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May 13, 2019

Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250
agsec@usda.gov

Re: Recommendation to Reject Petition for USDA Rulemaking to Exempt Certain Forests from the Travel Management Rule

Dear Secretary Perdue:

We are writing to express our deep concern with the petition for rulemaking submitted by six Eastern Oregon Counties¹ requesting that the U.S. Department of Agriculture exempt the Wallowa-Whitman and Malheur National Forests from the United States Forest Service's 2005 Travel Management Rule, 36 C.F.R. Part 212. We strongly oppose any efforts to waive protections afforded under the 2005 Travel Management Rule.

The 2005 Travel Management Rule is a carefully crafted Forest Service rule adopted through formal rulemaking provisions that was issued after decades of public discourse and involvement. It reflects sound judgment by the agency and implements Executive Order 11644, as amended by Executive Order 11989.² The Travel Management Rule requires the Forest Service to designate specific areas and trails open to off-road vehicle use; remaining areas are to be closed to motorized use. Designations are made through site-specific travel planning, and must be based upon protection of public lands resources, promotion of the safety of all users, and minimization of environmental impacts and conflicts among uses. The rule provides a national framework to make motorized designations at the local level, with public involvement, and allows the agency to strike an appropriate balance in managing all types of recreational activities.

¹ Harney, Wallowa, Malheur, Grant, Baker, and Union Counties of the State of Oregon submitted a petition to the U.S. Department of Agriculture pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), on March 1, 2019.

² President Nixon issued Executive Order 11644 in 1972 requiring the Forest Service to "establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands." E.O. 11644, § 1. The need for this Executive Order was due to the large number of off-road recreational vehicles being used on public lands that were "in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity," which demonstrated the need for a "unified Federal policy toward the use of such vehicles on public lands." *Id.*

The Wallowa-Whitman and Malheur National Forests have not complied with the Travel Management Rule. After nearly 15 years since the rule was finalized, this delay is unreasonable. The agency's compliance delay is particularly concerning due to the abundance of motorized roads and trails on the forests.³ Failure to close cross-country motorized travel on the Wallowa-Whitman and Malheur National Forests is not sound policy and flies in the face of the agency's own regulations, rules, guidance, and best available science. It is also unlawful. 5 U.S.C. § 706(1).

The Forest Service had previously made commitments to comply with the Travel Management Rule on the Wallowa-Whitman and Malheur following completion of the Blue Mountains Forest Plan revisions. These revisions proposed much-needed amendments to forest plans that are severely outdated: the Wallowa-Whitman and Malheur National Forest land and resource management plans are now almost thirty years old. Now that the revisions have been withdrawn, however, we are deeply concerned the agency will further delay compliance the Travel Management Rule.

Given this context, the counties' request to exempt the Wallowa-Whitman and Malheur National Forests from the 2005 Travel Management Rule requirements is especially egregious. Indeed, the petition relies on the agency's historic failure to comply with travel planning requirements as a basis for exempting the forests from compliance with the Travel Management Rule. The failure to comply with the Travel Management Rule in the past is not a legally valid reason to continue to fail to comply with the law.

The petition also makes vague and unsupported claims that travel management planning will result in various negative socioeconomic costs and recreational impacts. These unsupported claims directly conflict with the Forest Service's conclusions in its 2005 Travel Management Rule rulemaking.⁴ Similarly, there is no evidence that compliance with the Travel Management Rule will preclude necessary fire suppression activities or landscape restoration.⁵ Indeed, compliance with the Travel Management Rule on every other National Forest System unit belies the claims of the Eastern Oregon Counties regarding socioeconomics, public health and safety, and land management and restoration.

The Forest Service issued the Travel Management Rule to enhance public enjoyment of the National Forests, while maintaining other important values and uses on forest lands. Granting the Eastern Oregon Counties' rulemaking petition would undermine this balance, and would be


³ The Wallowa-Whitman National Forest contains a road network totaling approximately 9,120 miles of documented roads, of which approximately 4,630 miles are open to motorized travel. The Malheur National Forest contains a road network totaling approximately 9,651 miles of documented roads, of which approximately 6,795 miles are open to motorized travel. These two forests have some of the highest, if not *the* highest, open road mileage in the National Forest System.

⁴ *See, e.g.*, 70 Fed. Reg. 68264 (Nov. 9, 2005) (explaining “[t]he growing popularity and capabilities of OHVs demand new regulations, so that the Forest Service can continue to provide these opportunities while sustaining the health of NFS lands and resources.”).

⁵ *See id.* at 68267 (noting that concerns about impacts to timber harvesting, grazing, fuel reduction and fire suppression “are beyond the scope of this rule” because “[r]oad construction...must be subjected to site-specific environmental analysis, which establishes road management objectives”). *See also* 69 Fed. Reg. 135 (July 15, 2004) (proposed rulemaking).

immensely controversial. We strongly urge the Forest Service to reject the Eastern Oregon Counties' petition for an exemption to the Travel Management Rule.

Sincerely,



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