

**Testimony of Jack Terrell**

Subcommittee on Conservation, Energy and Forestry

Committee on Agriculture

United States House of Representatives

May 5, 2011

Chairman Thompson, Ranking Member Holden and distinguished Members of the Subcommittee on Conservation, Energy and Forestry, thank you for the opportunity to testify about the concerns that the motorized recreation community has with the Forest Service's proposed Land Management Planning Rule. I am Jack Terrell, Senior Project Coordinator for the National Off-Highway Vehicle Conservation Council, a national body of off-highway vehicle (OHV) recreation enthusiasts, that develops and provides a wide spectrum of programs, materials and information, or "tools," to individuals, clubs, associations and agencies in order to further a positive future for responsible OHV recreation.

Forest Plans provide broad guidance for planning of specific projects and activities, including both motorized and non-motorized recreation. As a result, the Land Management Planning Rule and its subsequent implementation can have a dramatic effect on the number and quality of sustainable OHV recreation opportunities. NOHVCC and the OHV community at large are concerned that the Forest Service's current proposed rule will lead to the development of Forest Plans that will inhibit motorized and other forms of recreation, be difficult, burdensome and costly to implement, and most likely will lead to exhaustive legal challenges. As a citizen who has invested hundreds, if not thousands, of volunteer hours participating in Forest Service planning processes to identify and manage trail systems, I must tell you that the recreation public is frustrated by what seems to be a never-ending series of "new" plans that constantly change the ground rules and leave the definite impression that public input is either ignored or downgraded. It seems that each new process or rule is formulated to further restrict OHV trail opportunities, and totally ignore the negative economic impact of such decisions on jobs or economic development in rural communities.

An initial concern of both the OHV community and the recreation community at large was that the Notice of Intent to develop the rule scarcely mentioned recreation. As a result, NOHVCC joined with other recreation groups to encourage the Forest Service to more meaningfully

address recreation in the proposed rule, and we appreciate that the draft rule does, in fact, recognize that recreation plays a role on National Forests. We are disappointed, however, that the proposed rule clearly provides that preservation trumps social and economic factors, including recreation, contradicting the Multiple Use Sustained Yield Act (MUSYA), which directs that the national forests be managed under principles of multiple use and to produce a sustained yield of products and services. We are concerned that this will mean that Forest Plans will heavily favor locking out recreation instead of maintaining and creating sustainable recreation opportunities that support the economy of local communities.

We are also concerned that the draft includes many undefined or ill-defined terms that are ambiguous at best and will be a magnet for litigation. For example, the draft repeatedly refers to “sustainable recreation.” NOHVCC believes that all recreation should be “sustainable” and frequently uses the term when we discuss recreation opportunities that are manageable and maintainable; however, the definition of sustainable recreation in the draft rule introduces new factors:

*Sustainable Recreation - The set of recreational opportunities, uses and access that, individually and combined, are ecologically, economically, and socially sustainable, allowing the responsible official to offer recreation opportunities now and into the future.*

What does “socially sustainable” mean? We are confident that the courts will have to decide if this is left in the final rule. What is socially sustainable to one interest may not be to another.

Other terms like “aesthetic values,” “spiritual, educational, and cultural sustenance,” and “spatial mosaic,” among many others, are undefined and perhaps, undefineable in the context of regulation. After decades of litigation and several different attempts at developing a workable planning rule the Forest Service should focus on producing a rule that is clear and relies on long-standing and defined terms, like those found in the Multiple Use Sustained Yield Act, not creating vague new terminology that will almost certainly result in anti-access advocates asking courts to limit recreation based on their interpretation of these terms.

Another factor of the proposed rule that will make it costly and burdensome is its reliance on “best available science.” While sound science certainly should have a role in planning activities we are concerned about what constitutes “best” science and who gets to make that determination. There is growing recognition that expending resources to determine what is the “best available science” will be not only time and resource consuming, but unnecessary. Again, it will almost inevitably be brought to the courts to decide what constitutes the “best available science.”

The last specific concern with the draft I will mention is the inclusion of the “viable population” provisions. The Forest Service itself acknowledges in the summary of the draft that similar provisions in the 1982 rule, “at times proved to be unattainable because of factors outside the control of the Agency.” These factors still exist – species ranging on and off of Forest lands, activities outside the plan area, failure of the species to occupy suitable habitat, climate change – only the draft rule would expand the current provisions to include invertebrate as well as vertebrate species. The “viable species” provisions of the 1982 rule are frequently used as the basis for litigation and the draft rule expands upon them instead of substantially revising or eliminating them all together.

I would be remiss if I didn’t take the opportunity to encourage the Subcommittee to urge the Forest Service to extend the comment period, which is set to end on May 16. The draft rule is extremely complex and it is difficult to fully digest in any amount of time, and May 16<sup>th</sup> is fast approaching. The Forest Service has been trying to produce a workable rule for nearly 30 years, so providing an additional 90 days to the public to formulate extensive and well thought out comments should not prove to be too much of a delay. In addition, the Forest Service asked a third party to conduct an external science review of the Draft Environmental Impact Statement (DEIS) that accompanies the proposed rule. The review was released to the public on April 21. Stakeholders simply need more time to review the draft rule, the DEIS and the science review to make informed comments and recommendations.

I will close by noting that the OHV community, NOHVCC, my family, and myself as a rider have a vested interest in the implementation of a successful planning rule. We hope the final

rule resolves all the issues I mentioned above as well as any others that will unnecessarily restrict recreation or otherwise make the rule unworkable.

Thank you.

**Jack Terrell**  
Senior Project Coordinator  
National Off-Highway Vehicle Conservation Council

### **Biography**

**Jack Terrell** is Senior Project Coordinator for the National Off-Highway Vehicle Conservation Council, a non-profit educational foundation dedicated to furthering a positive future for responsible OHV recreation. He is a past Chairman of the Florida OHV Recreation Advisory Committee, a member of the Florida RTP Advisory Committee, Chairman of the Polk County (Florida) OHV Advisory Committee, and is Vice President and Land Use Chairman of the Florida Trail Riders. An off-highway motorcycle competitor and trail rider, he has been involved with land use and recreational trail issues since 1980. His background includes work across the country with federal, state, county and local legislative bodies, regulatory agencies, land managers and recreation planners to develop and improve trail recreation opportunities for the public. He holds a Bachelor of Science Degree in management science from the University of South Florida, Tampa, Florida.

Committee on Agriculture  
U.S. House of Representatives  
Required Witness Disclosure Form

House Rules\* require nongovernmental witnesses to disclose the amount and source of Federal grants received since October 1, 2008.

Name: JACK TERRELL

Organization you represent (if any): \_\_\_\_\_

NATIONAL OFF-HIGHWAY VEHICLE CONSERVATION COUNCIL

1. Please list any federal grants or contracts (including subgrants and subcontracts) you have received since October 1, 2008, as well as the source and the amount of each grant or contract. House Rules do NOT require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:

Source: N/A Amount: —

Source: N/A Amount: —

2. If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) the organization has received since October 1, 2008, as well as the source and the amount of each grant or contract:

Source: SEE ATTACHED SHEET Amount: \_\_\_\_\_

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