The End of Travel Management?

How President Trump's Executive Order Could Reshape OHV Access for a Generation

During the last week, Utah Public Lands Alliance and BlueRibbon Coalition spent five days in Washington, D.C. meeting with officials from the White House, Department of the Interior, U.S. Forest Service, members of Congress, other policymakers and think tank lobbyists regarding the future of motorized recreation on federal lands.

The primary objective for the trip was clear: encourage the Administration to rescind the executive actions, policies, and regulatory interpretations that have driven unprecedented losses of public land access throughout the West.

That objective was substantially achieved as soon as President Trump signed his Executive Order, *Removing Unnecessary and Counterproductive Restrictions on Access to Federal Lands last* Friday.

With that objective accomplished, the focus of every remaining meeting shifted to a new question:

What comes next?

For the last five days, our discussions centered on the future of public land management, the role of travel management, the minimization criteria, the impact of the Supreme Court's Loper Bright decision, and whether the current regulatory framework governing motorized recreation remains necessary or legally sustainable.

Those conversations revealed that some policymakers are now willing to examine questions that would have been unthinkable only a few years ago.

The answers to those questions could shape the future of OHV access for decades to come.

The Origin of Modern Travel Management

Most recreationists assume that today's travel management requirements were enacted by Congress. In reality, the foundation of modern OHV regulation originated through Executive Orders issued during the Nixon and Carter Administrations and later implemented through regulations such as 43 CFR Part 8340 for the Bureau of Land Management and 36 CFR Part 212 for the U.S. Forest Service. These very restrictive rules were expanded even further by court decisions.

Over time, these regulations evolved into highly complex planning systems requiring route inventories, route-by-route analysis, environmental review, extensive documentation, and

increasingly burdensome procedural requirements to justify motorized access. The result has been decades of travel management plans, thousands of miles of route closures, and continuous litigation.

Critics argue that the system has become a one-way ratchet where access is continually reduced while agencies struggle to satisfy increasingly complex regulatory requirements.

The Forgotten Standard: Unnecessary or Undue Degradation

One of the most important legal developments in recent years came from the West Mojave Travel Management Plan litigation, commonly known as WEMO.

What is often overlooked is what the court actually found.

Judge Susan Illston concluded that although **the Bureau of Land Management met the statutory mandates established by Congress under the Federal Land Policy and Management Act (FLPMA), it failed to adequately demonstrate compliance with the "Minimization Criteria" contained in 43 CFR 8342.1.**

That distinction is critically important.

FLPMA directs the Bureau of Land Management to prevent "unnecessary or undue degradation" (UUD) of public lands while simultaneously managing those lands under principles of multiple use and sustained yield.

Congress clearly understood that multiple-use management would involve impacts. Grazing affects vegetation. Mining disturbs the surface. Energy development requires roads and infrastructure. Hiking creates trails. Recreation of every type alters the landscape to some degree.

If Congress intended that all impacts be eliminated, it would not have adopted a multiple-use mandate. Instead, Congress prohibited impacts that are unnecessary or undue. The unavoidable implication is that some impacts are considered both necessary and acceptable in order to accomplish the purposes of multiple-use management.

If a travel plan satisfies the statutory standards established by Congress under FLPMA, but fails a regulatory standard developed decades later through agency rulemaking, policymakers are justified in determining that the regulatory standard has expanded beyond the authority originally granted by Congress.

The WEMO decision by Judge Ilston thus fails with the elimination of the minimization criteria because she made the finding that the plan met the requirements in FLPMA. We have made an appeal for an immediate stay on the decision to stop the irreparable damage being caused by the order.

The Loper Bright Question

I have reported previously about the importance of the Supreme Court's decision in Loper Bright Enterprises v. Raimondo that it will have implications far beyond the fishing industry. This may be the first major example of how this decision will affect land management decisions.

For decades, federal agencies relied on Chevron deference when interpreting ambiguous statutes. Under Loper Bright, courts are no longer required to defer to agency interpretations simply because Congress did not provide detailed direction.

This raises an important question for public lands management:

Did Congress ever authorize the extensive travel management framework that now governs motorized recreation on federal lands?

FLPMA unquestionably authorizes federal land management. However, Congress never specifically directed agencies to adopt the minimization criteria found in 43 CFR 8342.1, nor did it mandate the highly detailed travel planning systems that have evolved over the last several decades.

As agencies review regulations pursuant to the President's Executive Order, it is reasonable to ask whether portions of the current framework exceed the authority delegated by Congress.

Beyond the Minimization Criteria

Much of the current discussion has focused on 43 CFR 8342.1, commonly known as the Minimization Criteria.

That focus is understandable. The WEMO litigation, the Nada Culver Memorandum, and many recent travel management decisions all relied heavily upon the interpretation and application of those criteria. In practice, the minimization criteria have become the primary legal tool used to justify route closures throughout the West.

However, the minimization criteria are only one component of a much larger regulatory framework. If the minimization criteria are found to be unsupported by statute, the same questions naturally extend to the broader travel management framework itself.

The regulations contained in 43 CFR Part 8340 were also not created by Congress. They originated from same executive orders and subsequent agency rulemaking. For nearly fifty years these regulations have served as the foundation for federal travel management decisions affecting millions of acres of public land.

If federal agencies determine that Congress never specifically authorized the minimization criteria, it becomes reasonable to ask whether Congress ever authorized the broader regulatory structure built around those criteria.

This same analysis extends to the U.S. Forest Service. The Forest Service Travel Management Rule, found primarily in 36 CFR Part 212, establishes a similar framework requiring designation of roads, trails, and areas open to motorized travel. Although administered through a different agency, the practical result has been remarkably similar: route inventories, route designation requirements, Motor Vehicle Use Maps, lengthy planning processes, and repeated litigation over access decisions. Like 43 CFR Part 8340, these regulations were developed administratively rather than through explicit congressional direction.

As agencies reevaluate their authorities following Loper Bright, policymakers may increasingly ask whether FLPMA, the National Forest Management Act, and the Multiple-Use Sustained-Yield Act already provide sufficient authority to manage public lands without separate travel management regimes specifically targeting motorized recreation.

If that conclusion is reached, the discussion may ultimately move beyond rescinding 43 CFR 8342.1 and toward a more fundamental question:

Should 43 CFR Part 8340 and significant portions of 36 CFR Part 212 continue to exist at all?

It's important before we even consider that question that we disclaim the false claim that the lack of these regulations would destroy the environment. These reforms would not eliminate or reduce environmental protections by many other laws, at minimum all of these will still be in force.

- Federal Land Policy and Management Act (FLPMA)
- National Environmental Policy Act (NEPA)
- Endangered Species Act (ESA)
- National Historic Preservation Act (NHPA)
- Archaeological Resources Protection Act (ARPA)
- Clean Water Act (CWA)
- Clean Air Act (CAA)
- Migratory Bird Treaty Act
- Bald and Golden Eagle Protection Act
- Wilderness Act
- National Forest Management Act (NFMA)

What would change is the assumption that motorized recreation requires its own specialized regulatory framework beyond the authorities already provided by Congress.

What Happens to Existing Litigation?

The significance of the WEMO decision extends far beyond the California desert.

By elevating the minimization criteria to a substantive legal requirement, the decision has influenced travel management planning throughout the Bureau of Land Management and may ultimately affect how courts view similar route designation requirements under the Forest Service Travel Management Rule.

Existing court decisions would not automatically disappear if regulations are revised or rescinded. Cases are generally decided based upon the law and regulations that existed when the agency action occurred. However, future appeals, agency reconsiderations, and new planning efforts could be affected dramatically.

If the minimization criteria are rescinded or substantially revised, future travel plans would no longer be constrained by legal standards developed under regulations that no longer exist. Likewise, agencies may be directed to revisit travel plans developed under a regulatory framework that is ultimately determined to be unsupported by statute or inconsistent with current policy.

The practical result could also be a significant reduction in the litigation cycle that has dominated travel management for decades.

A Historic Opportunity

For decades, recreation advocates have fought route closures one trail at a time, one travel plan at a time, and one lawsuit at a time. Today, the discussion is far broader.

Federal policymakers are beginning to ask whether the underlying framework itself remains necessary. The question may be whether the minimization criteria, the broader 43 CFR Part 8340 framework, and even portions of the Forest Service Travel Management Rule should continue to exist at all.

Congress already established a governing standard through FLPMA: public lands are to be managed for multiple use and sustained yield while preventing unnecessary or undue degradation.

For the first time in nearly fifty years, policymakers appear willing to consider whether that statutory framework is sufficient on its own.

If so, the future of OHV access may ultimately depend not on how existing travel management regulations are interpreted, but on whether those regulations continue to exist. For the first time in decades, that possibility is no longer theoretical, but one of the best hopes for a return to common sense and balance in the management of our public lands.