

Statement of Nada Culver
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Senate Energy and Natural Resources Committee Hearing Regarding Off-road Vehicle
Management on Public Lands
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Chairman Bingaman, members of the Committee and members of the Senate, my name is Nada Culver. I am Senior Counsel in the Public Lands Campaign of The Wilderness Society. The Wilderness Society's mission is to protect wilderness and inspire Americans to care for our wild places. I work in the BLM Action Center, which tracks land use planning around the West and is dedicated to helping the public effectively engage and participate in the processes that determine how our public lands are managed. I appreciate the opportunity to speak with you today about the management of off-road vehicles on the public lands. This written statement is submitted on behalf of The Wilderness Society and our partners, who care deeply about the natural wonders and recreation opportunities on our public lands.

Travel planning is the cornerstone for achieving workable management of dirt bike, all-terrain vehicles and other off-road vehicles (ORVs) on our public lands. Planning provides a framework for agencies like the Bureau of Land Management and Forest Service to take a hard look at the lands they manage, plan to manage uses of those lands, including by ORVs, enforce uses based on plan, and then monitor the effects of plans to determine if changes are needed to protect the resources, uses and values of these lands.

Recognizing the damage that ORVs can inflict on both natural resources, such as water, wildlife and wilderness, and other users of the public land, Presidents Nixon and Carter issued Executive Orders to guide their management by federal agencies, including the Bureau of Land Management (BLM) and Forest Service (FS). These Executive Orders (EO No. 11644 (1972)) as amended by Executive Order No. 11989 (1977)), which are also incorporated into the BLM's regulations (43 C.F.R. § 8342.1), require the agencies to ensure that areas and trails for off-road vehicle use are located:

- to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability;
- to minimize harassment of wildlife or significant disruption of wildlife habitats, and especially for protection of endangered or threatened species and their habitats;
- to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands; and
- outside officially designated wilderness areas or primitive areas and in natural areas only if the agency determines that off-road vehicle use will not adversely affect their natural, aesthetic, scenic, or other values for which such areas are established.

These Executive Orders essentially put the burden of proof on the agencies to make sure that natural resources, including sensitive and lands specifically identified for their conservation values are not harmed by ORV use, while other users can enjoy the scenery and non-motorized recreation opportunities on public lands, and ORV use is only permitted in areas or on routes where these criteria are met.

Although there are some BLM or FS planning efforts that are based on these fundamental principles, the majority are not. My testimony today will address our grave concerns with the ongoing damage to the public lands and the need for action to correct these trends while there is still time.

The key elements of sustainable plans to manage ORVs, as well as the key failures in the travel planning that the BLM and FS are conducting (or not conducting), can be described in three categories:

1. Ecological – The Executive Orders, as well as established management priorities for specific conservation areas or resources, such as wilderness study areas or wildlife habitat, dictate protection from ORVs.
2. Fiscal – The agencies must have sufficient resources to inventory resources and conditions on the public lands, create management plans, enforce decisions, and monitor plans to ensure they are adequately protecting other resources and users.
3. Recreational– Motorized vehicles prevent other users from experiencing the naturalness, solitude and scenery of the public lands. Sustainable plans provide for a variety of users to fully enjoy recreational opportunities on the public lands.

A review of the ways in which the current travel planning initiatives do not address these important considerations highlights the actions needed to fix them.

1. Ecological Sustainability:

As set out above, the Executive Orders direct the BLM and FS to manage ORV use by prioritizing protection of natural resources, such as wilderness suitability, soil, water, and wildlife habitat, as well as avoiding conflicts with other recreationists. These priorities are also consistent with the statutes governing the agencies. The Federal Land Policy and Management Act (FLPMA) directs the BLM to manage the public lands “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.” 43 U.S.C. § 1701(a)(8). FLPMA requires the BLM to accomplish this through management plans, which are based on an inventory of the public lands and their resource and values, “including outdoor recreation and scenic values.” 43 U.S.C. § 1711(a). Similarly, the National Forest Management Act (NFMA) requires that the Forest Service manage the Forests in an ecologically sustainable manner that “protects soil and water resources, streams, streambanks, shorelines, wetlands, fish, wildlife, and the diversity of plant and animal communities.” 36 CFR 219.27(a)(4) (implementing 16 U.S.C. § 1604).

Travel planning is an important aspect of achieving these management goals. The regulations of both the BLM and FS that address management of ORVs also incorporate the priorities established by the Executive Orders. *See*, 43 C.F.R. § 8342.1; 36 C.F.R. § 212.55(a). Unfortunately, the agencies are proceeding with travel planning in a manner that will not fulfill these mandates.

(a) *Maintaining oversized road and motorized trail systems* – Both agencies have stated their intent to move away from permitting unmanaged cross-country use. However, the networks that they are designating or simply leaving in place indefinitely are too large and, as a result, will continue to damage natural resources.

BLM's *Land Use Planning Handbook*. H-1601, Appendix C, Section II.D (Comprehensive Trails and Travel Management) states that the BLM should “[c]omplete a defined travel management network (system of areas, roads and/or trails) during the development of the land use plan, to the extent practical.” If designation is not possible, then the BLM is to designate the network within five years. *See*, Instruction Memorandum (IM) 2004-005. Individual state offices, such as Utah and Colorado, have issued their own guidance to more strongly require designation of a travel management network in resource management plans. *See*, IM CO-2007-020. However, in many plans, the BLM is continuing to delay designation and, instead, simply labeling multi-million acre planning areas as “limited to existing” roads and trails. Instead of selecting routes and avoiding ecological damage, the resulting travel networks do not actively manage ORVs and do not prevent damage to natural resources or the recreational experiences of other users of the public lands.

Although the FS is proceeding under a mandate to designate routes, the process to date has not included consideration of how to minimize impacts on other natural resources. Instead, the FS has provided opportunities for interested parties to identify additional motorized routes to be added to the travel network without similar opportunities or consideration of the need to protect natural resources.

BLM Examples:

- Yuma, Arizona, Proposed Resource Management Plan (RMP): The proposed plan limits ORV travel to existing routes in “limited” areas based on the existing inventory of routes, deferring designation to a later process even though these initial routes have not been subjected to analysis of their compliance with applicable legal standards. The Proposed RMP also commits to an interim step of permitting interested parties to designate additional routes, without requiring rigorous assessment and evidence that these routes were in existence legally and proof of why they are needed. Proposed RMP, p. 2-98. The travel planning process set out in the Proposed RMP does not provide for an assessment of whether inventoried routes, as well as any additional routes proposed, were created legally or for interested parties to recommend routes for closure based on a full disclosure of the manner in which these routes impact other values in the planning area, which is likely more important in light of the substantial mileage and acreage already identified for use by ORVs.
- Tri-County RMP revision and amendment in New Mexico: The process began in 2005 to update RMPs that were finalized in 1986 and 1994, governing close to 3 million acres of public land in three counties. Although the draft plan is still in progress, the BLM has confirmed that it will not be designating route systems for the vast majority of the planning area. Similarly, in Colorado, both the Little Snake and Uncompahgre RMP revisions currently in preparation have stated that designation of a travel network will not be included in either of these plans.

- Moab, Monticello, Kanab, Price, Vernal, and Richfield RMPs: The BLM is preparing six plans covering 11 million acres of land including areas with wilderness character and potential wild and scenic rivers. Rather than protecting wild areas and cultural sites, the BLM is proposing to designate more than 15,000 miles of off-road vehicle routes – essentially blanketing southern Utah’s canyon country with roads and motorized routes, while declining to acknowledge the potentially irreparable harm to other resources.
- California Desert Conservation Area (CDCA), travel plan for the Western Mojave (WEMO): This bioregion of the CDCA is the most heavily impacted by ORV use. The WEMO includes 4 units of designated critical habitat—Superior-Cronese (766,900 acres), Ord-Rodman (253,200 acres), Fremont-Kramer (518,000 acres), and Pinto Mountains (171,700 acres). WBO AR 14834. Although the WEMO plan also included designation of Desert Wildlife Management Areas (“DWMAs”) to manage critical habitat, the DWMAs excluded thousands of acres of designated critical habitat. The BLM’s 2003 WEMO Route Designation and the 2006 WEMO Plan amendment authorized an ORV route network including over 5,444 miles of open routes and over 30 miles of “limited” routes within desert tortoise habitat, of these, over 2,230 miles of routes are in designated critical habitat.

FS Examples:

- Plumas National Forest travel plan (California): Currently, the agency manages approximately 4,150 miles of roads and 102 miles of motorized trails. Its latest proposal adds 375 miles of existing unauthorized routes to the current system of motorized trails.
- Cassia Division on the Minidoka District of Sawtooth National Forest travel plan (Idaho): The district finalized an unmanageable 802-mile route system where the large amount of short “in and out” routes will be impossible to enforce. Additionally, the Idaho Department of Fish and Game and Environmental Protection Agency commented to the agency regarding potential problems managing wildlife habitat and water quality, respectively, with the high density of routes.

(b) *Not fulfilling special management requirements* – There are certain areas where natural resources and values must be given special consideration in travel planning, including heightened protection from the impacts of off-road vehicles. Agencies have a duty to protect cultural sites, rivers and streams, wildlife migration corridors, and other sensitive lands and should consider designating these areas for walking trails and other lower-impact uses only. Management of wilderness study areas (WSAs), national monuments, wild and scenic rivers, and cultural resources is governed by specific priorities to protect their conservation values. *See, e.g.,* Interim Management Policy (IMP) for Lands Under Wilderness Review (BLM Manual H-8550-1) (requiring that WSAs are managed to protect their suitability for wilderness designation); Antiquities Act of 1906, 16 U.S.C. §§ 431 – 433 (requiring management to protect objects of interest); Wild and Scenic Rivers Act, 16 U.S.C. § 1271 - 1287 (requiring management to protect outstanding river values); National Historic Preservation Act, 16 U.S.C. §§ 470f, 470h (requiring federal agencies to consider effects on historic properties and seek to avoid damage).

Inventoried roadless areas on FS lands are governed by the 2001 Roadless Rule. The Rule acknowledges defines the characteristics of roadless areas as:

- (1) High quality or undisturbed soil, water, and air;
- (2) Sources of public drinking water;
- (3) Diversity of plant and animal communities;
- (4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land;
- (5) Primitive, semi-primitive non-motorized and semi-primitive motorized classes of dispersed recreation;
- (6) Reference landscapes;
- (7) Natural appearing landscapes with high scenic quality;
- (8) Traditional cultural properties and sacred sites; and
- (9) Other locally identified unique characteristics.

36 C.F.R. § 294.11. The recognized ecological values of inventoried roadless areas are the reason that new road construction and road re-construction are prohibited by the Roadless Rule. These values also merit special consideration for protection when planning for management of ORVs. Instead, Forests in the Southwest are proposing travel management plans that will actively open and degrade inventoried roadless areas.

The BLM manages the National Landscape Conservation System (Conservation System), which is comprised of lands created by both presidential and congressional directive, is managed based on a mission of stewardship to: “conserve, protect, and restore these nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.” Wilderness, wilderness study areas, national monuments, national conservation areas, and wild and scenic rivers are all included in the Conservation System. Failure to manage ORVs in these areas, where not only the Executive Orders but also additional authorities direct the BLM and FS to prioritize conservation and/or highlight their ecological values, is especially indicative of the problems in the agencies’ travel planning processes.

Examples:

- Utah RMPs: These six plans govern more than 5 million acres of proposed Wilderness, including 1.8 million acres of WSAs. The plans propose to designate motorized vehicle routes throughout the WSAs and 92% of lands outside WSAs that the BLM has recognized as having wilderness characteristics.
- Grand Canyon-Parashant National Monument and Vermillion Cliffs National Monument RMPs, Arizona: The proposed plan for each of these monuments designates two-tracks and barely noticeable routes for vehicle use even though the Monument Proclamations prohibit “all motorized and mechanized vehicle use off-road.” In this case, the BLM is expanding the definition of a road to accommodate more off-road vehicle use in the monuments rather than protecting the natural and cultural resources for which these national monuments were created.
- Steens Mountain Cooperative Management Area Comprehensive Travel Plan, Oregon: The BLM’s travel plan designates so-called “obscure routes” in Wilderness Study Areas as available for motorized vehicles, even though nobody, not even the BLM, can find these routes on the ground. Off-roaders will be sent out to search for them, inevitably damaging

wilderness qualities. In addition, the Steens Act prohibits use of motorized vehicles “off road,” which is also bound to occur in light of this designation. The Interior Board of Land Appeals has recently stayed the implementation of this plan because of the blatant disregard for protection of wilderness qualities in sending motorized vehicles out to search for obscure routes in areas that the BLM is supposed to be protecting for their wilderness suitability.

- Upper Missouri River Breaks National Monument RMP, Montana: Despite a detailed analysis and substantial scientific literature documenting the risks to sensitive wildlife highlighted in the Monument Proclamation from the high road density in the Monument, and numerous recommendations to reduce the road network from biologists and the State of Montana, the BLM has chosen to *increase* the miles of road for motorized use between the draft and proposed plans. The designated road network is likely to damage wildlife habitat, as well as the remote character and cultural resources that led to the designation of the Monument.
- Western Oregon RMP Revisions – This revision addresses more than 2.5 million acres of public lands in six RMPs for the Eugene, Roseburg, Medford, and Coos Bay Districts and the Klamath Falls Resource Area of the Lakeview District. In addressing travel management for designated conservation areas, including areas of critical environmental concern (ACECs), WSAs and wild and scenic rivers, the Draft RMPs propose less protection in all management alternatives – reducing or even eliminating closures to ORVs for these areas, which include the Elk Creek ACEC in the Salem District, the Camas Swale ACEC/Research Natural Area A in the Roseburg District, and the Rogue Wild and Scenic River Corridor and the Soda Mountain WSA in the Medford District.
- Apache-Sitgreaves National Forest, Arizona: This Forest is proposing to open roads in inventoried roadless areas that are currently identified as closed (maintenance level 1) in the transportation inventory. Instead of protecting the ecological values of these roadless areas, the Forest is actively increasing their use – arguably violating the Roadless Rule’s prohibition on road reconstruction and certainly promoting damage of acknowledged natural resources.

2. Fiscal Sustainability:

The BLM and Forest Service are designating road and trail systems that are fiscally unrealistic based on available and projected funding for construction, maintenance, monitoring, and enforcement. Roads and trails are expensive to construct and maintain whether they are asphalt, gravel, or dirt. There are substantial costs to construct and maintain culverts, bridges and other structures to prevent erosion and ensure visitor safety. The Taxpayers for Common Sense estimates the Forest Service, in particular, currently has a \$10 billion road maintenance backlog (<http://www.taxpayer.net/forest/roadless/index.htm>).

Even where minimal construction or maintenance is required (as is the case for some routes on BLM lands), more routes require more enforcement to ensure compliance with travel plans and also require more monitoring to ensure that they are not causing unacceptable damage to natural resources.

The FS regulations specifically require that, as part of designating routes and areas for motor vehicle use, the agency consider “the availability of resources for that maintenance and

administration.” 36 C.F.R. § 212.55(a). Unfortunately, the agencies rarely, if ever, include an assessment of funding and resources required to implement proposed travel plans. As a result, travel planning decisions are not based on the practical realities associated with the designations. In many of the following examples, the agencies acknowledge that a lack of funding is foreseeable, yet do not adjust their travel plans, effectively abandoning their obligation to protect the public lands.

Examples:

- The Cibola National Forest, New Mexico, includes the Sandia Mountains, a popular place to visit just east of Albuquerque. The travel analysis prepared included the following statement: *“But based on road maintenance funding received over the previous five years the Cibola N.F. can afford to fully maintain only about 31% of the existing system.”*
- The Apache-Sitgreaves National Forest, Arizona reached a similar conclusion. Their assessment concluded that the Forest can only afford 33% of its road system.
- The Lincoln National Forest, New Mexico, presented a more distressing picture of road maintenance funding, stating that the forest receives about \$500,000 for road maintenance and construction, but needs about \$5.7 million to maintain its 2337-mile road system. The Forest reported that, “The Forest budget can only support 9% of the road system.”
- The Black Hills National Forest, South Dakota, actually references its obligation to designate a minimum road system that is:

needed for safe and efficient travel and for administration, utilization, and protection of NFS land ... strikes a balance between the benefits of public access to NFS lands and the costs of road-associated effects on ecosystem values, taking into account public safety, affordability, and management efficiency.

The Forest’s analysis concluded that “annual road maintenance funding is approximately 25 percent of what is needed based on [its known road system according to its database].” Nonetheless, the report recommends maintaining all roads, such that, despite only having ¼ of the necessary funding to maintain the existing road network, most routes will remain open for public and private use. Not surprisingly, the Forest also concludes that, “without new resources, the long term condition of NFS roads is expected to deteriorate.”

- The Upper Missouri River Breaks National Monument RMP, Montana, received repeated comments, including those of the federal district court in the *Montana Wilderness Association v. Fry* case, that emphasized the need for the BLM to assess the costs of its management approach. However, the plan does not analyze and compare the costs of mitigating the potential damage to the Monument objects from management decisions, such as keeping a high density of roads open in the vast acreage of the Monument, or take into account whether sufficient funding will be available to cover those costs. It seems unlikely that the BLM will be able to meet its obligations to protect the Monument from the foreseeable damage from ORVs.

3. Recreation sustainability:

The Executive Orders require the BLM and FS to ensure that conflicts with other recreationists, not using ORVs, are avoided. The BLM’s Land Use Planning Handbook also specifically directs the agency to consider designation of special recreation management areas to provide a primitive

recreation experience. H-1601-1, Appendix C, Section II.C. The majority of Americans who visit National Forests and BLM lands do so to experience wild lands and natural scenery, view wildlife, hike, hunt, or fish. The Outdoor Industry Association studied “active outdoor recreation,” which was defined as only non-motorized activities: bicycling, camping, fishing, hunting, paddling, snow sports, wildlife viewing, trail-running, hiking, and climbing. The report found that active outdoor recreation contributes an estimated \$730 billion to the US economy (Outdoor Industry Association, http://www.outdoorindustry.org/research.new.php?action=detail&research_id=26). According to the U.S. Fish & Wildlife Service, in 2006 Americans spent \$76.7 billion on wildlife-related recreation. (USFWS 2006, *National Survey of Hunting, Fishing and Wildlife-associated Recreation* - <http://www.census.gov/prod/2008pubs/fhw06-nat.pdf>). Contending with dust, pollution and noise from off-road vehicles disrupts these experiences.

Unfortunately, the travel planning efforts to date do not provide sufficient opportunities and areas for quiet, non-motorized recreation experiences.

Examples:

- Utah RMPs: Despite the acknowledged opportunities for primitive recreation and solitude in the nearly 3 million acres with wilderness characteristics outside existing WSAs, the RMPs do not include protection for these experiences, either through designation of special recreation management areas or management prescriptions. The Draft Monticello RMP would designate more than 500,000 acres as special recreation management areas, but only eight percent of this acreage (43,507 acres) is proposed for backcountry use – ORV use is identified as a primary activity in all other special recreation management areas. Although the Draft Moab RMP identifies about 25% of their special recreation management areas as having a non-motorized focus, none of them incorporate areas that are actually exclusively non-motorized. These RMPs also do not take the opportunity to close motorized ways in the 1.8 million acres of WSAs, which would not only improve wilderness values but also heighten the quiet recreation experience.
- Bangs Canyon Travel Management Plan, Colorado – The BLM agreed with Colorado citizens that large portions of this area had wilderness characteristics. However, the travel management plan designated a motorized trail through this area.
- Western Oregon RMP Revisions: The recreation section of these RMPs focuses on proposals to designate new ORV emphasis areas, but fails to even consider comparable designations for traditional, non-motorized recreational uses, such as hunting, angling, hiking, horseback riding, or bird watching. For example, for the 865,800 acres managed by the Medford District, the RMP proposes 13 ORV Emphasis Areas, comprising 100,751 acres. While there are 3 proposed special recreation management areas, only one, for the Pacific Crest National Scenic Trail, and a portion of another, the Rogue National Wild and Scenic River where it is managed for its “wild” values, is really focused on providing primitive recreation opportunities – for a total of less than 15,000 acres.
- Apache-Sitgreaves National Forest: The proposed management for the inventoried roadless areas in this Forest would open roads currently designated as closed, removing opportunities for primitive recreation, such as enjoyment of wildlife, that will no longer be available with increased motorized use.

Legal challenges: The glaring inconsistencies of the travel plans issued to date with the mandates of the Executive Orders, other applicable laws, and agency guidance, as well as responsible management of our public lands, has led to formal legal challenges. The travel plan for the Steens Mountain Cooperative Management Area has been appealed twice: first because the BLM failed to complete a comprehensive travel management plan altogether and then again because the plan tried to designate “obscure routes” that plainly violated the agency’s obligation to protect the values identified in the Steens Act. The travel plans for the California Desert Conservation Area have also been subject to a number of challenges: the BLM has been directed by courts to close portions of the Algodones Dunes to ORVs to protect threatened and endangered plants and a current lawsuit challenges plans for other bioregions, including the WEMO, based on designations made without any reference to or use of the regulatory requirements, as well as ongoing failures to protect critical habitat. Unless firm and comprehensive corrections are implemented in the travel planning underway, there are likely to be more such challenges.

Status: The FS is in the process of creating travel plans system-wide, with 108 currently underway. Of these, the majority are in the earliest stages of scoping or have not yet released a draft environmental document. The BLM is not subject to a specific rule requiring completion of travel plans, but is in the process of revising all of its governing land use plans, which inevitably addresses travel management decisions, and estimates 50 of these are currently in revision. (See, BLM Land Use Planning webpage: <http://www.blm.gov/wo/st/en/prog/planning.1.html>). The agency does not track completion of all travel planning efforts, especially where those plans are included in RMPs, although it highlights completion of nine. (See, BLM webpage showing completed travel plans: http://www.blm.gov/wo/st/en/prog/Recreation/recreation_national/travel_management/travel_mgmt_planning.html). The Wilderness Society performed its own informal survey in 2006, which indicated that approximately 80 comprehensive travel management plans have been completed or are close to completion. However, other than plans for units of the Conservation System, most of these travel plans are for small portions of different planning areas, such as individual areas of critical environmental concern or special recreation management areas. As a result, while many travel management plans have been completed, many more are still needed to address the vast acreage managed by the BLM.

Based on the agencies’ respective commitments to completing travel planning and the magnitude of acreage at issue, it is critical that these efforts be conducted correctly. Because the agencies have not completed plans for most of the lands they manage, there is still an opportunity for them to comply with direction to manage ORVs in a sustainable manner. The agencies should be directed to ensure that:

- Travel plans must prioritize protection of the ecological values of our public lands, including wildlife habitat, wilderness values, soil, and water, as well as historic and cultural resources. Use of ORVs cannot compromise these irreplaceable resources. Units of the BLM’s Conservation System, cultural resources and other places with recognized conservation values should receive special consideration for management that will fulfill the purposes for which they have been identified.

- Travel networks should be defined by the agencies' available budgets for construction, maintenance, monitoring and enforcement.
- Natural quiet and beauty of the public lands are without question what most people seek when visiting public lands. Interior Secretary Kempthorne and Forest Service Chiefs have acknowledged impacts to visitor experiences from motorized off-road vehicle use. The agencies cannot overlook the importance of providing visitor experiences that are not compromised by destroyed scenic views and noisy interruption, which scares away wildlife.

The Wilderness Society and our partners appreciate the interest of the Committee in addressing the management of ORVs on public lands. Responsible management of ORVs is crucial to the health of our public lands and on our opportunities to enjoy them. We hope that the BLM and FS will embrace their responsibilities as stewards of these lands and use travel planning as a way to protect them. Thank you.

This testimony is submitted on behalf of The Wilderness Society and the following: Colorado Mountain Club, Center for Biological Diversity, American Hiking Society, Wild Connections, Central Colorado Wilderness Coalition, Idaho Conservation League, San Juan Citizens Alliance, Wildlands CPR, High Country Citizens' Alliance, Wilderness Workshop and Winter Wildlands Alliance.