



December 31, 2021

Senator Joe Manchin
306 Hart Office Bldg.
Washington DC 20510

Senator John Barrasso
307 Dirksen Office Bldg.
Washington DC 20510

Re: Outdoor Recreation Act S.3266

Dear Senators Manchin and Barrasso:

The above Organizations welcome the opportunity to voice our limited support and hope for revisions to the Outdoor Recreation Act (S.3266) (hereinafter referred to as “the Proposal”) to make the Proposal both more effective on the ground and benefits sought to be achieved more valuable to a wider range of communities. The communities we represent have partnered with land managers for approaching 50 years and are now providing almost \$100 million in annual funding for maintenance and operations to land managers that benefits all users. Based on these partnerships, there are concepts in the Proposal we could vigorously support, such as improving recreational access, but there are more provisions that give us significant concern, such as the impact of artificial deadlines on the public process necessary for the travel management process or requiring inventories for broadband access on public lands. Most of the time, areas we ride don’t even have trail heads, little lone cell service or power to create broadband. Even if these opportunities were created, there is simply no one to maintain these facilities once they were built, which would result in a massive increase in the maintenance backlog and little benefit to users. This would result in long term barriers to recreational usage of public lands from the Proposal.

These new barriers from the Proposal are in addition to the many barriers in the travel management process that result from the entire travel management process being badly out of date and heavily redundant on many components of the travel process, such as minimization of impacts. Many opposed to motorized usages simply don’t want to recognize the fact that most forests and offices have been doing travel management for almost 50 years and minimization has been largely addressed and reviewed several times. Rather than starting with a position of minimization has not occurred, which is often asserted to be necessary by those simply opposed to multiple uses, managers should be able to start form a position that minimization has been largely completed on the Ranger District. This starting point would

greatly speed the travel process and ensure there is a vigorous and meaningful public process which should not be sacrificed in the desire of complying with arbitrary deadlines or conducting redundant reviews of previous decisions. Starting from such a position is also made more difficult by the fact the minimization criteria in the Executive Orders are highly subjective and commonly litigated. We are contacting you in the hope of discussing and resolving these concerns as we are ongoing touching the surface of this issue even though the comments are now spanning many pages.

1. Who we are.

Prior to addressing the specific concerns the Organizations have regarding the Proposal, we believe a brief summary of each Organization is needed, in order to fully understand why we are concerned as this concern is based on decades of on the ground experience with the travel process rather than abstract concepts. The Colorado Off-Highway Vehicle Coalition ("COHVCO") is a grassroots advocacy organization of approximately 250,000 registered OHV users in Colorado seeking to represent, assist, educate, and empower all OHV recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO is an environmental organization that advocates and promotes the responsible use and conservation of our public lands and natural resources to preserve their aesthetic and recreational qualities for future generations. The Trail Preservation Alliance ("TPA") is a 100 percent volunteer organization whose intention is to be a viable partner, working with the United States Forest Service (USFS) and the Bureau of Land Management (BLM) to preserve the sport of trail riding. The TPA acts as an advocate of the sport and takes the necessary action to ensure that the USFS and BLM allocate to trail riding a fair and equitable percentage of access to public lands. Colorado Snowmobile Association ("CSA") was founded in 1970 to unite the more than 30,000 winter motorized recreationists across the state to enjoy their passion. CSA has also become the voice of organized snowmobiling seeking to advance, promote and preserve the sport of snowmobiling through work with Federal and state land management agencies and local, state and federal legislators telling the truth about our sport. For purposes of this correspondence COHVCO, TPA and CSA will be referred to as "The Organizations". The Organizations have actively participated in all types of projects ranging from localized efforts to maintain or reroute portions of trails to large regional or national efforts, such as: Sage Grouse management efforts in the Rocky Mountains; recent revisions of the new USFS planning rule; development and revocation of the BLM 2.0 Planning Rule; and development of the USFS winter travel rule.

In addition to being actively involved in a wide range of planning efforts with the agencies, the Organizations and our State partners are some of the first to create the "innovative funding models"

sought to be expanded under §208 of the Proposal. The Organizations have partnered with the USFS/BLM/other federal managers and state level parks and recreation programs (generally referred to as “land managers” for purposes of these comments) for decades in addressing trail related maintenance issues of all sizes through the voluntary registration fees for OHVs and OSVs that have been adopted in numerous states. These registration programs started around grooming of winter trails for OSV recreation in the 1970’s and remain basically the only source of funding for winter grooming of routes generally on public lands. Seeing the success of these programs the OHV community soon adopted similar voluntary registration programs in the 1980s. These are some of the longest, largest and strongest partnerships in place with land managers, are easily within the definition of an innovative funding model and are often overlooked as these programs have been around for so long and are not matched really in any manner by other user groups.

As an example of these innovative funding models, the Colorado Parks and Wildlife motorized program provides between \$6 and \$8 million in direct funding to projects that results in almost 60 maintenance crews for summer and winter trails and extensive project specific funding. The California OHMVR program easily provides five times this amount of funding to the land manager offices in California much of which provides the major source of funding for maintenance and operations of recreational facilities on public lands. The State of Idaho program also provides land managers more than \$1 for every resident of the state to support trail maintenance. Winter programs in states with small amounts of federal public lands also provide significant economic contributions from trails, as evidenced by the State of New Hampshire program contributing \$3 million annually to the state trail network. Each of these State level partnerships is leveraged with countless volunteer hours and support, addressing a huge range of roles including basic volunteer labor on projects, to engineers volunteering time to design bridges and heavy equipment businesses working for the cost of fuel from the programs and many of the programs funded would simply cease to exist without this volunteer support. This volunteer support which multiplies the impact of this funding to have an impact on the ground of spending several times more money that comes from these programs. This intangible benefit is a critical component of the success of these programs and protecting this intangible would be a major benefit of reforming the Proposal.

2. Three big challenges in recreation on federal public lands.

The Organizations have spent significant time working with federal land managers and believe they are facing three major challenges on the landscape level. We are aware of the fact this might seem to be an unusual starting point for a comment on travel management but we are aware these are the types of

challenges managers are seeing every day on the ground. Trying to resolve travel management issues without recognizing the relationships these issues have on the ground will simply have little positive benefits to the recreational community. Trying to address travel management in isolation could actually make the situation worse and that is something everyone wants to avoid. The three challenges are as follows:

a. No staff and inconsistent funding. As noted above our Organizations and members provide funding for recreational staff to districts and offices. Without this funding many offices simply have no recreational staff and face significant systemic barriers in completing projects. Unfortunately, we consistently see a significant amount of this funding for staffing returned every year due to a variety of barriers, such as hiring practices within the agency or transitions of accounting systems. Barriers expand when funding is expanded to materials and staff, such as when money is provided to build and repair bridges. We are aware of projects replacing existing bridges where all materials have been purchased through our programs, engineered drawing completed and the project still can't start as the USFS requires an USFS engineer approval despite all engineer drawings being provided. The USFS engineer position has been unfilled for years. This type of systemic problem will continue to be a problem without regard to the passage of the legislation and is also impacting many issues beyond just travel management.

We mention this issue as numerous provisions of the Proposal, such as §102, create extensive new processes for planning, some of which mirror the 2012 USFS planning rule, but many do not. Our concern is these provisions will take staff away from projects that are critically needed and delay those projects even longer. What we need is staff to implement the projects we can fund and generally these staff already know what projects are critically important to recreation on the district. This implementation can be as simple as approving drawings or overseeing maintenance. This is made more frustrating by the fact we are also aware of districts where we try and fund these types of positions but the district simply cannot advertise or fill the position. We are very concerned that many of the provisions will draw staff away from these projects rather than compel completion of these projects.

b. Poor health of ecosystem. The Organizations are intimately familiar with the exceptionally poor state of forests on public lands in general. These are lands that have been ravaged by insect infestations and drought, and this has proven to be a major barrier to any recreational activity even before there are catastrophic wildfires that impact these areas. Falling trees blocking trails create a significant barrier to recreation even before wildfire and often these wildfires preclude recreational usage of these areas for decades. It is the Organizations position that these challenges must be the highest management priority

for land managers as the impacts from these challenges far outweigh any benefits from updating existing travel management maps and decisions that are alleged to be out of date. After a catastrophic wildfire, recreational opportunities are lost regardless of what travel management decision is defining the opportunities that should be available.

c. Too much paperwork. Travel management simply is not a major management concern compared to threats we are seeing on public lands such as poor forest health, catastrophic wildfire and a complete lack of staffing. We are concerned that any artificial elevation of travel management, such as that attempted by the §204(a)(2) as this simply is unrelated to the challenges we are seeing land managers facing on their districts. This could not be better exemplified by the impacts of the 2021 Caldor and Dixie fires in California, as these fires have now burnt almost entire Forests that have been involved in the almost 2-decade fight over winter travel decisions. Any impacts that could have been prevented by a travel plan are clearly outweighed by the fire impacts. We are also concerned that many of the problems that are asserted to be present with the travel process are the result of ongoing litigation and philosophical opposition to general public access and motor vehicles being used on public lands.

3a. Ways the Organizations believe the Proposal could improve travel management processes.

As noted previously, we have been involved in the Travel Management Process from the beginning and we remain active in this role and it is these experiences that create our concerns. We have sued federal land managers but we have also come to intervene in defense of the travel management decisions that are in place more frequently. It has been our experience that merely publishing a map is simply not enough as almost every travel decision we have been involved with has been challenged, often by those that are asserting there is no travel management. We believe the litigious nature of the travel process is something that could be addressed and minimized with legislation, such as providing a presumption that minimization has been completed if there is a travel decision in place. Again, our experiences allow us to identify situations where travel decisions have been challenged as supported by courts when they are released and are subsequently challenged by the same group years later and struck down simply because the land manager cannot explain the decision as staff has moved on and records cannot be found.

3b. The Travel Management Orders are comically out of date.

Our first concern is the fact that travel management as a concept is badly in need of a simple update, as this concept was created by Executive Order 11644 issued By President Richard Nixon in 1972 and updated only once by President Carter with the issuance of Executive Order 11989 in 1977. Simply for comparison

of the age of the concepts, a toaster was cutting edge technology in the home when these Orders were issued. Any position statement that was bringing a concept of a toaster being modern in 2021 would immediately be seen as irrelevant and dismissed. This is a major concern and we would submit should be addressed in any discussion on travel management.

While we frequently hear that Travel Management has not been completed in many locations, that has not been our experience as almost every district has some type of travel management in place at this point and most districts have undertaken two or three travel planning efforts. When the USFS updated its winter travel management rule in 2015, the agency concluded that almost 90% of the Forests in the US had completed winter travel management. Despite this outlay of resources, those that are opposed to the use of motor vehicles on public lands simply continue to assert travel management has not been undertaken. This simply is not accurate and a more accurate summary of the position being taken is there is not a travel management plan we agree with as motor vehicles are still used on public lands.

Given the fact that the Travel Management Orders are more than 50 years old, we believe there are opportunities for Congressional action to be targeted on certain aspects of these Orders to make the subsequent travel management process more efficient and effective. We would welcome a discussion on this topic in greater detail but would like to provide some brief details in these comments on specific aspects that could be improved.

3c. Protecting vigorous public processes around travel management efforts must be a priority.

Second concern is the fact that artificial deadlines such as those in §204 of the Proposal limit public input and reduce the quality of the plan. We are simply unaware of how the deadline of 5 years for completion of all travel management was arrived at as we are participating in numerous travels plans for particular forests or areas that have now covered more than 15 years since the planning effort started. Not only has it been our experience that 5 years is FAR too short a time to complete travel management, it has been our experience that anytime there is a deadline for project completion, public comment is the first area to be cut to make the deadline. Land managers have taken significant steps to more effectively engage with the public, such as releasing plans to the public before commencing NEPA. This has been a major step forward in public engagement rather than a negative but this also takes significant time. We are always frustrated when anti-access groups continue to challenge travel management decisions and then complain that travel management has not been completed or is taking too long. This is at best disingenuous at best, as closing opportunities is always easier than keeping them open.

The creation of travel plans of any size, is a long, difficult process that creates significant conflicts between users that often worked together before the commencement of the travel planning process and generally ends in litigation. Candidly the Organizations are struggling to identify a travel plan addressing a Ranger District or larger area that has been completed within 5 years of commencement of the planning process. These are both important components of the planning process and must not be overlooked. As we discuss in greater depth in other portions of these comments, with staffing changes and challenges often the local users are becoming the historian for the forests. We consistently are providing information about previous NEPA analysis and other efforts as part of the NEPA process, and ensuring this information is provided is critical to the development of quality planning documents moving forward. We believe a few of our experiences will highlight why we are concerned.

A. We are familiar with many areas that have actually undergone 3 or 4 rounds of travel management since the EO were issued in the early 1970's. This would be exemplified by the GMUG NF in Colorado. We mention this as we are currently involved in updating this Forest's resource management plan and have consistently been told by numerous interested parties that the GMUG NF in Colorado has never done travel management and that they think travel management should be done in conjunction with the resource plan. This is a situation where the deadline of 5 years for the completion of travel management could be erroneously applied and have critically negative impacts on the existing travel management efforts. The Rio Grande NF in Colorado recently completed a forest plan revision, which was supported by the motorized community but chose not to undertake a travel plan. This resource plan is currently being litigated as they chose not to update travel management as part of the forest plan. Again, these are decisions that don't benefit from arbitrary deadlines.

B. The Pike/San Isabel National Forest ("PSI") is another forest where the travel management process was completed but unacceptable to some interests which has resulted in decades of conflict both over the decisions and the basic process. The Organizations have vigorously supported moving travel decisions to small geographic areas, as smaller areas allow for better public engagement and understanding and better discussions of solutions for keeping areas open and addressing challenges on the ground. Travel management is based on the premise that if the route is not on the map, it must be closed. When travel plans seek to address millions of acres, conflicts inevitably commence as the basis for routes being closed is not understood and cannot be addressed with partner funding and in other situations entire networks of routes are overlooked, even if they are the basis of site-specific decisions previously, simply because users and managers are focused on other portions of the Forest or Office.

This is exemplified by the PSI efforts as the PSI chose to undertake travel management on a largely local level rather than working at the forest level and was sued in 2011 because of this. This lawsuit was again settled and the new recommendation for a forest level travel management plan is currently in the NEPA review. This forest level effort has closed less than 3% of the routes on the Forest, as it found previous site-specific travel management to be largely effective. Numerous routes were found to simply not be included in the forest level discussion because they had been overlooked in the mapping effort, which is a major concern when the foundation of the process is if the route is not on the map, it must be closed. The PSI process has stumbled over basic questions such as what does minimization mean and has it been documented. We mention this as again this is another example of why we are concerned about a 5-year window to complete travel management as this is simply too short. We also believe this decision will be challenged in court, regardless of what validation the agency provides for their decision.

C. The decades of saga that has become California winter travel management is another example of why a 5-year deadline is not good. Several anti-access groups sued in California state court based on the sufficiency of State environmental analysis for winter grooming efforts that had been occurring on districts since the 1960's for the benefit of all users. This claim was defeated in state court. These anti-access groups then sued on largely identical claims in federal court in 2011, which was settled in 2013. The settlement deadlines were then extended multiple times for a variety of reasons. During this timeframe and as the result of other litigation, basically by the same plaintiffs, the USFS also undertook a completely new winter travel rule that was completed in 2015. In 2021, this remains an open issue almost 2 decades after litigation started and is nowhere near close to being resolved as only a few forests have published a final plan.

D. Another example of why we are concerned about the 5-year deadline is provided our experiences with forests who have attempted to update existing maps. The Payette, Bridger-Teton and Boise National Forests published updated OSV travel management maps based on their existing plans in 2017 in response to the new USFS winter travel rule. These were immediately challenged as out of date¹ by numerous Organizations that are opposed to the use of over the snow motorized vehicles. Rather than try and defend the existing planning, the OSVUM were simply withdrawn. Again, it seems disingenuous for groups to challenge the issuance of maps based on planning in place for decades and then complain there are

¹ See, [2017_09_08 Complaint - Winter Wildlands Alliance v. US F.pdf \(wildearthguardians.org\)](#)

not maps available. This is also an example of why we are concerned about short deadlines for completion of travel management.

We could continue with examples like these for pages, but we believe only a few examples of the challenges with travel management process will convey why we are concerned. The more difficult question is how to improve the process of travel management.

4. Recommendations for Congressional action to streamline the travel management process.

A. Preserve and protect a vigorous public process for the development of these plans. A good plan must always be the objective of any federal planning effort and this should not be overlooked in the desire to develop a quick plan. A desire to work quickly will also negatively impact the partnerships we have in place that benefits all recreational users as critical projects are frequently overlooked and lost in planning efforts that seek to move too quickly. This simply can never be overlooked as a vigorous and meaningful public process will be critical to developing quality maps as these decisions will guide access for all types of recreational interests and activities on the planning area.

B. Update the Travel planning requirements. A major step in completing the travel management process would be for Congress to make specific conclusions on the status of steps in the travel process. An example of this could be a Congressional determination that minimization analysis has been completed if there is a travel decision in place on the forest. Congressional conclusions similarly structured to what would be needed on travel management issues were issued for Wilderness Study process because of litigation of that process in the early 1980s. Similar concerns about the effects of litigation and special interests could accurately reflect the status of travel management decision making process that we are seeking to streamline. Often the highly subjective Minimization criteria found in the EO can delay a travel plan for years and a presumption of completion by Congress would significantly speed any process. Providing guidance on this could take years off the travel process.

c. Don't put a deadline or heightened importance on the process. Let local managers make these decisions while weighing travel management with other challenges under current staffing concerns and other resource issues on the district. Worrying about a travel plan for a district that was just heavily impacted by wildfire simply does not make any sense and could result in a planning process that is largely irrelevant because of fire impacts.

d. Exclude the litigation of Travel Management decisions from cost recovery provisions of various acts.

It has been the Organizations experience that many groups have focused on Travel Management as a

process that can be litigated to advance their anti-access agenda and then recover the litigation costs. This is the result of the hugely subjective standards in the Travel Management Order, such as the minimization criteria. We submit that removal of the ability to recover litigation costs would reduce the almost ongoing challenges to travel management that have been common in many locations, and we really don't see these impacting resources as we believe if there is truly an issue with a travel plan funding can be found to litigate the issue without the carrot of cost recovery. With cost recovery, litigation becomes an easy resolution to issues with minimal risk of loss for those that oppose public access to public lands.

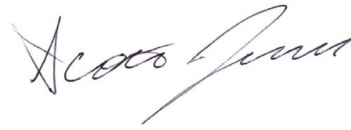
5. Conclusion.

The above Organizations welcome the opportunity to voice our limited support and hope for revisions to the Outdoor Recreation Act (S.3266) (hereinafter referred to as "the Proposal") to make the Proposal both more effective on the ground and more valuable to a wider range of communities. The communities we represent have partnered with land managers for approaching 50 years and are now providing almost \$100 million in annual funding for maintenance and operations to land managers that benefits all users. There are concepts in the Proposal we could vigorously support, such as improving recreational access, but there are more provisions that give us significant concern, such as the impact of artificial deadlines on the public process necessary for the travel management process or requiring inventories for broadband access on public lands. Most of the time, areas we ride don't even have trail heads, little lone, cell service or power to create broadband internet. Many of our users also use public lands to get away from the running of phones and email notices that are almost constant anymore. Even if these opportunities were created, there is simply no one to maintain these facilities once they were built, which would result in a massive increase in the maintenance backlog and little benefit to users.

Many of these barriers result from the fact that the entire travel management process is badly out of date and does not reflect the fact that most forests and offices have been doing travel management for almost 50 years. There is simply no need to continue to review minimization decisions in travel management as these decisions have been completed for decades. Rather than starting with a position of minimization has not occurred, managers should be able to start from a position that minimization has been largely completed on the District. A vigorous and meaningful public process has been one of the major benefits to users from the new policies of land managers and should not be sacrificed in the desire of complying with arbitrary deadlines. We are contacting you in the hope of discussing and resolving these concerns.

Please feel free to contact Scott Jones at 518-281-5810 if you should wish to discuss these matters further.

Sincerely,

A handwritten signature in dark ink, appearing to read "Scott Jones". The signature is fluid and cursive, with the first name "Scott" written in a larger, more prominent script than the last name "Jones".

Scott Jones, Esq.
Authorized Representative
CSA, COHVCO and TPA