urging the Park Service to fully consider an alternative of both prohibiting snowmobiling, and ceasing the creation of groomed trails throughout the Yellowstone Parks in order to protect the Parks' environment and wildlife. These comments pointed out that the Settlement Agreement required that the agency consider "a full range of alternatives for all types of winter visitor use, including snowmobiling and trail grooming," thereby requiring consideration of such an alternative.

65. The Park Service never considered such an alternative in any detail, in either its Draft EIS, or the Final EIS, which was issued in November 2000 ("the 2000 EIS"). Instead, the EIS considered several alternatives concerning changes in the level of use of snowmobiles in the Yellowstone Parks. Of those alternatives, in its Record of Decision ("ROD") the Park Service chose an alternative that would permit unlimited snowmobile use to continue for yet another winter, but would phase out the use of snowmobiles beginning the winter of 2001-2002. Under this alternative, the grooming of trails would continue, to permit snowcoaches -- essentially small buses on treads -- to take

winter visitors to the same areas they used to reach by snowmobile. 65 Fed. Reg. 80908 (2000). In part, the Park Service chose this alternative based on its conclusion that snowmobile use in the Yellowstone Parks constitutes an impairment of Park resources.

66. In the ROD, the Park Service explained that it would develop a "detailed snowcoach implementation plan" in order to have sufficient snowcoaches available once the agency starts reducing the number of snowmobiles they permit in the Yellowstone Parks. *Id.* at 80,909. The Park Service also stated that it would continue to "monitor use of groomed, ungroomed, and plowed surfaces by bison and other ungulates." *Id.* at 80,912.

67. In July 2000, the Park Service completed a Biological Assessment ("BA") concerning winter use in the Yellowstone Parks. That BA evaluated some of the impacts of the mass transit snowcoach system called for in the Final EIS and ROD, but did not purport to evaluate the impacts of continued snowmobiling on threatened and endangered species. It also did not evaluate the impacts of trail grooming on protected species, or adequately evaluate the impacts from snowcoaches.

68. Although the 1997 Settlement required that, after preparing the BA, the Park Service must request formal consultation with the FWS, the Park Service did not enter formal consultation after finishing the BA. Instead, the Park Service asked the FWS to concur in a conclusion that the proposed action was not likely to adversely affect protected species. *See* 65 Fed. Reg. at 80,921. In October 2000, the FWS provided this concurrence, and the Park Service never participated in formal consultation. *Id.*

**4. The Park Service's Regulatory Implementation Of Its Decision To Phase Out Snowmobile Use, But To Continue Trail Grooming**

69. As called for in the Final EIS and ROD, on December 18, 2000, the Park Service issued a Proposed Regulation to phase out snowmobile use in the Yellowstone Parks. 65 Fed. Reg. 79024 (2000). Explaining that continued snowmobile use in these areas would have "substantial adverse impacts on natural soundscapes, wildlife, air quality, the experience of other park visitors, and other park resources and values," the Proposed Rule provided that, beginning in the winter of 2001-02, snowmobile use would be capped at the average use on peak days -- 1520 -- to avoid any further increases in snowmobile use, and that, in the winter of 2002-03, that number would be cut to less than 500, and those snowmobilers would be required to travel in small groups accompanied by a Park Service permitted guide. By the following winter, 2003-04, the Proposed Rule provided that recreational snowmobile use would no longer be permitted in these Parks.

70. On January 22, 2001, the Park Service issued its Final Regulation implementing the EIS ("the Delay Rule"). That Regulation delayed the implementation of the new management scheme by yet another year, providing for continued, unregulated snowmobile use for a second winter after completion of the EIS -- the winter of 2001-2002 -- followed by a significant reduction in the winter of 2002-03. 66 Fed. Reg. 7260 (2001). The 2002-03 reductions provided that, rather than the more than 1500 snowmobiles that would otherwise enter Yellowstone on peak days this coming winter, only a total of 493 snowmobiles would be permitted on those and all other days, and, the following winter (2003-04), recreational snowmobiles would not be permitted in the Park at all. Id.

**5. The Park Service's Decision To Prepare A Supplemental EIS On Winter Use In The Yellowstone Parks And Its Proposal To Even Further Delay The Implementation Of Any On-The-Ground Changes To Winter Use There**

71. Several months after the Delay Rule was finalized, the Park Service issued another Federal Register notice, announcing that the agency intended to prepare a Supplemental EIS ("SEIS") to reconsider the snowmobile phase-out that had just recently been finalized. 66 Fed. Reg. 39197 (2001). In announcing this SEIS, the Service explained that the SEIS is necessary to "solicit[ ] more public comment on the earlier decision and alternatives to it which will maintain protection of park resources." Id. The new schedule provided that an SEIS would be completed, and a new decision would be made, before the initial reduction in snowmobiles was scheduled to go into effect during the winter of 2002-03. Id.

72. In March 2002, the Park Service issued a draft SEIS ("DSEIS"). Two of the alternatives in the draft SEIS called for the implementation of the original decision to phase-out snowmobiles, on various timetables. Other alternatives proposed to permit snowmobile use to continue.

73. On the same day the Park Service announced the availability of the draft SEIS, the agency also issued a separate Proposed Rule, providing for yet another delay in the implementation of the snowmobile phase-out called for in the original EIS -- the Draft "Further Delay Rule." 67 Fed. Reg. 15,145 (2002). Explaining that the Park Service "has not had sufficient time to plan for and implement the NPS-managed, mass-transit, snowcoach-only system outlined in the existing Winter Use Plan and to complete the [SEIS]," the Park Service proposed to permit unlimited snowmobile use to continue for the third winter season since the EIS was completed -- the upcoming winter of 2002-03, and to also permit snowmobile use to continue the winter of 2003-04. Id.

74. Many commenters -- including The Fund for Animals and other plaintiffs -- submitted comments on both the DSEIS and the Draft Further Delay Rule, urging the Park Service to finally consider an alternative of no longer grooming the trail system in the Parks. The Fund also once again urged the Park Service to engage in experimental trail closures -- which still have never occurred -- in order to collect data to consider such an alternative.

75. EPA also submitted comments, once again expressing the agency's concern that continued snowmobiling in Yellowstone threatens to violate the NAAQS for various pollutants, particularly carbon monoxide. EPA explained that any alternative which delayed the implementation of the Delay Rule "would likely result in noncompliance with air quality standards and [result in] air quality [that] could negatively impact human health."

**6. The Park Service Final "Further Delay Rule."**

76. In November 2002, the Park Service released a draft of the Final SEIS ("Draft FSEIS") to the states and other agencies serving as cooperators in the SEIS process. That Draft FSEIS provides that, at present, the Park Service intends to issue a Final SEIS that does impose daily use limits for the Yellowstone Parks. Although those limits would reduce to some degree the number of snowmobiles entering the West Entrance of Yellowstone on peak days, and would cap daily use at less than 1000 snowmobiles per day, in general the proposed limits permit further growth of snowmobile use in the Yellowstone Parks, particularly during non-peak periods.

77. Shortly after the release of this draft FSEIS, on November 18, 2002 the Park Service issued its Final "Further Delay Rule" to once again delay implementing any limits on snowmobile use in Yellowstone or surrounding areas, for at least a third winter since the EIS was completed. 67 Fed.

Reg. 69,473 (2002). While the Delay Rule provided that, during the winter of 2002-03, only a maximum of 493 snowmobiles would be permitted to enter Yellowstone per day; that these snowmobilers would have to be accompanied by a Park Service guide and travel in groups of less than a dozen; and that they would not be permitted to enter the Park until 8 am in the morning, the Further Delay Rule once again eliminates these restrictions. Thus, this coming winter of 2002-03, once again more than 1500 snowmobiles will enter Yellowstone on peak days, and they will not be required to travel in small groups, or be accompanied by Park Service guides. Unlimited snowmobile use will also be permitted to continue in areas of Grand Teton National Park and the Rockefeller Parkway. In all, the Park Service estimates that more than 104,000 snowmobiles will enter the Yellowstone Parks this upcoming winter.

78. In addition, under the Further Delay Rule snowmobiles may begin entering the Park an hour earlier, at 7 am. Id. at 69,477. Furthermore, the Park Service will be grooming additional roads this winter. Id. at 69,475. The Further Delay Rule also provides that snowmobile use will be permitted to continue during the winter of 2003-04. Id. at 69,477.

79. In promulgating the Further Delay Rule, the Park Service did not prepare an EA, or an EIS.

80. Although the 1997 Settlement required a new management scheme concerning winter use after only three winter seasons -- i.e., by the winter of 2000-2001 -- under the Further Delay Rule the Park Service will now be continuing to permit unlimited snowmobile use for the sixth winter since The Fund for Animals brought their original suit seeking to require the agency to regulate these activities in order to bring itself into compliance with various environmental statutes, Executive Orders, and its

own regulations and policies -- all of which the agency itself has determined it is violating by continuing to allow snowmobile use in these and other units of the National Park System.

## **PLAINTIFFS' CLAIMS FOR RELIEF**

### **First Claim**

(Unreasonable Delay)

81. By failing for almost four years to grant or deny the January 1999 Rulemaking Petition seeking a ban on snowmobiling and groomed trails in the National Parks, the defendants have unlawfully withheld and unreasonably delayed agency action in violation of the Administrative Procedure Act. 5 U.S.C. §§ 555(b), 706(1).

82. By promulgating the Further Delay Rule, which delays for at least another year the Park Service's 2000 ROD and Delay Rule providing a phase-out of snowmobile use in Yellowstone, Grand Teton, and the Rockefeller Parkway, thereby authorizing such use to continue unabated three winter seasons after the Park Service announced in its 2000 EIS that snowmobile use is inconsistent with the regulatory mandates governing public use of these areas, and six winter seasons after the Park Service entered into a Settlement Agreement with The Fund for Animals requiring that very EIS, the defendants have unlawfully withheld and unreasonably delayed agency action in violation of the Administrative Procedure Act. 5 U.S.C. §§ 555(b), 706(1).

83. These violations are injuring plaintiffs in the manner described in ¶¶ 3-15 above.

## **Second Claim**

(National Environmental Policy Act)

84. By promulgating the Further Delay Rule without first preparing an EA or an EIS, or engaging in any new NEPA analysis, the Park Service is violating NEPA and its implementing regulations, and the 1997 Settlement, and is acting in a manner that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of the APA. 5 U.S.C. ' 706(2)(a).

85. These violations are injuring plaintiffs in the manner described in ¶¶ 3-15 above.

## **Third Claim**

(Organic Act, Yellowstone Act, Executive Orders and Regulations)

86. By promulgating the Further Delay Rule, permitting snowmobiling and trail grooming to continue unabated in the Yellowstone Parks, despite the Department of Interior and Park Service's own findings that such use is inconsistent with federal laws, Executive Orders, and implementing regulations, which, among other things, require that the agency "conserve the scenery and the natural and historic objects and the wild life" in the Parks and "leave them unimpaired for the enjoyment of future generations," 16 U.S.C. ' 1, "in their natural condition," 16 U.S.C. ' 22, and prohibit the Park Service from permitting snowmobiling where it will "disturb wildlife or damage park resources," 36 C.F.R. ' 2.18(c), the Park Service is violating the Organic and Yellowstone Acts, Executive Orders 11644 and 11989, the Park Service's own regulations and binding management policies, and the 1997 Settlement, and is acting in a manner that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of the APA. 5 U.S.C. ' 706(2)(a).

87. By promulgating the Further Delay Rule, which will result in more than 1500 snowmobiles entering Yellowstone on peak days this winter of 2002-2003, even though (1) the defendants have determined that this level of snowmobile use is harmful to Park resources and Park users; (2) the pre-existing ROD and implementing regulations established a daily cap of fewer than 500 snowmobiles this winter; and (3) the recently released draft Final SEIS on winter use in the Parks -- which would lessen protection from that embodied in the existing ROD -- provides an overall daily limit of fewer than 1000 snowmobiles, the Park Service is violating the Organic and Yellowstone Acts, Executive Orders 11644 and 11989, the Park Service's own regulations and binding management policies, and the 1997 Settlement, and is acting in a manner that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" in violation of the APA. 5 U.S.C. ' 706(2)(a).

88. These violations are injuring plaintiffs in the manner described in ¶¶ 3-15 above.

WHEREFORE, plaintiffs respectfully request that this Court:

(1) declare that defendants are violating NEPA, the APA, the Organic Act, Yellowstone Act, EO 11644 and 11989, the Park Service's own regulations and binding management policies, and the 1997 Settlement Agreement;

(2) direct defendants to respond to the January 1999 Rulemaking Petition concerning snowmobiling and trail grooming in the National Parks within 60 days;

(3) set aside, and preliminarily and permanently enjoin implementation of, the Park Service's November 18, 2002 Regulation further postponing implementation of restrictions on winter use in the Yellowstone Parks, 67 Fed. Reg. 69473 (2002), pending defendants' compliance with

applicable federal laws, regulations and policies, Executive Orders, and the 1997 Settlement Agreement;

(4) retain jurisdiction of this matter until defendants have fulfilled all of their statutory, regulatory, and Court-Ordered obligations;

(5) award plaintiffs their costs, attorneys' fees, and other disbursements for this action, including any expert witness fees; and

(6) grant plaintiffs such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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