

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CASS

NINTH JUDICIAL DISTRICT

Case Type: Other Civil

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CASE TITLE:

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Court File No. C2-01-616

Minnesotans for Responsible Recreation,

Plaintiff,

**PLAINTIFF’S MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT  
(MINN.STAT. SEC. 116D.04)**

v.

Department of Natural Resources,

Defendant,

And

All Terrain Vehicle Association of  
Minnesota,

Intervenor-Defendant.  
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Plaintiff Minnesotans for Responsible Recreation (“MRR”) respectfully submits this  
Memorandum of law in support of its motion for summary judgment.

**I. INTRODUCTION**

MRR commenced the instant declaratory judgment action against Defendant Minnesota Department of Natural Resources (“MDNR”) under the Minnesota Environmental Policy Act (“MEPA”), Minn.Stat. Sec. 116D. MRR also commenced four other related actions. By Orders of this District Court and of the Minnesota Supreme Court, this consolidated action includes all five District Court actions, which include the same legal issues under MEPA. All Terrain Vehicle Association of Minnesota (“ATVAM”) intervened.

On this motion, MRR seeks a declaration that MDNR should prepare Environmental

Assessment Worksheets (“EAWs”) regarding specific MDNR proposals regarding the operation of off highway vehicles in State Forests and on other public lands (“Proposed Actions”). The Proposed Actions are contained within the five MDNR Off Highway Vehicle System Plans (“OHV Plans”) that are the subject of this action. MDNR has completed the OHV Plans, which are presently before the MDNR Commissioner for final adoption. The OHV Plans are part of a connected or phased effort by MDNR to direct OHV operation throughout Minnesota.

These Proposed Actions involve the specific classification of State Lands for use by OHVs, including classification of the majority of Minnesota State Forests are “managed” for OHV use. “Managed” means open to OHV use, unless specifically posted closed. The Proposed Actions classify other MDNR administered lands as “limited” or “closed” for OHV use. MRR and some MDNR staff maintain that these classifications with ensuing postings will result in physical manipulation to the environment by the resulting OHV activities in the specified areas, thereby constituting a “project” under Minnesota Rules requiring an EAW for each of the five OHV Plans. The primary impacts include erosion, rutting, soil compaction, noise, and damage to vegetation, trees and habitat.

In addition, MRR maintains that MDNR has been designating and/or constructing discrete stages of the Proposed Actions that should receive an EAW as part of the Proposed Actions. The Spider Lake OHV Trail System in Cass County is presently open to OHV use, requires repairs for continued use by the “scramblers and mudders”, may be modified to limit future damage and is intended to enlarge through acquisition of additional land. Other phases of the Proposed Actions that are included in the OHV Plans include a scramble area near the Snake River, a loop near the Snake River, a trail system in the Crow Wing State Forest, and trails

connecting the Gandy Dancer and Willard Munger trails in the Nemadji State Forest. Under Minnesota Rules designed to prevent piecemealing of environmental review, an EAW with regard to each stage of the OHV Plans triggers environmental review on the effects of the whole.

As the forest classification and trail system design “headed for the finish line” in November 2000, MDNR prepared to order signs, requesting that all departments get their sign order in by January 31, 2001. MDNR intended to begin postings of these signs “first thing next spring [2001]”. In January 2001, MDNR was looking for a contractor to construct trails and trail improvements and put together a request for proposals (“RFP”) from contractors for those purposes, among others. MDNR hoped to put out the RFPs by the fall of 2001. The Legislature had specifically provided MDNR with plenty of funds for 2001 to begin construction.

Despite requests for environmental review from experts, residents and MDNR staff, MDNR refused to require EAWs on the Proposed Actions. MDNR fashioned a narrow interpretation of the term “project” set forth in the Minnesota Rules (rejecting a broader interpretation suggested by the Attorney General’s Office) in order to avoid environmental review on the OHV Plans. MDNR further refused to perform EAWs on segments they determined were separate “projects” on the grounds that these: a) were substantially completed between the date of the OHV plan and the date of the petition (too late); and/or b) were segments not “proposed for immediate approval with site-level project planning and actual implementation” (too early). MDNR makes a cross motion.

Minnesota law requires an EAW where a petition demonstrates that a “proposed action” may have the potential for significant environmental effects. Minn.Stat. Sec. 116D.04. An EAW is merely a "brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action." Minn.Stat. Sec. 116D.04,

Subd. 1. Plaintiffs submit this Memorandum of Law to demonstrate that, because the Proposed Actions constitute “actions” which “may have the potential for significant environmental effects”, the Court should order MDNR to perform EAWs on each OHV Plan under Minn.Stat. Sec. 116D.04.

## **II. STATEMENT OF ISSUES**

### **A. STANDARD OF REVIEW.**

## **III. STATEMENT OF THE RECORD**

1. Plaintiff’s Complaints on file herein;
2. Certified Administrative Record filed by Minnesota Department of Natural Resources; and
3. Environmental Impact Statements on OHV systems to be lodged with the Court at the hearing.

## **IV. STATEMENT OF UNDISPUTED MATERIAL FACTS**

The factual record on this motion is relatively straightforward and set forth in the certified administrative record filed by MDNR with the Court. MRR expects that the MDNR will file on their cross-motion for summary judgment a comprehensive summary of their planning activity with regard to the OHV Plans. The following statement is intended as an outline for the Court of some of the facts directly relevant to the legal issues.

### **A. PARTIES.**

1. **MRR.** MRR is a non-profit public interest membership organization with many members in the State of Minnesota. The mission of MRR is to restore, protect and preserve peace and quiet, fresh air, personal safety and healthy environments on Minnesota’s trails and waterways

for future generations. MRR is organized under the laws of Minnesota and has its principal place of business in Minnesota. MRR members use and enjoy state forests for recreational, scientific and other pursuits. MRR members maintain that they will suffer harm from increased and uncontrolled OHV use in Minnesota State Forests.

As part of the record on this motion, MRR submitted to MDNR a report entitled “Off-Highway Vehicles in Minnesota”, which report is set forth in the record beginning at R643. The report documents the environmental impact of OHV use in Minnesota through numerous pictures (R698-715) and an organized presentation of the impacts (soils, water, wetlands and bogs, vegetation, fish and wildlife, pollution, cultural resources and visual and aesthetic impacts). See index, R647. The report cites to a wide body of literature developed in the effects of OHVs. R695-697.

2. **MDNR.** MDNR is an agency of the State of Minnesota, charged with, among other things, the protection and management of the natural resources of the state, including State Forests. MDNR has several divisions/sections. MDNR has divisions that include waters, fisheries, wildlife, forestry, parks and recreation, and planning. The Trails and Waterways division and the Forestry Recreation divisions of MDNR have led the effort to manage OHV use in Minnesota. R863. Trails and Waterways have been receiving gas tax revenues from OHVs since about 1984 and from dirt bikes and four wheel drives since about 1993. Trails and Waterways have amassed a considerable sum of money from this source.

MDNR has the charge of managing recreation in State Forests for multiple uses and is responsible for the highly political and difficult task of wilderness allocation. MDNR sets forth a Vision Statement, DNR Goals and OHV Program Mission in the OHV Plans. R69. MDNR is

attempting to balance OHV recreation, environmental quality and management of competing demands for use of natural resources. R69. MDNR seeks to establish a system of OHV trails in Minnesota State Forests and has classified all Forests as managed, limited or closed to OHV use. The majority of lands have been classified as managed, which means “open, unless posted closed”.

Some of the MDNR staff involved with responding to the petitions on the OHV Plans include: Bill Johnson of Office of Management and Budget (who appears to have coordinated the responses to the Petitions); Brian McCann of Trails and Waterways; (who provided input in the petition review process); Steve Simmer, Forest Recreation and Lands Coordinator (who consistently sought to avoid any EAWs on these projects on which he was closely involved in promoting, including on the grounds that there were no projects or plans); Ron Potter; and Jack Olson, Natural Resources Planner (whose opinion was that Minnesota law required EAWs).

In order to promote OHV use, MDNR has brought into Minnesota groups that advocate for the interests of OHV users in the western part of the United States. In 2000, MDNR presented a “Motorized Conference 2000” regarding the promotion of OHV recreation in Minnesota Forests on public land. MDNR brought in guest presenters from the Blue Ribbon Coalition, Colorado Off-Highway Vehicle Coalition, other OHV interest groups and the United States Forest Service (“USFS”).

As of January 2001, MDNR was seeking a contractor with an RFP to implement the trail system, including site prep, grading and construction of trails. R875. MDNR sought to have a draft RFP for submission to contractors in the fall of 2001. R875. Development of trails: “remains a very high priority both with the DNR Commissioner’s Office and with various constituent groups who

share a keen interest in wildland trail construction and operations.” R875. The RFP is set forth in the record at R877 and includes the following activities, among many others under the heading “**TRAIL DESIGN & CONSTRUCTION GUIDELINES**”: begin site preparation; establish trail grade, site switchbacks, retaining walls, railings, steps; cut and fill slopes; grading, clearing, shaping and brushing needs; and identify needed bridges.

MDNR has refused to conduct environmental review of the OHV system in Minnesota Forests with a narrow interpretation of the Minnesota rules, with the notion that they will only conduct environmental review under Court order. On about February 2, 2001, Steve Simmer wrote as follows in support of no environmental review:

The laws and rules we are obliged to follow are designed to insure that comprehensive environmental review occurs for projects that trip the threshold criteria. For everything else, we need only exercise our best professional judgment. The legislated authority for the commissioner to manage natural resources in line with generally accepted management principles is quite broad. For example, we do not ask an eco-services biologist to examine every tract of timber that is planned for harvest in order to ascertain the presence of special plan species.

It is easy to be drawn into a battle of allegations, questions and responses that draw out indefinitely. That is why I advocated for a summary dismissal of the petitions on legal grounds in the first place. Once we are engaged in arguing every point of the OHV system plans, line by line, there will be no end to it.

As I follow this endless series of interrogatories, I fear that this is only the beginning. Let's not go down that road unless we are forced, under the law, to do so.” R239.

**3. All Terrain Vehicle Association of Minnesota (“ATVAM”).** ATVAM includes proponents of OHV use. ATVAM members are existing and prospective users of the OHV trail systems that are the subject of this action. According to the Answer in Intervention, ATVAM seeks to avoid loss of access for OHVs that environmental review might bring about. ATVAM appears to have similar interests to “MnUSA”, a grouping of ATV riders that have lobbied MDNR to allow open access to as much area as possible. R841-842.

**B. OHV Use in Minnesota.**

MDNR estimates based on ATV registrations that OHV use in Minnesota on State Forest Lands has been increasing in the past years. R68; R170; R271; R449, 457-458. Although OHV use is increasing, the use levels are clearly less than hiking, biking, swimming, boating or hunting. R72; R174; R272. A small minority of the statewide population use OHVs. R72; R174; R273.

MDNR has attempted to define and segment the OHV user population. MDNR has identified several types, including: Recreational trail riders; long distance tourers, mudders and scramblers; racers; event riders; local riders and infrequents and utilitarians. R77; R180; R279-181; R454-456.

A 1994 letter from then MDNR Commissioner Rod Sando to staff sets forth the damage to natural resources from OHV use, including damage to soils, vegetation, wildlife and watersheds. Sando also commented about the disturbance of other users of the State Forests, who constitute the majority of the outdoor users. R717.

**C. Environmental Review of OHV Plans and Trails.**

The USFS has prepared a number of Environmental Impact Statements specifically addressing planning for the significant environmental effects on forests from OHV use in the United States, including the following studies and information:

1. Record of Decision and Final Environmental Impact Statement for Amending the Daniel Boone National Forest Off-Highway Vehicle Management Direction – United States Department of Agriculture, Forest Service, Daniel Boone National Forest.
2. Off Highway Vehicle Environmental Impact Statement and Proposed Plan Amendment for Montana, North Dakota and Portions of South Dakota – United States Department of the Interior, Bureau of Land Management, Montana State Office.

3. Trail 1135 Draft Environmental Impact Statement – USDA Forest Service, Rocky Mountain Region, Walden, Colorado.
4. Rock Creek Recreational Trails Record of Decision for Rock Creek Recreational Trails Final Environmental Impact Statement – USDA Forest Service, Eldorado National Forest, Eldorado County, California.
5. Sirretta Peak Trail Draft Environmental Impact Statement and Supplement – USDA Forest Service, Tulare County, California.
6. Delaware Water Gap National Recreation Area, Draft Trails Plan, Final Trails Plan, Environmental Impact Statement, General Management Plan, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania.

MRR intends to lodge these studies with the Court to establish that the USFS routinely conducts environmental review of these governmental actions.

**D. Overview of MDNR's OHV Plans.**

MDNR sets forth a description and timeline of the process used to classify uses available in State Forests, design a trail system, and develop the OHV Plans. See generally, R70. Each of the OHV Plans includes a similar timeline of events. MDNR classified State Forests as “managed”, “limited” or “closed” to OHV use. R74. These terms are defined by Minnesota Rules developed by MDNR. Minn.Rules Chapter 6100. MDNR selected and assembled OHV System Planning Teams for each OHV Plan and took public comment. See, R315-355. It appears that MDNR put the plans up for final approval in the fall of 2000.

The OHV Plans specifically included providing signage for trails. See, R183. On November 3, 2000, MDNR requested that all staff place orders for signs on the OHV trails. R905-906. The sign order is from Steve Simmer and provides in part as follows:

As OHV System Planning heads for the finish line, it is time to get ready for implementation. Many new signs have been in development over the past few years. We would like to use the winter season to order and deliver signs so that the state forest postings

can be underway first thing next spring. . . .

Use whatever area name is appropriate for your desired delivery point, and return order forms to either Steve or Ron by January 31<sup>st</sup>.” R905

As of January 2001, MDNR continued efforts to identify a qualified contractor to assist in the construction of recreational trails in State Forests. R875. MDNR had put together an RFP for site level design and development of the trails, which is in the record. R876-877. The RFP includes trail construction, among many other things. MDNR hoped to get the RFP in place by fall 2001. R875. It appears that MDNR had the funds to sign and begin construction in 2001. Jack Olson, who developed the proposed suites of actions for segment construction, stated as follows:

“The legislature allocated dedicated OHV funds for the 2000-2001 biennium for trail development. I assume most of these funds are still available and would be adequate to fund the actions listed. I expect that work plans and permits would be developed as needed by the Areas as they complete the action. Past experience is that work plans are fairly informal (may not even be written). . . .

My opinion is that signing does obligate the DNR to some other actions. We should not be signing trails that do not meet standards or BMPs – thus the need for hardening, rerouting, and water crossings.” R923.

In January 2001, Brian McCann provided detail as to the activities associated with hardening, rerouting and water crossings associated with signing trails, which activities included various mitigation of environmental impacts from the use of trails. R917-920. Jack Olson believed that signing of trails to standards would “result in direct physical manipulation of the environment which is part of determining what constitutes a project for environmental review purposes.” R929. Please note that Olson’s definition did not encompass the impacts of the trail use by OHV users, but instead focused solely on MDNR activities to manipulate the environment.

At some point in reviewing the petitions, MDNR received a “broad interpretation” of the term “project” from the Attorney General’s office. R934. In the end, MDNR responded to the

petitions with formal Findings of Fact, discussed below, that rejected any environmental review at this time.

**D. Aitkin OHV Plan.** The Aitkin County OHV Plan begins at R62 and includes plans for lands within Aitkin County. The OHV Plan includes the classification of state lands for OHV use in Aitkin County as managed. R65, R82. The Aitkin OHV Plan includes specific proposed ATV/OHM Trails, as follows: NW Aitkin Trails; Power Line ATV/OHM Trail; Solana ATV/OHM Trail and South Aitkin County GIA Trails. R65-R66. The Aitkin OHV Plan includes potential ORV trail sites, as well. R. 66. The record on this motion includes maps of each OHV Plan, which maps depict ownership of lands, designated trails, state forest roads and other features. R84. The OHV Plan for Aitkin County includes an evaluation of potential sites, including individual sites. R100-103. This OHV Plan states that MDNR staff will implement the Aitkin OHV Plan with development, maintenance and operation.. R91. An Appendix sets forth the Planning Team. Appendix A; R93. Also included are detailed specifications for trails, as follows: ATV Trail Specifications, R94; OHM Trail Specifications, R95; and ORV trail specifications, R96.

The factual record on this motion includes the MRR Petition on the Aitkin County OHV Plan. R111-112. The Petition identifies the proposals set forth within Aitkin County Plan as requiring environmental review. R111-112.

**E. Pine/Carlton Plan.**

The Pine/Carlton County OHV Plan starts at R163 and includes lands within these two Counties. The OHV Plan includes the classification of state lands for OHV use in Pine/Carlton Counties as limited, with some segments closed to OHV use. R167, R175-176. The Pine/Southern Carlton County OHV Plan includes specific proposed ATV/OHM Trails, as follows: Chengwatana

ATV/OHM Trail, R167; St. Croix ATV/OHM Trail, R168; General Andrews OHV Trails and Scramble Area, R168; Nemadji ATV/OHM Trails, R168; Beldon ORV Trail, p. 168; and various access Trails, R168. This Plan includes ORV trail sites, as well. R. 66. The Plan states:

“The DNR began developing OHV trails in State Forests in Pine and southern Carlton counties in the 1980’s. Existing trails specifically designated for OHV use include:

1. General Andrews State Forest Trail;
2. Gandy Dancer Trail in and between the St. Croix and Nemadji State Forests;
3. Continental Divide Trail in the Nemadji State Forest;
4. Yellow Birch Trail in the Nemadji State Forest;
5. St. Croix State Forest Trail.” R178.

This OHV Plan also states that MDNR staff will implement the Pine/Carlton OHV plan by signing the trails:

“The first priority will be to sign trails identified as core OHV trails in this plan. Core trails will be signed first, followed by signing of access trails. Undesignated trails will be closed by rule except for selected use by ATVs related to big game hunting and trapping and will not require signing. When operation on undesignated trails or off-trail, ATVs must not be operated in a manner that causes erosion, rutting or damage to trees or other crops.” R183

This OHV Plan provided for changes in permitted uses on the Munger and Gandy Dancer Trails. R183. “These changes in permitted uses will be implemented when this OHV System Plan is approved.” R184. “The DNR proposes to extend the segment where ORVs are permitted on the Gandy Dancer Trail from Harlis to Beldon during the spring, summer and fall. ORVs will then be able to use the trail from Harlis to Kingsdale, allowing development of a complete circular ORV trail in the Nemadji State Forest.” R185. Appendix E. The Plan also provided for a 3-5 acre scramble area on Blueberry Hill, which was located on sandy hills. R191.

This OHV Plan had an identified Planning Team, set forth in an Appendix A; R198. This OHV Plan also included: ATV Trail Specifications, R199; OHM Trail Specifications, R200; and ORV trail specifications. R202. Included in the plan was an Exhibit E, which sets forth

amendments to previously adopted trail plans that change primary uses on multiple trails. R202.

The factual record on this motion includes the MRR Petition. R204-205. Again, the Petition set forth proposals within the Pine and Southern Carlton County Plan. R111-112.

**F. Wadena, Southern Cass and Crow Wing Counties OHV Plan.**

The WCC Counties OHV Plan begins at R261 and includes plans for lands within these three Counties. This Plan contains specific classification of state lands for OHV use. R265. The Planning Team was deeply divided on forest classification, with the majority seeking managed and a minority seeking limited. R282-283. The WCC OHV Plan includes specific proposed ATV/OHM Trails, as follows: Crosby ORV Trail, R265; Spider Lake OHV Trails (“The Spider Lake OHV Trails are being developed about 10 miles west of Pine River on state and county lands . . .”), R265-266; Moose River ATV/OHM Trail, R266. The Plan states that the: “Spider Lake Trail System in the Foot Hills State Forest ([is]currently under development).” R277. The Plan includes a discussion of the future development plans for Spider Lake, which included land acquisition. R286-287.

The Planning Team is identified in Appendix A; R295. The Plan includes more of the following: ATV Trail Specifications, R296; OHM Trail Specifications, R297; and ORV trail specifications, R298.

The factual record on this motion concerning the WCC OHV Plan includes a lengthy list of public comments. R300-R355. From these, the Court can see the different issues and concerns of the people who wish to use the State Forests. This memorandum will briefly paraphrase some of these:

## **COMMENTS FOR OHV RESTRICTIONS**

- Rapid growth of OHV use outstrips ability to manage impacts;
- The cost to repair damage far exceeds costs to initially design;
- Impacts will include erosion, rutting, damage to trees, vegetation and habitat;
- Noise from OHVs disrupts other users of the State Forests;
- Mudders commit abuses to the environment;
- The OHV Plans give too much land to the OHV use by a %;
- The OHV Plans violate the letter and spirit of the Minn.Rules, Ch. 6100;
- MNDR has enforcement problems;
- Damage to paved snowmobile trails from carbide tipped snowmobiles demonstrates that the cost to repair damage is considerable;
- Rutting and erosion from OHV use destroys an area for cross country ski trails in winter;
- OHV fees are a fraction of the cost to repair damage done;
- Other regions of the U.S. are restricting OHV use because of widespread damage;
- The OHV gas tax revenue should fund an EIS;
- OHV users often abuse alcohol and litter in the State Forests;
- Because the majority of OHV use is on private land, OHV users can buy their own land;
- MDNR stacked the OHV Planning teams with OHV users;
- Trails and waterways has a conflict of interest because an increase in riding means an increase in revenue;
- Lobbying by OHV people skewed the process;
- MDNR has a vested interest in protecting their work product in the plans.

## **COMMENTS FOR OPEN OHV ACCESS**

- Past use by OHVs establishes a precedent for future use;
- MDNR should promote access for OHVs;
- OHV users need access to trap beavers, which has environmental benefits;
- Beaver trapping has economic benefits and provides jobs;
- There is plenty of land for non-motorized users;
- OHV use brings economic benefits from the sale of gas, food and lodging;
- People with handicaps need OHVs to get into State Forests;
- OHV users pay fees to repair the damage;
- OHV users outnumber non-motorized users of State Forests;
- Non-motorized users are “Bird-watchers”, who are not important to the economy and can use other places to see birds;
- Unrestricted OHV use is a thrill;
- MDNR’s mission is to allow OHV use;
- OHV users pay seasonal or residential property taxes and come to the area to use OHVs; and
- Not enough access for 4 wheel drives.

MRR's Petition is set forth in the record on this motion at R356-357.

**G. Kanabec and Mille Lacs Counties.**

The Kanabec/Mille Lacs Counties OHV Plan begins at R437 and includes plans for lands within these two Counties. This OHV plan classifies all of these State Forests as limited, with some areas closed to OHV use. R440; R449-451. The Kanabec/Mille Lacs OHV Plan includes specific proposed ATV/OHM Trails, as follows: Snake River ATV/OHM Trail, R440-441; Oxbow Access Trails, R441, South Snake River Access Trails, R441; Rum River State Forest Access Trails, R441. This plan also identifies five potential ORV sites, as follows: Woodland site; Esker site; Highway 27 site, Oxbow site; and North Snake River Site. R442

Among other things, the Snake River trail includes: a connection to the Redtop ATV Trail and Soo Line Trail; Highway 65 and Snake River Crossing; Southern Aitkin Loops; Connection to Solona State Forest and Soo Line Trail; and Kanabec Loops. R465-466.

MDNR states that "DNR staff will be primarily responsible for implementation of the recommendations contained in this plan. The plan includes recommendations for development, maintenance, and operation. " R472. The planning team members are listed at R474. ATV Trail Specifications are listed again at R475. OHM Trail Specifications are listed at 476. ORV trail specifications are listed at R477.

The Petition for an EAW on this OHV Plan is set forth at R480 and, again, addresses "proposals" included in the OHV Plan and not the "Plan". R480-481. The Petition specifically addresses the Snake River Loop and the proposed woodland scramble area.

**H. MDNR Declines to Require EAWs.**

MDNR officials met to discuss the Petitions starting in about January 2001. R858-860. It

appears that Bill Johnson ended up with the task of coordinating a response to the Petitions. Jack Olson, Natural Resources Planner with MDNR was asked to prepare a document to provide background information, an analysis of options and recommendations for “EAWs on projects consisting of selected “suites of actions” that will be taken in the short term (perhaps up to 2 years) to implement the OHV System Plans”. R854. In this document, Olson recommended that the MNDR declare that the system plans were not connected actions and to ask the AG’s office for an opinion on whether the phased action rule applied to the classifications and trail projects. R855.

The very next day after Olson issued the document, Steve Simmer, the Forest Recreation and Lands Coordinator for MDNR argued that there was no project and “In fact, there is no plan at this point”. R857. Simmer advocated making the petitioners seek redress in the Courts. R857. Despite this, Simmer noted over a year before that:

“it is time to get ready for implementation. We would like to use the winter season to order and deliver signs so that the state forest postings can be underway first thing next spring [2001].

. . . return order forms [for signs] to either Steve or Ron by January 31<sup>st</sup> [2001]”. R905.

Brian McCann of Trails and Waterways argued for a narrow interpretation of “project” to include only site development projects. R895.

It appears, as set forth below, that MDNR asked Olson to prepare a “suite of actions” for purposes of EAW review on each of the OHV Plans. Olson maintained that signing the trails constituted a “project”, that segments were sufficiently identified for environmental review, that physical manipulation of the environment would take place and that state funding was available. In the end, MDNR refused to perform any EAWs.

1. **Aitkin County.** Olson prepared a suggested suite of actions for an EAW on the Aitkin

County OHV Plan. R138. MDNR rejected these in its Findings. Findings. R154-157. MDNR took the position that the OHV Plans and the planning process “does [sic] not constitute a governmental action causing physical manipulation of the environment, and thus does not constitute a project”. R156. MDNR found no “projects” in Aitkin County.

**2. Pine/Southern Carlton Counties.** With regard to this Plan, also, Olson prepared a suggested suite of actions that could form the basis for an EAW. R232. MDNR again rejected these in the Findings. R246. MDNR held a discussion about the reasons not to have any EAWs and the way to advocate that decision:

Emphasize DNR interdisciplinary planning and staff-level internal project review mechanisms in-place in Region III (e.g., standing teams, special teams, REAB Specialist Review), RMT review, OHVPC review, CMO review and approval – as well as external or public review/recourse opportunities – both thru public planning process and thru project review & permitting steps. Need to stress that Envir Review is not a substitute for sound project planning and decisionmaking. It is undertaken only after the decision has been made to move forward with a project, then only if appropriate as per MN Rules Chapter 4410.1700.”R229

The Findings concluded that the OHV Plan and planning process was not a project. R249. The Findings found that the Petition identified a “project”, but concluded that the project had “not been proposed for approval and implementation.” R249. MDNR decided to hold the petition until December 20, 2001. R249. The Findings are silent about any phased or connected analysis of this admitted “project”, with other “projects” in the OHV Plans.

**3. Wadena, Cass, Crow Wing.** This portion of the OHV system plans received much comment and attention for a variety of reasons. The factual record on this motion includes an “On-Site Report of Spider Lake OHV Trail System”. R368-374. This report summarized a meeting on site with several MDNR representatives, including Tom Balcom, Brian McCann and Ron Potter.

The report talks about the serious damage in the Spider Lake area: “If the resource becomes degraded, even recreationalists will go elsewhere”. R371-372.

With regard to Spider Lake, the report memorialized that: “DNR is working on a land exchange agreement with Cass County. All of the Spider Lake recreational land will eventually be under DNR jurisdiction.” R372.

Once again, MDNR assembled a suite of actions for purposes of a possible EAW on this OHV Plan. R380. Included in the proposed suite of actions were the following actions: “complete any remaining development of the designated core OHV trail system and campground/day-use area at Spider Lake . . . Identify any additional segments of undesignated trails that should be closed to OHV use because of environmental or social problems and close, obliterate, rehabilitate as needed.” R380.

Bill Johnson sought clarification on this information about Spider Lake. R384. The record includes the fact that: “Work has been going on at Spider Lake for at least two years” and that Spider Lake is clearly a project. R390. Bill Johnson set forth an extensive discussion of Spider Lake area in the record in an effort to document the status of the project. Predictably, Simmer chimed in that: “An EIS at this point would surely be “a day late and a dollar short”. R408. Simmer stated that: “The “project” mainly consists of bringing some order to the chaotic use of this area by OHV’s which has been occurring for many years.” R408.

At the continued prompting of Johnson for more of a record, MDNR created a record to document that Spider Lake was “95% done”, with only some camping, a possible well and the construction of another ORV challenge left to complete. R413. MDNR expected to complete the other ORV challenge this summer [2001]. R414. MDNR might need a permit for the well. MDNR

might complete the land acquisition. One MDNR staffer wanted to make sure that the record he was giving Johnson would satisfy Johnson's goals. Mr. Boe stated: "Are you getting the kind of detail you need from my responses?". R415. MDNR even created a chart of action. R422. Timing of the much discussed land exchange was omitted from the chart. R422.

The Findings are set forth at R429-434. Again, MDNR concluded that planning is not project. R432. MDNR concluded that two projects "may involve the physical manipulation of the environment". R433. However, MDNR concluded that these were not proposed for approval and implementation. R433. MDNR concluded that Spider Lake was substantially complete. R433. In making this Finding, MDNR made no Findings about whether an EIS could assist in the conclusion of the project, including any phased or connected segments. MDNR made no findings regarding phased and connected actions to Spider Lake or the other two admitted "projects".

4. **Kanabec and Mille Lacs Counties.** Bill Johnson of MDNR similarly sought to develop a "suite of actions" that an EAW could address. R518. Jack Olson developed a suite of actions that an EAW could address. R527. Bill Johnson also developed a list of "potential actions" in this OHV Plan that included signing numerous aspects of the system and developing the Snake River Trail. R547. MDNR received a compilation of public review comments on this OHV Plan. R582.

Roger Hugill of the MDNR, Area Fisheries Supervisor, Hinckley, stated as follows to Bill Johnson on February 1, 2001 with regard to this OHV Plan:

The OHV trails run along the Snake River and near or through several smaller streams or runoff areas close to the Snake River. There are also several possible crossing sites on the Snake River . . .

Our main concerns for lake sturgeon would be the potential for disturbance of fish in spawning areas and the increased siltation during the spawning and egg incubation period.

Long term concerns would be related to increased erosion and nutrient loading into the Snake River and surrounding area streams and wetlands. I do not believe the impact of the trails on amphibian, reptile and turtle populations has been addressed at all. The trails can get to be depressions in the landscape and thereby impede the normal movement of a whole host of animals not to mention getting them to run flat. I do believe a few more issues need to be addressed by qualified people, not just recreational motor enthusiasts. R604.

MDNR set forth its Findings on this OHV Plan in the record at R606-610. Again, MDNR denied that the proposals for classification and trail systems were not a “project”. R609. MDNR took the position that the admitted “projects” should not receive environmental review because they “have not been proposed for approval and implementation. R609.

**I. The Instant Motion for Summary Judgment.**

MRR brings this motion for summary judgment based on the administrative record before the Court, together with examples of EISs prepared across the Country on OHV trail systems. MRR argues that the Court should require EAWs under MEPA, as set forth below.