



State of Utah

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*Governor*

SPENCER J. COX  
*Lieutenant  
Governor*

Office of the Governor  
PUBLIC LANDS POLICY COORDINATING OFFICE  
  
KATHLEEN CLARKE  
*Director*

April 30, 2018

*Sent via Federal eRulemaking Portal: <http://www.regulations.gov>*

William Shot  
Superintendent  
Glenn Canyon National Recreation Area  
National Park Service  
P.O. Box 1507  
Page AZ, 86040

Subject: **Special Regulations of the National Park Service; Glen Canyon National Recreation Area; Motor Vehicles: Proposed Rule**  
RIN 1024-AD93  
RDCC Project No. 62362

Dear Mr. Shot:

The State of Utah's Public Lands Policy Coordinating Office appreciates the opportunity to comment on the Glen Canyon National Recreation Area Off-road Vehicle Travel Plan Special Regulation (proposed regulation). The State previously submitted comments on the Glen Canyon National Recreation Area Off-road Vehicle Management Plan and Environmental Impact Statement (ORV plan). The State believes those comments to be relevant to this proposed regulation and incorporates them by reference. Please accept, in addition to the previous comments, the following regarding the proposal to adopt the ORV plan as part of special regulation 36 CFR part 7.

**A Record of Decision has Not Been Made in Regard to the ORV Plan.**

Notice in the federal register of the ORV Management Plan Final Environmental Impact Statement was posted on January 17, 2017.<sup>1</sup> However, it appears that the Intermountain Regional Director has not yet signed a record of decision.<sup>2</sup> According to the federal register notice "[t]he special regulation would implement the preferred alternative

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<sup>1</sup> See Federal Register Vol. 82, No. 10, Tuesday, January 17, 2017 / Notice at 4921

<sup>2</sup> See Federal Register Vol. 83, No. 40, Wednesday, February 28, 2018 / proposed rules at 8641. "The final rule will ... be signed by the Intermountain Regional Director prior to publication of the final rule." See *Also Id*, "The interim plan will remain in effect until ... the Regional Director for the Intermountain Region signs a Record of Decision."

(Alternative E) for the recreation area as described in the FEIS.”<sup>3</sup> However, in that same paragraph NPS states that “[t]he final rule will implement the alternative selected in the Record of Decisions” suggesting that the final decision could be different from the preferred alternative.<sup>4</sup> It is unclear what rule the Glen Canyon National Recreation Area (NRA) is proposing to adopt. As a result of this ambiguity, it is difficult to provide meaningful comments on a proposed regulation that has not yet been officially determined. It would be prudent for the NRA to first finalize the Record of Decision and adopt an Off Road Vehicle Plan. Once a ROD is in hand, comments could be provided that address the actual proposed regulation allowing all interested parties to properly comment.

### **Adopting Alternative E Would Put at Risk the Health, Safety, and Welfare of the Local Citizens and Those Who Visit**

One of the objectives in both the Glenn Canyon National Recreation Area General Management Plan and the Canyonlands National Park and Orange Cliffs Unit of the Glen Canyon National Recreation Area Backcountry Plan is to provide year-round access to Panorama Point.<sup>5</sup> Alternative E would only allow “conventional motor vehicles” to travel the unpaved road from the head of the Flint Trail to Panorama Point.<sup>6</sup> According to the 1993 Environmental Assessment completed for the 1995 Backcountry Plan that section of road is to be maintained for “high clearance” vehicles.<sup>7</sup> Further, the remainder of the Flint Trail and all other roads in the Orange Cliffs Unit are to be maintained for “high clearance, four-wheel-drive vehicles.”<sup>8</sup> In contrast, the preferred alternative would require those that would normally travel the roads in OHV’s or ATV’s to switch to a conventional motor vehicle, the majority of which are neither high clearance nor four-wheel drive, and risk their safety to access Panorama Point and travel the unpaved roads in the Orange Cliffs Unit.

Those visiting the Orange Cliffs Unit of the NRA often arrive to the area in low clearance two-wheel drive vehicles. ATV rentals from neighboring communities would provide safe access to Panorama Point while at the same time boosting local economies. However, the preferred alternative would completely remove this option and encourage many to risk health and safety by proceeding in the low clearance two wheel drive vehicles. Prohibiting access for the safest and most accessible vehicles without changing the road character is illogical, and worse, puts those who visit as well as first responders in danger.

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<sup>3</sup> See Federal Register Vo. 83, No. 40/ Wednesday, February 28, 2018/proposed rules page 8641

<sup>4</sup> *Id.*

<sup>5</sup> See Glen Canyon General Management plan at 7, (1979); Canyonlands National Park and Orange Cliffs Unit backcountry plan at 8, (1995)

<sup>6</sup> See Plan / FEIS figure 13 at 83

<sup>7</sup> See Canyonlands National Park and Orange Cliffs Unit Environmental Assessment for Backcountry Management plan at 12, (1993).

<sup>8</sup> *Id.*

### **Alternative E Would be Inconsistent with the Canyonlands National Park and Orange Cliffs Unit Backcountry Management Plan**

As mentioned above, previous planning efforts developed management plans for the Orange Cliffs Unit of the NRA establishing that the roads in the area are only accessible by high clearance four-wheel-drive vehicles<sup>9</sup>. The NRA General Management Plan explains that it is the desire of the NRA to maintain the Orange Cliffs Unit's "relatively primitive undeveloped atmosphere."<sup>10</sup> Alternative E only allows vehicles "designed primarily for use and operation on streets and highways which are licensed and registered for interstate travel but can be used off-road" to travel the roads in the Orange Cliffs Unit.<sup>11</sup> However, the required construction on the roads in the Orange Cliffs Unit to make them passable by conventional motor vehicles will cause the area to be relatively less primitive and more developed. This runs counter to the objectives of the General Management Plan and causes unnecessary confusion and danger to the public.

### **The Proposed Regulation's Definitions of "Conventional Motor Vehicle", "OHV," and "Street-legal ATV" are an Effort to Circumvent Presidential Mandate and State Law**

Presidential Executive Order 11644, issued by President Nixon on February 8, 1972, defines off-road vehicles 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>12</sup> The Executive Order was intended to address ORV use on public lands and clearly meant for OHV's, ATV's, and Conventional Motor Vehicles to be managed under one definition when issuing special regulations for ORV use in national park units. The special regulation should comply with this executive order by treating all off road vehicles equally and letting state law govern the traffic and use of vehicles within the NRA.<sup>13</sup>

Additionally, the proposed regulation makes frequent use of the terms "conventional motor vehicle, OHV, and Street-legal ATV."<sup>14</sup> These three distinct designations are used to distinguish different kinds of vehicles within the NPS's broad definition of ORV.<sup>15</sup> This is done to restrict certain types of motorized vehicles from specific roads within the NRA. Unfortunately, the NPS fails to cite any authority or prior precedent for its categorization of certain ORVs as either conventional motor vehicles, OHV's or Street-legal ATV's. The proposed regulation aims to remove street-legal ATV's off of roads on which state law specifically allows them to travel.<sup>16</sup> Street-legal ATVs are legal to operate on roads and

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<sup>9</sup> See Glen Canyon General Management plan at 7, (1979); Canyonlands National Park and Orange Cliffs Unit backcountry plan at 8, (1995)

<sup>10</sup> See Glen Canyon General Management Plan at 7, (1979)

<sup>11</sup> See Plan / FEIS figure 13 at 83

<sup>12</sup> See Executive Order 11644

<sup>13</sup> See 36 CFR 4.2

<sup>14</sup> See Plan/FEIS at 1,2,4.

<sup>15</sup> See Executive Order 11644

<sup>16</sup> See Utah Code Ann. 41-6a-1509 Street-legal ATV's may operate on a street or highway unless the road or highway falls under one of the listed exceptions.

highways in both Utah and Arizona.<sup>17</sup> Further, the State of Utah already regulates where and how street legal ATV's can travel on roads and highways.<sup>18</sup> If Alternative E is selected and the proposed regulation adopts that alternative, state law and federal regulation will be in conflict on this issue. This will cause confusion to users and further damage the already fragile relationship between Glen Canyon NRA and the local counties, cities, and towns.

### **No Justification for the Circumvention of State Law**

As explained above, the proposed regulation to adopt an ORV plan that has yet to be finalized could put the health and safety of users in jeopardy, conflict with the current management decisions, and circumvent presidential mandate and state law. With regard to the circumvention of state law, the NRA has yet to provide sufficient justification as to why complying with existing state law would be inconsistent with current management or mandates.

The FEIS for the ORV plan analyzed potential effects on 11 environmental resources.<sup>19</sup> The environmental consequences for the resources on the paved and unpaved roads were generally the same throughout all of the alternatives.<sup>20</sup> According to the FEIS, soils would be impacted the same under the no action alternative, the no off-road use alternative, and the increased motorized access alternative.<sup>21</sup> However, the FEIS does say the impacts "could be potentially greater," under increased motorized access alternative. It doesn't say that impacts likely will be greater, or that impacts are expected to be greater, only that at some level there could be potential for greater impacts.<sup>22</sup> These findings are comparable to the majority of the ten other environmental resources. Moreover, no significant impacts or environmental consequences on paved and unpaved roads were found in the comparisons of the alternatives.

Thus, the justification for adopting this special regulation is deficient, and runs counter to the wishes of the state, state law, presidential proclamation, and the NRA's own traffic policies<sup>23</sup>. As a result, the proposed regulation should be modified to allow street-legal ATV's on roads and highways in accordance with the wishes of the State and local governments and consistent with existing state law.

### **The National Recreation Area is Unwilling to Work with State and Local Governments**

The State disagrees with several aspects of Alternative E and opposes its adoption into special regulation. They State has also made a pointed effort to communicate its dissatisfaction with the specific provision in Alternative E to shut off access in the Orange

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<sup>17</sup> See Utah Code Ann. 41-6a-1509; See also Arizona Revised Statute 28-1171-1181 (Article 20- Off Highway Vehicles)

<sup>18</sup> See Utah Code Ann. 41-6a-1509

<sup>19</sup> See FEIS / Plan at 97, 215

<sup>20</sup> See *Id* at 215 – 435,

<sup>21</sup> See *Id* at 242 – 244, "Direct and indirect impacts on soils ... would be the same as those under Alternative A." Impacts "under Alternative C would be similar to impacts described for [alternative A]"

<sup>22</sup> See *Id* at 244

<sup>23</sup> See Utah code Ann. 46-6a-1509; Proclamation No. 11644; 36 CFR 4.2

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Cliffs Unit to street-legal ATV's. This has been communicated through written comment, emails, phone calls, and personal meetings by county officials, state officials, and the staff of Utah's congressional delegation. These communications have made clear the State's desire is for the ORV plan to allow street-legal ATV access in the Orange Cliffs Unit, consistent with the policies and laws of the State. Further, the State has asked for an explanation as to why this request cannot be granted. The best response provided was that all things considered, the NRA believes the decision to prohibit street-legal ATV access is the best way for the NRA to meet its mandate. This response does not excuse the reduction in street-legal ATV access to this highly desirable area of Utah.

### **The Proposed Regulation Should Protect Valid Existing Rights**

The State, Wayne and Garfield Counties hold rights-of-way to a number of roads, including the Flint Trail/Roost Road, affected by this proposed regulation under Revised Statute 2477. In order to protect these valid existing rights, the State requests that the NRA acknowledge the State's claims to R.S. 2477 roads and designate all such routes open to all forms of vehicular travel.

### **Conclusion**

Adopting a special regulation at this point is premature. Absent a final decision on the ORV Management Plan it is impossible to know what the special regulation will say. Moreover, the preferred alternative in the FEIS for the ORV Management plan would put the public health and safety in jeopardy, be inconsistent with current management plans, and circumvent presidential mandate and state law. Additionally, the special regulation is opposed by the State and local governments. The NRA should adopt an ORV plan that protects the safety of its visitors, complies with current management plans, presidential proclamations, and state laws. The NRA should reevaluate its decision and adopt a plan that is supported by local governments.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Clark', with a long horizontal flourish extending to the right.

Kathleen Clark  
Director