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TO: Paul Stockinger
Director, Lands and Minerals
Eastern Region, Forest Service
FILE: F&L 15 (GEN)

FROM: Gene Alan Erl
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SUBJECT: Nash Stream Easement

This is in response to your request for an opinion on whether the State of New Hampshire may permit the use of all terrain vehicles (ATV'S) on the Nash Stream Forest. The United States holds a conservation easement over the property by virtue of a deed from the State, dated August 4, 1989. We understand the State is in the process of revising its management plan for the area. In response to public requests, it is considering such use.

The Nash Stream Conservation Easement Deed is a so-called reserved interest deed. This means all interests in the property were conveyed, except for those expressly reserved by the grantor. As pertinent here, the State, as grantor, reserved "public recreation" uses, including trails and specifically the... "construction, operation and maintenance of... snowmobile trails..." (deed, para. II. C and II. C. 1) The mention of snowmobile trails as a subset of trails indicates that motorized use of trails is permitted. Thus, because both accommodate motorized vehicles, a reasonable interpretation would be that snowmobile trails being of the same kind, class or nature as ATV trails could be regulated by the State.

The public access provision of the deed, paragraph II. F, also gives to the State the discretion to "reasonably restrict and regulate access and use." This seems directly relevant as to whether the State may regulate ATV recreational use of trails on the easement area. Finally, the multiple use provision of the deed, paragraph II. C. 4, seems broad enough to give the State discretionary regulatory authority over determining how the public may use the trail and road system.

Accordingly, for the foregoing reasons, we are of the opinion that the State may ban/allow/regulate public ATV use of trails and roads for recreational purposes. However, we think it would be more difficult to conclude that off-trail or off-road (i.e., dispersed) ATV use by the public has been reserved by the State.

cc: James Snow

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Thomas G. Wagner
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