

**Report to**

# **Environmental Assessment Office**

**Review of RK Heli-Ski**

**Comments Received on Sierra Systems  
Report**



*New thinking.*

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### **Confidentiality/Validity**

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## 1. INTRODUCTION

Sierra Systems Group Inc. (Sierra) reviewed RK Heli-Ski's (RK) August 11<sup>th</sup>, 2004 response to Sierra's *Report to Environmental Assessment Office – Jumbo Valley Assessment* (the Report).

RK's response asserts that the Report's key conclusions are based on "faulty analysis of inaccurate information".

It should be noted that effectively all the information presented to, and analyzed by Sierra was originally provided by RK itself. This information was presented in the form of RK's management reports and terrain usage reports, formally submitted to the province in support of RK's operations under its license, and RK responses to interview questions.

Our Report, highlights in a number of areas, that there are significant issues with the information provided by RK. Inaccuracies between reports were noted. It was also noted that RK submitted a material restatement of usage information (indicating a material shift of volume into the Jumbo area) immediately after it became apparent that the Proponent had an interest in seeking a license.

Our Report also offers the conclusion that representations made by both RK and the Proponent should be viewed as potentially self-serving, as both parties approach this issue with a noted bias.

Given this apparent bias, our Report concludes that the most reliable information available for consideration is the written representations made by RK and the Proponent at the relevant time. We have asked both parties for all relevant documents and have been advised that searches have been conducted. We conclude that our files of records available are now complete. These records form the primary base of the Report.

RK is certainly correct that the Report's conclusions are based on the apparent conduct of RK at the time it became aware of the competing application from the Proponent. RK, as a private company, operated during the relevant period under the personal control of its president and founder, Roger Madsen. Unfortunately, Mr. Madsen passed away two years ago and is not available to offer any context for the documents we reviewed. We confirmed specifically with RK's new ownership representative and RK's current operations manager that neither held a "corporate memory" of the relevant time period. As a result, the Report is left to consider the historic RK documents in the context they were provided to the province, and all other RK documents as is.

At face value, RK's response to Sierra's Report appears to raise legitimate questions regarding the Report's conclusions. At closer inspection however, it becomes immediately clear that the bulk of RK's response actually:

1. strengthens the Report's conclusions;
2. and validates the information described and analyzed in the Report.

The remainder of this document lists specific assertions made in RK's response. Sierra considered each of these assertions by re-analyzing data, re-reviewing official RK documents and interview answers, and re-calculating terrain usage data. Electronic scans of RK's documents have been inserted to leave no room for reporting errors, errors in transcription, or miscalculations.

## 2. RK'S ASSERTIONS AND SIERRA'S CORRESPONDING RESPONSE

### 2.1. RK assertion #1 – "Statistics are Wrongly Reported"

Sierra reports that prior to 1989/1990 (and any public announcement of the JGR Proposal) the Jumbo Creek area accounted for 2.4 to 8.4 per cent of RK's ski day/visits. Sierra notes that in the 1989/1990 season, RK's management plan reported the Jumbo Creek area accounted for 2.4% of all skier visits.

These statistics are wrongly reported. Attached to this letter is a schedule (Appendix A) comparing Sierra's reported usage statistics for each of the zones operated by RK within its tenure. The schedule compares 1990 draft management plan and the January 1991 approved management plan for both the 1988/1989 season and the 1989/1990 season.

What is important to note is that the March 1990 draft management plan was prepared before the 1989/90 ski season had completed. Its reports as to usage were targets. Further, it was only a draft.

The 1991 approved management plan reflects the actual usage for the 1989/90 ski season. For the 1989/1990 ski season Sierra reports that RK utilized the Jumbo zone 2.4% of its skier runs. In actuality RK utilized the Jumbo zone for 27.2% of its skier runs. Sierra is unclear where it has derived the usage statistic of 2.4%.

#### Sierra Response to RK Assertion #1

According to RK's own management plans, the statistics in question are accurate. As displayed below, p. 4 of RK's March 1990 Management Plan reported that the Jumbo zone accounted for 63 skier days out of 2,640 skier days in the 1989/90.

3.2 SKIER DAYS PER ZONE					
	85/86	86/87	87/88	88/89	89/90
Paradise	65	70	118	124	125
Farnham	327	675	508	494	625
Cauldron	653	1,048	678	1,029	1,250
Jumbo	33	109	102	103	63
Copper Crown	197	303	169	206	375
Eyebrow	32	124	119	101	202
	1,307	2,329	1,694	2,057	2,640

\* Extrapolated from data to date.

Scan 2 - Electronic scan of RK 1990 Management Plan, p.4

Formula 1 calculates the Jumbo zone's percent usage of all skier days for the 1989/1990 season:

Formula 1:

$$63 / 2,640 = .024 \text{ or } 2.4\%$$

This result (2.4%) was clearly referenced on p.11 of the Report as being derived from RK's Management Plan dated March 1990.

RK's response states that it utilized the Jumbo zone for 27.2% of its skier runs in 1989/1990.

RK confirms it used its own 1991 Management Plan to calculate this figure. As displayed below, p. 4 of RK's 1991 Management Plan reported that the Jumbo zone accounted for 3,109 runs out of 11,688 runs.

SKIERS RUNS BY ZONE PER MONTH						
Season 1989/90						
	* Frequency	Dec.	Jan.	Feb.	March	April
Paradise	6	198	225	418	257	93
Farnham	4	88	225	558	684	240
Cauldron	4	176	375	697	855	336
Jumbo	6	330	450	836	1,026	467
Copper Creek	6	264	450	418	513	95
Eyebrow	6	44	75	209	342	32
Forester	6	44	75	210	342	32
<b>TOTAL:</b>		<b>1,144</b>	<b>1,875</b>	<b>3,346</b>	<b>4,019</b>	<b>1,304</b>

Scan 2 - Electronic scan of RK 1991 Management Plan, p.4

Formula 2 calculates the Jumbo zone's percent usage of all skier runs for the 1989/1990 season:

**Formula 2:**

$$3,109/11,688 = .2659 \text{ or } 26.5\%$$

It is not apparent how RK's calculation of 27.2% can be derived from the information submitted. The Report highlights this and other calculations in the information provided by RK in arriving at the conclusion that inconsistent results and information are evident in and between RK's management plans, terrain usage reports and RK's 2004 Response to the Proponent's Proposal.

Regardless of whether the restated usage of the Jumbo region was 26.5% or 27.2%, there is obviously a large contrast to the 2.4% figure presented by RK in its 1990 Management Plan. This is precisely the reason why Sierra identified this inconsistency as a "Major Discrepancy in Reporting Jumbo Terrain Usage" in the Report.

Indeed, this restatement implies that the 63 reported skier days accounted for 3,109 runs, implying that each skier would have to make almost 50 runs on each day to account for the skier runs reported in RK's 1991 Management Plan.

Sierra does not dispute RK's observation that the March 1990 management plan was prepared before the conclusion of the 1989/1990 season. However, RK's assertion that the numbers were only "targets" does not match the Management Plan's clear and explicit statement that the figures were "extrapolated from data to date". This is clearly evidenced at the bottom of Scan 1. Extrapolating data to date would indicate that RK's skier day data, up to March 1990, was used to calculate the 63 Jumbo zone visits and the 2,640 total visits for the 1989/1990 season. That is, the Jumbo zone was used infrequently up to March 1990 during the 1989/1990 season – the heli-ski season ends in April.

RK's response states that perhaps the reason behind the inconsistency is because the March 1990 Management Plan was only a draft. The March 1990 Management Plan analyzed by Sierra does not have the word "DRAFT" indicated on any portion of the document. The document was provided to Sierra by Land and Water British Columbia Inc. By all accounts, it appears that the March 1990 Management Plan was a final and official version submitted to the Ministry at that time (notwithstanding it may have reported usage figures extrapolated for the last month of the season).

## 2.2. RK assertion #2 – Increase in Jumbo usage is a result of re-zoning Leo and Leona Creek

*Sierra's report is true when it states that RK's reported usage of the Jumbo Creek increased from 7% in 1988/89 to 27.2% 1989/90. This, however, does not reflect so much an actual increase in usage, but rather a change in reporting practice.*

*Prior to 1989/90 RK reported ski runs from Leo Creek and Leona Creek as part of the Cauldron Zone. In fact, those runs are part of the Jumbo Creek drainage and part of the Jumbo Zone. In 1989/90 RK began to report runs made on Leo Creek and Leona Creek as part of the Jumbo Zone. As a consequence of this change in reporting there is an increase in reported skier usage within the Jumbo Zone and a decrease within the Cauldron Zone.*

### Sierra's Response to RK Assertion #2

RK's Assertion #2 displays another clear inconsistency with regards to its documentation routines and official reports submitted to the Ministry. A change in reporting practice prior to the 1989/90 season should have been captured for **both** the 1990 and 1991 Management Plans – both Management Plans were prepared after reporting practices were changed to the new terrain usage measurement system. As a result, there should not be any substantial differences in reported terrain usage between the two Management Plans for the *same* season. (As an aside, the Report does not state that RK's usage of the Jumbo Creek increased from 7% in 1988/89 to 27.2% in 1989/90 – the Report states that RK's usage of the Jumbo zone *decreased* from 7% in 1988/89 to 2.4% in 1989/90.)

Putting these observation aside, Assertion #2 does not explain RK's stated increase in Jumbo zone usage from 1988/89 to 1989/90 satisfactorily.

Prior to the submission of RK's response to the Report, their explanation for the marked increase in Jumbo zone usage *between seasons* did not include the stated change in reporting practice.

During a July 7<sup>th</sup>, 2004 interview, RK stated that the substantial increase in Jumbo zone usage was due to increased glading activities and increased customer volumes. There appears to be no documented evidence to corroborate this new explanation for the changes in terrain usage. As mentioned, RK has no corporate memory to draw upon, and hence cannot offer the recollection of management in support of the explanation.

RK apparently explains that the Jumbo zone's **389%** increase in usage between the 1988/89 and 1989/90 seasons is due to re-zoning of the Leo and Leona Creek areas into the Jumbo zone. Using RK's response's figures, Formula 3 calculates the 389% number:

**Formula 3:**

$$\begin{aligned} \text{Jumbo \% usage 1988/89} &: 7\% \\ \text{Jumbo \% usage 1989/1990} &: 27.2\% \\ \text{Percent increase} &= 27.2\%/7\% \\ &= \mathbf{3.886 \text{ or } 389\%} \end{aligned}$$

If re-zoning was indeed responsible for the increase in Jumbo usage, this suggests that **74.3%** of all of RK's commercial activity in the Jumbo zone was actually located in the Leo and Leona Creek areas. Leo and Leona Creeks are areas not impacted by the proposed resort. Using RK's response's figures, Formula 4 calculates the 74.3% number:

**Formula 4:**

$$\begin{aligned} \text{Jumbo \% usage 1988/89} &: 7.0\% \\ \text{Jumbo \% usage 1989/1990} &: 27.2\% \\ \text{Difference between 1989/1990 and 1988/1999} &= 27.2\% - 7.0\% \\ &= 20.2\% \end{aligned}$$

As described, RK's response states that the increase in Jumbo usage does not reflect so much an actual increase in usage, but rather a change in reporting practice. Therefore, the 20.2% annual increase observed between the 1988/89 and 1989/1990 seasons comes from the Leo and Leona Creek areas.

Therefore,

Difference in Jumbo Usage between 1989/1990 and 1988/1989: 20.2%

Total Jumbo % Usage 1989/1990: 27.2%

Leo and Leona Creek % Usage within Jumbo = 20.2%/27.2%



= .743 or 74.3%

This finding supports a key conclusion in the Report:

RK has obvious mitigation options if the Proponent's resort were to proceed. In this case, at least 74.3% of the Jumbo zone's commercial activities would not be affected by the Proponent's CRA – the Leo and Leona Creek areas will not overlap with the Proponent's proposed resort. Perhaps more importantly, there is absolutely no dispute that the Leo and Leona Creek areas are accessible during bad weather events.

RK's new explanation for the increase in Jumbo area usage actually supports the Report's conclusion that mitigation options are available, and undermines RK's claim that business failure is imminent because it will lose its only predictable bad weather terrain if the resort was to proceed.

### 2.3. RK assertion #3 – RK intended to make more use of the Jumbo zone before the proponent's notification

*Sierra also noted that RK's stated intention to make more use of the Jumbo Creek occurred only after notice was given by the proponent of its intent to investigate the JGR Proposal. This is also inaccurate.*

*In fact, RK had applied for a licence to cut additional runs (glade) in the Jumbo drainage on October 26, 1989, at least six months before learning of the proponent's proposal.*

#### Sierra's Response to RK Assertion #3

It is important to clarify that RK was *officially* advised of the Proponent's intention to develop a ski resort in the Jumbo Creek area in April 1990 – the Proponent paid a formal visit to RK's founder, Roger Madsen. News of a potential ski resort planned for the Jumbo Creek drainage circulated among the surrounding community and among local businesses well before April 1990. It is likely that RK understood the Proponent's intention prior to its application to cut additional runs in October 1989.

RK conceded that it has no corporate memory and that no member of its current management staff can comment on RK's operational or strategic decisions prior to the mid-1990's. As a result, RK's current team cannot state with certainty that the company did not learn of the proponent's proposal prior to October 1989 when it applied to glade the Jumbo drainage. Nor can RK's current team comment on RK's motivation behind the timber application submitted in October 1989.

Irrespective of when RK learned of the Proponent's interest in Jumbo Creek, glading in the Jumbo Creek drainage and increasing operational usage in Jumbo zone does not represent a reasonable attempt to mitigate the probable impact of the Proponent's resort.

#### **2.4. RK assertion #4 – RK records indicate extensive usage in the Jumbo zone in 1988/89**

*In fact, the primary run used by RK in bad weather, prior to the 1989/90 season was the Sunde run within the Jumbo Zone (but prior to 1989/90 Sunde was reported as part of the Cauldron Zone). In 1988/89 RK utilized that one run on 41.9% of its ski days. In 1990/91 RK utilized that one run on 46.9% of its ski day.*

*.... This illustrates most graphically that RK has always required access to the Jumbo Zone for its bad weather skiing.*

#### **Sierra's Response to RK Assertion #4**

RK stated during a July 7, 2004 interview that RK guides possess their own terrain preferences and tend to operate in different areas of RK's tenure. It is inaccurate to statistically infer that RK's operations depended on the Sunde run for 41.9% to 46.9% of the time; this reported observation is based on one heli-ski guide's logs only.

There is a clear sampling limitation with regards to RK's statistical method used in Assertion #4. The extrapolation is clearly not statistically valid.

Statistical validity aside, RK's assertion that material volumes can be accommodated on the "Sunde" run further validates a key conclusion included in the Report. That is, RK has obvious mitigation options if the Proponent's resort were to proceed:

the "Sunde" run is not located inside the Proponent's CRA and will not be affected by the Proponent's resort.

Again, based on its own information, RK's claim that business failure is assured because it will lose its only predictable bad weather terrain cannot be supported.

#### **2.5. RK assertion #5 – RK states that the Jumbo drainage provides the safest skiing within RK's tenure**

*Further, because of the advent of fat skis more intermediate skiers can heli-ski and all skiers can ski a greater number of runs per day. This means that RK must be more conscious of safety for the less skilled skier, and it therefore requires more safe and skiable terrain. Safety (reduced avalanche danger and all weather access) is paramount in today's heli-ski world. The Jumbo drainage provides the safest skiing within the RK tenure. This is because these areas are unique due to lower slope angled terrain and consistent snowfall. This allows access to large quantities of low hazard avalanche terrain during periods of high hazard. Also, Upper Jumbo Creek allows RK to safely access these runs during bad weather allowing our customers to ski on days that would otherwise be lost.*

#### **Sierra's Response to RK Assertion #5**

While it is clear that the Jumbo Creek drainage offers desirable terrain for safe heli-skiing, other areas within RK's tenure also possess similar characteristics. As demonstrated in its own

documentation and reports, RK has historically described the Glacier Creek zone as possessing the characteristics for optimal and safe skiing.

According to RK's letter dated Feb. 12, 1996 to the Ministry of the Environment, Land & Parks, RK states the Glacier Creek zone is "very similar" to the terrain in its licensed area – including the Jumbo Creek drainage.

The letter also states that the Glacier Creek zone "...just provides more areas of skiable terrain. There is no major difference." The contents of this paragraph can be cross-referenced with **Reference #28** from the Report (letter from RK to Ministry of Environment, Land & Parks BC, 12/02/1996).

Furthermore, it has been amply demonstrated in the Report and in the preceding sections of this document that RK will continue to possess substantial access to portions of the Jumbo Creek drainage not affected by the Proponent's CRA.

## 2.6. **RK assertion #6 – "Sierra has concluded that RK has acted in bad faith." RK Response**

*Sierra has concluded that RK has acted in bad faith. But what would be the motivation for RK to vigorously oppose the JGR project if, in fact, it would have virtually no impact on RK's operations? Why would RK make greater use of the Jumbo drainage if it could utilize other areas of its tenure to maximize safety and client satisfaction? Sierra does not answer these questions because there is no rational answer. RK does not oppose the JGR project because of a perverse desire to be contrarian but rather because it believes that the JGR project will ultimately destroy its business.*

### **Sierra's Response to RK Assertion #6**

The Reports concludes that RK shifted volume into the Jumbo area, out of its normal course of operations at or around the time RK learned of the Proponent's interest in the Jumbo area. The Report further concludes that RK has not acted to mitigate the impact of the proposed resort and that viable mitigation options remain available.

Documents do not describe the motives behind these observed actions, and no corporate memory is available to draw upon. What is clear from documents and the corporate memory of the Proponent is that RK's initial response to the Proponent was to engage in discussions of a buy-out scenario. Increased activities in the Jumbo area would clearly be consistent with that intent.

There is further clear evidence of ill will between RK and the Proponent, which would be consistent with the continuing failure on behalf of both parties to reach a reasonable accommodation, and RK's continued focus on the Jumbo area supporting its position in those stalled discussions.

## 2.7. RK assertion #7 – RK statements regarding Glacier Creek

*Sierra reports that during the period 1986 through 1995 RK made significant use of the Glacier Creek drainage, which is suitable for bad weather access. Sierra notes that RK's<sup>1</sup> records show that on February 3, 1998 a guide flew into Glacier Creek on a bad weather day. Sierra presumably notes this as support for its conclusion that Glacier Creek provides predictable bad weather access. Both these allegations are simply wrong and, again, based upon a misreading of RK's records.*

*The Cauldron Zone (within the RK Heli-Ski tenure) includes the south fork of Glacier Creek. The north fork of Glacier Creek was not within the RK tenure at that time. The records of RK show that in the years 1988/89 and 1989/90 the north fork of Glacier Creek was utilized on one day.*

### Sierra's Response to RK Assertion #7

The Report cites the Feb. 3, 1998 ski log only to support that ski guides associated with current management have made use of Glacier in bad weather:

During the July 7<sup>th</sup>, 2004 meeting RK's operations manager did not disagree with the Report's observation that RK had made extensive use of untenured areas in the Glacier drainage prior to 1995. RK advised that the tenuring system was imprecise at the time and that all operators made use of open Crown Land areas outside their tenures in the normal course of their operations

The most salient piece of information the Report references with regards to affirming Glacier Creek's bad weather access is RK's own 1991 Management Plan: RK's 1991 Management Plan describes the MacBeth Icefield (located adjacent to Glacier Creek's north fork) as having "exceptional scenery, high altitude skiing, and **bad weather access**".

This conclusion is further supported by RK's own 1990 Management Plan. RK's March 1990 Management Plan states that the Glacier Creek drainage:

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<sup>1</sup> From Lead Guides 'Log' Book

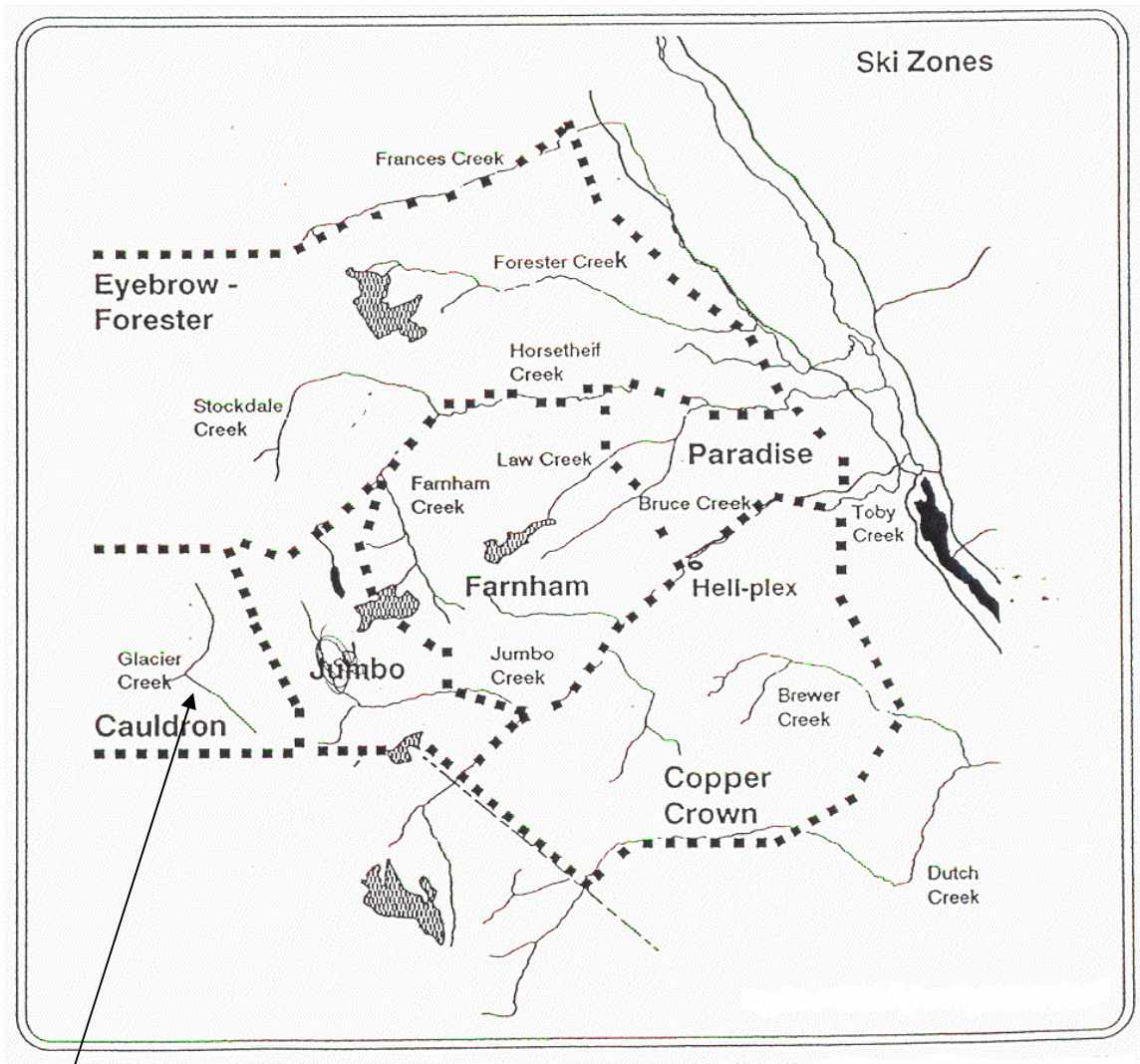
“has historically been an integral part of an existing operation”.

-RK Management Plan, 03/1990, p.2

RK temporarily explains its statements in its historic documents by stating that *“the Cauldron Zone (within the RK Heli-Ski tenure) includes the south fork of Glacier Creek. The north fork of Glacier Creek was not within the RK tenure at that time.”*

However, a number of RK’s own statements and documents refute this recent assertion:

1. RK’s 1990 and 1991 Management Plans confirm RK’s use of **both** the north and south fork of Glacier Creek. Both forks of the Glacier Creek are clearly depicted in the “Cauldron” zone by RK’s own operational map in its March 1990 Management Report, notwithstanding the area depicted was not within the tenure at the time. See Map 1 below.
2. The MacBeth Icefield, as described above, is not adjacent to the south fork of Glacier Creek, it is adjacent to (and even further north of) the north fork of Glacier Creek and clearly outside the tenure.
3. RK conceded during a July 7, 2004 interview that it operated (without authorization) in the untenured areas of the Glacier Creek drainage.



North and South Forks clearly depicted

**Map 1 - RK's Map of Operational Areas 1990**

As described in the Report, RK's current assertion regarding the north and south fork and bad weather access of the Glacier Creek contradicts its own official documents and statements. The Feb. 3, 1998 ski log entry simply confirmed RK's historic documentation.

Responding to another element of Assertion #6, RK's statement that the north fork of the Glacier Creek was utilized for only one day during the 1988/89 and 1989/90 is based on one guide's logs. As demonstrated earlier, many guides are employed with RK and each guide possesses his own terrain preferences and tends to operate in different areas of RK's tenure. Without implementing

sound sampling and statistical methods, RK's conclusion that the north fork of Glacier Creek was utilized for only one day is not a reasonable extrapolation of the information contained in the logs of only one guide.

## **2.8. RK assertion #8 – RK statements refuting bad weather conditions on Feb. 3, 1998**

*Further, although the north fork of Glacier Creek was accessed on February 3, 1998 it was not in bad weather. The log record shows that conditions were overcast with no precipitation while in north Glacier Creek. Overcast conditions simply mean that the cloud cover was above the flight path of the helicopter. RK can only presume that Sierra misread RK's records.*

### **Sierra's Response to RK Assertion #8**

As described above, the Feb. 3, 1998 log entry simply confirms that even current RK operations have made use of Glacier Creek in bad weather (admittedly a small and non-representative sample, but evidence of use).

The vital point in the Report is not the reference to the weather symbols used by the RK guides, but rather the clear confirmation in a series of RK management reports and in RK's formal application to have Glacier Creek added to its tenure, that RK had made extensive historic use of the Glacier Creek area. Based on this actual experience in the area, RK stated specifically that it required the tenure to add new areas with quality skiing and confirmed bad weather access to accommodate its expansion and to increase client safety.

## **2.9. RK assertion #9 – RK statements re: Sierra's analysis of terrain usage.**

*Sierra has not done a detailed analysis of terrain usage as carried out by Brent Harley & Associates and their report. The analysis Sierra did do is not based on all the records provided. Had Sierra done a detailed analysis, it would have accurately reported usage statistics and it would have commented upon the loss of Taynton, Paradise, Sandy, North Star, Catamount, Coppercrown and Jumbo Pass to RK.*

*Taynton Creek was lost to Panorama Ski Resort upon its expansion; Paradise and Sandy were lost to Toby Creek Adventures and its Snowmobile operation; Northstar and Catamount are now unskiable because weekend Snowmobilers regularly use this territory in contravention of the legal closures in place. Parts of Coppercrown were lost because of a 1995 boundary change to the Purcell Wilderness Conservancy and RK avoids using Jumbo Pass because of conflict with other recreational ski touring parties.*

*The mitigation conclusions rest on the premise that RK can move its ski operations from the Jumbo drainage without significant impact upon its business. As shown, this premise is faulty.*

*The loss of the Jumbo Creek drainage could only be mitigated if RK could use other territory within its tenure for predictable bad weather access.*

### Sierra's Response to RK Assertion #9

The Report clearly lists and explains the limitations found in the Brent Harley & Associates Assessment (p.22-25 of the Report). RK did not comment to Sierra on these limitations as an operational concern, prior to their response to the Report. Sierra concluded these areas did not represent operational issues and did not warrant comment beyond the references to the Brent Harley Associates Assessment.

Sierra is unclear with regards to RK's statement "*that Sierra did not analyze all the records provided.*" All records and documents regarding specific skier run usage in the Jumbo and Farnham zones were analyzed by Sierra – these records were provided by RK.

However, RK did not provide Sierra with records or documents regarding specific skier run usage in the Paradise (Taynton, Paradise, Sandy), Forster (North Star, Catamount) or Coppercrown zones. Additionally, the "Jumbo Pass" runs were not included in the Jumbo zone skier run usage documents provided to Sierra. Having not been provided with specific skier run usage documents in Paradise, Forster or Coppercrown zones, Sierra concluded that RK did not hold a significant operational concern respecting those areas.

Any impacts to the aforementioned zones have been absorbed in the current usage areas and are reflected in our comments on mitigation. These historic impacts do not represent a new mitigation pressure on RK.

Therefore, it remains the Reports conclusion that RK could realistically transfer operational volumes back to existing runs (with proven historical usage) inside tenured zones.

There is a clear implication to RK if it remains adamant that:

1. it cannot effectively operate in many areas *inside* its tenure; and
2. that its disuse of these tenured areas is justified by the pressures and encroachments it noted in its response to the Report.

RK's existing license requires that it make active use of all tenured areas in its existing tenure.

"Article 8 – Termination" of RK's current tenure agreement outlines situations where the Ministry can terminate RK's right to use and occupy land. The relevant excerpt from Article 8 is provided below:

8.1 b) ...you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you.

-RK's Current Tenure Agreement, 2001

RK was granted all areas of its tenure for viable commercial purposes.

Notwithstanding the impacted runs described in Assertion #9, RK has clearly failed to make efficient and effective use of its tenure in the Paradise, Coppercrown, Forster, Eyebrow, Glacier, and Tenise zones. RK appears to have progressively shifted operations out of these zones since



the Proponent's announcement (of its intention to develop a ski resort in the Jumbo Creek drainage).

## 2.10. RK assertion #10 – RK statements re: Brent Harley

*RK also notes another of the numerous factual errors in the Sierra report is that Brent Harley is a consultant in the employ of RK. This is wrong and an unwarranted attack on the integrity of Brent Harley. Brent Harley is not and never has been employed or under contract to RK.*

### Sierra's Response to RK Assertion #10

During a phone call to Brent Harley & Associates (BHA) on July 12<sup>th</sup>, 2004, the BHA office stated that it was retained as a consultant for RK. While the accuracy of the BHA's statement on July 12<sup>th</sup>, 2004 may be in question, there exists no confusion with regards to the specific verbal contents of the statement.

As indicated in Sierra's record of electronic and telephone communications, Sierra contacted BHA via e-mail on July 9<sup>th</sup>, 2004 requesting specific information with regards to BHA's 1999 report. The exact e-mail address (including specific BHA staff to address) was provided by BHA's office during a telephone call on July 9<sup>th</sup>. Sierra did not receive an electronic response. As a result, Sierra placed a follow-up phone call and delivered a voice message to BHA's Mr. Ted Battison requesting the same specific information as described in the July 9<sup>th</sup> e-mail. Sierra did not receive a telephone response.

Sierra's records indicate that additional telephone calls were placed to BHA on July 12<sup>th</sup> (the date BHA stated its current working relationship with RK), July 13<sup>th</sup>, and July 15<sup>th</sup>, 2004. Messages were not returned.

The perceived lack of cooperation on BHA's behalf appeared to validate BHA's July 12<sup>th</sup>'s statement .

While BHA may not be, or may never have been, retained by RK as a consultant, the events described above would lead any reasonable observer to regard the Report's following notation as factual:

*"To gain a clear understanding of how BHA reached their conclusions, Sierra Systems consultants contacted BHA to identify documents BHA reviewed and confirm the approach BHA pursued to complete its report. BHA did not respond to Sierra System's queries, but an individual at the BHA office indicated that BHA is currently retained as a consultant for RK."*

- The Report, p. 23

## 2.11. RK assertion #11 – Appendix A

*These statistics are wrongly reported. Attached to this letter is a schedule (Appendix A) comparing Sierra's reported usage statistics for each of the zones operated by RK within its*

*tenure. The schedule compares 1990 draft management plan and the January 1991 approved management plan for both the 1988/1989 season and the 1989/1990 season.*

*... For the 1989/1990 ski season Sierra reports that RK utilized the Jumbo zone 2.4% of its skier runs. In actuality RK utilized the Jumbo zone for 27.2% of its skier runs. Sierra is unclear where it has derived the usage statistic of 2.4%. Sierra is also unclear why its statistics do not account for 31.4% of the ski days, as their chart only accounts for 68.6% of the 'Total' Usage.*

Comparing numbers in the Sierra Systems report to RK's 90 (Draft) M. plan and RK's 91 M.plan

1988-1989 Season by %	March 90 M.Plan		Jan. 91 M.plan	Difference
Zone	Sierra's	Draft	(reported)	Sierra vs M. plan
Jumbo	7.0%	7%	7%	0%
Cauldron	45.3%	45%	45%	0%
Farnham	22.2%	22%	22%	0%
Paradise	6.0%	8%	8%	(-) 2%
Coppercrown	10.0%	14%	14%	(-) 4%
Eyebrow/Forester	4.9%	4%	4%	(+) .9%
Total	95.2%	100%	100%	
Usage not accounted for	4.8%	0%	0%	

The numbers above show only minor differences and only in zones that are not effected by Sierras report.

1989-90 Season by %		March 90 M.plan	Jan. 91 M.plan	Difference	Difference
Zone	Sierra's	Draft (targeted #s)	(reported)	Sierra vs 90 M.plan(target)	Sierra vs 91 M.plan (reported)
Jumbo	2.4%	19.3%	27.2%	(-) 16.95	(-) 24.8%
Cauldron	20.9%	42.8%	21.3%	(-) 21.9%	(-) .4%
Farnham	18.7%	21.4%	15.8%	(-) 2.7%	(+) 2.95
Paradise	4.7%	6.4%	10.4%	(-) 2%	(-) 5.7%
Coppercrown	14.2%	6.9%	13.1%	(+) 7.3%	(+) 1.1%
Eyebrow/Forester	7.7%	3.2%	12.2%	(+) 4.5%	(-)4.5%
Total	68.6%	100%	100%		
Usage not accounted for	(-) 31.4%	0%	0%		

1. Sierra's numbers do not account for almost 1/3 of the 89/90 seasons usage.
2. It is interesting to note that the zones that have the greatest difference are all zones that are the subject of this report
3. The table above also shows the RK operational shift of Leona and Leo Creeks from Cauldron to the Jumbo Zone.

## 2.12. Appendix A, Schedule — Sierra's Response to RK Assertion #11

Appendix A provides additional examples of reporting inaccuracies and inconsistencies already evidenced in and between RK's management plans, terrain usage reports and RK's 2004 Response to the Proponent's Proposal.

The RK response introduces new examples of methodology errors and incorrect calculations. The examples are listed below:

1. Scan 1 provides the figures used by Sierra and RK to calculate terrain usage, by visits, for 1988/89. Each “difference” between Sierra’s calculation and RK’s calculations for 1988/89 are presented below:

**APPENDIX A ERROR #1 - PARADISE ZONE:**

Skier Day Visits in Paradise Zone for 1988/89: 124

Skier Day Visits for All Zones for 1988/89: 2,057

Percent Skier Day Visits in Paradise Zone =  $124/2,057$

$$= \mathbf{0.0602} \text{ or } \mathbf{6.0\%}$$

Therefore, according to RK’s 1990 Management Plan, Sierra’s 6.0% calculation is correct and RK’s 8.0% calculation is incorrect.

**APPENDIX A ERROR #2 - COPPERCROWN ZONE:**

Skier Day Visits in Coppercrown Zone for 1988/89: 206

Skier Day Visits for All Zones for 1988/89: 2,057

Percent Skier Day Visits in Paradise Zone =  $206/2,057$

$$= \mathbf{0.1001} \text{ or } \mathbf{10.0\%}$$

Therefore, according to RK’s 1990 Management Plan, Sierra’s 10.0% calculation is correct and RK’s 14.0% calculation is incorrect.

**APPENDIX A ERROR #3 – EYEBROW/FORSTER ZONE:**

Skier Day Visits in Coppercrown Zone for 1988/89: 101

Skier Day Visits for All Zones for 1988/89: 2,057

Percent Skier Day Visits in Paradise Zone =  $101/2,057$

$$= \mathbf{0.0491} \text{ or } \mathbf{4.9\%}$$

Therefore, according to RK’s 1990 Management Plan, Sierra’s 4.9% calculation is correct and RK’s 4.0% calculation is incorrect.

2. RK’s table summarizing the 1989/90 season displays a major error:

the March 1990 Management Plan *does not* include a table with “targeted #'s”.

There is only one table in the March 1990 Management plan reporting terrain usage – it is represented as Scan 1. As a result, the contents of RK’s entire third column for the 1989/1990 season are invalid.

3. The only “differences” between Sierra and RK’s calculations for the 1989/1990 season suitable for analysis in RK’s 1989/90 table is for the 1991 Management Plan’s data. Here again, RK’s methodology measuring terrain usage is erroneous:

It is clear that RK did not read Figure 1 - “Chronology of Terrain Usage and Relevant Events” carefully. Figure 1’s title states that terrain usage is reported by annual skier **visits** and not annual skier runs. The Report clearly explains that the selection of skier run data to measure potential impact (to RK’s operations due to the Proponent’s resort) is less accurate than employing ski visit data. Revenues (customer payments) to RK are determined by ski visits and not by ski runs.

If RK applied its own “Frequency” factor to the number of ski runs reported by zone (as practiced by Sierra), it would have calculated the number of ski visits for each zone – the more appropriate metric. RK’s method of calculation is incorrect which, in turn, results in figures different from Sierra’s.

4. RK correctly points out that the Report’s 1989/1990 ski season’s data does not account for 31.4% of RK’s ski days – in actuality, this result emphasizes RK’s inconsistent terrain usage reports.

As demonstrated in Sierra’s response to Assertion #1, the Jumbo zone accounted for 2.4% of RK’s skier day visits in 1989/90. As stated in the Report and in this document, a *major discrepancy in reporting Jumbo terrain usage* for the 1989/90 season was uncovered in RK’s 1990 and 1991 management plans.

By including RK’s 1990 Management Plan’s “2.4%” Jumbo zone skier visit figure with RK’s 1991 Management Plan’s skier visit data (derived from ski run data) for the remaining zones, the sum total (less than 100%) does not indicate a calculation error made by Sierra, it effectively signals discrepancies in RK’s own source data. RK’s source data for the same 1989/90 season from successive management plans should be compatible but is not - data is clearly inconsistent.

### 3. CONCLUSION

The information presented in RK's response to the report has been considered and explained above. New information revealed in RK's response support the Report's conclusions. Nothing has come to light in this review that would give cause to modifying the interpretations or conclusions presented in the Report.