

**CALIFORNIA
OFF-HIGHWAY
VEHICLES:**



**IN THE MONEY AND
OUT OF CONTROL**

CALIFORNIA OFF-HIGHWAY VEHICLES: IN THE MONEY AND OUT OF CONTROL

A Project of:

California Wilderness Coalition
Center for Sierra Nevada Conservation
Friends of Hope Valley
Friends of the River
Planning and Conservation League
Public Employees for Environmental Responsibility
Sierra Club California
Sierra Nevada Alliance

June 1999

Written by Karen Schambach

Special thanks to Laurel Ames, George Barnes, John Brissenden, Charlie Casey, Terry Davis, Marcus Libkind, Paul Spitzer, Judith Spencer, Tom Walsh and Howard Wilshire. Copy editing by Amy March.

Cover photo by John Rabold

Contacts:

For additional information about this report, contact:

Center for Sierra Nevada Conservation
Karen Schambach (530) 333-1113

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Center for Sierra Nevada Conservation
P. O. Box 603
Georgetown, CA 95634
(530) 333-1113

EXECUTIVE SUMMARY

California's environmental community is calling for reform of the state's Off-Highway Vehicle (OHV) program. Despite spending almost a half billion dollars in the 28 years since the off-road program was established, the state's OHV policies still do not prevent – and often actually cause – environmental damage on public lands. While off-road recreation has prospered under the state's jurisdiction, the state's OHV program is causing severe damage to the state's primary watersheds, displacing wildlife in our forests and deserts and commandeering a disproportionate share of recreation lands.

State OHV grants are used by the Forest Service and the Bureau of Land Management (BLM) to fund regional and local OHV coordinators, as well as to build, operate and maintain OHV trail systems, staging areas, parking lots and restrooms. Other recreationists do not have the political and financial leverage these grants afford OHV users, so hikers, equestrians, cross-country skiers and birders are finding themselves forced out of their favorite forests, deserts, and beaches when these become motorized play areas. Rural residents suffer a de facto condemnation of their property when the Forest Service and BLM locate OHV areas without regard to noise impacts and potential for trespass.

Responsibility for this miscarriage belongs to the California Department of Parks and Recreation's OHV Division, a rogue agency that systematically violates environmental laws and uses improperly acquired fuel tax funds to finance a grant program that influences Forest Service and Bureau of Land Management resource managers to turn blind eyes to OHV-related resource problems.

The intent of the statute that created the state OHV program, the Chappie Z'berg Law of 1971, was to protect the state's soil, watershed, wildlife and vegetative resources from OHV damage – and minimize conflicts the noisy machines created with other recreationists and residents – by directing OHV use to areas that are less susceptible to environmental damage. Instead the program has perpetuated damage and conflicts by “grandfathering” OHV use virtually wherever it occurred and making almost all areas with existing OHV use part of the state's OHV system.

The failure of the program is largely due to the power with which the program's generous budget – \$30 to 34 million annually – has endowed the off-roaders. The OHV community boasts that its program is 100% user-funded. In fact, the OHV Division is the beneficiary of huge revenue transfers from the state's fuel taxes. The program was originally intended to be funded through the collection of OHV registration fees (now \$20 for a two-year "Green Sticker"). That revenue source, however, was soon determined to be insufficient to fund the program; only 6.8% of the OHV Division's current revenues are from registration fees. In 1972 the program was allocated fuel taxes calculated to have come from the use of registered off-road vehicles. Since 1990 these fuel tax transfers have been enormously inflated by improperly including fuel attributed to illegal OHV use – 54% of the total transfer – in the formula that calculates the transfer amount. Most of the revenue to the OHV Trust Fund is based on the premise that use of unregistered – and therefore illegal – OHVs is rampant, and the irrational conclusion that this illegal use should be rewarded by allowing it to subsidize the state's OHV program.

The State OHV system includes eight State Vehicular Recreation Areas (SVRAs), totaling approximately 84,000 acres and 16 small sites managed by cities, counties and other jurisdictions. The program also supports sixty-one Forest Service and twenty-seven Bureau of Land Management (BLM) riding areas, totaling several million acres. OHV use on these federal areas is supported through the OHV Division's grant program, that began in 1983. Up to 50 percent of the program's gas tax revenue may be given as grants to local and federal agencies. To date, the U.S. Forest Service and Bureau of Land Management have received more than 80% of all state grants awarded – \$147 million.

By awarding the bulk of its available grant money to Federal agencies, the OHV Division has deliberately evaded the stricter environmental protection required in state-owned or controlled OHV areas. State law requires soil loss standards and wildlife habitat protection plans and monitoring on all areas and trails in the State Vehicular Recreation Areas (SVRAs), as well as for state funded new areas, trails, and facilities on federal lands. The OHV Division has routinely exempted federal grantees from this requirement. Since the statute was adopted in 1988, not a single federal OHV area or trail has been required to comply with the soil and wildlife protec-

tion measures. As a result, the state is paying millions of dollars a year for a program intended to protect public lands from OHV-related resource damage, only to exempt from such protection almost all the lands in the program.

Some of the exempted lands are those most in need of protection. According to the Sierra Nevada Ecosystem Project (SNEP) Report, a comprehensive scientific study of environmental conditions in the Sierra, the health of Sierra Nevada watersheds – source of 61% of all the state’s water – depends on the ecological integrity of riparian areas. The SNEP study found that road construction and use are the biggest contributors to stream sedimentation in the Sierra. The off-road community, however, vehemently opposes road or trail closures and the Forest Service is unwilling to provoke their ire and risk future grants by reducing excessive road/trail densities.

The state/federal OHV collaboration results in deliberate legal jurisdictional confusion. Federal agencies and the state each claim the other agency is responsible for compliance with state and federal environmental laws. Although all state-funded OHV projects are required to comply with the California Environmental Quality Act (CEQA), with rare exceptions, federal grantees claim their OHV grants are exempt from environmental review. As a result, compliance with the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) may occur only when environmentalists or local residents threaten, or take, legal action.

Admittedly, some state grants do include funds for road and trail closures and rerouting to reduce watershed and wildlife impacts. In the absence of monitoring however, the public has no means of ascertaining if or how those closures actually take place. Moreover, some trail maintenance practices used by the Forest Service and BLM actually increase erosion rates. Without the public disclosure provided by NEPA and CEQA there is no means by which the public or other agencies can judge whether maintenance, re-routes or closures provide substantial environmental benefit, or whether they simply shift the problems from one area to another. Federal land managers who claim that their trail systems, construction methods and maintenance practices are environmentally sound should allow those systems to be judged by the objective criteria that the state’s soil and wildlife protection standards provide. State and federal evasion of environmental

laws and the soil and wildlife protection standards foster the public's perception of an OHV program out of control.

Attempts by environmentalists and the legislature to reform the State's OHV program unfailingly meet with intense opposition generated by a single interest, well-oiled OHV machine, capable of generating thousands of letters to legislators or land managers and busloads of OHV enthusiasts to meetings. Lobbying by off-roaders has resulted in the state's OHV program largely failing its intended mission of maintaining environmental protection while allowing OHV use. Unless major and meaningful reforms can halt the inappropriate funding and the degradation of public resources, the program should be scrapped.

Essential changes should include the following:

- \$400,000 was approved in the state's fiscal year 2000/2001 budget for a new fuel tax study to determine CalTrans fuel tax transfers to the OHV Fund. The parameters of that study should not include unregistered OHVs and other ineligible vehicles in the fuel tax base. Off-roaders should not be rewarded for evading the law.
- All OHV grants should be subject to independent environmental compliance review.
- All the state's OHV areas and trails, including those on federal land, should be subject to annual, systematic and objective monitoring, using the state's soil and wildlife standards. Monitoring reports should be made available to the public and interested agencies.
- Federal agencies receiving grants should be held to all the same environmental standards that apply to state lands. These standards should apply to all existing as well as new OHV areas and trails.
- Grants to federal agencies should not include funding for OHV Coordinators and OHV technicians. State funds should not be spent to encourage a federal OHV bureaucracy.

- Acquisition and development of new areas for OHV use should cease until all lands currently financed by the program are in full compliance with all applicable statutes and standards. Moreover, BLM and Forest Service should not be given state grant money for acquisition of land for OHV use. State taxpayers should not be buying land for federal agencies.
- New regulations should include minimum law enforcement requirements that assure sufficient law enforcement presence to enforce all laws relating to OHVs.
- State OHV grants should not be used to develop trails in federal roadless areas.
- Grants to federal agencies should ensure that rural residents are protected from noise impacts and trespass by requiring adequate noise buffers and sufficient law enforcement.

Implementation of these reforms should help to ensure that the money California taxpayers are required to spend to manage off-road recreation does not result instead in additional environmental degradation.