



Public Employees for Environmental Responsibility

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July 21, 2016

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U.S. Bureau of Land Management
702 North Industrial Way
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RE: PEER Comments on Environmental Assessment for 2016 Best in the Desert “Vegas to Reno” The Long Way Race Event

Dear District Manager Herder:

On behalf of Public Employees for Environmental Responsibility (PEER), I am submitting the below comments on the July 1, 2016 draft Environmental Assessment (EA) for the proposed 2016 Best in the Desert “Vegas to Reno” The Long Way Race Event.

Our principal concerns are that the Preferred Alternative (PA) identified in the EA is deficient in its consideration of the management goals of the Basin and Range National Monument, fails to sufficiently address damaging race impacts and lacks a coherent plan for preventing or addressing certain-to-occur permit violations to the detriment of Monument resources.

In addition, Nevada Bureau of Land Management (BLM) has skewed its required National Environmental Policy Act (NEPA) review so as to necessitate a Finding of No Significant Impact (FONSI) in order to issue a timely permit allowing the race to run as scheduled. This bureaucratic gamesmanship is both duplicitous and disturbing. Further, it fosters a clear

violation of NEPA since, even mitigated, a FONSI for the Preferred Alternative is both unsupportable and inappropriate.

The basis for these conclusions is detailed below.

I. The Preferred Alternative Conflicts with the Basin and Range National Monument's Conservation Intent

A. Event Conflicts with the Monument's Conservation Goals

On July 10, 2015, President Obama established the Basin and Range National Monument (BARNM) through Presidential Proclamation.¹ The Monument was explicitly created to both preserve and protect the unique natural environment and its “prehistoric, historic, and scientific” value “for the benefit of all Americans.”

The Proclamation highlights the “stark and silent” and “undisturbed” nature of the landscape, an experience intentionally preserved within the Monument's boundaries. The site and sound of hundreds of vehicles tearing through soft dirt roads at an average of sixty miles per hour lies in harsh contrast to the values outlined in the Proclamation.

The 2016 Vegas to Reno Race serves no land conservation purpose. It does not enhance the historic or scientific legacy of the Monument, nor does it benefit the varied flora and fauna within. In fact, it does the opposite.

When Best in the Desert (BITD) submitted their Special Recreation Permit on May 26, 2015, the Nevada BLM offices were aware that the designation of Basin and Range National Monument was on the horizon. That the permit application was submitted prior to the designation is irrelevant — now, at the time of the analysis, the Monument land is under a separate, conservation-focused management regime.

It is indicative of BLM's apparent lack of regard for the Monument's designation that its entire analysis of the race's consistency with the Presidential Proclamation consists of only six paragraphs covering less than a page.² In fact, Nevada BLM dedicated far more space in the EA

¹ http://www.blm.gov/style/medialib/blm/nv/special_areas/basin_and_range_monument.Par.74270.File.dat/15-07-10Proclamation.pdf

² EA, pg 55.

to discussing the supposed congruence of the race with the Ely, Carson City and Battle Mountain District plans than it did reflecting on the compatibility of this high-impact off-road race with the purposes of the Monument. Nevada BLM appears to be operating on the false premise that this is a “multiple-use Monument” (in the words of one your staff members) rather than one predominantly dedicated to conservation, as denoted by, among other things, its inclusion in the BLM’s National Landscape Conservation System.

B. Preferred Alternative Flouts Proclamation Directive

The Presidential Proclamation specifically indicates that the “Secretary shall prepare a transportation plan that designates the roads and trails where motorized or non-motorized mechanized vehicle use will be permitted.” Yet, no document has been released indicating which roads are suitable for use consistent with the Monument’s conservation objective and which are not; additionally, *any* expansion or degradation of the existing dirt roads runs contrary to the Proclamation’s clear and unequivocal intent.

The draft EA lamely asserts that because the Monument race route is on “dirt roads” it therefore may be permitted. However, the fact that several roads have supposedly been evaluated (although no formal designations have been shared with the public) does not remove the responsibility to conduct a thorough assessment *prior* to finalizing any decisions. By its pursuit of a through-Monument race course, the BLM undercuts the plain meaning of the Presidential Proclamation’s directives.

C. Draft EA Undermines Monument Management Planning Process

This draft EA advocates permitting of a major activity even though the Monument’s management planning process has barely begun. A year after designation, only initial public scoping has been undertaken, and two years remain before the Management Plan must be in place. The President’s Proclamation mandated “maximum public involvement” in this planning process. Choosing to permit a large-scale recreation activity with only 30 days of public comment is far less than the “maximum public involvement” the President ordered.

Essentially, this EA improperly presumes that the outcome of the BARNM management plan creation process will be consistent with staging the nation’s biggest off-road vehicle race.³ This further flies in the face of the BLM’s “Planning 2.0” initiative, which specifically calls for increased public input and agency transparency at the *start* of all planning activities, not after a particular course of action has already been predetermined.

The determination on whether off-road vehicle racing is a use that will not harm or undermine the Monument’s goals must occur as part of the broader management planning progression, with full public consultation, not slammed through in an *ad hoc* truncated EA, which appears deliberately designed to subvert the process.

II. Environmental Assessment Inadequately Addresses Environmental Consequences of the Preferred Alternative.

A reading of the draft EA prepared in secret over several months by 30 listed BLM staff makes it obvious that it is written to produce a FONSI, however inappropriate or unsupported such a finding would be.

A. Significant Impacts Are Unquestionable

The likelihood that this race would produce “No Significant Impact” on the Monument is completely undermined by the EA itself. If the race is not expected to produce a significant impact on the human environment, there would be no need for the 20 pages of stipulations and mitigation requirements imposed on BITD by the Preferred Alternative.

The damages potentially caused by the Preferred Alternative that must be “mitigated” to create an ultimate Finding of No Significant Outcome include, but are not limited to —

- Forest, brush, and grass fires;
- Pollution of waters on public lands;
- Exhaust and dust generation impacting air quality;
- Harassment of birthing, nesting, foaling, calving and fawning wildlife and livestock;

³ EA, pg 57. “Future actions with potential to conflict with Monument objects and values are expected to be similar to the past and present uses” and “Prior to Monument designation, SRPs have been concentrated within this area of the Monument since 1998.”

- The collection of and harm to wildlife, plants and archaeological artifacts by participants and spectators;
- Damage to areas currently recovering from wildfire;
- Collisions between cars and horses or burros;
- Destruction of dirt road surfaces;
- Widening of existing roads;
- Vehicle accidents;
- Spreading the distribution of the seeds of noxious and/or invasive weeds; and
- Debris from sources ranging from spectator garbage to blown tires.⁴

Alone, several of these concerns would be sufficient to trigger the preparation of an Environmental Impact Statement (EIS); together, it would be absurd to conclude that the 2016 race will have no significant impact on the Basin and Range National Monument.

B. EA Understates Environmental Damage

The EA states that the roads selected for use within the Monument “vary in width from 12 to 16 feet and are passable by a 2-wheel drive vehicle.” However, this bland statement does not reflect the breadth of impact from this event. For example, the EA does not consider:

1. ***Breakdowns.*** The event in question is a race, yet the EA makes no mention of vehicle breakdowns and tire blowouts. Regardless of the EA’s assumption that racers will stay on the road, invariably there will be breakdowns and flat tires along the 37-mile segment within the Monument — the portion of the course deemed the most rugged. There is ample evidence from historic Vegas to Reno races that vehicles encounter mechanical difficulties along the route. This will lead to race participants driving deliberately off the road and across undisturbed Monument land (See Appendix 1 for photos of this occurring).
2. ***Passing.*** Although the EA purports to limit passing vehicles in vegetated areas, this behavior has occurred frequently in past years. Again, this is a competitive, high-speed race, making it difficult, if not impossible, to curtail drivers seeking to go around slower

⁴ EA, Appendix D.

vehicles. To pass slower cars competitors must navigate their vehicles at high speeds off of the narrow road, because it is not wide enough for two vehicles to travel abreast. This means that surrounding areas will certainly rutted in numerous places causing negative effects not even considered in the EA (See Appendix 1 for photos of this behavior and the visible aftermath).

As this activity is not even contemplated in the EA, the agency has not offered any means for mitigating or rehabilitating the damage incurred by passing during the race. Nor does the agency even offer a way to monitor this damage so that it may be later addressed.

C. EA Overstates Success of Road Rehabilitation

The EA also fails to address the fact that past road remediation efforts required by the BLM for the Vegas to Reno race have not returned roads to their pre-race condition. For example, the Determination of NEPA Adequacy done for the 2013 race included a change to the prior year's course, stating:

“This will allow for greater flexibility and allow the permittee to avoid course areas that may need additional rehabilitation time from previous use.”⁵

Similarly, there is evidence that remediation undertaken after the 2008 race was insufficient. Here are the conditions observers found after that race:

“We went back in February, 2009 and found the roads adjacent to Death Valley National Park were graded, but the deep erosion created by the extreme use of the roads by the race participants caused so much erosion that the roads are now permanently in a much more degraded state than before. The eroded depressions fill up with water after rain and erode the surface of the road even more. We found that one of the new cross country routes was graded into a road.”⁶

⁵ https://eplanning.blm.gov/epl-front-office/projects/nepa/36901/44058/47419/Vegas_to_Reno_2013_DNA_Signed.pdf

⁶ <http://www.basinandrangewatch.org/OHV-09-Terribles.html>.

These damaged conditions persisted several months after a race. Since the EA cites past experience as a basis for its analysis, it should include these observations and strengthen required mitigation measures so as to prevent their recurrence.

It is also telling that BLM has increased the time permitted for remediation actions from two weeks to four weeks.⁷ This time extension implies that more rehabilitation will be required than can be accomplished in two weeks. It also increases the amount of time that damaged resources will remain un-remediated and, presumably, the time that public access to these damaged areas will be curtailed so as to not aggravate the damage.

D. EA Mitigations Contradictory and Muddled

The language within the EA designed to protect Monument resources is inconsistent and vague. For example, the EA —

- States in one place that BITD “must”⁸ undertake rehabilitation efforts and at others only stating that they “may”⁹ take them;
- Leaves unspecified what participant behavior will be classified as “traveling off course” and what precise conduct requires a “disqualification”¹⁰; and
- Contradicts itself by providing that spectators are “confined to pit areas and start/finish areas”¹¹ while elsewhere noting that they are also welcome to view the race at road crossings (which are “popular viewing areas for race spectators”¹²).

Unless these ambiguities are completely dispelled, these promised mitigations must be assumed to be ineffective.

⁷ EA, pg 89. “...immediately after and within ~~two~~ four weeks....”

⁸ EA, pg 82. “Upon leaving, the lands must be restored as nearly as possible to pre-existing conditions.”

⁹ EA, pg 89. “The permittee may be required to grade, drag, disc or seed soil and vegetation areas within the course and pit areas that were significantly changed or impacted as a result of the event.”

¹⁰ EA, pg 6. “Participants deviating from the proposed route would be disqualified.”

¹¹ EA, pg 86. “Spectators are only allowed in pit areas and at the Start and Finish Line.”

¹² EA, pg 50. “Road crossings are popular viewing areas for race spectators.”

E. EA Imprudently Leaves No Room for Error

In theory, the “stipulations” placed on BITD would address the concerns detailed in the EA (or a resulting mitigated FONSI) only if they were implemented to perfection under BLM oversight. Yet within this permitting process itself, BLM has demonstrated its utter lack of capacity, suggesting that unerring execution is not its strong suit. For example, while BLM announced that the EA was “released” on July 1, 2016, it was not actually available for public review until later due to the failure of BLM to properly post it; instead it placed a map image where the EA should have been. If BLM cannot even competently display its EA, how can it reasonably expect to perfectly enforce 20 pages of detailed rules?

Moreover, even a capable organization admits and plans for the possibility of error. This EA concedes no such possibility and thus cannot be considered a realistic or reliable assessment of the real world impacts anyone would reasonably expect to occur.

F. Reliance on Past Assessments Misplaced

The EA’s reliance on past evaluations of NEPA adequacy for prior race courses is misplaced. Since the 2016 course will significantly differ from the 2015 course, it would be inappropriate for BLM to rely on past analyses to evaluate potential race impacts.

For the above reasons, PEER would urge that this draft EA be rewritten to address these deficiencies and reissued for public comment.

III. Nevada BLM Violates National Environmental Policy Act Requirements and Prohibitions.

In order to engineer the approval of this event, Nevada BLM has made a mockery of the NEPA process.

A. Illicit Predetermination with Race Sponsors

BITD invested significant resources under assurances from BLM that the permit would be granted for the through-Monument route the organizers preferred. In other words, the fix is in. This improper predetermination was reflected in numerous candid comments by those associated with the race:

- An August 10, 2015 *Reno Gazette-Journal* article stated that “Coordination between the field offices and BITD already is in progress to ensure permitting is completed and the public is involved.”¹³ In fact, the collusion between the BLM and the organizer went on for months but the public was not involved until only very recently.
- The day prior to the 2015 race, the director of BITD stated to reporters that the 2016 race course had been deliberately plotted to go through the newly created National Monument.¹⁴ He had received assurance that this route would be approved.
- August 13, 2015, Steven Olsewski of Off Road Extreme stated that notwithstanding the designation of the new Monument: “The most aggressive part of the race is the fact the course will go through a newly declared national monument.”¹⁵
- On June 11, 2016, Casey Folks, the race director, expressed his firm confidence to the Associated Press that the through-Monument would be approved. “Have we been assured by BLM we will get the permit? Pretty much.”¹⁶

Compounding these machinations, Mr. Folks recently stated that BLM has provided him with assurances of its final decision by July 29, 2016 — before the comment period has even closed.¹⁷

This strongly suggests that BLM has given repeated private assurances to race organizers months before it completed its review that the course BITD preferred would be approved. It also means that BLM consideration of public comments is a fraud, merely a required pretense.

Finally, it means that BLM has violated NEPA by prejudging the selection of alternatives before rendering a final decision.¹⁸

¹³ <http://www.rgj.com/story/news/local/leader-courier/2015/08/09/vegas-reno-race-held-aug/31311421/>

¹⁴ <http://www.offroadxtreme.com/news/get-excited-big-changes-for-best-in-the-desert-2016/>

¹⁵ <http://www.race-dezert.com/forum/threads/official-changes-to-the-2016-bitd-race-season-from-press-conference.122968/>

¹⁶ <http://www.usnews.com/news/sports/articles/2016-06-13/apnewsbreak-desert-race-through-nevada-monument-under-fire>

¹⁷ Statement on BITD website (7/8/2016) — “We will know the decision regarding the race on July 29, we will wait to mail out the FIP until July 29. We have been working on 2 different routes, this way we can send you the correct information.”

B. Consideration of Alternatives Is a Sham

This predetermination was further facilitated by selecting alternatives that were not fairly, let alone fully considered. In fact, no fair consideration was accorded to any route other than the one chosen by the race sponsor.

In particular, the Beatty-to-Dayton Route alternative purports to move the start of the event to lands near Beatty, Nevada, as occurred in the 2015 race. However, David Nehrbass, of Motorsports Safety Solutions which provides rescue support for BITD races, stated on June 30, 2016 that the race organizer never had any intention of running such an event, regardless of the determination made by BLM:

“Absolutely NO on the Plan B starting in Beatty — Regardless of Plan A or Plan B, the start will be in the same location as the old Silver State 300 Finish on the airstrip land.”¹⁹

Casey Folks of BITD further confirmed on the BITD website that no consideration was given to any other start option, as “Plan A” is the Preferred Alternative and “Plan B” is the Transfer Route.²⁰

Agency consideration of an unreasonable alternative does not satisfy the NEPA’s requirement for a thorough review of options, and further supports BLM’s predetermination of the permitting process’s ultimate outcome.

C. BLM Rigged EA Timing to Preclude Challenges

Best in the Desert submitted their permit application on May 26, 2015. The BLM waited more than a year, until July 1, 2016, to release an Environmental Assessment for the permit. The

¹⁸ 40 CFR Part 1502.2(f).

¹⁹ <http://www.race-dezert.com/forum/threads/conservationists-trying-to-stop-v2r.125913/page-3>

²⁰ Statement on BITD Website (7/8/2016) - “Note — as many of you know there is some controversy over 43 miles of our race course. Just so you know we are here working it out. We will know on July 29 if we get our original course, which is referred to as “Plan A” here. We have been working hard on making sure you get a race and we have planned for an option, that is called “Plan B” which will entail a transfer section, to bypass these 43 miles. The draw will still be on July 27, which is when we usually send out the FIP. We will wait to hear what course we get on July 29 and we will send out the FIP when we know, you will receive instructions for either Plan A or Plan B. We know the transfer section is very difficult for you, and us, but at least it is early in the race. We are doing our best to work this out, we are working on two of everything. (I had just finished the 45-page pit book when this all started...but now I have Plan B completed, so all coming together here.)”

comment period for the Environmental Assessment will close after 30 days, on July 31, 2016. This will leave the Ely District Office a mere 15 working days to make a final determination before the race starts on August 19, 2016.

Thus, Nevada BLM sat on the permit application for a year, providing a mere seven weeks before the race date to formally evaluate the appropriateness of an EA.

Moreover, this official stalling accomplishes the desired result only if the BLM had already decided that the evaluation would result in a Finding of No Significant Impact. Any other final determination made in these late hours, such as the need to conduct a full (and appropriate) Environmental Impact Statement, would preclude the race from occurring.

Even an additional open comment period providing for public review of the FONSI (necessary for any “precedent-setting case”²¹) before the ultimate decision is rendered will be precluded by BLM’s deliberate delay.

PEER expects BLM to go through the charade of “considering” public comments for two weeks after the August 1 close of the comment period. It will then issue a FONSI and a permit for the through-Monument course the day before the race (though the organizers will have known in advance).

This gaming of the NEPA process does a disservice to the public, makes a farce of environmental laws BLM is supposed to uphold and bespeaks a form of corruption that should not be tolerated in federal service.

D. A FONSI for This Event Would Violate CEQ Guidelines

According to the White House Council on Environmental Quality’s guidelines,²² an assessment of the 2016 race route will not meet the criteria required for a FONSI because:

- The Basin and Range area contains significant cultural and historic resources, including rare artifacts and valuable petroglyph sites, and many of these exceptional features are located in the Southern area of the Monument, the closest section to the race start;

²¹http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf

²² 40 C.F.R. § 1508.27

- The use of the National Monument for the race is highly controversial, as evidenced by the news coverage editorials and op-eds it has generated;
- Other fast paced off road races have led to injury or death for observers and participants, including the deaths of an 8 year old spectator and two race drivers just last month, and public safety may be negatively impacted by the course;
- Permitting the race creates a precedent of permitting off road racing within the Monument in the future — a decision wholly inappropriate in the midst of the Monument management planning process; and
- The cumulative impact of individual race vehicles on the land constitutes a significant environmental harm, and the potential loss or destruction of important natural resources requires the completion of a full environmental analysis.

In summation, the Environmental Assessment completed for the 2016 Best in the Desert Vegas to Reno race is insufficient, fails to set clear remediation standards, and falsely presents an unworkable alternative as if it was actually under valid consideration. The ultimate selection of the Preferred Alternative by BLM would drastically undermine any public confidence in the Monument management planning process, undercut the President's clear intention for the land, and damage the Monument's fragile resources.

Should you have any questions about the foregoing or desire information on any aspect of it, please do not hesitate to contact us at (202) 265-PEER.

Respectfully submitted,

Jeff Ruch
Executive Director

Appendix 1: Vehicles leaving established course roads in past Vegas to Reno races.

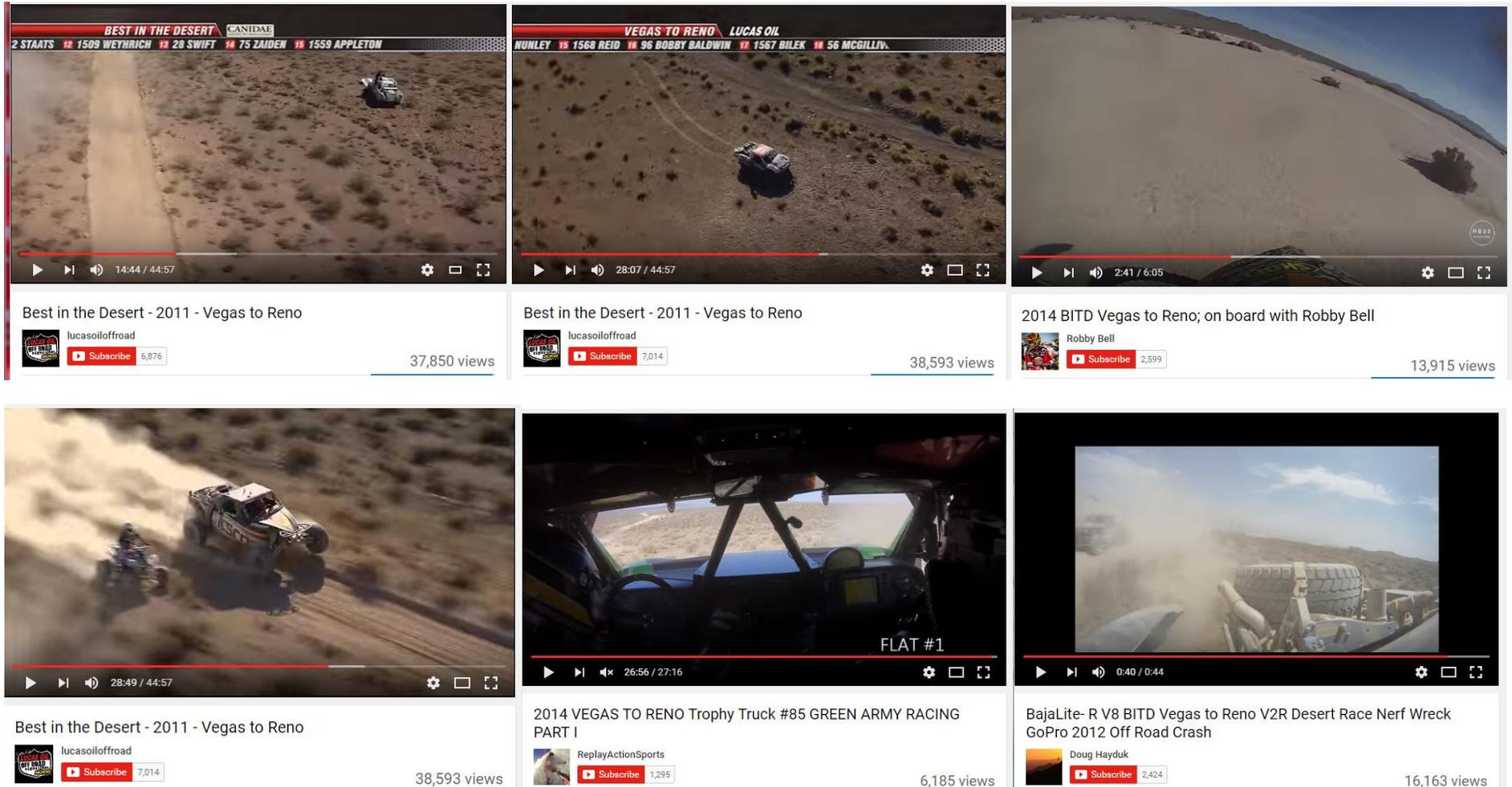


Image 1: 2011 Vegas to Reno Race, vehicle leaves road after mechanical failure — note that the hood of the truck has been taken off and placed directly on top of off road vegetation as well as track marks left by vehicle. **Image 2:** 2011 Vegas to Reno Race, vehicle breakdown — note distance from road/track marks left on non-road surface. **Image 3:** 2014 Vegas to Reno race - note faint line indicating actual road in image distance. **Image 4:** 2011 Vegas to Reno Race, vehicles passing on course — note larger vehicle is substantially off the established road. **Image 5:** 2014 Vegas to Reno Race, race participant deliberately drives vehicle off road to fix flat tire — note established road in the distance on left. **Image 6:** 2012 Vegas to Reno Race, deliberate “bump” by larger vehicle into smaller vehicle leads to damage to the smaller vehicle, causing vehicle driver to deliberately take the smaller vehicle off the road — note that larger vehicle remains on established road in back left of image. Images from various YouTube accounts, as listed.