



March 12, 2008

Congressman Raúl Grijalva
1410 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Grijalva:

Thank you for recognizing the damage that off-road vehicles are doing to our public lands and for bringing it to the forefront by holding congressional oversight hearings on the issue.

At the Center for Biological Diversity, we believe that the welfare of human beings is deeply linked to nature — to the existence in our world of a vast diversity of wild animals and plants. Because diversity has intrinsic value, and because its loss impoverishes society, we work to secure a future for all species, great and small, hovering on the brink of extinction. We do so through science, law, and creative media, with a focus on protecting the lands, waters, and climate that species need to survive.

Off-road vehicles are a great and growing threat to the natural resources we work to protect; the Center has been a leader in off-road vehicle issues across the West for more than 15 years, working to protect species like the desert tortoise and the piping plover in a diverse array of environments, ranging from the Mojave Desert to our eastern seashores. Over the past few years, we have also been involved in tracking travel management planning on national forests across the West, with a strong focus on Arizona and New Mexico. The Center has organized and led an effective and successful coalition of conservation organizations working to protect forests in the Southwest from off-road vehicle abuse.

The Center is well versed in the problems associated with travel management planning and is well positioned to offer testimony on a variety of issues related to the planning process and the rampant abuse of our public lands by off-road vehicles. Although we work in many areas, the national forests we focus on in this testimony are areas especially affected by many of the key shortcomings in the implementation of travel management planning.

On behalf of our more than 40,000 members across the country, please accept the following written testimony from the Center for Biological Diversity and please add it to the official record for the off-road vehicle hearings being held on March 13, 2008 by the House Committee on Natural Resources and Energy.

Introduction

In the process of working to protect the San Francisco and Blue rivers from off-road vehicle damage, the Center has discovered that the agency in charge of the Apache-Sitgreaves and Gila

national forests has predetermined that sections of the San Francisco River will likely be kept open to off-road travel — despite the fact that the travel management plans are not finished. We have also discovered that motorized user groups are posting signs in these areas asking people to contact the Forest Service in support of keeping the areas open to off-road vehicles. These areas, which include several inventoried roadless areas and offer valuable habitat for threatened and endangered species, are falling through cracks left open by lack of guidance and by National Environmental Policy Act (NEPA) failures in travel management planning. This is unconscionable and demonstrates the need for changes in the process if the government hopes to achieve outcomes that meet the initial goals of the travel management planning rule and that comply with Executive Orders 11644 and 11989, which guide the use of off-road vehicles on public lands.

The San Francisco and Blue Rivers and the Ultimate Failure of the Process

Travel management planning is a step toward limiting off-road vehicle damage and abuse. When it was conceived, it was meant to move environmentalists and off-roaders forward in resolving a conflict that has intensified because of decades of agency inaction and mismanagement. However, as travel management planning moves forward in the Southwest, it is becoming more and more evident that because of the process' design, as well as its implementation by the Forest Service, it is failing to deal with key issues — even those addressed by time-tested federal laws like the Endangered Species Act and the National Environmental Policy Act. We are seeing this on many forests in the Southwest and across the nation.

For example, in November 2007, the Center led a coalition in petitioning the Forest Service to maintain existing closures in the Gila and the Apache-Sitgreaves national forests and to immediately implement further closures of portions of the San Francisco and Blue rivers to damaging off-road vehicle use. The petition was based on the need to protect the rivers' ecological, biological, and quiet-use recreational values in compliance with Executive Order 11644, the National Forest Management Act, the Endangered Species Act, and the Clean Water Act.

The natural values that are adversely impacted by off-road vehicles reside principally in the rivers themselves, their associated riparian systems, contiguous inventoried roadless areas, and several threatened and endangered species that call these rivers and riparian systems home. By prohibiting motorized recreation use, closures would serve to prevent further adverse impacts and help secure the ecological and biological integrity of the broader landscape, provide enhanced protection for an interconnected whole, and ensure continued access to the Frisco-Blue area for quiet-use recreationists.

The acute importance of the rivers is made evident by the fact that the U.S. Fish and Wildlife Service designated portions of them as critical habitat for the threatened loach minnow (*Tiaroga cobitis*), a species whose present range is estimated at only 10 percent of its historical range. Several other Endangered Species Act-listed species also inhabit this area and are entitled to protection pursuant to the Forest Service's responsibilities dictated by the National Forest Management Act and the Endangered Species Act. These species, including the endangered southwestern willow flycatcher (*Empidonax traillii extimus*), the threatened Chiricahua leopard frog (*Rana chiricahuensis*), and the threatened spikedace (*Meda fulgida*), would benefit from the protections created by the petitioned-for closures.

Not only would these closures in the Frisco-Blue area prevent the most obvious type of adverse impacts caused by motorized vehicles — direct damage to the river's ecological, biological, and recreational values — they would also help prevent the conservation of natural areas from becoming devalued through those areas' continued degradation. That is, the more off-road vehicles are allowed free rein in the Frisco-Blue area, the less pristine this area will become and the less worthy it will seem of future protection. If immediate closures are not put in place, the Forest Service may become disinclined to take future corrective action and may never arrive at an integrated, comprehensive solution to the off-road vehicle problem.

On the Gila National Forest, it appears that the Forest Service may reach decisions on motorized-area designations for the San Francisco River and Big Dry Creek (FR 68) prior to the completion of the travel planning process. At a meeting featuring Glenwood District Ranger Pat Morrison and NEPA coordinator Lisa Mizuno, the District Ranger clearly stated that she had already made her decision about this area: She will keep Big Dry Creek open as a "road" available to motorized recreation because, she claims, it contains the only public vehicular access to the San Francisco River on the Gila National Forest. This effectively guarantees that motorized recreation — legal or otherwise, given the Gila National Forest's limited enforcement resources — will take place in some portion of the San Francisco River. The fact that the Mogollon Rim Trail Riders and the Gila Roads and Trails Association posted signs encouraging the public oppose the rivers' closure aligns the agency with motorized recreation interests. This apparent alignment, coupled with a lack of enforcement of off-road vehicle laws, threatens to turn the travel planning process into a farce.

The Frisco-Blue area provides a haven and refuge that reconnects people with the land and water that sustains us all and inspires our collective effort to act ethically and respectfully in our day-to-day lives. The roars of motorized off-road vehicles, and the scars these vehicles place on the landscape and in the hearts of the quiet users, are simply unacceptable in the Frisco-Blue area. These lands should be left as untrammelled as possible to preserve our collective natural and cultural heritage.

If the Frisco-Blue area is not deemed worthy of protection through travel management planning despite the fact that it shelters threatened and endangered species, houses a rare riparian corridor, runs through inventoried roadless areas, and contains the only remaining primitive area in the country, then travel management planning is a failure and many other places may also be at risk.

Inventoried Roadless Areas

The Roadless Area Conservation Rule, a critical Forest Service regulation implemented in 2001 by the Clinton administration, limits logging and roadbuilding in inventoried roadless land on national forests. Despite their ecological importance, at least 2.8 million acres of inventoried roadless areas on Forest Service lands have been lost to road construction over the last 20 years. The Roadless Rule seeks to prevent further loss by providing protections for much of the nation's best remaining fish and wildlife habitat and sources of clean water for more than 60 million Americans.

Unfortunately, this key regulation does not deal directly with travel management planning issues. Because the travel management planning rule and regional guidelines give little if any guidance

about how to handle designations in inventoried roadless areas, the Forest Service is being allowed to create plans that will undermine the intent of the Roadless Rule and will destroy the last untouched and unspoiled parts of our forests.

Roadless area protection is especially important in the southwestern United States, where numerous pristine watersheds and endangered species habitats in roadless areas are at risk. Of the 11.2 million acres of Forest Service lands in Arizona and 9.3 million acres in New Mexico, almost 1.2 million acres and 1.6 million acres, respectively, are roadless. Many of these lands are significant habitat for imperiled species. In 2001, the Center published a scientific report ([available at http://www.biologicaldiversity.org/publications/papers/trout_report.pdf](http://www.biologicaldiversity.org/publications/papers/trout_report.pdf)) demonstrating that roadless areas provide the last refuge for numerous imperiled western native trout species such as the Gila trout, greenback cutthroat trout, bull trout, west slope cutthroat trout, and Colorado River cutthroat trout.

Despite this fact, we see Forests in the Southwest proposing travel management plans that will actively open and degrade inventoried roadless areas. For example, the Apache-Sitgreaves National Forest is proposing to open roads in inventoried roadless areas that are currently identified as closed (maintenance level 1) in the current transportation inventory. The Apache-Sitgreaves is also proposing to allow cross-country travel off designated routes for the purpose of camping in and adjacent to inventoried roadless areas. In a continued assault on roadless areas, the Apache-Sitgreaves is also proposing to allow cross-country travel for motorized big-game retrieval in inventoried roadless areas. Both of these actions will allow for further proliferation of illegal routes throughout these protected areas.

The 2001 Roadless Area Conservation Rule specifically recognizes semi-primitive motorized recreation as among the “roadless area characteristics” that were intended to be protected by the Rule. The Roadless Rule was careful to leave most of the decisions with respect to semi-primitive motorized use to local Forest decision makers. However, to propose dispersed motorized camping corridors (300 feet from road centerline) and cross-country big-game retrieval directly adjacent to or within an inventoried roadless area has the effect of the Forest Service sanctioning the creation of new roads and is clearly contrary to regulations established by the Roadless Rule.

The Roadless Rule established regulations under 36 CFR 294 that state that a road — defined as “a motor vehicle travelway over 50 inches wide, unless designated and managed as a trail” — “may not be constructed or reconstructed in inventoried roadless areas of the National Forest System....” But to allow the general public free access to pioneer, continuously use, and establish motorized routes up to 300 feet from a road to a campsite or for big-game retrieval effectively permits the construction of a new road that is not designated nor managed as a trail. Furthermore, the designation of cross-country corridors would detract from the exact “roadless area characteristics” that the Roadless Rule is intended to protect, such as “undisturbed soils,” “native biodiversity,” “natural-appearing landscapes,” and “traditional cultural properties.”

By allowing dispersed motorized camping corridors and cross-country big-game retrieval, the Forest Service will not technically be *constructing* new roads in inventoried roadless areas, but it is clear that new roads will be created as a result of unfettered off-road vehicle access through these

pristine lands. Roadless areas need to be protected, not only from road construction, but also from road creation — an unavoidable result of allowing off-road vehicles to run rampant.

As this testimony's two examples (the San Francisco-Blue River and inventoried roadless areas) show, travel management planning is failing to address major issues. If travel management planning is not addressing even these issues — those of highest priority — then it is not actually a step forward, but a step backward. How can the Forest Service claim that travel management planning is following the intent with which it was created and is successful in reining in off-road vehicle abuse if the agency is not, at a very minimum, even forcing compliance with national rules, laws, and regulations?

Deficiencies of Regional Guidance in Region 3 Forests (Arizona and New Mexico)

The 2005 Travel Management Rule is very general and gives too much discretion to local agency officials, meaning that there have been no clear, consistent or definitive guidelines for local agencies to follow regarding the travel management planning process. This has resulted in confusion for the public and often the failure of agencies to put the environment first in addressing issues of utmost importance, such as roadless protection and endangered species preservation.

The 2005 rule's lack of direction has resulted in a free-for-all such that each forest in the country is going about this "nationwide" process in a completely different way. In the Southwest, the Forest Service's guidelines are not only vague but are still in draft form three years into the process.

These Regional Implementation Guidelines cite local collaboration and decision making as the "cornerstone" of the Travel Management Rule. However, early on in the process, the Forests of Region 3 largely included only off-road vehicle enthusiasts in their collaborative meetings. The Forests also focused their media and public information on the motorized aspect of the Travel Management Rule rather than on the true reason for the rule, which is to rein in destructive, unrestricted motorized recreation that is devastating our nation's forests.

Another crucial problem with the Guidelines is that the region does not intend to incorporate them into its directives system. Rather, the Guidelines serve only to identify the tools available to meet public interests and are supposed to provide a level of consistency that enhances public understanding, compliance, and ease of enforcement. Unfortunately, the Guidelines suggest only "consideration" that will provide a "common starting point" and that will result in plans that "feel familiar" to visitors to the forests. This fails to consider the intent of the now more than 30-year-old, unenforced Executive Order, which sought to *change* the way visitors to the forest used and enjoyed these public lands.

The Guidelines instruct the Forests to make difficult travel management decisions now, considering foreseeable future uses and developing technologies, while simultaneously instructing the Forests "not to be overly restrictive" in anticipation of future problems. The Guidelines also tell the Forests that it is unlikely that the region will have the resources necessary in the future to make frequent significant changes. This places the Forests in the impossible situation of making the perfect decisions now, with already limited resources, to prepare for foreseeable increased recreational demands and decreasing management and enforcement budgets.

The Guidelines are meant to ensure consistency, yet Forests and even districts within the same Forest are undergoing very different public involvement processes and are adopting contrasting policies. For example, adjacent forests with game units that cross Forest Service boundaries are developing vastly different motorized game-retrieval rules. The Apache-Sitgreaves National Forest in Arizona is bordered by the Coconino National Forest to the west and the Gila National Forest to the east, in New Mexico. The Apache-Sitgreaves National Forest is proposing to allow motorized big-game retrieval up to one mile from designated routes, while neither the Coconino nor the Gila will allow motorized big-game retrieval at all. The Forests are also developing motorized dispersed camping strategies that not only differ between adjacent forests, but also within forests. For example, the Apache-Sitgreaves National Forest will use designated camping sites, designated camping corridors, as well as designated camping areas, with different rules applied within and among ranger districts. This will lead to confusion, frustration, and constant violations of the Travel Management Rule, whether intentional or accidental, and will add to an already overburdened law enforcement problem in the forest. In short, the Forests are already failing to “coordinate within states and amongst adjacent Forest Service units to ensure a level of consistency in designation that promotes public understanding, compliance and ease of enforcement,” as stated in the Regional Guidelines.

In sum, the guidelines released for Arizona and New Mexico give each Forest entirely too much discretion and in many cases it appears that they are not being followed by all forests in all instances. We do not know if this is because the guidelines are still in draft form or if it is because they are just that — guidelines and nothing more. Although these guidelines will be finalized in 2009, most forests either will have already completed the travel management plan process or will be significantly far along in the process; therefore, the final Regional Guidelines will have little, if any, impact on travel management plans. As a result, there is currently — and will likely continue to be — a lack of consistency across the region and within forests in the Southwest. This inconsistency is affecting forests throughout the nation, suggesting the need for clearer and more formal regulations from the Forest Service.

Failure to Conduct Travel Analysis

We have discovered that forests throughout the nation, and especially in Region 3, are not adequately implementing travel analysis prior to making decisions on travel management. Travel analysis is a process that requires Forests to identify the minimum road system needed for safe and efficient travel, as well as for resource and administrative needs. But we have yet to find a Forest that identifies this road system. The failure to adequately complete this early and important step of the travel management process has led to a belief that every road that currently exists in the forest is a road that should remain open to motorized travel and recreation.

The travel analyses completed to date, however inadequately, clearly demonstrate that forests across the nation can afford only a fraction of their current motorized system, ranging from 9 to 33 percent in the analyses we have reviewed thus far. Ironically, these same forests are often planning to expand their current motorized system. This fiscal irresponsibility must be addressed at a national level.

Failures in NEPA Implementation

The Forest Service has engaged the off-road vehicle community early in the travel management process but has often ignored other forest users, including ranchers, hikers, biologists, environmentalists, and nearby residents. Even after the various stakeholders are all engaged, the forests often mishandle the NEPA process so that many interested parties are confused and ultimately excluded, preventing the collaboration required under the Travel Management Rule. Specifically, the Apache-Sitgreaves National Forest has issued press releases and notices to the public regarding public comment period timelines that are then changed without timely notice to the public. We believe this could lead to years of unnecessary litigation and a failure to protect the forests from off-road vehicle abuse and destruction.

Recommendations

We ask Congress to support the following recommendations:

- Agencies must prioritize environmental concerns over the perceived need for more access and must ensure that, at a minimum, Forest Service and Bureau of Land Management travel management plans comply with executive orders, regulations, and environmental laws.
- Agencies must move beyond the minimum of ending cross-country travel to ensure that travel-management decisions actually rein in abuse and repair and reverse damage to our public lands. This will require closing large and important areas of public lands to vehicles so that restrictions are clear and enforceable.
- Agencies must employ the multiple-use mandate as it was meant to be used. This does not mean allowing every use in every place, but instead allowing certain uses in appropriate places. Therefore, there are some places where only quiet use is appropriate and off-road vehicles are not. Agencies should adopt clear restrictions about what types of places should be set aside for quiet recreation and habitat protection (i.e., endangered species habitat, riparian corridors, inventoried roadless areas).
- The Forest Service should allow less local discretion by creating and implementing clearer and definitive national regulations and directives to guide the internal agency process, the NEPA process, and the desired outcomes of travel management planning.

Conclusion

The Center for Biological Diversity had high hopes that travel management planning would bring real protections and balance to our public lands, and that is why we have invested so much time, energy, and money into participating in the process over the past years. However, disregarding the need to prioritize roadless areas, threatened and endangered species habitat, and riparian areas in the arid Southwest is far from a balanced approach and has shaken our hopes for positive preservationist outcomes. The fact that forests are, in many instances, ignoring issues of highest national importance implies to us that the process is broken and needs repair. We are fearful that unless agencies are forced to address the highest-priority issues and ensure compliance with existing laws, travel management planning is a recipe for litigation — and not resolution, as we would have hoped. We should not have to resort to the courts to fix this apparently broken process, and we implore Congress to help us avoid the likely result if travel management planning is allowed to continue down its current path.

We are intensely interested and involved in the travel management process and appreciate the opportunity to offer the expertise we have gained regarding the problems, as well as the possible solutions, that have accompanied it.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Kassar', with a stylized, flowing script.

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