



ADVOCATES for the WEST

BLM TRAVEL MANAGEMENT PLANNING AND OFF-HIGHWAY VEHICLE CONFLICTS

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OVERVIEW

- **OHVs and Their Impacts**
- **BLM's Travel Management Rule**
- **Other Applicable Regulations**
- **Engaging in the Planning Processes**
- **Examples of Successful Advocacy**

OHVS AND THEIR IMPACTS

- BLM defines off-road vehicle as:
 - “Any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain”
 - Basic exceptions for some government uses
 - Source: 43 C.F.R. § 8340.0-5 (a)
- Secretary Bernhardt directed BLM to exempt e-bikes. Int. Order No. 3376
- OHV impacts
 - Natural Resources
 - Wildlife
 - Recreation
 - Cultural Resources
 - Safety



OVERVIEW OF BLM'S TRAVEL MANAGEMENT RULE

- **BLM must designate all public lands as either open, closed, or limited for OHV use to protect resources, promote safety, and minimize conflicts.**
 - OHVs permitted only in areas or trails designated as open
 - OHVs prohibited in areas and trails that are closed
 - Limitations may include any categories, including number or types of vehicles, time or season of vehicle use, permitted or licensed use only, use on existing or designation roads and trails, etc. 43 C.F.R. § 8340.0-5(g)
- **Sets standards and penalties for OHV operators**
 - Requires compliance with terms and conditions in designation orders
 - Sets minimum operating criteria (e.g., hold license and not be reckless)
 - Violators subject to up to 12 months in prison or a fine of up to \$1,000
- **Source: 43 C.F.R. Part 8340 to 8344**

MINIMIZATION CRITERIA FOR DESIGNATING LANDS

- Areas and trails shall be 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. Special attention will be given to protect endangered or threatened species and their habitats.
 - to minimize conflicts between off-road vehicles use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.
- Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic, or other values for which such areas are established.



DESIGNATION PROCESS

- BLM must designate OHV areas when preparing, revising, or amending RMPs.
- RMP approval constitutes formal designation of OHV areas
- BLM must consider current and potential impacts of vehicles on “all resources and uses in the planning area”
- BLM must provide public notice; consult with interested user groups, agencies, local landowners, and other parties; and provide public involvement opportunities
- Source: 43 C.F.R. § 8342.2



TMP BACKLOGS

- BLM may prepare stand-alone Travel Management Plans that designate specific transportation routes, management objectives, and maintenance needs separately from RMPs, especially for areas designated as limited in an RMP
- But as of 2017, BLM had only completed:
 - 18% of the Travel Management Plans that need to be done
 - Inventories of 42,000 of 400,000 miles of travel routes or roads
- Each state office should have an action plan and timeline for TMPs

	AK	AZ	CA	CO	ID	MT	NV	NM	OR	UT	WY	Total
<i>Completed</i>	3	12	28	32	12	15	5	10	4	14	18	153
<i>Complete by 2018</i>	3	16	29	32	18	27	5	13	6	15	22	186
<i>Complete by 2022</i>	7	28	34	42	41	62	15	29	12	24	67	361
<i>TTMPs to Complete after 2022</i>	16	6	0	8	4	12	129	63	111	8	32	389
<i>Total # of anticipated TTMPs</i>	23	34	34	50	45	74	144	92	123	32	99	750
<i>Total Routes Designated (Miles)</i>	29	7,000	36,176	18,494	4,958	14,932	2,988	5,291	840	19,749	2,731	113,187
<i>Total BLM Land (Acres in Millions)</i>	72.4	12.2	15.3	8.3	11.6	8	47.8	13.4	16.1	22.8	18.3	246.2

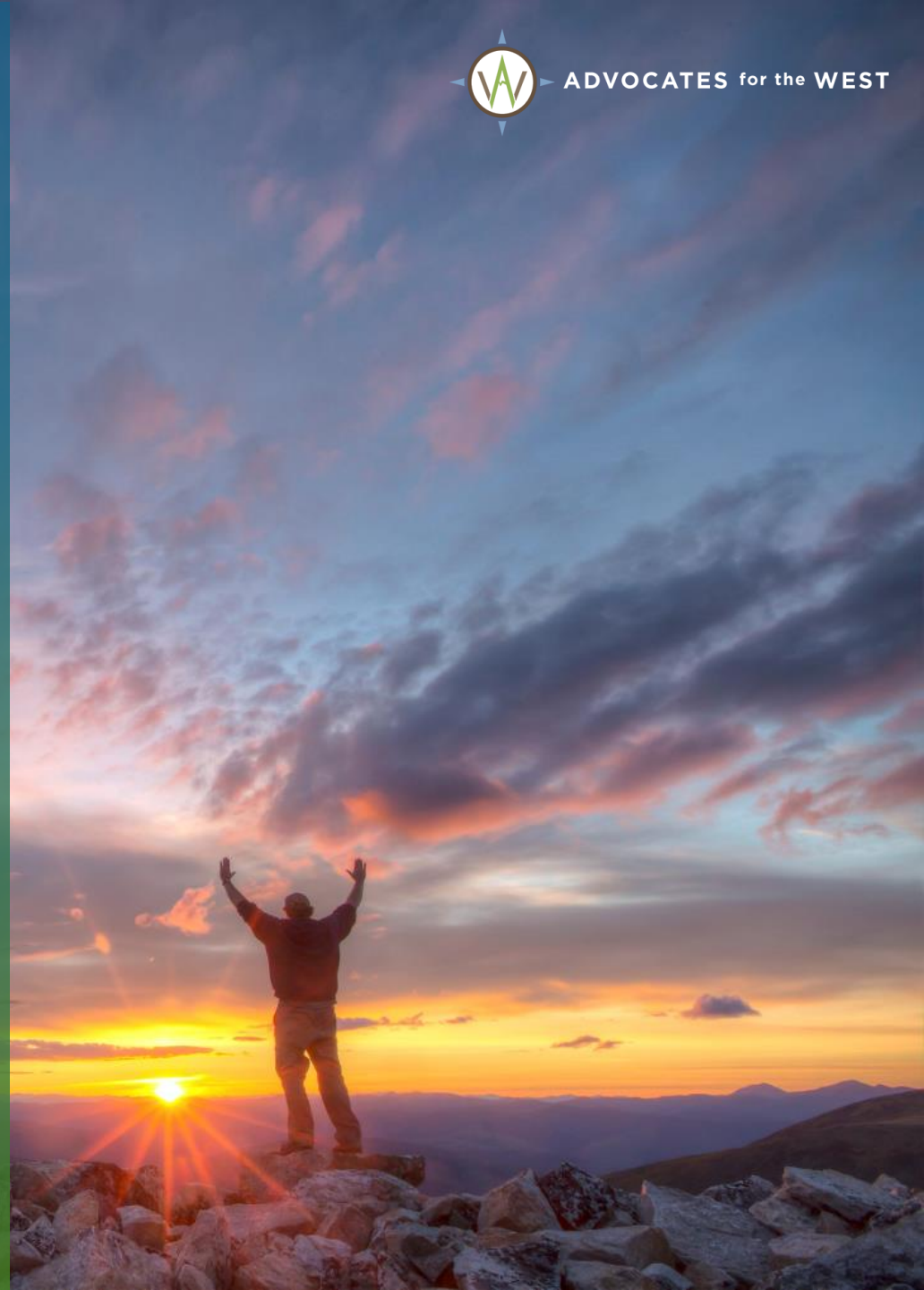


OTHER APPLICABLE REGULATIONS

- **Federal Land Management Policy Act (FLPMA)**
 - Begin with inventory of resources and uses
 - Follow BLM guidance, manuals, and directives
- **National Environmental Policy Act (NEPA)**
 - Prepare Environmental Assessment or Environmental Impact Statement
- **Endangered Species Act (ESA)**
 - Consult when threatened or endangered species or critical habitat may be affected
- **National Historical Preservation Act (NHPA)**
 - Consult with state SHPO
- **Wild and Scenic Rivers Act**
- **Wilderness Act**

PUBLIC ENGAGEMENT

- Start by finding existing RMP designations or TMP
- Track planning and implementation decisions for OHV use approvals
- Participate in comment opportunities and submit community alternative
- Coordinate with other groups
- Collect and verify data on-the-ground
- Pack record with evidence for appeal or litigation





DESIGNATION ADJUSTMENTS

- Agency must monitor OHV effects and where necessary, amend, revise, revoke, or take other action where necessary to carry out the travel management objectives. 43 C.F.R. § 8342.3
- Where BLM determines that OHVs “are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the authorized officer shall immediately close the areas affected to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence.” 43 C.F.R. § 8341.2(a)
- *SUWA v. Sierra*, No. 2:08–CV–195–TC, 2008 WL 4643003 (D. Utah Oct. 20, 2008)
 - SUWA submitted petition for BLM to close Arch Canyon to OHV use and Included expert reports that showed OHVs harmed riparian areas and archaeological resources
 - Sued BLM when the agency denied the petition and court found it had jurisdiction to review petition because 43 C.F.R. § 8341.2(a) provided law to review



UTAH LITIGATION

- *SUWA v. Burke*, 981 F.Supp.2d 1099 (D. Utah 2013)
 - Challenge to Richfield RMP for 2.1 million acres, half of which was wilderness quality
 - BLM designated 9,980 acres designated as open and 209,900 acres as closed
 - Within remaining 1.9 million acres designated as limited, BLM opened 4,277 miles of dirt roads and trails
 - BLM merely included OHV designations in Appendix abd did not address minimization criteria nor provide “enough information or analysis for someone other than the BLM to know why or how the routes were chosen”
 - Court found criteria must be applied at route-specific level, not in some general sense
 - BLM also violated NHPA for failing to conduct an adequate survey for cultural resources
- Tenth Circuit recently upheld settlement agreement regarding this RMP/Travel Plan and 5 others from Bush administration, requiring BLM to prepare 13 new TMPs for six million acres

Oregon Nat. Desert Assn. v. Rose, 921 F.3d 1185, 1190 (9th Cir. 2019)

- Challenge to TMP and EA for Steens Mountain in Oregon
- EA failed to establish “the physical condition of the routes, such as whether they are overgrown with vegetation or have become impassable in certain spots.
- “[W]ithout understanding the actual condition of the routes on the ground, the Bureau could not properly assess the environmental impact of allowing motorized travel on more than 500 miles of routes, or of carrying out mechanical maintenance on those routes.”
- Ninth Circuit held that BLM violated NEPA by failing to “assess, in some reasonable way, the actual baseline conditions” in an EA for a TMP where the agency included roads in its inventory that it could not confirm on the ground

Center for Biological Diversity v. BLM

746 F. Supp. 2d 1055

- Challenge to Amendments of the 1980 CA Desert Conservation Area Plan
- Court found that even though BLM closed two-third of routes previously open, BLM failed to apply minimization criteria, which require minimizing effects of routes, not the overall number of routes
- BLM also violated NEPA by failing to consider a reasonable range of alternatives regarding differing levels of OHV use
- Also found TMP that opened new OHV routes was inconsistent with overarching RMP for CDCA that limited OHV use



CONCLUSIONS

- RMP/TMP processes include numerous advocacy hooks
- Tough to tackle OHVs outside of planning processes or implementation decisions
- Tips for engaging in TMP processes are similar to plans and decisions
- On-the-ground data and collaboration invaluable



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