

**Comments on RIN 1004–AE72 Increasing Recreational Opportunities Through the Use of Electric Bikes on behalf of:**

**Aiken Audubon Society • Back Country Horsemen of America  
Black Canyon Audubon Society • California Wilderness Coalition  
Center for Biological Diversity • Colorado Mountain Club  
Conservation Lands Foundation • Conserve Southwest Utah • Defenders of Wildlife  
Denver Audubon • Environmental Protection Information Center • Evergreen Audubon •  
Forest Issues Group • Friends of Nevada Wilderness • Friends of the Bitterroot  
Friends of the Inyo • Great Old Broads for Wilderness • Greater Yellowstone Coalition  
High Country Conservation Advocates • Idaho Conservation League  
Idaho Trails Association • Keep Routt Wild • Montana Wilderness Association  
Montana Wildlife Federation • National Audubon Society • Natural Resources Law  
New Mexico Wilderness Alliance • Oregon Wild • Quiet Use Coalition  
Rocky Mountain Recreation Initiative • Rocky Mountain Wild • San Juan Citizens Alliance  
San Luis Valley Ecosystem Council • Sheep Mountain Alliance • Sierra Club  
Sierra Forest Legacy • Soda Mountain Wilderness Council  
Southern Utah Wilderness Alliance • Teton Back Country Horseman  
The Wilderness Society • Upper Gila Watershed Alliance  
West Virginia Wilderness Coalition • Wild Connections • WildEarth Guardians  
Wilderness Workshop • Winter Wildlands Alliance • WY Backcountry Hunters & Anglers  
Wyoming Back Country Horsemen • Wyoming Wilderness Association**

June 9, 2020

*Submitted Electronically via [www.regulations.gov](http://www.regulations.gov)*

U.S. Department of the Interior, Director (630)  
Bureau of Land Management  
Mail Stop 2134 LM, 1849 C St. NW  
Washington, DC 20240  
Attention: RIN 1004–AE72

RE: RIN 1004–AE72 Increasing Recreational Opportunities Through the Use of Electric Bikes

On behalf of the 48 undersigned organizations, we are providing the Bureau of Land Management with the following comments on the agency’s proposed rule regarding Increasing Recreational Opportunities Through the Use of Electric Bikes, 85 Fed. Reg. 20,229 (April 10, 2020), RIN 1004–AE72. For the reasons articulated throughout these comments, the proposed rule is unnecessary, unlawful, and should be abandoned.

## I. Background

### A. E-BIKES ARE CONSIDERED MOTORIZED VEHICLES SUBJECT TO LONG-STANDING TRAVEL MANAGEMENT LAW AND POLICY

Motorized vehicles – referred to as “off-highway vehicles” (OHVs) or “off-road vehicles” (ORVs)<sup>1</sup> in governing law and policy – provide important access and recreational enjoyment on our public lands. BLM regulations define ORVs broadly to include any motorized vehicle capable of, or designed for, travel on roads, trails, or natural terrain,<sup>2</sup> and include everything from motor bikes to UTVs to snowmobiles to pick-up trucks. Over four decades of research has documented significant adverse environmental and social impacts associated with ORV use on public lands.<sup>3</sup>

Public lands managed by the BLM host more than 62 million recreation visits each year, a number that has nearly doubled in the last three decades.<sup>4</sup> These visitors enjoy a broad range of recreational pursuits, including hunting, fishing, camping, hiking, and viewing wildlife. Over the last half-century, recreational ORV use has dramatically increased. In southern California alone, ORV use has gone from almost none in the 1960s to more than 10 million user-days a year in the 2000s. For many years, BLM’s management strategy was to generally allow ORVs to be driven cross-country or on existing multiple-use trails. In many landscapes, unmanaged ORV use has

---

<sup>1</sup> The Bureau of Land Management generally uses the term “off-highway vehicle” or “OHV,” which is synonymous with off-road vehicle. For consistency across agencies and with the governing executive orders, this comment uses the term ORV.

<sup>2</sup> 43 CFR § 8340.0-5.

<sup>3</sup> For a selection of scientific studies, literature reviews, and other publications documenting these impacts, *see, e.g.*, Switalski, A., Off-highway vehicle recreation in drylands: A literature review and recommendations for best management practices, *Journal of Outdoor Recreation and Tourism* 21: 87–96 (2018), Attachment A; Wildearth Guardians, *The Environmental Consequences of Forest Roads and Achieving a Sustainable Road System* (March 2020), Attachment B; S.C. Trombulak & C.A. Frissel, Review of Ecological Effects of Roads on Terrestrial and Aquatic Communities, *Conservation Biology* 14:18-30 (2000), available at <http://onlinelibrary.wiley.com/doi/10.1046/j.1523-1739.2000.99084.x/pdf>; The Wilderness Society, *Science and Policy Brief, Habitat Fragmentation from Roads: Travel Planning Methods to Safeguard Bureau of Land Management Lands* (May 2006, No. 2), available at <https://partners.tws.org/wildscience/Publications1/Habitat%20Fragmentation%20from%20Roads.pdf>; U.S. Government Accountability Office, GAO-09-509, *Enhanced Planning Could Assist Agencies in Managing Increased Use of Off-Highway Vehicles* (2009), available at <http://www.gao.gov/assets/300/291861.pdf>; T. Adam Switalski & Allison Jones, *Off-road Vehicle Best Management Practices for Forestlands: A Review of Scientific Literature and Guidance for Managers*, *Journal of Conservation Planning* 8:12-24 (2012), available at [http://www.journalconsplanning.org/2012/JCP\\_v8\\_2\\_Switalski.pdf](http://www.journalconsplanning.org/2012/JCP_v8_2_Switalski.pdf); Adam Switalski, *Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management* (2014), available at <http://winterwildlands.org/wp-content/uploads/2015/02/BMP-Report.pdf>; Saul L. Hedquist et al., Public Lands and Cultural Resource Protection: A Case Study of Unauthorized Damage to Archaeological Sites on the Tonto National Forest, Arizona, *Advances in Archaeological Practice* 2(4): 298-310 (2014).

<sup>4</sup> Off-Highway Vehicle Management On Public Lands: Hearing Before the Senate Energy and Natural Resources, 112 Cong. (2008) (Statement of Henri Bisson); The Bureau of Land Management, *The BLM: A Sound Investment for America 2016*, available at: [https://www.blm.gov/sites/blm.gov/files/documents/files/AboutUs\\_SoundInvestmentsocioeconomicreport\\_lettersize\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/documents/files/AboutUs_SoundInvestmentsocioeconomicreport_lettersize_0.pdf).

resulted in vast spaghetti networks of user-created routes, with significant harmful impacts to soils, watersheds, air, and wildlife, public safety concerns, and conflicts among users.

In response to the growing use of ORVs and corresponding environmental damage and conflict, starting in the 1970s federal land management agencies including the BLM established policies and procedures designed to protect resources from unnecessary damage, promote public safety, and minimize conflicts by limiting ORV use to a designated system of areas and routes.<sup>5</sup> However, BLM has not completed the required travel management plans for many public land units.

BLM and other federal land management agencies have long identified e-bikes – which by definition have a motor – as off-road motorized vehicles subject to travel management laws and policies. Pursuant to BLM regulations, off-road vehicles are defined broadly as any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain.<sup>6</sup> BLM regulations also require ORV use be confined to a designated system of routes and areas.<sup>7</sup> Further, BLM Manual 1626 specifically states:

Electric bicycles, also referred to as e-bikes, are to be managed in a manner consistent with off-highway vehicles (off-road vehicles) as defined in 43 CFR 8340.0-5(a). Such management applies to all types of e-bikes, including pedal-assist models designed for speeds below 20 miles per hour.<sup>8</sup>

All classes of e-bikes are ORVs, and their use is restricted to motorized routes designated in accordance with BLM’s travel management regulations.<sup>9</sup>

Travel management laws and policies dating back to the Nixon administration require *all motorized* recreational uses of public lands be confined to a system of roads, trails, and areas designated in compliance with the so-called “minimization criteria.”<sup>10</sup> BLM codified the “minimization criteria” in its travel management regulations at 43 C.F.R. § 8342.1, which provide:

The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands; and in accordance with

---

<sup>5</sup> See 43 C.F.R. part 8340; Exec. Order No. 11,644, §§ 1 & 3 (Feb. 8, 1972), as amended by Exec. Order No. 11989 (May 24, 1977); BLM Manual 1626.

<sup>6</sup> 43 C.F.R. § 8340.0-5(a); see also Exec. Order No. 11,644, § 2(3) (“any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain”).

<sup>7</sup> *Id.* § 8342.1

<sup>8</sup> BLM Revised Manual 1626, ch. 6.9.

<sup>9</sup> 43 C.F.R. § 8340.0-5; see also, e.g., *Winter Wildlands All. v. United States Forest Serv.*, No. 1:11-CV-586-REB, 2013 U.S. Dist. LEXIS 47728, at \*32 (D. Idaho Mar. 29, 2013) (“the Executive Order requires the Forest Service to ensure that *all* forest lands are designated for *all* off-road vehicles” (emphasis in original)).

<sup>10</sup> See Exec. Order No. 11,644, §§ 1 & 3 (Feb. 8, 1972), as amended by Exec. Order No. 11989 (May 24, 1977); 36 C.F.R. Part 212; 43 C.F.R. Part 8340.

the following criteria:

- (a) 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.
- (b) Areas and trails shall be located 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.
- (c) Areas and trails shall be located to minimize conflicts between off-road vehicle 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.
- (d) 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.

Collectively, case law confirms the agencies' substantive obligation to meaningfully apply and implement – not just identify or consider – the minimization criteria when designating each area or trail, and show in the administrative record how they did so.<sup>11</sup> As a circuit court of appeals decision confirmed, agencies must “document how [they] applied [relevant] data on an area-by-area [or route-by-route] basis with the objective of minimizing impacts.”<sup>12</sup> BLM's Travel and Transportation Management (TTM) Manual confirms that BLM must pay particular attention to thoroughly documenting its application of the minimization criteria in making both ORV area designations<sup>13</sup> and route designations.<sup>14</sup>

This long-standing designation process is fully adequate to address needs for additional e-bike trail opportunities. In fact, BLM has recently designated or is in the process of designating a number of new e-bike trails under existing laws and policies, as described further below.

## **B. EXPANDED E-BIKE USE IS LIKELY TO LEAD TO NUMEROUS ECOLOGICAL AND SOCIAL IMPACTS**

### **i. E-bikes classes**

In the preamble, BLM requests information on use of Class 1, 2, and 3 e-bikes on roads and trails on public land, as a new and evolving technology.<sup>15</sup> E-bikes are bicycles with an integrated motor that provides power assist to the operation of the bicycle.<sup>16</sup> Initially, e-bikes were designed for use on public roads and paved pathways. A recent new product category is the e-MTB (e-mountain bike), which brings similar power assist to mountain bikes. The growth of e-bikes has

---

<sup>11</sup> See, e.g., *Idaho Conservation League v. Guzman*, 766 F. Supp. 2d 1056, 1072-73 (D. Idaho 2011) (consideration of the minimization criteria insufficient where agency failed to demonstrate that the criteria “were then implemented into the decision process”).

<sup>12</sup> *WildEarth Guardians v. U.S. Forest Serv.*, 790 F.3d 920, 931 (9th Cir. 2016).

<sup>13</sup> BLM Manual 1626, ch. 3.3.

<sup>14</sup> BLM Manual 1626, ch. 4.1.

<sup>15</sup> 85 Fed. Reg. at 20,231.

<sup>16</sup> For more detailed information, see Attachment L, “Appendix I.”

been driven by advent of lithium-ion batteries, which brings many power and weight advantages over the initial use of NiCad (nickel-cadmium) batteries.

An e-bike's system is composed of a small electric motor, a rechargeable battery, and a motor controller. The system can add power in addition to that put out by the rider (class 1 and 3 e-bikes add power only when the rider is pedaling), or the e-bike can be exclusively propelled by the motor via a throttle control (class 2) with no pedaling required. E-bikes may be pedaled without power assist, though their heavier weight may discourage many riders from doing so. A typical e-bike will give the rider control over the amount of assist, or "boost," available from the bike through a control on the handlebar.

Additional restrictions are dependent on the class of the e-bike. The three classes include class 1, class 2, and class 3 e-bikes. The proposed rule defines each class as the following:

- **Class 1:** Bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 20 mph.
- **Class 2:** Bicycle equipped with a throttle-actuated motor, no pedaling required, that ceases to provide assistance when the e-bike reaches 20 mph.
- **Class 3:** Bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 28 mph.<sup>17</sup>

A 750-watt limit is well above the sustained power output of even the most elite athlete, which we will demonstrate below. While this is not a major issue for e-bikes' initial use model on a public road where motorized vehicular traffic already exists, it brings up serious issues of user compatibility and wildlife impacts when placing these same vehicles on a path meant for non-motorized hiking or biking.

The 750-watt limit for all classes of e-bikes bring superhuman capabilities to the rider, well beyond sustainable power limits of even the most elite athletes. This enables much higher speeds, particularly when traveling uphill when the speed limit of the boost is never

---

<sup>17</sup> Proposed § 8340.0-5(j)(1-3).

reached.<sup>18</sup> 750 watts is several times the power of the average recreational athlete.<sup>19</sup> The speed limits of each of the current e-bike classes were chosen as the sole method to limit performance, by eliminating boost above certain speeds. This method limits performance when the e-bike is traveling on a level or downhill slope, as these speeds are easily reached on flat paved surfaces. However, when the slope turns decidedly uphill, the speed limits are never reached, and full boost remains applied. This is the situation for most non-motorized trails on public lands, where dirt paths and rolling terrain keep even fit mountain bikers to single digit speeds, but could be traversed by an e-bike at very high power and much higher speeds.

These lower average speeds while on trails can be seen when observing the speeds of recreational and competitive mountain biking. For example, the 2016 Summer Olympics were held in Brazil, and featured men and women cross-country mountain biking. The men's race winner completed the course with an average speed of 13.77 mph, while the women's race winner completed the course with an average speed of 12.26 mph.<sup>20</sup> Meanwhile, a 2007 article from Singletracks Magazine reported that the average speed of all Singletracks readers who uploaded speed data across all trails was 6.98 mph.<sup>21</sup> A study performed by researchers from the US Forest Service and Oregon Fish and Game measured the average speed of recreational mountain bikers at 2.2 m/s, or 4.9 mph.<sup>22</sup>

A BYU study confirmed the increased speed of e-bikes on trails.<sup>23</sup> Researchers recruited 33 amateur cyclists and outfitted them with heart rate monitors and GPS devices. Each were randomly assigned either a conventional or electric mountain bike, and then sent out on a 5.5-mile study loop. After finishing the loop, the riders rode the loop again on the bike they didn't use the first time. The e-bike model used by the riders for the study was a Class-1 pedal-assist

---

<sup>18</sup> Ross Tucker, *Tour de France 2009: Power estimates*, *Science of Sport* (Jul. 14, 2009), available at: <https://sportsscientists.com/2009/07/tour-de-france-2009-power-estimates/> (estimating famed L'Alpe d'Huez climb in the 2004 Tour de France had an average power output of 495 watts); Reed Albergotti, *Cycling's One-in-a-Million Story*, *The Wallstreet Journal* (Aug. 10, 2009), available at: <https://www.wsj.com/articles/SB10001424052970204908604574334741597350028> (stating female cyclist Evelyn Stevens ascended Mt. Bachelor, Oregon to win the 2009 Cascade Cycling Classic with an average of approximately 260 watts); Robbie Gonzalez, *The Insane Numbers Behind Cycling's Most Masochistic Race*, *Wired* (Jan. 11, 2019), available at: <https://www.wired.com/story/cycling-hour-record-almost-impossible/> (stating Evelyn Stevens broke the women's one-hour cycling record to travel 29.81 miles with a sustained power output of approximately 300 watts and Bradley Wiggins broke men's one-hour cycling record to travel 33.881 miles with a sustained power output of approximately 440 watts).  
*Cycling Power to Weight Ratio Calculator*, DataCracker, <https://datacranker.com/cycling-power-to-weight-ratio-calculator/> (showing the output of 120-pound female fit recreational cyclist for one hour is 109 watts and the average output of 160-pound male fit recreational cyclist for one hour is 174 watts);

<sup>19</sup> *Id.*

<sup>20</sup> *Cycling Mountain Bike Rio 2016*, Olympics, <https://www.olympic.org/rio-2016/cycling-mountain-bike>

<sup>21</sup> Barber, Jeff, *Are you fast or slow? Epic or not?*, *SingleTracks* (May 29, 2007), <https://www.singletracks.com/uncategorized/are-you-fast-or-slow-epic-or-not/>.

<sup>22</sup> Michael Wisdom, et. al., *Effects of Off-road Recreation on Mule Deer and Elk*, *Transactions of the 69th North American Wildlife and Natural Resources Conference* 531 (2004).

<sup>23</sup> Cougar Hall, et. al., *Pedal-Assist Mountain Bikes: A Pilot Study Comparison of the Exercise Response, Perceptions, and Beliefs of Experienced Mountain Bikers*, *JMIR Form Res.* (Aug. 13, 2019), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6711045/>.

2017 Specialized Turbo Levo FSR Comp Carbon 6Fattie. This e-bike has a 250-watt motor, one-third of the power-assist permitted under the proposed rule.<sup>24</sup>

The riders' times and heart rates were compared between using a conventional mountain bike and an e-bike. Though the power-assist was limited to just 250 watts, riders exhibited dramatic increases in average speed. Riders using e-bikes reduced the average time in completing the course from 38:54 (min:seconds) to 26:14.<sup>25</sup> This equates to increasing the average speed from 8.8 mph to 12.9 mph, a speed increase of nearly 50%.<sup>26</sup> Furthermore, they achieved this higher speed on an e-MTB with lower heart rates.<sup>27</sup> The average heart rate dropped 10 beats per minute from 155 bpm to 145 bpm.<sup>28</sup> 10 bpm represents a significant decrease of intensity for fit recreational athletes.<sup>29</sup>

All riders were polled before and after the test rides. In a post-ride poll, 28 of the 33 riders (85%) agreed with the statement, "I believe my heart rate is considerably lower while riding an e-MTB as compared with my conventional mountain bike."<sup>30</sup> 100% of the riders agreed with the statements, "I believe e-MTB use allows riders to ascend or climb greater distances and elevations in less time on dirt trails" and "I believe that e-MTB use allows riders to bike longer distances."<sup>31</sup>

Again, these results reflect the experience of using a 250-watt e-bike, one-third the power-assist permitted under the proposed rule.

With up to 750 watts being supplemented by the electric motor, e-bikes enable a rider to achieve superhuman speeds. Recreation users can exceed speeds and power outputs of world record holding athletes.<sup>32</sup> Besides speed, e-bikes will enable a rider to go further on trails and deeper into public lands than with a human powered bike.<sup>33</sup>

## ii. Safety concerns & recreational conflicts

The BLM's Manual for Trails and Travel Management defines user, or recreational, conflict as "perceptions, often expressed as concerns, fears and unease, and involve a variety of issues ranging from safety to resource impacts."<sup>34</sup> The social science literature is replete with studies addressing recreational conflict and defines it primarily in terms of "goal interference" between

---

<sup>24</sup> Rob Weaver, *Specialized Turbo Levo FSR Comp Carbon 6Fattie/29 e-MTB first ride review*, BikeRadar (July, 15, 2017), available at: <https://www.bikeradar.com/reviews/bikes/mountain-bikes/specialized-turbo-levo-fsr-comp-carbon-6fattie-29-e-mtb-first-ride-review/>.

<sup>25</sup> Hall et. al., *supra* note 22.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Tucker, *supra* note 17; *see* 85 Fed. Reg. at 20,231 (BLM "expects that the changes directed by the proposed rule would result in an increase in e-bike ridership on public lands").

<sup>33</sup> E-bike range is dependent on a number of variables: levelness of terrain, weight of bike and rider, tire and pressure, trail attributes, and the amount of power supplied by the rider.

<sup>34</sup> Bureau of Land Management, Manual for Trails and Travel Management Rel. No. 8-82 (Mar. 16, 2012), 64, available at: <https://www.ntc.blm.gov/krc/uploads/750/8342%20-%20TTM%20Planning%20Handbook.pdf>.

one form or forms of recreational activity versus another. For example, feelings of conflict have been documented to occur among trail users when acts of great speed, reckless behavior, or environmental damage (presumably caused by another user) are witnessed. As described below with reference to the BLM's Proposed Rule, recreational conflict of this nature can lead to reduced opportunity and displacement of recreationists from places they would normally frequent.<sup>35</sup>

On the topic of minimizing user conflict, the BLM TTM Manual lists first, among eight topics: "Difference in speed of travel between different trail user groups."<sup>36</sup> This is consistent with published scientific literature regarding trail conflict, including literature reviews published by the federal government that clearly state that "Speed is a major source of conflict between trail users."<sup>37</sup>

Hikers and equestrians travel along natural surface trails at speeds that average 5 mph or less. Of the three classes of e-bikes addressed in the proposed Rule, both class 1 and class 2 e-bikes provide motor-assisted speeds up to 20 mph, while class 3 e-bikes provide the rider with a motor assist up to 28 mph. Capable riders can exceed the maximum motor-assisted speed.

Additionally, equestrians and hikers, and particularly those hiking with small children, often will choose to avoid trails where there is a potential for encounters with fast-moving bicycles. When selecting among trails available in a given area, a key criterion shared by equestrians is safety concerns and the sometimes unpredictable response of their horses or mules in the event of a surprise on-trail encounter. The ability of e-bikes to travel at relatively high speeds, combined with their often silent approach, elevate the potential for such dangerous encounters.

The rapid speeds at which e-bikes are capable of traveling on shared-use trails, combined with their often silent approach, would create significant safety hazards for public land visitors either on foot or on horseback. The safety hazard would be compounded on trails that are either steep, narrow or winding and which serve to minimize adequate line-of-sight by users traveling in either direction.

At present, there are conflict and safety issues on BLM public lands associated with fast-moving mountain bike use and the presence of traditional trail users like hikers and equestrians. The issue has risen to such a level of concern in some locations that it has compelled the creation of either:

- Trails on which mountain bikes are designated as the primary intended use, or

---

<sup>35</sup> Moore, R.L., *Conflicts on multiple-use trails: Synthesis of the literature and state of the practice*. Fed. Hwy. Admin. Rep. No. FHWA-PD-94-031 (1994); Stokowski, P.A. and C.B. LaPointe, *Environmental and social effects of ATVs and ORVs: An annotated bibliography and research assessment*. School of Natural Resources, University of Vermont, Burlington, VT (2000).

<sup>36</sup> Bureau of Land Management, Manual for Trails and Travel Management Rel. No. 8-82 (Mar. 16, 2012), 64, available at: <https://www.ntc.blm.gov/krc/uploads/750/8342%20-%20TTM%20Planning%20Handbook.pdf>.

<sup>37</sup> Federal Highway Administration (FHWA) and the National Recreational Trails Advisory Committee, *Conflicts on Multi-Use Trails: Synthesis of the Literature and State of the Practice* (1994), available at: [https://safety.fhwa.dot.gov/ped\\_bike/docs/conflicts.pdf](https://safety.fhwa.dot.gov/ped_bike/docs/conflicts.pdf).



- Directional mountain-bike downhill trails as means to keep hikers and equestrians out of harm's way.

An e-bike, which is capable of rapid acceleration and speeds in excess of a standard mountain bike, would represent a further danger to other trail users, particularly along relatively flat or uphill terrain where higher than normal speeds could be attained via the motorized assist.

As described elsewhere throughout these comments, these safety and user conflict impacts must be fully analyzed under NEPA and minimized under travel management law and policy.

### **iii. Wildlife impacts**

The sections above demonstrate the increased speed and range attained by e-bikes when compared to non-motorized travel. Both of these factors can also impact wildlife negatively, leading to habitat loss and fragmentation.<sup>38</sup>

There is significant evidence that a greater speed of trail use displaces wildlife further away from those trails. Allowing faster modes of travel on trails will result in greater impacts on wildlife due to a larger trail zone of influence, further limiting quality habitat and habitat security. We will show below that both the width and the length of the disturbance zone is significantly increased with the speed and range that comes from e-bikes and extends well past that of non-motorized travel.

In the early 2000s researchers from the US Forest Service and the Oregon Department of Fish and Wildlife conducted a study on the impacts from recreation titled *Effects of Off-Road Recreation on Mule Deer and Elk*.<sup>39</sup> The study, commonly referred to as the “Wisdom Study” led by US Forest Service biologist Mike Wisdom, placed radiocollars on mule deer and elk within an enclosed area in eastern Oregon, and then subjected the ungulates to specific recreation activities - hiking, horseback riding, mountain biking, and ATVs.<sup>40</sup> By looking at a large number of radio-collared animals, they could model the probability that the animals would flee, and at what distance, for each specific activity.<sup>41</sup> The results showed, specifically with elk, a wide disturbance distance from the trail, with the results varying with activity.<sup>42</sup> Chief researcher Dr. Michael Wisdom subsequently stated, “We saw that their flight response occurred at distances over 1000 meters (3,218 feet) for ATVs and close to that for mountain bikes, and more like 500 to 750 meters (1,640 to 2,460 feet) for horseback riding and hiking and “[y]ou’ve basically reduced what we call carrying capacity, the number of animals that can make a living on the landscape.”<sup>43</sup>

---

<sup>38</sup> For more detailed information, see Attachment L, “Appendix 1.”

<sup>39</sup> Michael Wisdom, et. al., *Effects of Off-road Recreation on Mule Deer and Elk*, Transactions of the 69th North American Wildlife and Natural Resources Conference 531 (2004), available at: [https://www.fs.fed.us/pnw/pubs/journals/pnw\\_2004\\_wisdom001.pdf?fbclid=IwAR323w8YN5MH1LTG35QL\\_eqPExqBgy06Q3XbKIvehV\\_Tn8SB7T0j5DQJm8w](https://www.fs.fed.us/pnw/pubs/journals/pnw_2004_wisdom001.pdf?fbclid=IwAR323w8YN5MH1LTG35QL_eqPExqBgy06Q3XbKIvehV_Tn8SB7T0j5DQJm8w) & Attachment K.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> U.S. Forest Service Pacific Northwest Research Station, *Seeking Ground Less Traveled: Elk Responses to Recreation*, Science Findings (Sept. 2009), available at: <https://www.fs.fed.us/pnw/sciencef/scifi219.pdf>.

Additionally, there is a clear correlation between speed of the activity and the disturbance distance from the trail.<sup>44</sup> While a single user may have a finite probability of disturbing an elk, successive users on the same trail increase the probability of disturbance asymptotically towards 100%. While a 5-mph mountain bike disturbs elk up to 750m from each side of the path, disturbance would increase that to 1150 meters if the bike doubled its speed to 10-mph, easily attainable on an e-bike.<sup>45</sup> Not only is the disturbance width increased, but the faster bike travels further per hour as well, potentially disturbing much greater areas of habitat.<sup>46</sup>

Speed impacts the disturbance footprint in two ways. The disturbance width increases with speed, but so does the distance traveled.<sup>47</sup> The disturbed area is the product of length traveled multiplied by the disturbance width. With multiple users per day on the same trail, this disturbance footprint leads to a permanent loss of habitat and habitat fragmentation.<sup>48</sup>

The area disturbed increases non-linearly with speed. A 15-mph e-bike would expect to disturb 30 square miles of elk habitat per hour, while a human-powered bike travelling at 5-mph average would disturb only 5 square miles per hour. The observation from this is that even a few users using e-bikes at heightened speed can add large cumulative disturbances to elk habitat.

Finally, research demonstrates that disturbance during calving season can lead to a high mortality of elk calves.<sup>49</sup> In one study, a radio-collared cow elk was approached during calving season until she was “displaced”, essentially fleeing.<sup>50</sup> Each event counted as a disturbance. The study showed elk calf/cow ratios declined by approximately 40% as a result of this human disturbance. The second half of the study involved removing the human disturbance component.<sup>51</sup> With the human disturbance removed the calf/cow ratios rebounded to their pre-treatment levels.<sup>52</sup>

The Phillips study averaged eight disturbances per cow elk to result in 40% fewer surviving calves, or about 5% mortality per disturbance.<sup>53</sup> This is a remarkably high mortality rate from a single disturbance. The researchers speculated that the high mortality rate was largely due to predation - that each disturbance of the cow elk also led to the calf fleeing or being unprotected. The calving season disturbance study used the same definition of a disturbance as in the Wisdom study (an elk fleeing), allowing the Wisdom parameters to be used when protecting calving areas. This is a major reason for the timing of trail closures that bring users near or through elk calving areas (typically May 15 to late June).<sup>54</sup>

---

<sup>44</sup> Mary Rowland, *Elk Response to Recreation on Public Forests*, Recreation and Wildlife Resources Workshop (May 7, 2018), available at: <https://ecoshare.info/wp-content/uploads/2018/06/6-Rowland.pdf>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Gregory E. Phillips & A. William Alldredge, *Reproductive Success of Elk Following Disturbance by Humans During Calving Season*, 64 *Journal of Wildlife Management* 521 (2013), <https://www.emwh.org/pdf/elk/Reproductive%20success%20of%20elk%20following%20disturbance%20by%20humans%20during%20calving%20season%202000.pdf>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

The increased speed of e-bikes significantly increases the disturbance width, requiring a reevaluation of any trail in proximity of elk calving areas. Trails that were considered outside a calving area may find that they are impacting elk calves due to the increased speed of travel.

An interesting correlation from the Wisdom study above is speed. Each successively faster activity comes with a wider disturbance zone. A likely explanation is that speed reduces the time an animal has to react, and a surprised animal is more likely to flee than hide. This has been shown, tragically, to be true when looking at mountain bikes and grizzly bears.

A multi-agency Board of Review investigation into the death of Brad Treat who was fatally mauled by a grizzly near West Glacier, Montana wrote the following:

Mountain biking is a recreational activity that involves increased risk and danger of surprise encounters with bears because: 1) it is relatively quiet; 2) the high speed of bike travel compared to hiking; and 3) the necessity of the bike rider to focus his/her vision down on the trail close to the bike to avoid obstacles instead of looking ahead for bears, especially on single-track trails. With the increase in mountain biking, surprise encounters with bears resulting in human injuries and possibly deaths are likely to increase.<sup>55</sup>

The high-speed and silent nature of mountain bikes with respect to bears is exacerbated with higher-speed and silent e-bikes.<sup>56</sup> In fact, the Board of Review investigating the death of Brad Treat published recommendations to related to mountain bike safety in bear habitat and included a recommendation to slow down.<sup>57</sup>

Researchers in grizzly bear recovery – like Dr. Christopher Servheen, who spent four decades at the helm of the U.S. Fish and Wildlife Service’s Grizzly Bear Recovery Team in the West, and – conclude that a combination of high speeds and quiet human activity like mountain biking result in significant displacement impacts along trails for grizzly bears.<sup>58</sup> Bikes further degrade

---

<sup>55</sup> *The death of Mr. Brad Treat due to a grizzly bear attack June 29, 2016 on the Flathead National Forest*, Board of Review Report (Mar. 3, 2017), available at: [http://igbconline.org/wp-content/uploads/2016/03/160629\\_BOR\\_Report\\_Treat\\_NCDE.pdf](http://igbconline.org/wp-content/uploads/2016/03/160629_BOR_Report_Treat_NCDE.pdf).

<sup>56</sup> *Recommendations related to mountain bike safety in bear habitat based on the fatality of Mr. Brad Treat on June 29, 2016*, Board of Review Report (Mar. 3, 2017), available at: [http://igbconline.org/wp-content/uploads/2016/03/160629\\_BOR\\_Recomm\\_Treat\\_NCDE.pdf](http://igbconline.org/wp-content/uploads/2016/03/160629_BOR_Recomm_Treat_NCDE.pdf) (“Previous research had shown that grizzly bears are more likely to attack when they first become aware of a human presence at distances of less than 50 meters. Herrero and Herrero (2000) concluded that mountain bikers travel faster, more quietly, and with closer attention to the tread than hikers, all attributes that limit place on a fast section of trail that went through high-quality bear habitat with abundant berries”).

<sup>57</sup> *Id.* (“Slow Down – Encounters with bears are much more likely to occur when riding at high speed. Surprised bears are more likely to be defensive and to cause injury to bike riders. High-speed encounters can cause enhanced aggression in bears and may cause bears to chase you and possibly knock you off your bike. Riding at high speed can be especially dangerous where there is little sight distance ahead or to the sides of the trail where you can surprise a bear at close range. Areas with curves in the trail or thick vegetation require slow speeds and making noise as you ride to alert bears to your presence.”).

<sup>58</sup> Todd Wilkinson, *Griz Expert Says 'Mountain Bikes Are A Grave Threat To Bears'*, Mountain Journal (May 26, 2020), [https://mountainjournal.org/scientists-say-mountain-biking-negatively-impacts-bears\\_](https://mountainjournal.org/scientists-say-mountain-biking-negatively-impacts-bears_) (“High speed and quiet

the wilderness character of wild areas by mechanized travel at abnormal speeds.<sup>59</sup> While going uphill a mountain biker slows to a speed that disturbs a bear no more than a hiker would; higher speeds on smooth surfaces or downhill are problematic.<sup>60</sup> The issue with e-bikes are that they enable this higher speed not only on downhills, but increasingly on flat sections and uphill. In fact, e-bikes can enable these higher speeds on all sections of a trail. We note that this is not merely a safety issue; it has direct impact on bear habitat.<sup>61</sup>

It is not surprising that wildlife often avoids recreational use that has higher speeds. The studies cited above are detailed examples showing these effects. Other studies show how birds adjust their flight distance to the speed limits of roadways.<sup>62</sup> Research also demonstrates that the hunting best-practice of walking slowly is a direct consequence of observing a wide variety of prey disturbed at higher speeds.<sup>63</sup>

The e-bike classifications allow up to 750 watts of supplemental power, limited at 20 or 28 miles per hour. This is well beyond the power and speeds of human non-motorized recreation. For a large breadth of wildlife, these speeds will lead to wider and longer disturbance zones than would be the case with non-motorized travel. As described elsewhere throughout these comments, these impacts must be fully analyzed under NEPA and minimized under travel management law and policy. Likely effects to endangered and threatened species also must be subject to consultation under the Endangered Species Act.

#### **iv. Impacts to wilderness values & increased potential for trespass into remaining non-motorized areas/trails**

Section 201 of the Federal Land Policy and Management Act (FLPMA) requires the BLM to maintain on a continuing basis an inventory of all public lands and their resources and other values, including lands with wilderness characteristics. IM 2011-154 and Manuals 6310 and 6320 set forth the agency's current policy for implementing that requirement. The IM directs BLM to "conduct and maintain inventories regarding the presence or absence of wilderness characteristics, and to consider identified lands with wilderness characteristics in land use plans and when analyzing projects under [NEPA]." Manual 6310 requires BLM to consider whether to update or conduct a wilderness characteristics inventory when a project that may impact wilderness characteristics is undergoing NEPA analysis.<sup>64</sup> Manual 6320 requires BLM to ensure

---

human activity in bear habitat is a grave threat to bear and human safety and certainly can displace bears from trails and along trails").

<sup>59</sup> *Id.* ("The key factors of mountain biking that aggravate its impact on wildlife are high speed combined with quiet travel").

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* ("Wild public lands that currently have grizzly bears present have those bears because of the characteristics of these places: visual cover, secure habitat, natural foods, and spring, summer, fall and denning habitat. All these factors can be compromised by excessive human presence, high speed and high encounter frequencies with humans").

<sup>62</sup> Pierre Legagneux and Simon Ducatez, *European birds adjust their flight initiation distance to road speed limits*, *Biology Letters* 9 (Oct. 23, 2013), available at: <https://doi.org/10.1098/rsbl.2013.0417>.

<sup>63</sup> L. Jack Lyon & Milo G. Murcham, *Tracking Elk Hunters with the Global Positioning System*, U.S. Forest Service Research Paper (Feb. 1998), available at: [https://www.fs.fed.us/rm/pubs/rmrs\\_rp003.pdf](https://www.fs.fed.us/rm/pubs/rmrs_rp003.pdf) & Attachment J (measuring the average speed of elk hunters on foot to be 40 meters per minute, or approximately 1.5 mph, about half the speed of recreational hikers in the Wisdom study).

<sup>64</sup> Manual 6310 at .06(A)(4).

that “wilderness characteristics inventories are considered and that, as warranted, lands with wilderness characteristics are protected in a manner consistent with this manual in BLM planning processes.”<sup>65</sup>

Congress has defined lands with wilderness characteristics as contiguous blocks of unroaded public lands generally exceeding 5,000 acres in size that are natural in appearance to the average visitor and contain either outstanding opportunities for solitude or outstanding opportunities for primitive and unconfined recreation. While non-motorized trails, including mechanized trails, do not necessarily disqualify an area from consideration as lands with wilderness characteristics, BLM has cited such uses as contributing rationale for determining that an area does not meet the criteria for lands with wilderness characteristics. Mechanized use, whether including motorized e-bikes or not, can degrade wilderness characteristics, and, if such use is pervasive can cumulatively result in an area no longer meeting the criteria for lands with wilderness characteristics, because of impacts to the outstanding opportunities for solitude and primitive and unconfined recreation. BLM may also cite such uses as reasons to either disqualify an area from consideration as lands with wilderness characteristics, or as rationale for deciding not to protect inventoried lands with wilderness characteristics in a land use planning process. Additionally, such uses, once permitted, are exceedingly difficult to revoke, as recreational constituencies are typically loss averse. The Proposed Rule could lead to increased degradation of lands with wilderness characteristics through trail construction and maintenance, and through increased mechanized and motorized recreational use of an area. BLM must consider the impacts of e-bike use on lands with wilderness characteristics.

Permitting e-bikes on non-motorized trails, with associated changing recreational use trends and e-bike riders travelling further and faster into the backcountry, also increases potential for trespass into non-motorized areas, including designated wilderness, onto non-motorized national scenic trails, or other protected areas.

### **C. SECRETARIAL ORDER 3376 & THE PROPOSED RULE**

On August 29, 2019, Secretary of the Interior David Bernhardt (the “Secretary”) issued Secretarial Order No. 3376 (“SO 3376”) declaring a new policy that e-bikes are to be allowed wherever non-motorized bicycles are allowed.<sup>66</sup> SO 3376 requires land management agencies within the Department of the Interior to implement that policy by developing proposed rules on e-bikes, delivering reports to the Secretary on policy changes enacted by the agencies, and publishing public guidance regarding e-bike use on public lands.<sup>67</sup> It is unclear whether BLM provided the reports required under SO 3376, which must be made publicly available, as articulated in section II below. SO 3376 specifies that, “to the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations

---

<sup>65</sup> Manual 6320 at .04(C)(2).

<sup>66</sup> Department of the Interior, Secretarial Order No. 3376, § 4 (Increasing Recreational Opportunities through the use of Electric Bikes) (Aug. 29, 2019).

<sup>67</sup> *Id.* § 5. Specifically, SO 3376 instructs the BLM to “revise 43 CFR § 8340.0-5 and any associated regulations to be consistent with this Order add a definition for e-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from the definition of off-road vehicles or motorized vehicles.” *Id.* § 5(b)(v).

will control.”<sup>68</sup> Subsequently, BLM published Information Bulletin No. 2020-003 on October 22, 2019.<sup>69</sup>

To implement SO 3376’s policy directives, BLM released its proposed rule on April 2, 2020 via press release.<sup>70</sup> A Federal Register notice followed on April 10, 2020.<sup>71</sup> BLM’s proposed rule would exempt all three classes of e-bikes equipped with motors up to 750 watts from the long-standing travel management laws and policies that govern ORVs.<sup>72</sup> It would do so by excluding e-bikes from the definition of an ORV, wherever: (i) “used on roads and trails upon which mechanized, non- motorized use is allowed;” (ii) “being used in a manner where the motor is being used exclusively to propel the e-bike;” and (iii) “the authorized officer has expressly determined, as part of a land- use planning or implementation-level decision, that e-bikes should be treated the same as non-motorized bicycles.”<sup>73</sup> The proposed rule instructs authorized officers to “generally allow” e-bikes on mechanized, non-motorized trails “unless the authorized officer determines that e-bike use would be inappropriate on such roads or trails.”<sup>74</sup> In short, the proposed rule would create a rebuttable presumption that all classes of e-bikes – including those with a throttle – are permitted wherever non-motorized bicycles are allowed.

BLM did not conduct NEPA analysis for the proposed rule, but instead relies on the categorical exclusion under 43 CFR 46.210(i).<sup>75</sup> As rationale, BLM claims the proposed rule is administrative and procedural in nature and would not result in any environmental effects.<sup>76</sup>

#### D. SUMMARY OF COMMENTS

Under the Administrative Procedure Act, 5 U.S.C. § 706, agency actions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”<sup>77</sup> When an agency changes policy, as is the case here, it must “provide a more detailed justification than what would suffice for a new policy created on a

---

<sup>68</sup> *Id.* § 6.

<sup>69</sup> The Information Bulletin’s approach of categorizing e-bikes as an officially authorized use was clearly unlawful and does not, to our knowledge, appear to have been implemented. The Bureau of Land Management, Information Bulletin No. 2020-003, Information on Secretary’s Order 3376 *Increasing Recreational Opportunities through the use of Electric Bikes* (SO 3376). Available at: <https://www.blm.gov/policy/ib-2020-003>; see Attachment C, “Letters to Field Offices.”

<sup>70</sup> The Bureau of Land Management, BLM SEEKS PUBLIC COMMENT ON PROPOSED E-BIKE REGULATIONS, Apr. 2, 2020. Available at: <https://www.blm.gov/press-release/blm-seeks-public-comment-proposed-e-bike-regulations>.

<sup>71</sup> Increasing Recreational Opportunities Through the Use of Electric Bikes, 85 Fed. Reg. 20229 (Apr. 10, 2020).

<sup>72</sup> Proposed § 8340.0–5(a)(5), (j).

<sup>73</sup> Proposed § 8340.0–5(a)(5).

<sup>74</sup> *Id.* § 8342.2(d).

<sup>75</sup> 85 Fed. Reg. at 20230.

<sup>76</sup> *Id.*

<sup>77</sup> *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (summarizing judicial review under the Administrative Procedure Act).

blank slate.”<sup>78</sup>

The proposed rule suffers from a number of significant deficiencies. As an initial matter, BLM has not provided adequate opportunities for participation, information, or data to the public. Next, the proposed rule is contrary to long-standing travel management law and policy and will lead to significant implementation and enforcement issues. Further, BLM has not satisfied its obligations under National Environmental Policy Act (NEPA) or the Endangered Species Act.

Crucially, the proposed rule is also unnecessary because BLM already has ample tools and discretion to expand e-bike opportunities and accomplish the purported objectives of the proposed rulemaking. But it must do so in compliance with long-standing travel management laws and policies, not by declaring that a class of motorized vehicle should in fact not be managed as a motorized vehicle.

For example, the BLM Gunnison Field Office is currently considering permitting up to 30 miles of new single-track trails open to e-bikes through its Silverton Travel Management Plan.<sup>79</sup> This would be done simply by designating the new trail system as single-track motorized, but limiting the motorized use to e-bikes only (i.e. motorcycles and other OHVs would be prohibited). This type of designation is allowed under current regulations and travel management policies. Further examples of BLM expanding e-biking opportunities without any need for this proposed rule change are in the Moab Field Office where BLM recently approved the Lower Monitor and Merrimac Trail for e-bike use;<sup>80</sup> the Colorado River Valley Field Office, where BLM is proposing e-bike use on new trails in the New Castle Trails System;<sup>81</sup> and the Price Field Office, where BLM is considering new e-bike opportunities on the Good Water Rim Trail in the San Rafael Swell Special Recreation Management Area.<sup>82</sup> BLM has the tools and processes it needs to designate trails as open to e-bikes; this rulemaking is entirely unnecessary.

We recognize that e-bikes are an important part of the recreational matrix on our public lands and that additional guidance on their management may be prudent. In particular, we support updating the BLM Manual to clarify that e-bikes are their own class of motorized vehicle – distinct from other classes of ORVs and with their own unique expectations and needs for trail opportunities. Those opportunities can be readily provided by designating appropriate motorized trails and limiting their use to e-bikes, consistent with the minimization criteria and other travel management requirements.

---

<sup>78</sup> *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

<sup>79</sup> DOI-BLM-CO-F070-2019-0008-EA, <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=186260>

<sup>80</sup> DOI\_BLM-UT-Y010-2020-0044-EA, <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=1503601>

<sup>81</sup> Bureau of Land Management, DOI-BLM-CO-N040-2020-0040-EA (New Castle Extensive Recreation Management Area 2020 Trail Additions Proposal), available at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=200012213>

<sup>82</sup> Bureau of Land Management, DOI-BLM-UT-G020-2020-0018-EA (Good Water Rim Trail), available at: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=1504554>

## II. Inadequate public process & information

During this rulemaking, BLM has provided inadequate public process, information, and data. BLM must provide adequate opportunities for public process and participation.

The COVID-19 pandemic has made it extremely difficult for many people, especially those without broadband internet access, to review and comment on relevant agency documents. In a letter dated April 15, 2020, many of the undersigned groups requested BLM extend the public comment period on the proposed rule until after the pandemic has subsided and everyone is able to provide informed comments.<sup>83</sup> Given the ongoing public health crisis as a result of COVID-19 and the executive order declaring a national state of emergency on March 13, 2020, this request is in line with a multitude of other requests submitted across the country, including from members of congress, attorneys general, and state and local governments, to extend public comment periods for rulemaking efforts and other processes during the novel coronavirus pandemic.<sup>84</sup> The April 15 letter further requested that BLM schedule public meetings and dialogues (in person and virtual) around the proposed e-bike rules when it is deemed safe to do so. BLM responded to the April 15 letter on May 27, 2020 and denied our request to extend the comment period in light of the pandemic.<sup>85</sup>

Additionally, BLM has not made information required by SO 3376 available to the public. In accordance with SO 3376, BLM submitted reports to the DOI Secretary that included a summary of policy changes enacted in response to the order, a summary of laws or regulations that prohibit the full adoption of the policy described in the order, and a timeline to seek public comment on changing any regulations.<sup>86</sup> On October 28, 2019, The Wilderness Society requested these reports in Freedom of Information Act requests to DOI and BLM, which the agencies confirmed with tracking numbers OS-2020-00053 and 2020-00116 respectively.<sup>87</sup> Under FOIA's statutory deadline, a final determination on the requests were due on November 25, 2019. DOI and BLM have yet to release the reports and other responsive documents associated with these requests. BLM must release the reports required under SO 3376 to the public to inform the comment period.

Key data necessary to provide informed comments on the proposed rule is also not available to the public. For example, BLM has not provided information about how many trails may qualify

---

<sup>83</sup> See Attachment D, "DOI Delay Letter."

<sup>84</sup> E.g., Letter from fourteen House of Representatives Committee Chairs to Acting Director Russell Vought, submitted April 1, 2020, available at: [https://www.eenews.net/assets/2020/04/02/document\\_gw\\_08.pdf](https://www.eenews.net/assets/2020/04/02/document_gw_08.pdf); Letter from Senators Wyden, Merkley, and Udall to Secretary Bernhardt requesting a pause on comment periods, submitted April 3, 2020, available at: <https://www.wyden.senate.gov/imo/media/doc/040320%20Letter%20on%20DOI%20comment%20periods.pdf>; Letter from state attorney generals to Acting Director Russell Vought, submitted March 31, 2020, available at: [https://portal.ct.gov/-/media/AG/Press\\_Releases/2019/COVID-19-Rule-Delay-Letter---Final.pdf?la=en](https://portal.ct.gov/-/media/AG/Press_Releases/2019/COVID-19-Rule-Delay-Letter---Final.pdf?la=en); Letter from various state and local government organizations requesting a pause on all public comment and rulemaking processes, submitted March 20, 2020, available at: <https://www.nga.org/letters-nga/state-and-local-government-organizations-seek-pause-on-public-comments-on-rulemaking-processes/>.

<sup>85</sup> Attachment E, "DOI Response to Delay Request."

<sup>86</sup> Sec. Order 3376, sec. 5(b).

<sup>87</sup> Attachment F, "FOIA Confirmation."



for e-bike use under the proposed rule. In order to provide opportunity for meaningful dialogue with the public, BLM must provide this information and extend the comment period accordingly.

***BLM has provided inadequate public participation due to the current COVID19 pandemic and limited public information and data concerning this rulemaking. BLM must stay the rulemaking until the pandemic has subsided; make reports and data available to the public; then reopen the comment period and provide public meetings and other participation opportunities.***

### **III. The proposed rule is arbitrary, capricious, and contrary to travel management law and policy**

In addition to inadequate public participation, the proposed rule is arbitrary and capricious. The proposed rule violates the ORV EOs and does not align with BLM's broad definition of ORVs and motorized vehicles. BLM has failed to provide a reasoned explanation for these proposed changes.

Importantly, the ORV EOs remain enforceable<sup>88</sup> and require all motorized vehicles be confined to a designated system in compliance with the minimization criteria.<sup>89</sup> The EOs define ORVs broadly as "any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain."<sup>90</sup> BLM regulations echo this broad definition.<sup>91</sup> All motorized vehicles must be confined to a system designated in compliance with the minimization criteria under the EOs and BLM regulations.<sup>92</sup>

E-bikes clearly fall within these broad definitions, and it is arbitrary and capricious and contrary to their intent to exempt them. Though the preamble asserts e-bikes are already permitted on a majority of BLM roads and trails,<sup>93</sup> BLM must apply its travel management regulations to any new trails or areas where it permits ORVs, including e-bikes. BLM cannot wave a wand and proclaim something with a motor exempt from these requirements. Nor can BLM avoid applying the minimization criteria by re-writing the definition to exclude what is necessarily a motorized recreational vehicle. Doing so will result in violation of the EOs and the minimization criteria. Such an exemption would also create a dangerous slippery slope that erodes long-standing law and policy. BLM must continue to comply with its long-standing travel management regulations and the ORV EOs.

---

<sup>88</sup> Courts recognize that the ORV EOs meet all three enforceability criteria laid out in *City of Carmel-by-the-Sea v. United States Dep't of Transp.*, 123 F.3d 1142, 1166 (9th Cir. 1997). See e.g., *Southern Utah Wilderness Alliance v. Sierra*, No. 2:08-CV-195-TC., 2008 WL 4643003 (D. Utah Oct. 20, 2008); *Defenders of Wildlife v. Salazar*, 877 F.Supp.2d 1271 (M.D. Fla. 2012).

<sup>89</sup> See Exec. Order No. 11,644, §§ 1 & 3.

<sup>90</sup> Exec. Order No. 11,644, § 2(3).

<sup>91</sup> 43 C.F.R. § 8340.0-5(a).

<sup>92</sup> See Exec. Order No. 11,644, §§ 1 & 3; 36 C.F.R. Part 212; 43 C.F.R. Part 8340.

<sup>93</sup> 85 Fed. Reg. at 20230. BLM has not completed travel management plans for significant proportions of the public lands. Thus, the allowance of e-bikes and other ORVs on many BLM roads and trails is largely by default, and BLM remains in violation of the EOs and its travel management regulations.

Further, BLM does not provide a reasoned explanation for the proposed changes to its interpretation – consistent with longstanding travel management laws and policies – that e-bikes are motorized vehicles. Under the proposed rule, e-bikes would be exempt from the designation process applicable to all other ORVs.<sup>94</sup> BLM does not discuss how the proposed rule complies with the broad definition of ORV and the requirement that all ORVs be subject to travel management planning and the minimization criteria. Indeed, the proposed rule does not even mention the governing travel management EOs.

BLM’s explanation for the proposed rule identifies the need to increase recreational opportunities<sup>95</sup> and focuses on allowing for “flexibility to utilize local knowledge and determine the propriety of e-bike use on site-specific basis.”<sup>96</sup> These objectives can easily be met under existing processes. As described above, BLM is expanding e-bike opportunities in a number of landscapes as we speak.

Moreover, BLM’s explanation does not grapple with the absurdity of exempting something with a motor from the broad definitions of motorized vehicle in the EOs and the agency’s own regulations. In fact, BLM explicitly defines electric bicycles as having “an electric motor.”<sup>97</sup> BLM further defines each class of e-bike as “equipped with a motor.”<sup>98</sup> The proposed rule would “direct” local BLM land managers to “generally allow” all classes of e-bikes on non-motorized trails. This includes motorized e-bikes that require no pedaling at all—class 2 e-bikes that can be powered by simply holding one’s thumb on the throttle, just like a dirt bike. This is not “human-powered” recreation—it is motorized use, which would presumptively be allowed anywhere non-motorized bikes are currently allowed.

Further, the proposed exemption of e-bikes from the definition of ORV is inconsistent with the existing regulatory scheme. The existing regulatory exemptions are not for certain classes of recreational motorized vehicles. Instead, the existing exemptions are for appropriately exempted uses of ORVs – including emergency purposes, uses authorized by officers, vehicles in official use, and vehicles used in times of national emergencies.<sup>99</sup> If e-bikes can be exempted, presumably so too could snowmobiles, dirt-bikes, or other classes of motorized vehicle for which BLM determines recreational opportunities should be expanded. In short, e-bikes are ORVs under BLM’s long-standing regulations and the EOs, and BLM does not articulate how the contrary interpretation presented in the proposed rule is necessary, rational, or lawful.

BLM also disregards the facts and circumstances underlying existing policy.<sup>100</sup> BLM’s proposal does not acknowledge or recognize the over four decades of research documenting significant adverse environmental and social impacts associated with ORV use on public lands.<sup>101</sup> For

---

<sup>94</sup> *Id.*

<sup>95</sup> 85 Fed. Reg. at 20230.

<sup>96</sup> *Id.* at 20231.

<sup>97</sup> Proposed Rule § 8340.0–5(j).

<sup>98</sup> *Id.* § 8340.0–5(j)(1-3).

<sup>99</sup> 43 C.F.R. § 8340.0-5(a).

<sup>100</sup> See *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125, 195 L. Ed. 2d 382 (2016) (citing *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. 967, 981-982, 125 S. Ct. 2688, 162 L. Ed. 2d 820 (2005)) (internal quotations omitted).

<sup>101</sup> *Supra* note 3.

example, the Proposed Rule does not reconcile its inherent discrepancy with existing agency policy like the broad goals of BLM's TTM Manual.<sup>102</sup> Instead of addressing the decades-long record, evidence, facts, and circumstances underlying BLM's existing policy to determine whether or how to update its policies to address e-bikes, the proposed rule creates an unexplained inconsistency that was largely pre-determined under SO 3376.<sup>103</sup> This unexplained inconsistency is an arbitrary and capricious change from agency policy and practice.<sup>104</sup>

***BLM fails to provide a reasoned explanation for exempting e-bikes from the definition of ORVs and this shift is an unexplained inconsistency in agency policy and an arbitrary and capricious change from agency practice.***

#### **IV. The proposed rule will lead to significant implementation and enforcement issues**

##### **A. THE PROPOSED RULE PROVIDES INADEQUATE DIRECTION ON IMPLEMENTATION**

The proposed rule paves the way for several serious implementation challenges and generally lacks adequate direction on implementation. First, as discussed throughout these comments, the proposed rule articulates a presumption that field managers generally must exempt e-bikes from travel management requirements governing other OHVs and permit e-bike use wherever non-motorized bicycles are allowed.<sup>105</sup> The presumption is rebuttable: “unless the authorized officer determines that e-bike use would be inappropriate on such roads or trails.”<sup>106</sup> The proposed rule, however, provides no meaningful criteria for how field managers should determine when e-bike use would be inappropriate. After reinforcing that e-bike use is generally appropriate wherever mechanized, non-motorized use is permitted, the preamble provides a handful of examples where field managers may determine otherwise, including steep or narrow trails where e-bike use at higher speeds may cause public safety concerns; where legislation or presidential proclamation restricts motorized use; or on multi-jurisdictional trails.<sup>107</sup> As described below and throughout these comments, these and other scenarios that will result in public safety concerns, recreational use conflicts, conflicts with other laws or management obligations, or other social or ecological impacts are likely to be the rule – not the exception – and present complex challenges that will frustrate lawful implementation.

Second, the proposed rule incorrectly assumes that field managers can easily identify where mechanized, non-motorized uses are currently allowed to facilitate expansion of e-bike use to those trails. But BLM does not have travel and transportation management plans and associated

---

<sup>102</sup> Bureau of Land Management, Manual for Trails and Travel Management Rel. No. 8-82 (Mar. 16, 2012), 64, available at: <https://www.ntc.blm.gov/krc/uploads/750/8342%20-%20TTM%20Planning%20Handbook.pdf>.

<sup>103</sup> Sec. Order 3376 § 5 (a)(v) (instructing BLM “to develop a proposed rule to revise 43 CFR § 8340.0-5 and any associated regulations to be consistent with this Order, add a definition fore-bikes consistent with 15 U.S.C. § 2085, and expressly exempt all e-bikes as defined in Sec. 4a from the definition of off-road vehicles or motorized vehicles”).

<sup>104</sup> See *Encino Motorcars*, 136 S. Ct. at 2125.

<sup>105</sup> See proposed § 8342.2(d).

<sup>106</sup> *Id.*

<sup>107</sup> 85 Fed. Reg. at 20,231.

trails data for a majority of its units,<sup>108</sup> making it exceedingly difficult to determine where e-bikes should be allowed under the policy articulated in the proposed rule. In many cases, mechanized, non-motorized use may be allowed on trails largely by default and not based on any planning or management decision informed by public input and analysis under NEPA or consistent with relevant travel and transportation management policies or practices. Just because such unplanned mountain bike use is permitted by default does not mean that BLM can or should expand that use to include e-bikes. Doing so will establish a motorized use by fiat, frustrating future travel management planning.

Third, BLM must clarify that e-bikes are not permitted to travel cross-country. Given the lack of complete travel and transportation management planning and the generally unmanaged nature of mountain bike use on many BLM lands, the proposed rule may encourage e-bike use off designated trails, with significant and lasting adverse ecological impacts associated with such cross-country travel.

Finally, BLM must clarify that e-bikes will not be permitted in either designated Wilderness or in BLM Wilderness Study Areas (WSAs) and portions of WSAs where traditional mountain bike use is currently prohibited. BLM Wilderness Study Areas are currently managed under the non-impairment standard. BLM Manual 6330 is clear that no new discretionary uses, such as mountain biking or motorized uses, should be allowed if such a use would impair the suitability of such areas for wilderness designation.

## **B. THE PROPOSED RULE WOULD RESULT IN TRAIL TRANSITION CONCERNS**

State, local, and Forest Service definitions and requirements for e-bikes differ and conflict, creating the potential for significant jurisdictional challenges. This is especially true when trails under BLM jurisdiction transition directly to trails under the jurisdiction of another entity.

The preamble of the proposed rule addresses this, suggesting that this may be a situation where the authorized officer might decide that e-bike exemption is inappropriate.<sup>109</sup> This language, however, does not provide sufficient direction to deal with the scope, complexity, and significance of these jurisdictional challenges.

There are numerous BLM trails or trail segments that transition directly to trails under non-BLM jurisdiction. Many of these non-BLM jurisdictions (US Forest Service, County, City or State) do not permit e-bike use on trails under their jurisdiction.

Certain trails under BLM or other jurisdictions may cross segments of private land where a documented easement exists that permits public trail use. Often times these easements

---

<sup>108</sup> As of 2012, the agency had only completed about 21% of its travel management plans, with over 500 plans to complete and an estimated 400,000+ miles of motorized and non-motorized travel routes left to survey, inventory, and potentially designate. *See* BLM Instruction Memorandum No. 2015-060, Travel and Transportation Management Planning Schedules and *2020 Travel and Transportation Management Vision* (March 13, 2015), available at <https://blm-dev.opengov.ibmcloud.com/policy/im-2015-060> & Attachment G.

<sup>109</sup> 85 Fed. Reg. at 20,231.

specifically state that only non-motorized use is permitted on that trail, and public motorized use of the trail is prohibited. BLM's proposed rule blurs the line between motorized and non-motorized use in a way that is likely to threaten violations of easement restrictions that depend on a clear distinction between motorized and non-motorized uses.

The BLM should not permit e-bike use on BLM trails or trail segments that transition directly to trails under other jurisdictions where e-bike or other motorized use is prohibited. The BLM should not place new burdens on other entities and jurisdictions to increase education, monitoring and enforcement of existing regulations on trails not under BLM jurisdiction due to a BLM decision to allow e-bike use. Opening these BLM transition trails to e-bike use could expose e-bike users to citations and penalties for illegally operating an e-bike as a motorized vehicle on routes or land under other jurisdictions.

The regulations and desires of other jurisdictional entities regarding e-bike use must be fully investigated and clarified by the BLM before opening any BLM trail to e-bike use that transitions directly to a trail under any other jurisdiction. We do not recommend making decisions to approve dead-end e-bike use on trail segments that transition to other jurisdictions. This will be difficult to enforce and could damage relationships with those other entities.

We urge the BLM to not make 'conditional' decisions where e-bike use will be allowed on the BLM segment of the transitional trail or trail segments only if the other jurisdiction opens their corresponding trail to e-bike use. Experience has shown that conditional approvals confuse the public and BLM staff, and result in unauthorized use and other conflicts for the BLM and other jurisdictional entities.

We strongly recommend that any transitional trails or trail segments that remain closed to e-bike use be well signed as closed to e-bike use at the last legal use intersection on BLM land.

### **C. THE PROPOSED RULE WOULD RESULT IN PROBLEMATIC FUNDING CONFLICTS WHEN NON-MOTORIZED TRAILS ALLOW MOTORIZED USE**

Many BLM trails were planned, constructed and/or are maintained using grants or other types of awarded contract funding that was specifically intended to be used only for non-motorized trails. There are BLM trails that transition directly to trails on lands that were purchased by other entities using funding with similar restrictions. Tools, equipment and machinery for maintenance of these BLM trails was purchased using funding that was allocated for non-motorized use only.

Relevant contracts to fund non-motorized trails on BLM lands were entered into with the understanding that e-bikes are motorized vehicles and that their use would be prohibited.

A change in policy to allow motorized electric bicycles on trails planned, constructed and/or maintained using funds allocated specifically for non-motorized use, or on land restricted to non-motorized use, will be perceived as a misuse of those funds. There are breach of contract

concerns for partner organizations and entities if motorized e-bike use is allowed on trails with non-motorized funding restrictions. Permitting e-bike use on non-motorized trails may also jeopardize the ability and willingness of partner organizations to maintain and manage trails with such funding restrictions.

All previous contracts for funding of trails or land with trails must be analyzed to determine the legal and other implications of allowing e-bike use on those trails or lands.

#### **D. A PROHIBITION ON EBIKE OPERATION USING THE THROTTLE IS UNENFORCEABLE**

Clarification is needed regarding education and enforcement of an apparent requirement to only operate e-bikes in pedal assist mode if and where e-bikes might be allowed on non-motorized trails. The proposed rule permits all three classes of e-bikes to potentially travel where traditional bicycles are allowed. Class 2 e-bikes have a throttle which permits the operation of class 2 e-bikes exclusively by use of the throttle alone, without a requirement to pedal. Operation of a class 2 e-bike using the throttle alone would be a violation of this proposed rule.

Class 2 e-bike use using the throttle alone is operation as a normal motorized vehicle. Physical effort outside of that minimally required to move the throttle with a slight hand movement is not required for this type of e-bike use.

The preamble for this proposed rule recognizes the possibility of this operation using a throttle alone. It states that class 2 e-bikes “allow for the motor to propel the rider without pedaling,”<sup>110</sup> Secretarial Order 3376 also states, “The possibility that in some cases e-bikes can be propelled solely through power provided by the electric motor, a function often used in short duration by older or disabled riders as an assist, has contributed to confusion about e-bike classification.” This statement fails to consider that any class 2 e-bike rider could operate a class 2 e-bike using the throttle alone, regardless of their age or physical ability. Younger riders with normal physical abilities can and do operate class 2 e-bikes using the throttle alone.

Use of a throttle to exclusively operate an e-bike provides other advantages aside from not having to pedal, which will tempt riders to use the throttle even when prohibited. A throttle allows easy starting from a dead stop, especially in rough terrain or on steep uphill terrain. Throttle use allows the maintenance of speed over obstacles and around tighter corners where pedaling would normally be difficult due to likely ground contact. Riders wanting to focus on navigating difficult trail sections without the distraction of pedaling favor throttle only operation. It can be easier to modulate speed and control a bike using finer hand dexterity with a throttle rather than rougher foot and leg dexterity. Throttle use alone can be used to accelerate to 20 miles per hour, and then the energy saved from not pedaling can be expended to achieve even higher speeds. Improper throttle use can result in wheel spin leading to soil displacement. These types of throttle only uses will contribute to greater speeds of trail travel and trail damage, resulting in increased conflict.

---

<sup>110</sup> 85 Fed. Reg. at 20,231

Any attempt by the BLM to require human powered propulsion of e-bikes via pedaling, as an effort to make them appear to be similar to bicycles, is flawed. It is possible to ‘soft pedal’ almost any e-bike, where the pedals are being rotated with little-to-no force actually being applied to them. Simply moving the pedals in a circular motion results in the motor providing almost 100% of the power output. This can be achieved on any class of e-bike.

It is difficult for anyone except a class 2 e-bike rider/operator to know when operation is achieved using the throttle alone. The subtle hand movements to operate a throttle are virtually invisible to any bystander, especially when the bike is moving. It will be virtually impossible for the BLM to monitor, and enforce, restrictions prohibiting operation using the throttle exclusively.

It will be difficult to educate about, achieve voluntary compliance with, and/or enforce a regulation that allows possession of something, but prohibits its certain types of uses. We recommend that if the BLM wishes to restrict use or potential use of certain aspects of class 2 e-bikes in certain locations (or any class or type of e-bike) regulations and orders must be written to prohibit possession of those e-bikes in those locations, and not simply their use or certain aspects of their use.

The proposed rule limits potential e-bike use on non-motorized trails to bikes with a motor that cannot exceed 750 watts, and limits the maximum speed that can be attained when e-bike motors are engaged.

In a new and rapidly evolving market, there are a number of vehicles that are commercially available that do not comply with proposed e-bike technical regulations and specifications. There are vehicles out there that appear similar to e-bikes (they have functioning pedals), but have motors that exceed 1000 watts and can achieve speeds exceeding 50 miles per hour via use of the motor.<sup>111</sup> It can be difficult to distinguish these vehicles from e-bikes that comply with proposed restrictions.

It is difficult to determine which class (1, 2 or 3) an e-bike conforms to, as identifying stickers, decals or other information is not always required on these machines, and/or can become illegible or removed. In addition, there are e-bikes and other vehicles that can be programmed to function as either a class 1, 2 *or* 3 or other type of e-bike with the push of a button.

There are also e-bikes that are commercially available that cannot be distinguished from a traditional non-motorized bicycle.<sup>112</sup> Where the BLM chooses to make local decisions to prohibit e-bike use on certain routes, it will be difficult to exclude these vehicles.

---

<sup>111</sup> Nargess Banks, Looking For The Ultimate Urban Toy? Introducing SWIND EB-01 Hyperbike, Forbes (Feb. 27, 2018), available at: <https://www.forbes.com/sites/nargessbanks/2018/02/27/swindeb01-hyperbike/#122a56b73a0a> (“Designed for the urban adventurer and cross-country adrenalin junkie, the \$21,000 (£15,000) bicycle has an electric motor to help boost pedal power and deliver speeds of over 60mph”); Ben Coxworth, Rungu's electric fat-trike goes pedal-assist, New Atlas (July 8, 2018), available at: <https://newatlas.com/rungu-electric-juggernaut-mdv/55294/>.

<sup>112</sup> *Goat Track SLX*, Goat Bikes, available at: [https://www.goatbikes.com/section811575\\_327663.html](https://www.goatbikes.com/section811575_327663.html); see Attachment H, “GOAT Bikes.”

It is possible for e-bike owners to modify the speed limiters on their machines, in order to permit motor-powered travel well in excess of 20 or 28 miles per hour.

In short, the evolving nature of e-bike technology and BLM's proposal to permit all three classes of e-bikes on non-motorized trails will make enforcement virtually impossible. BLM must fully analyze and consider these challenges.

#### **E. CITIZENS HAVE BUILT THEIR OWN E-BIKES THAT DO NOT CONFORM TO ANY PROPOSED BLM REGULATIONS**

It is extremely difficult to determine if an e-bike motor conforms to any wattage limit, or if speed limiters are in place or have been removed. The higher speeds achievable by non-conforming and non-standard e-bike use will lead to additional conflicts. It will be difficult for BLM staff to determine if a machine is an unmodified e-bike that conforms to BLM regulations, or is an electric motorcycle or other vehicle.

Other governing entities have enacted different or additional regulations pertaining to e-bike use, define the types of e-bikes differently, or do not regulate bikes at all. There will be problems with education and enforcement of more restrictive BLM regulations where routes under other jurisdictions transition directly to routes that may allow e-bike use on BLM land.

Educating the public about the different e-bike classes and where they may be allowed will be complex and difficult. As an example, the BLM is still struggling to educate the public about, and enforce, the regulations regarding the differences between ATVs and UTVs. There are no width or other physical differences between the different classes of e-bikes that would allow physical restrictors to be installed to exclude certain types of e-bikes.

There is no requirement to license or register e-bikes, and these vehicles will lack any type of visible identification. This will make identification, reporting and potential citation of e-bike violations virtually impossible.

There are also concerns about the relative lack of enforcement capability within the BLM, and if any enforcement of e-bike regulations will occur at all. Only BLM law enforcement officers are authorized to issue citations for violations of BLM regulations. A single BLM law enforcement officer is frequently responsible for enforcing BLM regulations on thousands of square miles of BLM land. Even when known violations have been meticulously documented and reported, these officers frequently choose to ignore these violations and prioritize other investigations.

These implementation and enforcement issues and associated environmental impacts must be fully analyzed in an EIS for the proposed rule, as addressed in section IV below.

#### **IV. The proposed rulemaking requires preparation of an environmental impact statement pursuant to NEPA**

Major federal actions, including policy changes that may have significant impacts to the human environment, require preparation of an environmental impact statement (EIS) under the National



Environmental Policy Act (NEPA).<sup>113</sup> As explained below, the proposed rule meets that threshold. Instead of preparing the requisite environmental analysis, including consideration of alternatives, BLM unlawfully defers NEPA analysis and instead relies on a categorical exclusion that does not apply to this rulemaking. This violates NEPA.

#### **A. E-BIKE USE ON BLM NON-MOTORIZED TRAILS MAY HAVE NUMEROUS SIGNIFICANT IMPACTS**

In its “Discussion of the Proposed Rule,” the BLM requested information from the public on the “potential social and physical impacts of e-bike use on public lands.” 85 Fed. Reg. at 20230. The proposed rule fails to recognize the significant discrepancy in the range of potential speeds by trail users and the resultant safety hazards that are certain to accrue should e-bike use be authorized on non-motorized trails. The ability of e-bikes to travel at relatively high speeds, combined with their often silent approach, elevate the potential for such dangerous encounters. Thus, the Proposed Rule and its prompt to local BLM managers to authorize the use of e-bikes on multiple-use non-motorized trails would result in many trails being viewed by hikers and equestrians as either less desirable, less compatible for shared use, or outright unsafe for shared use. Should the BLM adopt the Proposed Rule, it likely would represent the diminishment or loss of these traditional uses on non-motorized trails.

The proposed rule clearly ignores decades of practice and the principle of managing trails for the primary uses, or purposes, for which they were designated. In fact, by compelling BLM field offices to “generally allow” any or multiple classes of e-bike use on existing natural surface trails, the Proposed Rule runs counter to decades of applied recreation management theory that recognizes the need to maintain the desired experiences of non-motorized and relatively slow-moving trail users. This approach stands in sharp contrast to agency practice that new uses, including new types of travel, should first be programmatically evaluated for their impact on, and compatibility with, approved uses and activities on federal public lands.

Instead, the proposed rule acts to impose a new and largely untested use (e-bike use) among non-motorized trail uses without first conducting an analysis of its general compatibility. There exists a wealth of peer-reviewed scientific literature on topics regarding the motivations of outdoor recreationists, their desired experiences, and methods to address user conflict. Yet the Proposed Rule bypasses any evaluation of the prevailing science by its directive to “generally allow” e-bike use as if these public attitudes and its overwhelming body of evidence do not exist. Consequently, the Proposed Rule and its intent to compel widespread authorization of e-bike use on non-motorized trails would, in many locations, lead to the phenomena of “technological displacement” whereby recreational users with new and more advanced forms of travel degrade the experience of, and displace, traditional trail users such as hikers and equestrians.

The proposed rule fails to address the potential for such obvious and clearly ubiquitous safety hazards that would be associated with e-bike use on non-motorized trails. As described previously, the rapid speeds at which e-bikes are capable of traveling on shared-use trails, combined with their often-silent approach, would create significant safety hazards for public land visitors either on foot or on horseback.

---

<sup>113</sup> 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.18.

Another factor that makes this potential hazard even greater to all trail users is the fact that bicycle helmets commonly in use today are not designed to sustain collisions at speeds much greater than 14 miles per hour.<sup>114</sup> This fact alone renders the proposed rule untenable, if not outright irresponsible.

The proposed rule will also lead to significant impacts on wildlife. As outlined above in section I, the increased speed and range attained by e-bikes can negatively impact wildlife. Studies demonstrate the clear correlation between the speed of the activity and the wildlife disturbance distance from the trail.<sup>115</sup>

Based on these and other reasonably foreseeable significant impacts described throughout these comments, BLM must prepare an EIS to fully analyze the impacts of the proposed rule.<sup>116</sup>

## **B. BLM MAY NOT DEFER NEPA ANALYSIS OF THESE IMPACTS UNTIL IMPLEMENTATION DECISIONS**

The notice of proposed rulemaking makes clear that BLM intends to defer any and all NEPA analysis until implementation decisions. The preamble states “an authorized officer of the BLM would have to issue a land-use planning or implementation-level decision allowing” e-bike use, and this decision “would have to comply with applicable law, including NEPA.”<sup>117</sup> While it is true that BLM must comply with NEPA when implementing the proposed rule, it does not absolve the agency of its obligation *now* to analyze all reasonably foreseeable impacts associated with its proposed rule, which effectively directs field managers to permit e-bikes on non-motorized trails wherever mountain bikes are permitted. As explained above, this will necessarily result in a host of reasonably foreseeable direct, indirect, and cumulative impacts, including but not limited to changing recreational use trends and conflicts, increased public safety issues, impacts to wildlife, and increased likelihood of trespass into non-motorized areas. These impacts can and must be analyzed now, even if additional site-specific analysis will occur at the implementation stage. BLM can and should disclose how much additional trail mileage may be impacted by the proposed rule. BLM should also identify where trails that would likely be open to e-bike use under the proposed rule overlap with designated critical habitat. It also can and should address the extent to which that trail mileage overlaps with ungulate winter range, grizzly bear proposed habitat, and other areas where wildlife disturbance impacts are reasonably foreseeable.

The resulting implementation decisions are also connected actions under NEPA that must be fully analyzed now. Actions are connected, and must therefore be analyzed in a single EIS, if

---

<sup>114</sup> League of American Bicyclists, *Electric Bicycles: Public Perceptions & Policy. Results and Analysis of a National Survey of American Bicyclists* (2015), available at: [https://www.bikeleague.org/sites/default/files/E\\_bikes\\_mini\\_report.pdf](https://www.bikeleague.org/sites/default/files/E_bikes_mini_report.pdf)

<sup>115</sup> U.S. Forest Service Pacific Northwest Research Station, *supra* note 41.

<sup>116</sup> 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.18.

<sup>117</sup> 85 Fed. Reg. at 20233.

they have if they are “inextricably intertwined.”<sup>118</sup> Courts determine if actions are connected by looking to “whether each of two projects would have taken place with or without the other and thus had independent utility.”<sup>119</sup> NEPA requires evaluation of connected actions “to prevent agencies from minimizing the potential environmental consequences of a proposed action (and thus short-circuiting NEPA review) by segmenting or isolating an individual action that, by itself, may not have a significant environmental impact.”<sup>120</sup> Here, implementing decisions to allow e-bikes on non-motorized trails by exempting them from the definition of ORV could not occur without the proposed rule. These decisions are inextricably intertwined with the proposed rule. Conversely, absent those implementing decisions, the proposed rule would have little independent utility and SO 3376 would not be implemented. Therefore the actions lack independent utility. Segmenting each implementing decision from the proposed rule would shield the potentially significant environmental impacts from review.

Finally, BLM must analyze the reasonably foreseeable, cumulative impacts associated with the proposed rule and subsequent implementation actions.<sup>121</sup> A cumulative impact analysis must identify:

- (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.<sup>122</sup>

If, as the proposed rule prescribes, numerous BLM offices allow e-bikes on non-motorized trails, each of the implementing decisions would have cumulatively significant impacts on public lands. All of these implementing decisions would allow motorized bikes to travel further and faster into the backcountry, sensitive wildlife habitat, and the small proportion of public lands that are free from motors. Multiplied throughout the nation’s vast public lands, this is precisely the type of potentially individually insignificant but undoubtedly cumulatively significant actions that cumulative impacts analysis under NEPA mandates. Thus, BLM must analyze the connected actions and reasonably foreseeable cumulative impacts now and may not defer such analysis until implementation decisions.

### **C. BLM’S RELIANCE ON A CATEGORICAL EXCLUSION IS ARBITRARY AND CAPRICIOUS**

BLM’s reliance on the categorical exclusion (CX) at 43 CFR 46.210(i) is arbitrary and capricious. “When an agency decides to proceed with an action in the absence of an EA or EIS,

---

<sup>118</sup> 40 C.F.R. § 1508.25(a)(1); *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1317 (D.C. Cir. 2014); *Chilkat Indian Vill. of Klukwan v. Bureau of Land Mgmt.*, 399 F. Supp. 3d 888, 917 (D. Alaska 2019).

<sup>119</sup> *Wilderness Workshop v. United States BLM*, 531 F.3d 1220, 1229 (10th Cir. 2008).

<sup>120</sup> *Citizens' Comm. to Save Our Canyons v. United States Forest Serv.*, 297 F.3d 1012, 1028 (10th Cir. 2002).

<sup>121</sup> 40 C.F.R. § 1508.7; see *Dine Citizens Against Ruining Our Env't v. Bernhardt*, 923 F.3d 831, 851 (10th Cir. 2019), *reh'g denied* (June 24, 2019).

<sup>122</sup> *Grand Canyon Tr. v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002), *as amended* (Aug. 27, 2002).

the agency must adequately explain its decision.”<sup>123</sup> BLM relies on the following two-part CX:

Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case- by-case basis.<sup>124</sup>

As to the first part of the CX, BLM does not adequately explain why the rule is administrative or procedural in nature.<sup>125</sup> Regulations that “increase the barriers to public involvement” are not purely administrative.<sup>126</sup> Additionally, courts do not view rules that repeal substantive environmental protections as procedural.<sup>127</sup> As written, the proposed rule will result in less public input into key travel management decisions about e-bikes. The proposed rule would also repeal key elements of travel management regulations and designation criteria — substantive environmental protections — as applied to e-bikes, a class of motorized vehicle. BLM did not address either of these considerations in its proposal. As such, the proposed rule is not administrative or procedural in nature.

Additionally, BLM has not established that the environmental effects of the proposed rule “are both (1) too broad, speculative, or conjectural to lend themselves to meaningful analysis; and (2) will later be subject to the NEPA process, either collectively or case-by-case.”<sup>128</sup> While BLM argues the proposed rule does not change existing allowances for e-bike use and instead provides instructions to BLM field managers for making decisions,<sup>129</sup> these statements do not justify use of this CX. First, as addressed in the previous section, the reasonably foreseeable effects are easily analyzed at this stage – even if future site-specific NEPA analysis will continue to address those effects in more detail. The environmental effects are not too broad, speculative, or conjectural to lend themselves to meaningful analysis.

Second, the proposed rule creates a presumption that e-bikes are allowed on non-motorized trails. This presumption may effectively pre-determine many or most implementation-level decisions, thereby prejudicing the associated NEPA analysis and raising serious questions whether the effects of the proposed rule in fact will be subject to meaningful NEPA review later on, as required by the CX.<sup>130</sup>

---

<sup>123</sup> *Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007) (quoting *Alaska Ctr. for the Env't v. United States Forest Serv.*, 189 F.3d 851, 859 (9th Cir. 1999)).

<sup>124</sup> 43 CFR 46.210(i).

<sup>125</sup> 85 Fed. Reg. at 20233.

<sup>126</sup> *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 498 (9th Cir. 2011).

<sup>127</sup> *Cal. ex rel. Lockyer v. USDA*, 575 F.3d 999, 1018 (9th Cir. 2009) (finding USDA’s characterization of repeal of substantive protections as “merely procedural” under a categorical exclusion as unreasonable).

<sup>128</sup> *Shearwater v. Ashe*, No. 14CV02830LHK, 2015 U.S. Dist. LEXIS 106277, at \*59-60 (N.D. Cal. Aug. 11, 2015) (citing 43 C.F.R. § 46.210(i)) (internal quotation omitted).

<sup>129</sup> 85 Fed. Reg. at 20233.

<sup>130</sup> See *Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 692, 714 (10th Cir. 2010); see also, e.g., *Davis v. Mineta*, 302 F.3d 1104, 1112 (10th Cir. 2002) (finding improper pre-determination where consultant preparing environmental assessment was contractually obligated to reach a certain environmental analytic outcome, with the endorsement of the agency); *Metcalf v. Daley*, 214 F.3d 1135, 1144 (9th Cir. 2000) (finding improper pre-determination where agency signed written agreements binding them to support the proposal undergoing

Indeed, BLM is already treating the *proposed* rule as creating a presumption that e-bikes must be allowed on non-motorized trails, with no mention of or commitment to conducting meaningful NEPA analysis at the implementation phase. BLM’s April 17, 2020 Browns Canyon National Monument Proposed Resource Management Plan/Final EIS (the “Browns Canyon RMP”) states the proposed rule would “identify e-bikes as non-motorized” and “[o]nce [the proposed rules] are in place, the plan would allow for class 1 and 2 e-bikes to travel on both motorized and mechanized trails designated on BLM-administered lands in the [Browns Canyon National Monument].”<sup>131</sup> This approach raises serious questions about future NEPA analysis for implementation decisions that will largely be predetermined.

BLM’s use of the 43 CFR 46.210(i) CX is arbitrary and capricious because the proposed rule is not administrative or procedural and the environmental effects of the proposed rule are not too broad, speculative, or conjectural and may not be subject to meaningful NEPA analysis later on.

#### **D. EXTRAORDINARY CIRCUMSTANCES APPLY TO BLM’S PROPOSED RULE**

Even if the CX did apply (it does not), extraordinary circumstances listed in 43 CFR 46.215 also make its use inappropriate. NEPA regulations provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.<sup>132</sup> An action that would normally be categorically excluded must be evaluated to determine if it triggers any extraordinary circumstances.<sup>133</sup> When extraordinary circumstances apply, BLM must conduct further analysis under NEPA.<sup>134</sup> In the preamble, BLM claims the proposed rule does not implicate any of the extraordinary circumstances.<sup>135</sup> On the contrary, the following extraordinary circumstances articulated in DOI’s NEPA regulations apply:

- **Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (43 CFR 46.215(c))**

E-bike use on public lands is rapidly becoming highly controversial and involves numerous unresolved conflicts concerning alternative uses of available resources. “A proposal is highly controversial when there is ‘a substantial dispute [about] the size, nature, or effect of the major Federal action rather than the existence of opposition to a use.’”<sup>136</sup> In general, there has been almost no effort to study the impacts of emerging and burgeoning e-bike use. There is also

---

analysis); *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717–19 (9th Cir. 1988) (finding improper pre-determination where construction contracts were awarded prior to completion of NEPA analysis)

<sup>131</sup> Bureau of Land Management, E-Planning DOI-BLM-CO-F020-2017-0107-RMP - EIS (Browns Canyon National Monument Resource Management Plan), 114. Available at: [https://eplanning.blm.gov/epl-front-office/projects/lup/69924/20016419/250021882/BCNM\\_PRMP\\_FEIS\\_Vol1\\_Ch1-3\\_200416-508.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/69924/20016419/250021882/BCNM_PRMP_FEIS_Vol1_Ch1-3_200416-508.pdf); see Attachment I, “TWS Browns Canyon National Monument Protest,” section V.

<sup>132</sup> 40 C.F.R. § 1508.4; 43 C.F.R. § 46.205(c).

<sup>133</sup> 43 C.F.R. § 46.205(c)(1).

<sup>134</sup> *Id.*

<sup>135</sup> 85 Fed. Reg. at 20233.

<sup>136</sup> *Anderson v. Evans*, 371 F.3d 475, 489 (9th Cir. 2004) (alteration in original) (quoting *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998)).

conflicting data and dispute about how significant the impacts of e-bikes are in comparison to other ORVs or non-motorized mountain bikes. As such, there are unresolved disputes about the potentially large effects and conflicts due to e-bike use on non-motorized trails.

- **Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks (43 CFR 46.215(d))**

Given the rapidly growing popularity of e-bikes as an emerging recreational use, the extent of the foreseeable environmental impacts are still uncertain and data collection and studies are warranted. In fact, in the preamble, BLM readily admits that “the use of an e-bike could cause increased ridership on these roads or trails.”<sup>137</sup> As discussed in sections I and V, BLM does not consider the uncertain and potential impacts, but instead defers such analysis while directing pre-determined outcomes.

- **Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects (43 CFR 46.215(e))**

The proposed rule would establish a precedent for future actions with potentially significant environmental effects. As discussed above, the proposed rule creates a presumption that e-bikes are allowed on non-motorized trails and largely pre-determines the outcome of the relevant land management planning or implementation-level decision. The proposed rule encourages BLM offices to make decisions without addressing the potentially significant environmental effects.

- **Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment (43 CFR 46.215(i))**

Allowing e-bikes on non-motorized trails threatens to violate laws designed to protect resources on public lands. As laid out in section III above, allowing e-bikes on non-motorized trails without designating those trails for motorized use is contrary to Federal law and long-standing travel management regulations and policies.

The proposed rule also threatens to violate various state and local laws governing e-bike use on trails, as described in detail in section IV above. State, local, and Forest Service definitions and requirements for e-bikes differ and conflict from BLM's proposals. This creates the potential for significant jurisdictional challenges and violations of such differing standards imposed for the protection of the environment.

Based on these extraordinary circumstances, BLM may not rely on a CX and must conduct additional analysis pursuant to NEPA regulations.

***Pursuant to NEPA regulations, BLM must prepare a full environmental impact statement for the proposed rule. At a minimum, it must prepare an environmental assessment to determine whether an EIS is required.***

---

<sup>137</sup> *Id.*

## V. The Proposed Rule Requires Programmatic ESA Consultation

BLM must complete a programmatic consultation with both the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (hereafter jointly “Services”) to identify the potential harms resulting from the proposed rule. Under Section 7 of the Endangered Species Act and its implementing regulations each federal agency, in consultation with the Services must insure that any action authorized, funded, or carried out by the agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species or (2) result in the destruction or adverse modification of the critical habitat of such species.<sup>138</sup>

Agency “action” is broadly defined to include actions that may directly or indirectly cause modifications to the land, water, or air, and actions that are intended to conserve listed species or their habitat, specifically including, as here, “the promulgation of regulations.”<sup>139</sup> Under the Services’ joint regulations implementing the ESA, an action agency such as the BLM must initiate consultation under Section 7 whenever its discretionary action “may affect” a listed species or critical habitat.<sup>140</sup>

The Fish and Wildlife Service Consultation Handbook defines the “may affect” standard as “[t]he appropriate conclusion when a proposed action may pose any effects on listed species or designated critical habitat.”<sup>141</sup> A “may affect” determination is required by the Services’ Joint Consultation Handbook when any “*possible* effect, whether beneficial, benign, adverse, or of an undetermined character” occurs.<sup>142</sup> Simply put, “may affect” includes any actual effect on an endangered species, and “no effect” means absolutely no effect on an endangered species whatsoever. As the Ninth Circuit explained in *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1027 (9th Cir. 2012), “actions that have any chance of affecting listed species or critical habitat — even if it is later determined that the actions are ‘not likely’ to do so — require at least some consultation under the ESA.”

Here, the proposed rule crosses the “may affect” threshold, yet BLM does not mention the ESA or consultation anywhere in its proposal. As noted elsewhere in this letter, a key purpose and intended effect of the proposed rule is to encourage e-bike use that will lead to more human entry into and disturbance of remote backcountry locations. This obviously has the potential for impacts to candidate, threatened, and endangered species who rely on BLM lands for habitat. In fact, over 480 listed, proposed, or candidate species exist on BLM lands.<sup>143</sup>

---

<sup>138</sup> 16 U.S.C. § 1536(a).

<sup>139</sup> 50 C.F.R. § 402.02(b).

<sup>140</sup> 50 C.F.R. § 402.14(a); *see also Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007).

<sup>141</sup> U.S. Fish & Wildlife Serv. and Nat’l Marine Fisheries Serv., *Endangered Species Consultation Handbook* at xvi (Mar. 1998).

<sup>142</sup> *Center for Biological Diversity v. BLM*, 698 F.3d 1101, 1122 (9th Cir. 2012) (emphasis added).

<sup>143</sup> While the current webpage lists “300 threatened or endangered species,” an archived version from January 2019 states “BLM manages habitat for over 480 wildlife, fish, and plant species listed as threatened or endangered under the Endangered Species Act (ESA) and at least 31 species identified as candidates for listing.” *Compare* Bureau of Land Management, Threatened and Endangered Species, <https://www.blm.gov/programs/fish-and-wildlife/threatened-and-endangered> to Bureau of Land Management, *Threatened and Endangered Species*, available at: <https://web.archive.org/web/20190129212429/https://www.blm.gov/programs/fish-and-wildlife/threatened-and-endangered>.

As just one example, grizzly bears are a listed species under the ESA that requires consultation.<sup>144</sup> The quiet movement of e-bikes at high speeds will likely result in significant displacement impacts along trails for grizzly bears and would result in direct impacts on their habitat.<sup>145</sup> Given likely impacts on grizzly bears, the proposed rule and its effects satisfy the “may affect” threshold. Thus, BLM must conduct an ESA consultation.

***Pursuant to the ESA, BLM must complete a programmatic consultation with FWS and class NMFS.***

## **VI. Conclusion**

For the reasons listed above, BLM should abandon the proposed rule. BLM must provide opportunities for participation, information, or data to the public. As written, the proposed rule is contrary to long-standing travel management law and policy and will lead to significant implementation and enforcement issues. BLM must satisfy its obligations under National Environmental Policy Act (NEPA) or the Endangered Species Act. To the extent BLM wishes to provide additional e-bike trail opportunities, BLM should utilize its existing regulations, tools, and discretion to expand e-bike opportunities and accomplish the purported objectives of the proposed rulemaking. If you have any questions, please contact Soren Jespersen or Robert Rigonan.

Sincerely,

Soren Jespersen  
Senior Field Representative  
The Wilderness Society  
Soren\_jespersen@tws.org  
970-819-7377

Robert Rigonan  
Associate Attorney  
The Wilderness Society  
Robert\_rigonan@tws.org  
303- 803-1760

Linda Hodges  
Conservation Chair  
Aiken Audubon Society  
hikerhodges@gmail.com  
719-425-1903

---

<sup>144</sup> U.S. Fish and Wildlife Service, *Grizzly Bear*, available at: <https://www.fws.gov/mountain-prairie/es/grizzlybear.php#:~:text=Grizzly%20bear.,Continental%20Divide%20in%20northwestern%20Montana>.

<sup>145</sup> Wilkinson, *supra* note 56.



Randall Rasmussen  
Director, Public Lands & Recreation  
Back Country Horsemen of America  
WildernessAdvisor@bcha.org  
541-602-0713

Bruce Ackerman  
President  
Black Canyon Audubon Society  
BruceAckermanAUD@aol.com  
727-858-5857

Linda Castro  
Assistant Policy Director  
California Wilderness Coalition  
lcastro@calwild.org  
760-221-4895

Allison N. Melton  
Staff Attorney  
Center for Biological Diversity  
amelton@biologicaldiversity.org  
970-309-2008

Julie Mach  
Conservation Director  
Colorado Mountain Club  
juliemach@cmc.org

Danielle Murray  
Senior Legal and Policy Director  
Conservation Lands Foundation  
danielle@conservationlands.org  
302-367-8076

Susan Crook  
Staff Assistant  
Conserve Southwest Utah  
susan@conservewu.org  
435-773-7920

Vera Smith  
Senior Federal Lands Policy Analyst  
Defenders of Wildlife  
vsmith@defenders.org  
720-943-0456

Karl Brummert  
Executive Director  
Denver Audubon  
karl@denveraudubon.org

Thomas Wheeler  
Executive Director  
Environmental Protection Information Center  
tom@wildcalifornia.org  
707-822-7711

JoAnn Hackos  
Conservation Board Member  
Evergreen Audubon  
Conservation@evergreenaudubon.org  
303-670-8517

Donald Rivenes  
Executive Director  
Forest Issues Group  
rivenes@sbcglobal.net  
530-477-7502

Shaaron Netherton  
Executive Director  
Friends of Nevada Wilderness  
shaaron@nevadawilderness.org  
775 324-7667

Jim Miller  
President  
Friends of the Bitterroot  
news@friendsofthebitterroot.net

Jora Fogg  
Policy Director  
Friends of the Inyo  
jora@friendsoftheinyo.org  
760-873-6500

Nancy Working  
Co-Leader  
Great Old Broads for Wilderness  
nworking@msn.com  
303-349-4728

Shelley Silbert  
Executive Director  
Great Old Broads for Wilderness  
shelley@greatoldbroads.org  
970-385-9577

Siva Sundaresan  
Conservation Director  
Greater Yellowstone Coalition  
ssundaresan@greateryellowstone.org  
307-335-5331

Matt Reed  
Public Lands Director  
High Country Conservation Advocates  
matt@hccacb.org  
970-349-7104

John Robison  
Public Lands Director  
Idaho Conservation League  
jrobison@idahoconservation.org  
208-345-6933

Jeff Halligan  
Executive Director  
Idaho Trails Association  
Jeff@idahotrailsassociation.org  
208-315-0079

Larry Desjardin  
President of the Board  
Keep Routt Wild  
larrydesjardin@yahoo.com  
970-819-8435

Amy Robinson  
Conservation Director  
Montana Wilderness Association  
arobinson@wildmontana.org  
406-249-4408

Nick Gevock  
Conservation Director  
Montana Wildlife Federation  
ngevock@mtwf.org  
406-533-9432

Nada Culver  
Vice President, Public Lands  
National Audubon Society  
nada.culver@audubon.org  
720-780-8727

Rene Voss  
Senior Counsel  
Natural Resources Law  
renepvoss@gmail.com  
415-446-9027

Logan Glasenapp  
Staff Attorney  
New Mexico Wilderness Alliance  
logan@nmwild.org  
414-719-0352

Erik Fernandez  
Wilderness Program Manager  
Oregon Wild  
ef@oregonwild.org  
541-382-2616

Tom Sobal  
Director  
Quiet Use Coaliton  
quietuse@gmail.com  
719-539-4112

Rosalind McClellan  
Director  
Rocky Mountain Recreation Initiative  
rosalind.mcclellan@colorado.edu  
303-447-9409

Alison Gallensky  
GIS Director  
Rocky Mountain  
Wild alison@rockymountainwild.org  
303-546-0214 x 9

Jimbo Buickerood  
Program Manager  
San Juan Citizens Alliance  
jimbo@sanjuancitizens.org  
970-259-3583

Christine Canaly  
Director  
San Luis Valley Ecosystem Council  
info@slvec.org  
719-589-1518

Karen Tuddenham  
Executive Director  
Sheep Mountain Alliance  
lexi@sheepmountainalliance.org  
970-728-3729

Athan Manuel  
Director, Lands Protection Program  
Sierra Club  
athan.manuel@sierraclub.org  
202-716-0006

Susan Britting  
Executive Director  
Sierra Forest Legacy  
britting@earthlink.net

Dave Willis  
Chair  
Soda Mountain Wilderness Council  
sodamtn@mind.net

Neal Clark  
Wildlands Program Director  
Southern Utah Wilderness Alliance  
neal@suwa.org  
435-259-7090

Donald Saner  
Teton Director Public Lands  
Teton Back Country Horseman  
sanerent@gmail.com  
307-413-8484

Donna Stevens  
Executive Director  
Upper Gila Watershed Alliance  
director@ugwa.org  
575-590-5698

Karen Yarnell  
Chair  
West Virginia Wilderness Coalition  
bioverdant@icloud.com  
304-657-0812

James E. Lockhart  
President  
Wild Connections  
jlock@datawest.net  
719-385-0045

John Sztukowski  
Conservation Director  
Wild Connections  
john@wildconnections.org  
8179394239

Adam Rissien  
ReWilding Advocate  
WildEarth Guardians  
arissien@wildearthguardians.org  
406-370-3147

Juli Slivka  
Conservation Director  
Wilderness Workshop  
juli@wildernessworkshop.org  
970-963-3977

Hilary Eisen  
Policy Director  
Winter Wildlands Alliance  
heisen@winterwildlands.org  
208-629-1986

Buzz Hettick  
WY BHA Chair  
WY Backcountry Hunters & Anglers  
buzzandpat@msn.com

Barry Reiswig Chairman  
Wyoming Back Country Horsemen  
Thepacker@tctwest.net  
307-690-9713

Matthew Cuzzocreo  
BLM Wildlands Organizer  
Wyoming Wilderness Association  
matt@wildwyo.org  
307-672-2751

Addi Jenkins  
Marketing Director  
Wyoming Wilderness Association  
addi@wildwyo.org