



July 22nd, 2024

Bureau of Land Management
Price Field Office
125 South 600 West
Monticello, Utah 84501

RE: San Rafael Swell Travel Management Plan (DOI-BLM-UT-G020-2019-0019-EA)

Dear SRS TMP Project Manager:

These comments on the BLM's Draft Environmental Assessment of the San Rafael Swell (SRS) Travel Management Plan (TMP) are an addendum of the supplement to the primary comments that all three of our groups submitted earlier today along with the Colorado Snowmobile Association and Colorado Off-Highway Vehicle Coalition.

1. Background of Our Organizations

In our comments, the "Organizations" will refer to the following three groups:

Colorado Off Road Enterprise (CORE) is a motorized action group based out of Buena Vista Colorado whose mission is to keep trails open for all users to enjoy. CORE achieves this through trail adoptions, trail maintenance projects, education, stewardship, outreach, and collaborative efforts.

Ride with Respect (RwR) was founded in 2002 to conserve shared-use trails and their surroundings. Since then, over 750 individuals have contributed money or volunteered time to the organization. RwR has performed over 20,000 hours of high-quality trail work on public lands, most of which was in the Moab Field Office. In the Price Field Office, RwR has participated in the 2008 RMP and subsequent travel planning.

The Trails Preservation Alliance (TPA) is an advocacy organization created to be a viable partner to public lands managers, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of motorized trail riding and multiple use recreation. The TPA acts as an advocate for the sport and takes necessary action to ensure that the USFS and BLM allocate a fair and equitable percentage of public lands to diverse multiple-use recreation opportunities.

2. Introduction

As stated in our supplement to the primary comments, the Organizations are providing feedback on the draft TMP because the BLM requested it, but we also urge you to start with amending the Price RMP and developing an SRS Recreation Area Management Plan (RAMP) before proceeding with the TMP.

In this addendum, the Organizations also urge your agency not to close routes for the sake of minimizing impacts to wilderness characteristics (WC) in lands with wilderness characteristics (LWC) units or natural areas (NAs).

In both LWC units and NAs, Alternative B closes many routes for the express purpose of minimizing impacts to WC, as stated in Section 2.2.3 on Page 23:

Alternative B prioritizes protection of resources, including, but not limited to, wildlife habitats, natural and cultural resources, ecosystems, and landscapes. OHV use is more constrained under this alternative than under any other alternative. For example, route closures were prioritized in BLM natural areas and LWCs...

In both LWC units and NAs, Alternative C closes many routes that may not be for the express purpose of minimizing impacts to WC, but the clear correlation between Alternative C closures and LWC units or NA status suggests that it's more than a coincidence. While Alternative C may close few routes in LWC units or NAs than Alternative A, Alternative A is based on a TMP that—in many parts of the planning area—is irrefutably incomplete in its development, implementation, and enforcement from 2008 to present. Alternative D is the baseline that most closely represents on-the-ground use patterns from 2008 to present, thus it's what visitors would regard as the status quo. Compared to Alternative D, Alternative C closes many routes, and it closes a higher percentage of routes in LWC units and NAs than in lands without WC. Figure 3-1, "Miles of Evaluated Routes by Alternative in LWC" on Page 37, shows 56% of LWC route miles closed in Alternative C compared to just 4% in Alternative D. In the planning area at large, Alternative C closes 21% of the total evaluated route network, thus Alternative C's closure percentage in LWC units is over 2.5 times greater than Alternative C's closure percentage in the planning area at large. Thus, while Alternative B is more severe than Alternative C in LWC units and NAs, Alternative C nevertheless minimizes impacts to WC as much or more than it minimizes impacts to other resources. These statistics suggest that even Alternative C closes many routes for the purpose of promoting WC, albeit less expressly and less severely than Alternative B.

The promotion of WC outside the designated wilderness in this planning area is inappropriate for many reasons that go back many years, including the 2008 Price RMP, the 2017 settlement agreement, the 2019 Dingell Act, and recent Supreme Court rulings as this addendum will outline.

3. 2008 Price RMP

The draft TMP in Section 3.3.2.1 "Affected Environment" on Page 34 states "LWC units are not solely managed for the protection of their wilderness character unless a BLM land use planning decision has been made to manage the unit as a BLM natural area." This statement is inaccurate in multiple ways. First, NAs are not solely managed for the protection of WC either. The BLM insists that NA designations don't constitute a decision because they can manage for WC among other things at the agency's discretion. If—as the draft TMP asserts—NAs are solely managed for the protection of WC, then they don't leave enough discretion to avoid recognizing NA designations as decisions. Second, LWC units are not even partly

managed for the protection of WC, as the BLM insists that LWC classification is purely descriptive. Thus the SRS TMP should not prioritize route closures in LWC units because the Price RMP directs the BLM to not manage for WC in those LWC units, yet Alternative B does so expressly and Alternative C does so effectively.

4. 2017 settlement agreement

The draft TMP in Section 3.3.2.1 "Affected Environment" on Page 34 states:

Similarly, the 2017 Settlement Agreement stipulates that "For purposes of minimizing damage to public lands with BLM-inventoried wilderness characteristics, the BLM will consider the potential damage to any constituent element of wilderness characteristics, including naturalness, outstanding opportunities for solitude, and outstanding opportunities for primitive and unconfined recreation, for each alternative route network."

Where the 2017 Settlement Agreement refers to minimizing damage to public lands with BLM-inventoried wilderness characteristics, it refers to minimizing damage to those public lands, not minimizing damage to the WC themselves. Furthermore the 2017 Settlement Agreement refers to considering the potential damage to any constituent element of WC, it directs the BLM to consider such damage, but it doesn't direct the BLM to minimize such damage. If the 2017 Settlement Agreement were to direct the BLM to minimize impacts to WC, it probably wouldn't have been approved by the court, which cautioned against creating de facto wilderness in its 2018 dismissal of Utah's appeal.

5. 2019 Dingell Act

5(a). Preserving the Balance Inherent to this Compromise Legislation

The Dingell Act designated roughly half of the SRS to be wilderness and the other half to be very accessible, which is what the Organizations reminded the Price Field Office of in our Price RMP Amendments scoping letter, "2022-01-07 Price RMP comm from CCOHVA-SRMC-RwR" (which is also Exhibit 3 of our primary comments from earlier today). Specifically our Price RMP Amendments scoping letter stated:

Please remember that Emery County agreed to the massive wilderness designation so the remaining areas would continue to be managed more inclusively by the multiple-use form of conservation. Indeed, settling the wilderness debate was the spirit shared by all congressional sponsors of the Emery County bill... the packaged Emery County bill of 2019 proposed to designate over 650,000 acres of wilderness, with those additional acres encompassing 73 miles of Class D roads and at least that many other motorized routes that had not been marked "closed" on the ground, nor had they even been analyzed for closure (through a complete travel-planning process that would start with a complete inventory of existing routes). The point is that designating approximately 660,000 acres of wilderness permanently closed many well-established routes to motorized and mechanized travel.

The Organizations reiterated these points in our SRS TMP scoping letter, "2021-03-03 SanRafSwel TMP scoping comm -RwR COHVCO TPA," which is enclosed. Our SRS TMP scoping letter concluded that "Route inventories in all parts of the TMA should include a baseline of all roads and trails, if any, that are or will be proposed to be closed as a result of the Dingell Act wilderness designation."

5(b). Accounting for the Permanent Closure of Existing Routes in New Wilderness Areas

Over three years later, the draft TMP fails to provide a baseline of all roads and trails that are in wilderness designated by the Dingell Act within the SRS TMP planning area. As stated, the Organizations are aware of 74 miles of Class D roads and at least that many miles of other motorized routes that were in continuous use for decades up to 2018 or later. Ten examples of such routes are enclosed. We are also aware that your agency has an inventory of these routes, so it would be easy for you to show them to the public on a planning map or at the very least acknowledge the total mileage of these routes permanently closed by wilderness designation, which is what the San Rafael Desert TMP did when acknowledging that 80 miles of existing routes were permanently closed by the Labyrinth Rims wilderness area.

5(c). Managing Displacement due to Closures by the Dingell Act and the Draft TMP Alternatives

Given that at least 150 miles of routes were permanently closed by wilderness designation in the SRD TMP planning area, displacement of that use to other parts of the planning area is inevitable, yet the draft TMP yet again denies the existing of such displacement from these routes or the hundreds of miles of routes that would be closed by alternatives B or C. The draft TMP in Section 3.3.4.1 "Affected Environment" on Page 51 states "Based on this prominent concentration of recreational use, even though the alternatives would change the route networks available for motorized recreation opportunities, they would not meaningfully change visitation to these popular areas nor would they result in visitor use being distributed differently across the TMA." In fact, displacement has already begun through blocking off the existing routes permanently closed by wilderness designation, and it would increase greatly by alternatives B or C that would result in blocking off hundreds of miles of more existing routes. This reality must be acknowledged and handled by any environmental assessment such as the draft TMP in order to successfully manage recreation and conserve resources.

5(d). Honoring the non-wilderness management for areas not designated as wilderness

The September 18th, 2019 Congressional Record from Senator Romney stated "The driving force for this compromise bill was the desire for countywide land use certainty." This certainty applies to non-wilderness areas just as it applies to wilderness areas. He elaborated:

For example, it was important to not close a road, trail, airstrip, or prohibit other existing use in the legislative text or corresponding map with a wilderness designation. Further, to avoid applying more restrictive designations, such as wilderness, to areas it would limit ongoing activity, such as grazing or recreation.

Clearly if Congress had intended NAs in the SRS TMP planning area to be managed as wilderness, it would've designated them as wilderness. This is yet another reason not to promote WC in NAs let alone LWC units.

5(e). Honoring continued access of the routes that comprise wilderness boundaries

The September 18th, 2019 Congressional Record from Senator Romney also stated:

On the topic of roads, stakeholders worked closely with BLM to ensure all roads in the 2008 Resource Management Plan were “cherrystemmed,” meaning they were not included in a wilderness designation. Our intent was to maintain these roads and for those designated as “open” to stay open. These cherry-stems are of various sizes and were intended to ensure an adequate corridor exists to facilitate necessary maintenance.

Given that Senator Romney's entire statement was roughly 700 words, it's reasonable to assume that this intent would apply to other types of routes that comprise wilderness boundaries, such as the Waterfall Trail. Yet this motorized singletrack that has been designated by the BLM and maintained by motorcycle groups for decades is closed in Alternative B. Such a closure would be a violation of the good-faith agreement that was shared among those that negotiated during this bill's process.

6. Recent Supreme Court Rulings

This year even more reasons have emerged for the BLM to avoid promoting WC in the SRS TMP planning area, specifically recent Supreme Court decisions such as *Loper Bright Enterprises v. Raimondo*, June 28, 2024 that reaffirmed the judicial review of an agency's legal interpretation. The draft TMP in Section 3.3.2.1 "Affected Environment" on Page 34 asserts "Distinct from any planning decisions, under 43 CFR § 8342.1 the BLM has the obligation to minimize impacts to resources, including wilderness character, when designating OHV routes." The BLM should be cognizant of the extent to which such agency guidance is actually grounded in legislation. When clear authorization is lacking, administrative actions are now more likely to be ruled a bypass of requirements such as the Section 603 release and Section 202 multiple-use mandate of FLPMA. The argument that the BLM is merely conducting minimization pursuant to the 2017 Settlement Agreement could be unavailing if that exercise is wholly or partially beholden to administratively-created special designations that wind up no longer holding under the glaring Congressional authority of the Section 603 release and Section 202 multiple-use mandate of FLPMA.

7. Conclusion

For all these reasons, the Organizations caution your agency against promoting WC outside of the many wilderness areas that have already been designated in the SRS TMP planning area. As for the many other natural and cultural resources, managing for them should start with completing an RMP amendment and RAMP before the TMP, as the proper order is important when planning motorized routes that are cherished by millions of Americans.

Sincerely,



Clif Koontz
Executive Director
Ride with Respect



Chad Hixon
Executive Director
Trails Preservation Alliance

A handwritten signature in black ink, appearing to read 'M. Trusty', with a stylized, cursive script.

Marcus Trusty
President/Founder
Colorado Off Road Enterprise









