

Appendix 2 - Draft Environmental Assessment Scoping Comments and BLM Responses

My concerns center on the validity, fairness, effectiveness, and safety of the closures. Most of my objections stem from three basic issues. First, no census has been taken to identify how many people use the Owyhee area for each type of OHV. Second, the BLM provides neither a clear inventory of current OHV trails, nor a defensible reason for each closure based on a specific amount of environmental impact necessary to justify closures. And finally, the BLM appears to be proposing to close trails that might be better maintained and managed if appropriate funds were available for that purpose.

The BLM has conducted extensive scoping throughout the entire travel management planning process, meeting with a variety of user groups, holding four public meetings, advertising through the internet and local newspapers, posting notices at trailheads, parking areas, and subdivisions within the area. The BLM has also collected data over the past year and a half gauging the amount of traffic utilizing the existing trailheads (section 3.12 of the EA).

Throughout the scoping process and public comment period, the BLM issued and provided the public access to maps of the subregion which contained over 1,200 miles of categorized routes ranging from single track, ATV, 2x4, and 4x4. Route closures are based on a set of planning criteria developed for the travel management plan that is located in section 2.2 of the Environmental Assessment (EA). There were no routes proposed for closure based on funding.

Under the sections detailing construction and obliteration of routes it refers to the use of “24 inch boulders” to block off areas. I’m very concerned about the safety aspect of this approach. Proper route flow needs to occur to ensure the safety of users.

Within the Wild Horse Management Area, in conformance with the RMP, non-structural controls (i.e. boulders) will be used rather than fencing. When placing boulders throughout the subregion to aid in the closure of routes, the BLM will account for safety and request the assistance of user groups for the design and layout of the projects.

The EA notes the population increases in the west and the tremendous growth in the popularity of OHV use. Given those indisputable facts, the BLM should adopt a "mitigate first - closure last" policy. Please look for ways to mitigate impacts in order to keep as many routes open to OHVs and mountain bikes as possible.

The BLM has implemented mitigation measures for a number of routes throughout the subregion, including better signage to keep users on trails, better trail maintenance to reduce trail widening, monitoring, seasonal limitations, and better education and enforcement efforts for example. Often times however, the appropriate mitigation for multiple paralleling routes is closure.

The BLM must follow the RS 2477 Assertions the County Commissioners have signed about the roads & trails in the area.

A Federal Court hearing is the appropriate mechanism for determining the validity of RS 2477 assertions, not this EA. RS 2477 assertion information is presented in this EA (section 1.6) as part of the existing management situation. Route designations are based on resource conditions and land management considerations, not any implied determination, acceptance, or rejection of current RS 2477 assertions.

The BLM has failed to adequately examine the No Action Alternative as required by NEPA.

The BLM has provided rationale for how the No Action Alternative was addressed in section 2.4.1 of the EA. The No Action Alternative would not be in conformance with the Owyhee RMP and the BLM planning regulations which require the designation of specific routes of travel.

Designation of new routes without adequate planning is not consistent with any rational planning method and this EA must be elevated to an integrated EIS which examines impacts to sage grouse, pygmy rabbits, cultural resources, weed infestations and other cumulative impacts to the environmental health of these lands.

There are no new routes being created as a result of the TMP, all designations involve existing routes. The Owyhee RMP Final Environmental Impact Statement provides the basis for this TMP.

The unauthorized creation of motorized trails and roads and the cumulative impacts to the lands has not been adequately examined and will cause irreparable harm to sensitive species.

The EA specifically identifies the unauthorized creation of roads and trail as a problem, which the TMP is designed to mitigate.

The BLM must consider a wide range of alternatives including the closure and rehabilitation of all unauthorized roads and trails with accompanying mitigation which should include reduction or elimination of grazing activities on these lands.

The range of alternatives considered in the EA is wide with alternatives ranging from having 100% of the trail system (section 2.5.1 – Alt A) to having a 65% reduction of trails (section 2.5.3 – Alt C). The EA also provides methods of trail rehabilitation and states that road closures will be rehabilitated. Grazing management decisions are outside the scope of a Travel Management Plan.

Two Headed Dragon and Lost Trail 4x4 and rockcrawling trail system is compromised if area "45" is closed, I realize that there is proposed access to the Two Headed Dragon and Lost Trail 4x4 and rockcrawling trails. This access would come from Kane Springs parking area on Reynolds Creek Road. Currently, there is an ATV width cattleguard on this access. I would request that the cattle guard is removed or a full size guard installed prior to the closure of Area "45".

The BLM has proposed to modify its management of the "45", under Alternative D in the EA (sec. 2.5.4). Under this alternative, the existing "45" access point would be retained as a parking area, allowing users to access the trail system from this location. Exterior fencing would be installed to define the limits of the parking area and prevent further expansion. Exit stiles appropriate for 4x4s, ATVs, and/or motorcycles would be installed in the exterior fence to match the use of designated routes leaving the trailhead. Approximately 2.5 miles of fencing would be installed in order to prohibit access to the user created defacto play areas. The play areas are not consistent with the Owyhee RMP which only allows for the 192 acre play area located at Hemingway Butte. From the "45" the fence will run directly West from the parking area and then to the North through sections T. 1 S., R. 2 W., Sec 4 and T. 1 S., R. 2 W., Sec 33.

We are concerned about the closure of the area near the “45”, and the closure of many of the routes adjacent to staging areas. New riders and youngsters prefer to ride close to the staging area, while still enjoying a variety of routes. We would support enlarging some of the current “Open” areas to accommodate such usage close to the staging areas. I know that this would require an RMP amendment, but we feel this is a worthy project. We are concerned that the Proposed Action will be hard to enforce, and leave the BLM vulnerable to a legal challenge if the plan is violated.

As stated in the previous comment response (above), the BLM has proposed to modify its management of the “45” under Alternative D.

Users that desire an area with unrestricted access need to recreate within the Hemingway Butte Play Area (HBPA). The Northern 1/3 of this designated play area is rarely used and provides a great location for new and young riders to learn skills. The 192 acre HBPA is the only open area the 1999 Owyhee Resource Management Plan allows within the Field Office. While numerous comments suggest that the Hemingway Butte Play Area is too small and other open areas need to be designated, such designations would require a Resource Management Plan (RMP) amendment which would be outside the scope of this Travel Management Plan (TMP).

The BLM agrees that enforcement of the travel plan will be a difficult task. A resident ranger will be added to the Owyhee Field Office to provide additional coverage. Owyhee County also has enforcement authority, through ordinance’s 07-01, 07-02, 07-03, and 07-04, allowing them to protect public lands as well as public health and safety.

I would like the rock crawl trails that are shown in the Bachman Grade/Antelope Springs area on Alternative C included in Alternate B. I would like the rock crawl trails that are shown in the New York Summit/Avondale/Slacks Mountain area on Alternative C included in Alternate B.

Although the draft EA did not identify these routes specifically for rock crawling, the EA did identify them as 4x4 routes, therefore, rock crawling access would be permitted on these routes.

BLM should close and revegetate all duplicative and parallel ORV routes to reduce the impact on wildlife habitat. Spur routes that serve no essential public purpose should also be closed. Such redundant routes must be closed to meet BLM’s obligation under Executive Order 11644 and the BLM regulations implementing it.

The BLM plans to rehabilitate proposed route closures (section 2.3.1). Route closures are based on a set of planning criteria developed for the travel management plan that is located in section 2.2 of the EA. In some cases, spur routes serve a purpose that may not be evident to everyone, livestock management, camping, hunting, or access to mining claims for example. In any case, wholesale closure of routes due to the fact that their spur routes could be considered arbitrary without a resource issue requiring resolution. Neither Executive Order 11644 nor BLM regulations obligate the BLM to specifically close any routes.

Reducing the amount of routes through an area worries me as a parent since it causes congestion and greatly increases the risk of my child or myself having a "run-in" or accident with another rider or trail user. That is one of the main reasons that I take my family out to this area is so that my kids can ride with the reduced risk of injury.

The BLM’s intent in designation is to create a safe activity for all users, including families. Most of the route closures throughout the subregion are within the unauthorized play areas rather than in areas that could cause congestion.

The BLM's base maps provide a helpful graphical reference to see what trails are proposed for closure, but they give no explanation as to why. Consequently, the public has no way of knowing if each closure is necessary and based on objective criteria.

Road closures under the proposed action were based on a set of planning criteria that can be found in section 2.2 of the EA. The planning criteria were developed by the BLM staff and through extensive public scoping efforts. These criteria were the basis upon which the plan was developed and through these, allowed the BLM to meet the purpose and need of the Travel Management Plan.

The EA evaluates hill climbs in terms of whether they attract "attention of visitors," or "visually dominate the landscape." Not only are visual impacts subjectively measured, they are not directly related to the health of the environment. And while the EA states that hill climb routes cause extensive erosion, there is no baseline identified for how much erosion is excessive. In fact, without establishing a baseline for allowable environmental impact for any trail, and a reason for each closure, the public has no way to confirm whether the BLM has proposed closing trails that might have been otherwise re-routed or physically improved.

The Federal Land Policy and Management Act (FLPMA) requires that public lands be managed in a manner that will protect their scenic values. Much of the area in the subregion containing hill climbs is inventoried as a class IV or class III category. While these two classifications do allow for modifications to the natural character of the landscape, attempts should be made to minimize impacts to the scenic quality of the area.

Analysis of soils and soil disturbances (sec.3.2.2) has been conducted by a qualified BLM soils scientist, which identified that OHV use has resulted in the creation of unauthorized trails and disturbance of hill slopes. The most severe forms of erosion, rills and gullies, have resulted from these actions. According to Executive Order 11989, federal land managers must immediately close areas or trails to off-road vehicles whenever the land manager determines that "the use of the off-road vehicle will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitats or cultural or historic resources of particular areas or trails until such adverse effects have been eliminated and that measures have been implemented to prevent further recurrence."

Section 2.31 addresses Management Actions Common to All Alternatives. In the section the EA states "Maintained ATV trails would be managed and limited to 48" or less, which is in accordance with Idaho Statute definition for ATVs. The Idaho Legislature changed this definition in the 2008 Legislative Session. 67-7101 (1) Idaho Code, defines an ATV as "All-terrain vehicle (ATV)" means any recreation vehicle with three (3) or more tires, under nine hundred (900) pounds and fifty (50) inches or less in width, having a wheelbase of sixty-one (61) inches or less, traveling on low-pressure tires of ten (10) psi or less, has handlebar steering and a seat designed to be straddled by the operator."ⁱ

The BLM was unaware of the change made by the Idaho Legislature in 2008 and has incorporated it into the EA.

Alternatives A and B address competitive use, but Alternative C does not fully address competitive use. Alternative B reduces competitive use routes by 51 miles or 9.7%. Most of these closures are in the Sinker Creek drainage to reduce impacts to the riparian zone.

Alternative C represents the plan and resolution adopted by Owyhee County on February 25, 2008, as such, the Owyhee County resolution and plan allowed for BLM's authorization of competitive use but do not designate any routes for this particular use.

Due to riparian and water quality resource concerns (sec. 3.4.1), the Sinker Creek drainage would be closed to competitive use with the exception of crossing points on designated routes. Where competitive use events require use of private and state lands, the permittee would be required to obtain permission from land owners before the event could be authorized.

The EA analyzes Socio-Economic Issues starting on Page 78. The EA does present factual information, but fails to explain why some issues happen. For example, the EA states, “Despite the powerful contribution that recreation makes to regional economies, according to a 2003 regional economic impact model for Owyhee County, Idaho (Darden, et al. 2003), relatively few purchases are made in Owyhee County as a direct result of OHV or other recreational activities that occur there, even though recreation use of the County by non-County residents has grown steadily.”

The reason for this is many users, most of whom are day users from Ada and Canyon counties do not need to purchase supplies or food because they bring the supplies with them for the day and return home directly from the areas that were being used. Therefore, Owyhee County derives limited economic benefit.

Alternatives A and C do not meet all of the planning criteria designed for the project. The final decision should cover as much as the planning criteria as possible.

The BLM agrees that the final decision should be in compliance with most, preferably all, of the planning criteria that was established for this TMP. While Alternative A may not meet all of the specified planning criteria, it is the current situation and in presenting a full range of alternatives, the consideration of designating all existing routes is a valid alternative for consideration. One of the considerations in not choosing Alternative A is that many of the planning criteria are not met.

Alternative C was developed by the Owyhee County Recreation Task Force and adopted by Owyhee County on February 25, 2008, and in fulfilling BLM’s coordination responsibilities with Owyhee County, consideration of their proposal as an alternative is valid even though the County may not have been utilizing the planning criteria developed to guide this TMP.

Although Alternative C is based on the County resolution, it contains recommendations that were not part of the resolution and does not fully reflect the County Task Force’s vision.

Alternative C accurately reflects the routes proposed for public use and/or closure as identified on the map presented to the BLM by the Owyhee County Commissioners. In order to assess the impacts of Alternative C, or any alternative, the BLM must include a description of implementation actions which would be necessary to implement any of the alternatives. Therefore, as the current “45 play area”, and surrounding lands, have been identified as an area that has been degraded by OHV activity. It is appropriate and necessary to describe how the impact will be managed or eliminated. Similarly, where routes are closed or restrict public access, the methods to be used to implement these actions (fencing, barriers, etc...) must also be identified and specified for the purpose of analysis and for full public understanding and disclosure.

To allow continued use of trails by equestrians, the travel plan should ensure that pedestrian-wide gates are installed at all ATV cattleguards and also at any locations where existing cattleguards will be removed.

The BLM is in concurrence with this suggestion and it will be added into the management common to all section of the EA.

The final EA should identify the specific routes that will receive periodic and corrective maintenance.

Roads and trails are planned for maintenance subject to funding, weather and soil moisture conditions, need, and type and frequency of use as listed below. The Maintenance Plan (sec. 2.3.4) lists what areas would be maintained, when they would be maintained, which equipment would be used, how wide the trails or roads would be, how closed routes would be put to bed, and the capability and proposed uses of each type of equipment.

Under Alternative A, the existing 100 miles of maintained ATV routes would continue to be maintained. Additional routes designated for ATV use, due to their inventoried condition as ATV use routes, would not be included in the maintained system. No single track trails are currently maintained and none would be maintained under this alternative. Map 7 in the EA identifies the current maintained system.

Under Alternative B, the existing 100 miles of maintained ATV trails would be increased to 175 miles, increasing the mileage of maintained routes 75%. Single track trails would be maintained as needed.

Under Alternative C, the existing 100 miles of maintained ATV trails would be increased to 155 miles increasing the mileage of maintained routes by 55%. Single track trails would be maintained as needed.

Under Alternative D, the existing 100 miles of maintained ATV trails would be increased to 185 miles, increasing the mileage of maintained routes 85%. Single track trails would be maintained as needed.

Roads maintained by BLM in addition to the existing ATV routes will be added to Map 7.

One of the key differences between Alternative B and C is that Alternative B includes many trails that dead end, whereas Alternative C emphasizes loop routes. Including dead-end routes in the recreational travel management plan is inappropriate because dead-end trails do not offer a positive recreational experience. Users are likely to create additional resource damage when they reach a dead end, and the potential for trespass and property damage will increase where designated routes end at private land. The travel management plan should close most “spur” roads and trails to recreational access. Administrative access could be allowed on these dead-end spurs, as appropriate. The draft EA identifies “designation of routes as administrative access only” as an option in Section 2.3.2. The BLM’s Alternative B does not emphasize this option, whereas the County’s resolution does. Providing “high quality recreation opportunities” (p. 4) and providing for a “motorized transportation system that meets the needs of the local communities” (p. 5) do not require the exact same network of trails.

There are a number of activities in addition to recreational OHV use that utilize motorized vehicles throughout the subregion including ranching, mining, hunting, and camping. In some cases spur routes serve a purpose that may not be readily evident; for example livestock management, access to mining claims, hunting or camping locations, or scenic overlooks. In any case, wholesale closure of routes due to the fact that they’re spur or dead end routes could be considered arbitrary without a resource issue requiring resolution.

Spur roads (not otherwise restricted) ending on BLM land would be signed to indicate they are dead end routes; all routes that dead end at a private land boundary would be signed to indicate that they are not through routes; and all routes that physically continue onto private lands would be signed to indicate that there are private lands ahead and permission to cross would be required. Where it is appropriate, signs and boulders, fencing, or other barriers would be installed at the end of a spur route to prevent further expansion.

The planning criteria, which apply to all alternatives, include the provision of connectivity and loop routes as desirable in all cases.

Designating routes for administrative access only would require the implementation of a tremendous number of gates and barriers (fencing, boulder, etc...), and due to the relatively flat terrain of the area, could lead to the creation of new routes as users navigate their way around barriers. Within the Wild Horse Management Area boulders would be used in place of fencing so the free roaming nature of the horses would not be interrupted. The placement of boulders would be less successful in keeping users out of a desired area, as users often go to great lengths to drive over, around, and through these barriers.

Alternatives B and D also appear to show more dead end routes than Alternative C due to the influence of private lands. Many of these are through routes but because the BLM does not designate routes on private land, Alternative B appears to show more dead end routes.

The proposed action (Alternative D) has not identified any routes as of yet which require administrative access with no public access allowed. Alternative C, the Owyhee County resolution, does not limit BLM's authority to designate routes for administrative access; however, the County plan does not identify any routes to be designated for administrative access.

BLM needs to adequately incorporate administrative use into the preferred alternative. Administrative use was a key issue during the developmental stages to creating a travel management plan for other areas and continues to be so for this sub-region see 43 CFR 8340.0-5 paragraph 3 for list of exclusions that may be authorized by the authorized officer, or "otherwise officially approved."

During development of its Proposed Action (Alternative D), BLM looked at all routes, and in particular spur or dead end routes, to see if limiting access to administrative uses was appropriate. At this point, it does not appear necessary or justified to take this action. BLM also has enough experience with implementing administrative route closure in the Wilson Creek TMP area to know the difficulty of implementing and maintaining administrative closures and chose to avoid them where possible. Therefore, Alternative D does not include any limits on any routes to either the public or administrative use. Where administrative use may be necessary for administrative purposes, the BLM has authority to allow use on a case by case basis. Such authority should be specifically included in licenses or permits allowing the authorized activity.

In keeping with the BLM's weed free hay proposals and desires to control the spread of noxious weeds, the BLM needs to establish support and enforce the use of OHV cleaning stations at the trailheads that would be used prior to hitting the trails and when finished riding.

The installation of cleaning stations is a good idea but at this point impractical due to funding limitations. Additionally, the availability of water and water rights issues might limit the feasibility of this suggestion. The BLM will continue weed control efforts and to participate in multi-agency weed management programs. The BLM will also encourage continued emphasis on and education of the OHV community.

The EA does not address retrieval of tagged big game in areas designated as "limited". How do you intend to address retrieval of big game in the Murphy Subregion?

The Murphy subregion falls under the category of limited to designated roads and trails and cross country travel is prohibited. The Owyhee Field Office contains only one area of 192 acres (Hemingway Butte Play Area) that is open to cross country travel. The rest of the field office is either; limited to existing roads and trails, limited to designated roads and trails, or closed to vehicle use. Hunters retrieving big

game animals will be required to keep motorized vehicles on roads and trails. Friends, relatives, packstock, and handcarts are all viable options to assist in the retrieval of big game animals.

Mountain bike enthusiasts have not had the opportunity to give BLM their concerns regarding issues, goals and alternatives, or to suggest that some “mountain bike only” trails are appropriate and potentially needed in parts of the planning area. Perhaps more importantly, the mountain bike community may react negatively to the BLM’s apparent lack of outreach and coordination.

The mountain bike community has had the same opportunities to provide input or express concerns about the TMP as other interested publics. The same scoping list that was used for the Wilson Creek TMP, that the mountain bike community was an active part of, was used for the Murphy TMP. The BLM conducted extensive scoping (sec. 1.6) throughout the entire travel management planning process, mailing letters to interested public on the mailing lists, meeting with a variety of user groups, holding four public meetings, advertising through the internet and local newspapers, posting notices at trailheads, parking areas, and subdivisions within the area.

The EA leads us to assume that the BLM will restrict all mountain bike use in the Murphy Subregion to the roads and trails.

Similar to the Wilson Creek TMP, the BLM does intend to restrict mountain bikes to roads and trails throughout the Murphy Subregion. The Murphy TMP focuses on the motorized community where the Wilson Plan focused more on the non-motorized community, and while there have not been any routes designated exclusively for mountain bike use, there is nothing prohibiting mountain bikes from using the trails either.

We understand that the Owyhee Front SRMA was designated with an emphasis on providing for motorized recreation opportunities, but this does not negate the BLM’s obligation to protect resource values, such as wildlife and other users of the public lands.

The BLM has not negated its obligation to protect resource values; in fact the TMP was designed to minimize impacts to natural and cultural resources while providing for motorized recreation opportunities. Route designations and closures were based on a set of planning criteria that can be found in section 2.2 of the EA. The planning criteria were developed by the BLM staff and through extensive public scoping efforts. Route designations were based on the protection of the resources of public lands, the promotion of safety of users of public lands, and the minimization of conflicts among various users of public lands.

A reasonable range of alternatives should have included, or at least considered for development of an alternative that gives priority to the protection of wildlife.

The BLM feels that a reasonable range of alternatives was considered in this EA. The alternatives range from having 100% of the trail system (Alternative A), to having a 65% reduction of routes (Alternative C). In the development of the proposed action the BLM used a set of planning criteria as a foundation for which route closures were based upon. Among those, were criteria for resource protection which not only focused on the protection of wildlife but also considered other key resources such as soils, plants, streams, and cultural resources. The BLM felt strongly that these other resources were of equal importance and did not base an alternative strictly on wildlife protection. Some of the benefits for wildlife under Alternative D include: 17 miles of permanent closures and an additional 68 miles of seasonal closures for the protection of sage grouse, the elimination of 48 miles of routes for the protection of Golden Eagles, and closure of an additional 86 miles of routes in areas identified as habitat for Bighorn Sheep.

What is the BLM doing to protect Birds of Prey nesting within the Murphy Subregion from motorized recreation?

The BLM has worked with the USFWS, USGS, and interested publics on route adjustments and mitigation for potential issues within the Murphy subregion. The proposed action eliminates 48 miles of routes for the protection of Golden Eagles. Signing, monitoring, barricades, and routes closures would also be some of the methods used in mitigating impacts to the birds.

The EA should have a section explaining that once this process is complete, the map that is published will be the enforcement document, and it is incumbent upon users to educate themselves.

Maps and other informational materials will be placed at trailheads and parking areas, and will be made available to the public at BLM offices. The maps will be a representation of the decisions made in the Travel Management Planning process. This information along with signing of the area will aid in the education of the public on the rules and regulations within the Murphy Subregion. The onus will fall upon the user to be informed and comply with the rules and regulations of the areas in which he or she rides. Failure to comply will result in penalties imposed by BLM Law Enforcement Rangers using the Code of Federal Regulations as their guide.

The BLM has proposed a 0.6 mile buffer around leks during the breeding period from March until May. The scientific basis for this buffer around leks is unclear, and we would ask that the BLM explain how this buffer has been shown to scientifically protect sage-grouse. The information we provided in our June 2007 scoping letter shows that a much larger buffer is required, 3.4 miles.

A new alternative has been developed that has incorporated data from a recent telemetry study of sage-grouse in the TMP area completed by IDFG. Based on the movement patterns identified in this study, BLM has proposed a seasonal closure from March 1 through June 15 that includes active leks and over 42,000 acres of nesting habitat. Most of the leks are located in the transition zone from salt desert shrub to mountain big sage. Telemetry data indicate that female grouse are moving into the mountain big sage areas and they are not nesting in the salt desert shrub community. This is consistent with research on what constitutes suitable nesting habitat. The transition zone is roughly on a north/south line with salt desert shrub to the north and mountain big sage to the south. Rather than base closures on an abstract distance, the proposed closures are based on evidence of habitat use by sage-grouse in the TMP area and where suitable nesting habitat is most likely located in the TMP.

The EA notes that scientific literature on California Bighorn Sheep, which are a BLM Sensitive Species, suggests that “bighorn sheep distributions and activities are negatively influenced by OHVs...” and “because of the high densities of routes in preferred bighorn habitat within the TMP, levels of disturbance are high” (EA 50). Acknowledging the fact that the existing condition is impacting bighorn sheep, the preferred alternative explains that “areas important to bighorn sheep would still have high densities of roads” (EA 53), So the BLM’s preferred alternative will designate a system of routes that will continue to have long lasting, detrimental impacts to bighorn sheep. This is a clear violation of the BLM’s OHV regulations, the objective of this travel plan, the Owyhee RMP, and the requirements for management of BLM Sensitive Species.

To reduce the impacts to bighorn sheep, Alternative D proposes the permanent closure of 85 miles of routes within the TMP area and 28 miles of seasonal route closures. This would reduce the impacts to bighorn sheep and seasonal closures would be during the lambing period. Closures of routes would reduce fragmentation and limit access to bighorn habitat.

Given the requirements in the Owyhee RMP, the Clean Water Act (CWA) and State water quality regulations, the BLM cannot implement an alternative that it recognizes and acknowledges will continue to contribute to the degradation of riparian areas and 303(d) listed streams.

The BLM acknowledges the likely future increase of OHV use would result in additional impacts to the riparian areas and water quality. However, Alternatives B, C, and D limit potential riparian/water quality impacts with trail closures. Additionally, any unforeseen impacts incurred after an alternative has been implemented, would be mitigated through adaptive management when identified.

BLM is not required to simply improve water quality standards to a level that is better than the status quo. The BLM is required to meet or exceed IDEQ water quality standards, which means that something better than the status quo is insufficient.

Section §313 of the Clean Water Act requires that “each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions in a like manner as any non-governmental entity”. The BLM is therefore required to comply with all federal, state, interstate and local requirements, administrative authority, and process and sanctions in respect to the control and abatement of water pollution. Idaho Department of Environmental Quality (IDEQ) is responsible for implementing the Clean Water Act in Idaho and has promulgated state water quality rules to meet this responsibility in IDAPA 58.01.02-Water Quality Standards and Wastewater Treatment Requirements (IDEQ 1996). Waters are designated as impaired when there is a violation of water quality criteria and are placed on the §303(d) list. Section §303(d) of the Clean Water Act requires States to develop water quality improvement plans, referred to as "total maximum daily loads" (TMDLs), for water bodies that are not meeting their beneficial uses. A TMDL is only required when a pollutant can be identified and in some way quantified. The goal of a TMDL is to set limits on pollutant levels to correct water quality impairments and achieve beneficial uses of water bodies through attainment of water quality standards.

There are land uses other than recreation that impact riparian areas and water quality. However, implementation of Alternatives B, C, or D would result in riparian/water quality protection with trail closures. For streams with specific TMDLs, Water Quality Restoration Plans with specific best management practices (BMPs) have been developed and implemented to improve the water quality and attain or exceed state standards. Results of the BMPs are evident in the proposed delisting of the sediment TMDL for Browns Creek, Pickett Creek, and Rabbit Creek. For streams that are water quality limited with no TMDLs, BLM protects and improves water quality through NEPA actions (such as Murphy TMP, various grazing decisions, etc.).

The notion that direct and indirect impacts from sedimentation will be solved through adaptive management should not be used as a way to defer management action until some undefined and unknown point in the future. The Section on adaptive management (2.3.2) does not explain how the resource impacts from sedimentation will be resolved. If the BLM knows that the preferred alternative is going to contribute to sedimentation deteriorating water quality in streams, then the agency is obligated to address the problem during the land use plan and not push the issue aside as something to be dealt with in the future.

Alternatives B, C, and D presented in the Murphy TMP limit potential riparian/water quality impacts (direct and indirect) with trail closures. The direct and indirect impacts are not immediately solved by adaptive management. Adaptive management would be used if/when unexpected impacts arise after an alternative has been implemented to mitigate the specific impact.

