

District 36 Meeting Minutes
Location: Zoom (remote) July 19th, 2023
Referee's Meeting 7:00PM – 8:00PM

**NOTES: If topic is not on the agenda, it will be added to the non-agenda items,
if approved by the president for the next meeting**

- Meeting Called to Order @ 7:03pm by ~~Brad Rosbach~~ (President), by Brian Garrahan (Vice President) as Brad Rosbach was not in attendance.
- Roll Call (Monique Whitworth)
 - o 13 of 28 Clubs/Promoters present
 - PRESENT: CERA, CCP, FAST TIMES, GOT, HAYWARD MC, LODI MC, NORCAL MC, PDMC, RDR, RICHMOND RAMBLERS, WDBRA, SALINAS RAMBLERS, TIMEKEEPERS,
 - o 32 of 67 Committeemen present
- Approve Minutes (June, 2023): motioned by John Davis, no objections; minutes approved
- Guests: No guests in attendance this evening.
- Correspondence: No correspondences this evening.

Committee Reports:

Maximum time spent on each agenda item is 3 minutes. If unresolved, it goes to the Parking Lot to be added to the agenda for the next month.

- Sanctioning (Katie Pond)
 - o Sanctioning meeting will be September 9th, 2023 from 9am - 1pm. Emails will follow from Katie for more information.
 - o Phantom HS is still currently postponed with no date rescheduled as of yet.
 - o Sawmill and Crosscut Family Enduro are still currently postponed with no date rescheduled as of yet.
 - o There are 2 Dual Sport events on the schedule.
 - September 9th-10th, 2023 is the Stewards of the Sierra - Adventure Ride
 - September 30th, 2023 is the Lost Coast Dual Sport- Adventure Ride hosted by North Bay MC.
 - o For any date change requests, please make sure to email BOTH Katie Pond, Sanctioning Steward and the corresponding Steward.
- Membership (Cat Swenston)
 - o 82 renewals have been sent out since our last meeting
 - o 117 cards have been mailed out since our last meeting

- o 3 new lifetime members
 - April Kennedy, 1K
 - Clay Hodges, 15N
 - Darrel McCall, 10Z
 - o Chris Dark has been working with the database. It is at the point where Cat would like Stewards to look and browse. It is still a little ways from going live, but so far it is looking like a step in the right direction.
- Youth Cross Country (Jimmy Whitworth)
 - o Advancements will be out this week.
- Cross Country/Scoring (Jeremy Carlin)
 - o Advancements will be out this week.
- Enduro/Family Enduro (Bruce Hendrickson)
 - o Advancement points for Enduro are posted to the website.
- Dirt Track (Carter Fisher)
 - o Jill Patterson reporting for Carter Fisher
 - Lodi MC 100 National TT hosted by Lodi MC on 6/24/23
 - 126 entries
 - Hills Ferry ST hosted by Fast Times on 7/8/23
 - 91 entries
 - The race scheduled for July 15th has been rescheduled to September 17th.
 - The next race is on July 22nd, 2023.
- Dual Sport (Jerry Fouts)
 - o No reports as Jerry Fouts was not present this evening.
- GP Series (Leon Hannum)
 - o Next GP race is at E-Street on July 30th, 2023.
- Sponsor Committee (Charlie Coiner)

- o Tech Roe Computers is District 36's newest sponsor. The will be sponsoring a new computer for Bill McGibbon for all his computer work for D36.
 - o Charlie has a lead on EMT Racing that he will continue to work on to bring them to District 36.
- Social Media (Amanda Carlin)
 - o Net gain on Instagram is 110 followers.
 - o If you need anything posted to social media, please email Amanda Carlin.
- Contingency Committee (Rachel Douglas)
 - o All contingencies are current.
- Newsletter/Website/Operations Manual (Bill McGibbon)
 - o July newsletter is out.
 - o Bill is still looking for content for the newsletter.
 - o Website is up to date, charter applications have also been posted for 2024.
 - o The last date to submit rule changes is coming up, please make sure to get them in before October.
 - o There will be a few rule change proposals this evening during the Competition Committee meeting.
- AMA/Congress (Jerry Fouts/Ralph Lee)
 - o There is an in-person meeting in September, Ralph was unsure of the exact date. John Davis will send an estimated budget for possibly sending Ralph Lee to this meeting for the AMA.
- Director of Competition (Jeff Irwin)
 - o There is a rule proposals for 7.5.3 Enduro that will be discussed later this evening.
- LAO (Don Amador)
 - o John Davis reporting on behalf of Don Amador.
 - o See attached report.

- o Jeremy Carlin suggests to Clubs/Promoters to reach out with the Managers at Forest Service. Do not listen to what you hear, talk to the actual rangers for accurate information.
- Clubs/Promoters/Members – Question/Answer *This is not for club announcements*
- Old Business
- New Business
 - o BOD Nominations for 2024-2025
 - Jeremy Carlin nominated by Brian Garrahan
 - Brian Garrahan is termed out at the end of 2023 so can not be up for renomination.
 - Katie Pond nominated by Jeremy Carlin (accepted)
 - Tim Adkinson nominated by Jeremy Carlin (accepted via a text message to Secretary, Monique Whitworth)
 - Ryan Gouldthread nominated by Jeremy Carlin (accepted via a text message to Secretary, Monique Whitworth)
 - Kolby Butcher nominated by Cat Swenston (accepted, however will need to be voted by active members to bypass Qualification C, Section 2, under Article IV in the By-Laws, will follow up in the Competition Committee meeting in August)
 - Jeff Irwin nominated by Bill McGibbon (accepted)
 - o Nominations will be accepted during our August meeting as well as the Sanctioning meeting.
- Good of the Body
- Bill Goodno motioned to adjourn; Meeting Adjourned @ 7:57pm

Competition Committee Meeting

- Meeting Called to Order @ 7:58pm by Brian Garrahan (Vice President); meeting ran by Jeff Irwin, Director of Competition
- Roll Call (Monique Whitworth)
 - o 24 Active members of 13 Clubs/Promoters present.
 - PRESENT: CERA, CCP, FAST TIMES, GOT, HAYWARD MC, LODI MC, NORCAL MC, PDMC, RDR, RICHMOND RAMBLERS MC, SALINAS RAMBLERS MC, TIMEKEEPERS, WDBRA
- Protests
 - o No active protests.
- New Clubs
 - o No new clubs.
- Old Business
- New Business
 - o Rule Proposal 7.5.3 Enduro

- Ruled proposed by John Davis, John read rule as proposed (see attached rule proposal).
 - Opened for discussion
 - No discussion , no opposition
 - Jeff Irwins calls for a vote to accept rule as written
 - 24 yay; rule as proposed passes
- Motion to adjourn by Bill McGibbon; meeting Adjourned @ 8:06pm

BREAK

Board Meeting [8:00-9:00]

Maximum time spent on each agenda item is 5 minutes. If unresolved, it goes to the Parking Lot to be added to the agenda for the next month. Comments and business by the BOD only unless approved by the President. Please keep your report to 5 minutes in length. Questions will be limited to 3 minutes.

- Meeting called to order @ 8:12pm by ~~Brad Rosbach (President)~~ by Brian Garrahan (Vice President) as Brad Rosbach was not present tonight.
- Roll Call (Monique Whitworth)
 - o 8 of 9 members present
 - NOT PRESENT: RYAN GOULDTHREAD
- Old Business
 - o GP Scoring System (Tabled from March, 2023)
 - Will be removed from future agendas for the time being as Leon Hannum no longer wishes to pursue.
- New Business
 - o Procedural Rue Proposal 1.6.1
 - Rule proposal submitted by Bill McGibbon. Brian Garrahan read rule as proposed. Bill McGibbon elaborated a bit more (see attached rule proposal).
 - Opened for discussion
 - John Davis makes a motion to accept rule as written, Jeremy Carlin seconds.
 - 8 yay, 0 no; rule passed
 - o Procedural Rule Proposal 1.6.2
 - Rule submitted by Bill McGibbon. Brian Garrahan read rule as proposed (see attached rule proposal).
 - Opened for discussion. Jeremy Carlin has concerns that if we change deadline date to September 1st, it can potentially be cause for concern because some may propose rules during the Sanctioning meeting. Bill McGibbon amends his deadline date to September 15th for rule proposals.

- Brian Garrahan motions to accept rule as written with the amended date of September 15th, Billy Goodno seconds.
 - 8 yay, 0 no; rule passed
 - o Date change for Banquet (Jeremy Carlin)
 - Jeremy Carlin would like to move the banquet to January 27th, 2024. This will allow for the use of December to be used as make up race dates. Jeremy Carlin has already spoke with Banquet Chair, Katie Pond, who is ok with date change.
 - Charlie Coiner asked why this needs to be a decision made by BOD rather than the Banquet Chair. Jeremy would rather the Board of Directors make the decision.
 - Jeff Katarzy makes a suggestion that a decision to change the banquet date be held off until we get a calendar of events for 2024.
 - Jeremy Carlin motions to move banquet to January 27th, 2024, Jimmy Whitworth seconds.
 - 4 yay, 2 no, 2 abstain; motion passes.
 - Katie Pond will make sure venue is available for January 27th, 2024. We will verify date of banquet in August, 2023 meeting.
 - o Budget for Hearing Protection for Scoring Personnel (Jeremy Carlin)
 - Jeremy Carlin would like to request \$750.00 to purchase hearing protection for some of the scoring crew.
 - John Davis makes a motion for \$750.00 to purchase 6 sets of hearing protection for some of the members of the scoring crew, Billy Goodno seconds.
 - 8 yay; motion approved.
- Adhoc Committee Updates
- Non Agenda Items (There will be 5 minutes TOTAL allowed)
- Good of the Body
- Executive Session
 - o No executive session this evening.
- Motion to adjourn by Jeremy Carlin; meeting adjourned @ 8:49 pm



Amador District 36 LAO Activities Report

June 21, 2023 to July 19, 2023

D36 Mission Statement

District 36 is a volunteer-based non-profit organization of motorcyclists and like-minded enthusiasts who organize and enhance responsible family recreation and exercise environmental conservation for the purpose of promoting today's activities and protecting our sport for the future.

Dear Board,

**Please take time to review documents supplied including official D36 LAO comments on the FS proposed permit fee amendments AND the BLM's Proposed Conservation and Landscape Health Rule. Over the years, various Presidents have attempted to impose new highly restrictive regulations and/or fees that affect both casual trail use and permitted competition events. Since the inception of the LAO program, it has been engaged in critically important policy and some legal efforts to challenge bad agency plans or to support good proposals. Thanks for your review of the issues in this report and that attached documents.*



FOREST SERVICE PROPOSAL TO 86 COST RECOVERY - The LAO believes the loss of the 50-hour exemption and other proposed, yet vague, fee increases will force many of those partner clubs to cease applying for a special use permit since events such as an amateur enduro that are many times a “break-even” proposition since the entry fees will not cover the club’s expense for items such as on-site medical services, communications, and other event materials. This proposal threatens those important partnerships and the pre-event volunteer trail work.

The LAO has also attached a comment letter of opposition to the fee proposal from a key coalition of non-motorized groups who share our concerns.

The LAO continue to work with our motorized and non-motorized stakeholders and also monitor this proposal and take further action as needed.



BLM PROPOSED CONSERVATION AND LANDSCAPE HEALTH RULE – If enacted, this would have a devastating impact on casual trail use and our permitted events held at BLM areas such as Chappie Shasta and Fort Sage. This proposal has created a national effort to pushback against this extreme example of government overreach. I have attached the D36 comment letter along with a couple of other comment letters of opposition from government officials and even a sister federal agency.

Just as with the Clinton Roadless Rule that was defeated in a court case that OHV was key part of, the LAO expects this to end up in court as well with D36 as a potential plaintiff if the board decides to join a suit.

SPRINT ENDUROS ON THE MENDOCINO IN 2024 – The LAO has met with the Mendocino NF District Ranger and Tony Elmore from the Valley Climbers to agree on a strategy to ensure that D36 clubs can hold sprint enduros on the Forests. Since the FS feels unable to host a sprint enduro this season based on various capacity challenges placed on the agency from the heavy winter storms and the ongoing recovery effort, the agency has agreed to meet with the clubs after the fall enduro season to discuss

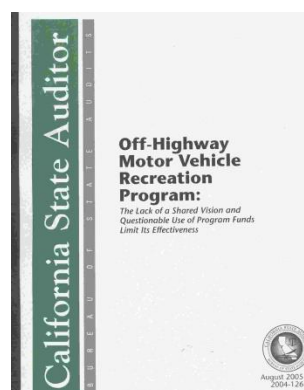
options that will allow for sprint enduros to occur in the future. The LAO will facilitate this meeting in later this year and will continue working with the D36 Enduro Steward on this issue.

COMPETITION PERMIT SENATE BILL SET FOR BATTLE NEXT YEAR - Although SB 708 passed the Senate (Ayes 39. Noes 0.) In May, the chair (a hard core anti-OHV hater) would not allow the bill to be heard in her assembly committee. Fortunately, SB 708 is a 2 year bill and the LAO, our lobbyist, and Senator Jones will continue to work hard so the bill can be heard next year.

PUBLIC RECORDS ACT REQUEST FOR OCEANCO DUNES - At the June OHV Commission subcommittee hearing in Sacto, the LAO testified about ongoing concerns with what appears to be excessive spending of OHV Trust Fund monies at Oceano Dunes to the detriment of operations at other SVRA units. Also, said spending is not sustainable and threatens the long term viability of the OHV program that also funds riding and permitted events on federal riding areas used by D36 members and clubs. As follow up to the LAO testimony, a public records act request was filed with the legal department at CA State Parks to get an accounting of monies spent for APCD and Coastal Commission staff time and legal costs related to Oceano Dunes.

SxS SAFETY – The LAO will be attending another OHMVR Division Safety Conference on July 27 as it continues to work with State Parks interagency SxS safety team on solutions to address illegal and rogue activity by certain SxS groups and the growing number of accidents between dirt bikes and SxSs. As part of our joint effort with Parks, the LAO is doing research on existing online OHV safety courses, the LAO took the online OHV safety courses offered by OR State Parks and UT Parks and Recreation.

The LAO expects that Parks will require some form of REQUIRED education certificate similar to other states such as OR and UT before riding a SxS on public lands. It would most likely start off with a required online cert. but if that is not effective than an in-person field training would also be required.



Cover of the 2005 Audit of CA OHV Program

AUDIT OF OHV TRUST FUND - Due to the LAO Program's concerns about the long term fiscal viability of the OHV Trust Fund due to the ongoing deficit spending by the OHV Division and Parks - to subsidize activities that DO NOT benefit OHV recreation – it continues to work with Legislators on submission of a REQUEST FOR AN AUDIT that will be submitted later this year or early next year. The audit is expected to highlight deficit spending on unwarranted projects and funding shortfalls that could impact the operation of SVRAs and grants to federal and county agencies. The audit is also expected to find possible solutions to fiscal shortfalls.

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July 5, 2023

U.S. Department of the Interior, Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646,
Washington, DC 20240
Attention: 1004-AE92

RE: Proposed Conservation and Landscape Health Rule - Docket # 1004-AE-92

POSITION: STRONGLY OPPOSE

Dear Planning Team:

Please accept these comments from AMA District 36 (D36), a volunteer-based non-profit recreation organization, **voicing strong opposition** to the *Proposed Conservation and Landscape Health Rule* (PR) - Docket # 1004-AE-92. D36 represents approximately 4,000 OHV trail enthusiasts that enjoy casual trail rides with family and friends and also participate in sanctioned amateur competition motorcycle events on lands managed by the BLM in California and Nevada. This comment letter does not preclude other D36 representatives, clubs, and members from submitting their own comments.

OVERVIEW

The proposed 2023 BLM Conservation and Landscape Health rule redefines the term Conservation, creates Conservation leases managed by private sector interests, and emphasizes Areas of Critical Environmental Concern as the sole designation for protecting important natural, cultural, and scenic resources.

Conservation is a key element of land management today that protects natural resources and also provides sustainable recreation for OHV and other activities that families enjoy. Traditional Conservation includes maintaining trails to reduce soil loss, restoration, and post-fire recovery. However, under this rule proposal Conservation efforts would be restricted to “protection” and “restoration.”

The proposed rule would direct BLM staff to identify and mitigate “disturbances” and restore the land to its natural state. Authorized officers would be required to avoid authorizing any use of the public lands

that permanently impairs ecosystem resilience. Staff would also be directed to review and mitigate OHV and other recreation uses at designated intensive use areas such as the BLM Fort Sage OHV Area in California and the BLM Knolls OHV Area in Utah.

The new concept of private sector managed Conservation leases on BLM lands is also troubling for OHV access since the strict prohibition of OHV activity is a core tenet of most, if not all, private, state, and federal conservation lease plans and programs.

Many recreation and other multiple-use interests objected to the BLM's 2017 2.0 Planning Rule because it created a vague set of hard to follow or implement standards that would have resulted in confusion, chaos and a loss of OHV access for casual use and permitted events such as amateur competition and club rides. For those and other reasons, Congress and the President repealed the rule.

If this new rule is enacted it will also create confusion and chaos. Agency staff will no longer have time to authorize permitted OHV events or do travel plans. Designated OHV sites would most likely see a loss of opportunity including entire areas being closed due to new definitions.

*Before you read the following D36 Section-by-Section responses to the PR, it is important to understand the wide range of recreational uses that will be either restricted or prohibited by the new definition of "disturbance" since all create some level of disturbance. Many of those activities are also "intensive" uses that would not be authorized.

According to the BLM website, Visitors to public lands enjoy countless types of outdoor adventure – participating in activities as widely varied as camping, hunting, fishing, hiking, horseback riding, boating, whitewater rafting, hang-gliding, off-highway vehicle driving, mountain biking, birding and wildlife viewing, photography, climbing, all types of winter sports, and visiting natural and cultural heritage sites.

Many of those recreational pursuits engage in group activities that require a BLM Special Recreation Permit (SRP). SRPs are issued to businesses, organizations, and individuals to allow the use of specific public land and related waters for commercial, competitive, and organized group use.

According to the BLM H-2930-1 *Recreation Permit and Fee Administration Handbook* - H-2930-1 - Special recreation permits (SRPs) are authorizations that allow specified recreation use of the public lands and related waters... SRPs are issued to manage visitor use, protect natural and cultural resources, achieve the goals and objectives of the field office recreation program as outlined in a land use plan, and authorize the types of recreation uses described here.

**The six major types of SRPs are listed below:

Commercial use - recreation use of the public lands and related waters for business or financial gain

Competitive use - any organized, sanctioned, or structured use, event, or activity on public lands and related waters in which two or more contestants compete

Vending - is a type of commercial use defined as a temporary, short-term, nonexclusive, revocable authorization to sell goods or services on public lands and related waters in conjunction with a recreation activity or at a recreation site

Special Area Use - individual special recreation permits (ISRPs) may be required for individual (i.e., private, noncommercial) recreation use in Special Areas

Organized group or event permits - are intended for group outdoor recreation activities or events that are neither commercial nor competitive

Commercial photography or filming - may be authorized under the SRP guidelines

D36 Responses to Section-by-Section Discussion of Proposed Rule

Section 6101.1—Purpose

PR - This section describes the overall purpose for this proposed rule. It is designed to ensure healthy wildlife habitat, clean water, and ecosystem resilience so that our public lands can resist and recover from disturbances like drought and wildfire. It also aims to enhance mitigation options, establishing a regulatory framework for those seeking to use the public lands, while also ensuring that the public enjoys the benefits of mitigation measures. The proposed rule discusses the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring. Pursuant to Executive Order 14072, Strengthening the Nation's Forests, Communities, and Local Economies, and consistent with managing for multiple use and sustained yield, the BLM is working on various aspects of ensuring that forests on Federal lands, including old and mature forests, are managed to: promote their continued health and resilience; retain and enhance carbon storage; conserve biodiversity; mitigate the risk of wildfires; enhance climate resilience; enable subsistence and cultural uses; provide outdoor recreational opportunities; and promote sustainable local economic development. While there are ongoing inter-departmental efforts related to implementing the Executive Order, the BLM is also interested in public comments on whether there are opportunities for this rule to incorporate specific direction to conserve and improve the health and resilience of forests on BLM-managed lands. What additional or expanded provisions could address this issue in this rule? How might the BLM use this rule to foster ecosystem resilience of old and mature forests on BLM lands?

D36 Response - According to the U.S. Bureau of Economic Analysis (BEA) 2022 annual report the gross economic output for the outdoor recreation economy was \$862 billion in 2021 (that's \$173 billion more than 2020). Outdoor recreation accounted for 1.9 percent of GDP in 2021—an 18.9 percent increase from 2020—where the overall U.S. economy only saw a 5.9 percent increase. Also, 4.5 million people found employment in the outdoor recreation industry, an increase of 13.1 percent from 2020. A significant amount of that economic impact come from public use of BLM lands including but not limited to self-guided or guided backcountry tours, rafting, OHV, hunting, fishing, boating, waterskiing, backpacking, camping, MTB, E-bikes, and hiking. Monies are also generated by related businesses that offer rentals, supply products, or lodging.

The Purpose appears to be frontloaded to focus proposed mitigation actions solely on “protection” and “restoration” efforts instead of including modern conservation management tenets that allow for active and sustainable forms *casual recreation use and **SRP authorized activities.

Equally troubling is the proposal to create a new “regulatory network” or scheme that will impose closure oriented mitigation measures vs. the current BLM regulations that administer special use permits for *diverse outdoor recreation activities and **SRP authorized activities.

The PR does not provide the rationale for proposing a new regulatory program.
If enacted the PR makes a seismic shift from the agency encouraging diverse *managed recreation opportunities to a policy that directs staff to work primarily on restoration and protection (i.e. closure) projects and programs.

Section 6101.4—Definitions

PR - This section provides new definitions for concepts such as conservation, resilient ecosystems, sustained yield, mitigation, and unnecessary or undue degradation, along with others used throughout the proposed rule text. These definitions apply only in 43 CFR part 6100.

The proposed rule would define the term “best management practices” as state-of-the-art, efficient, appropriate, and practicable measures for avoiding, minimizing, rectifying, reducing, compensating for, or eliminating impacts over time. This definition would provide clarity and consistency as the BLM authorizes restoration and compensatory mitigation actions under the proposed rule.

D36 Response- Without providing a substantive rationale, the PR redefines and constrains “best management practices” to abandon well-established recreation and travel management strategies that use signing, trail delineators, trail width restrictors, and engineered trail construction to reduce soil erosion and focus solely on mitigation tenets that will highly restrict or prohibit multiple-use recreation activities.

PR - The proposed rule would define the term “casual use” so that, in reference to conservation leases, it would clarify that the existence of a conservation lease would not in and of itself preclude the public from accessing public lands for noncommercial activities such as recreation. Some public lands could be temporarily closed to public access for purposes authorized by conservation leases, such as restoration activities or habitat improvements. However, in general, public lands leased for conservation purposes under the proposed rule would continue to be open to public use.

D36 Response - D36 strongly objects to redefining “casual use” to an even more restrictive recreation use tenet. Currently, most if not all, local, state, and federal “Conservation leases” prohibit all OHV use and in some cases restrict or prohibit MTB use, access to rivers for fishing and rafting, and general public access for hiking and camping.

PR - The proposed rule would define “conservation” in the context of these regulations to mean maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions. The overarching purpose of the proposed rule is to promote the use of conservation to ensure ecosystem resilience and in doing so the proposed rule would clarify conservation as a use within the BLM's multiple use framework, including in decision-making, authorization, and planning processes. The proposed rule would include a stated objective to promote conservation on public lands, and proposed subpart 6102 would outline principles, directives, management actions and tools—including establishing a new tool in conservation leases—to meet this objective and fulfill the purpose of the proposed rule. Because conservation is the foundational concept for the proposed regulations, the proposed definition would provide important guidance and clarity for the BLM to meet the spirit and intent of the proposed

rule. Within the framework of the proposed rule, “protection” and “restoration” together constitute conservation.

D36 Response - Redefining “conservation” is the most troubling aspect of the PR since it would create a seismic shift away from its multiple-use mandate contained in the 1976 Federal Land Policy and Management Act. Traditional multiple use activities such as OHV, backcountry exploring in 4x4s, gem collecting, grazing, and energy production would become subservient to the new Conservation use definition since agency staff (particularly new field office managers with no background in traditional multiple-use management) would be tasked with booting most recreation use off of public lands so they could focus on protection and restoration projects.

BLM staff would now have a bias against authorizing *SRP authorized activities. This would have a huge impact on rural communities that depend on an existing recreation economy.**

PR - The proposed rule would define the term “disturbance” to provide the BLM with guidance in identifying and assessing impacts to ecosystems, restoring affected public lands, and minimizing and mitigating future impacts. Identifying and mitigating disturbances and restoring ecosystems are important components of ensuring ecosystem resilience on public lands.

D36 Response - The BLM in general and also in the *RECORD OF DECISION AND APPROVED KEMMERER RESOURCE MANAGEMENT PLAN*, Appendix M, Surface Disturbance and Reasonable Foreseeable Actions considers OHV to be a “disturbance” use. With that understanding, the BLM with support from many OHV groups and grant funds from various state recreation programs have pioneered highly successful minimization techniques that are used in most BLM OHV areas. However, under the new definition the agency would be forced to severely restrict OHV recreation including permitted competition events or guided tours since the new goal in the PR is to restore (e.g. close to OHV use) an area to protect it.

PR- The proposed rule would define the term “effects” as the direct, indirect, and cumulative impacts from a public land use, and would clarify that the term should be viewed synonymously with the term “impacts” for the purposes of the rule.

D36 Response - Many forms of recreation including OHV have varying levels of impacts or “effects” to the environment. In travel management or authorizing a SRP to a club, organization, or business the agency makes a determination of the level of effect such as no significant or adverse impact, some adverse impact, or a significant adverse effect. Under the PR, almost any form of *recreation would have an effect and then summarily disqualified from consideration since the new overarching goal on all BLM land is to return it to its natural state. This will have a huge negative economic impact on users, businesses, and local communities.

PR - The proposed rule would define the term “high-quality information” so that its use would ensure that the best available scientific information underpins decisions and actions that would be implemented under the proposed rule to achieve ecosystem resilience. The proposed definition would also clarify that Indigenous Knowledge can be high-quality information that should be considered alongside other information that meets the standards for objectivity, utility, integrity, and quality set forth in Federal law and policy.

D36 Response - D36 agrees that Indigenous Knowledge is critically important to forest health and fuel reduction programs.

PR - The proposed rule would define the terms “important,” “scarce,” and “sensitive” resources to provide clarity and consistency in BLM's implementation of mitigation requirements, including under the proposed rule.

D36 Response - Those terms are vague and will only add confusion to agency staff as they try to understand what is meant by those definitions. However, in the PR it is clear they should be interpreted as a rationale to restrict or prohibit *casual trail use and **SRP authorized activities.

PR -The proposed rule would define the term “Indigenous Knowledge” to reflect the Department of the Interior's policies, responsibilities, and procedures to respect, and equitably promote the inclusion of, Indigenous Knowledge in the Department's decision making, resource management, program implementation, policy development, scientific research, and other actions.

D36 Response - D36 agrees that Indigenous Knowledge is critically important to forest health and fuel reduction programs and other resource and cultural management planning efforts.

PR- The proposed rule would define the term “intact landscape” to guide the BLM with implementing direction. The proposed rule (§ 6102.1) would require the BLM to identify intact landscapes on public lands, manage certain landscapes to protect their intactness, and pursue strategies to protect and connect intact landscapes.

D36 Response - The term “intact landscape” is vague and will confuse agency staff and the public.

PR - The proposed rule would define “land enhancement” to provide clarity for interpreting provisions of the proposed rule that would authorize the BLM to issue conservation leases for the purpose of facilitating land enhancement activities.

D36 Response - The term “land enhancement” is vague and will confuse both agency staff and the public. If the PR is enacted land enhancements will restrict or prohibit both motorized and non-motorized recreational activities including *casual recreation use and **SRP authorized activities.

PR - The proposed rule would define “landscape” to characterize a meaningful area of land and waters on which restoration, protection and other management actions will take place. Assessing how BLM's management can affect the functionality and resilience of ecosystems may require considering resources at the landscape scale.

D36 Response - The term “landscape” along with “meaningful area” is alarming since it declares that restoration and protection management activities WILL take place apparently without any public input via the NEPA process. Where is there agency commitment to the collaborative process?

PR- The proposed rule would define “mitigation” consistent with the definition provided by the Council on Environmental Quality regulations (40 CFR 1508.20), which identify various ways to address adverse impacts to resources, including steps to avoid, minimize, and compensate for residual impacts. As a tool to achieve ecosystem resilience of public lands, the BLM will generally apply a mitigation hierarchy to address impacts to public land resources, seeking to avoid, then to minimize, and then to compensate for any residual impacts. This definition and the related provisions in this proposed rule supplement existing DOI policy, which among other things provides boundaries to ensure that compensatory mitigation is durable and effective.

D36 Response - The PR promises the BLM will generally apply a mitigation hierarchy to address impacts to public land resources, seeking to avoid, then to minimize, and then to compensate for any residual impacts. This places any *recreation activities including **SRP authorized activities on the administrative chopping block to be eliminated or reduced in size so as to be of little value to the general public.

PR - The proposed rule would define the term “mitigation strategies” to identify documents that identify, evaluate, and communicate potential mitigation needs and mitigation measures in advance of anticipated public land uses.

D36 Response - As redefined in the PR, the term “mitigation strategies” is vague and will confuse agency staff and the public. The BLM already has proven recreation mitigation plans to manage diverse forms of recreation that both protect natural resources while providing the public with a high quality recreation experience. There is no rational given to support the need to reinvent this spoke in the management wheel.

PR - The proposed rule would define the term “monitoring” to describe a critical suite of activities involving observation and data collection to evaluate (1) existing conditions, (2) the effects of management actions, or (3) the effectiveness of actions taken to meet management objectives. Management for ecosystem resilience requires the BLM to understand how proposed use activities impact resource condition at many scales. Monitoring is a critical component of BLM's Assessment,

Inventory and Management (AIM) framework that provides a standardized strategy for assessing natural resource condition and trends on BLM public lands.

D36 Response - There is no need to redefine the term “monitoring” since the BLM already has a successful and effective monitoring system to review impacts to the resource from OHV and other forms of recreation and to implement proven minimization techniques such as signing, education, use of trail delineators, trail width restrictors, trail maintenance, and engineered trail construction.

PR - The proposed rule would define the term “permittee” to identify those persons with a valid permit, right-of-way grant, lease, or other land use authorization from the BLM. The proposed rule largely discusses “permittees” when identifying the responsibility of parties in the context of mitigation and in discussing the opportunities to rely on third parties in complying with mitigation requirements.

D36 Response – This appears to be a way to extract money from SRP authorized activities including competition events, guided tours, and club trail rides to pay for mitigation measures that are intended to eventually discourage stakeholders from applying for a **SRP.

PR - The proposed rule would define “protection” in the context of the overarching purpose of the rule, which is to promote the use of conservation measures to ensure ecosystem resilience of public lands. “Protection” is a critical component of conservation, alongside restoration, and describes acts or processes to preserve resources and keep them safe from degradation, damage, or destruction. The proposed rule (§ 6101.2) would include a stated objective to promote the protection of intact landscapes on public lands, as a critical means to achieve ecosystem resilience.

D36 Response – D36 agrees that resource protection is an important element of modern land management efforts that have a current goal to help ensure that BLM lands are conserved for multiple-use activities as well as forest and grassland health. This new definition will have a significant and devastating impact on existing *recreation access including **SRP authorized activities.

PR - The proposed rule would define “public lands” in order to clarify the scope of the proposed rule and its intended application to all BLM-managed lands and uses. The proposed definition is the same as the definition of “public lands” that appears at § 6301.5.

D36 Response – The PR attempts to place all BLM lands of various classifications including Special Recreation Management Areas (SRMAs) which are often managed for intensive uses such as general OHV recreation and related *casual use and competition, club rides, and tours authorized by **SRPs. Under this new directive, the BLM would be forced to close congressionally designated OHV Areas such as the BLM South Cow Mountain OHV Area, SRMAs, and ACECs’ that allow motorized access or recreation.

PR - The proposed rule would define “reclamation” to identify restoration practices intended to achieve an outcome that reflects project goals and objectives, such as site stabilization and revegetation. While “reclamation” is a part of a continuum of restoration practices, it contrasts with other actions that are specifically designed to recover ecosystems that have been degraded, damaged, or destroyed. Reclamation often involves initial practices that can prepare projects or sites for further restoration activities. The proposed rule (§ 6102.4–2) discusses reclamation in the context of bonding conservation leases to ensure lessees hold sufficient bond amounts to provide for the reclamation of the conservation lease area(s) and the restoration of any lands or surface waters adversely affected by conservation lease operations.

D36 Response – This appears to be a not so elaborate scheme to funnel monies to third party Conservation organizations that are lessees. The PR does not explain what a conservation lease operation is and how that is connected to restoration projects. If the goal of the PR is to return the land to its natural state what if any “operations” would be allowed on said conservation lease lands that would be in conflict with a restoration project?

PR - The proposed rule would define “resilient ecosystems” in the context of the rule's foundational precept that BLM's management of public lands on the basis of multiple use and sustained yield relies on resilient ecosystems. The purpose of the proposed rule is to promote the use of conservation to ensure that ecosystems on public lands can resist disturbance maintain and regain their function following environmental stressors such as drought and wildfire. The proposed rule identifies and requires the use of protection and restoration actions, as well as tools such as land health evaluations, inventory, assessment, and monitoring to ensure BLM is managing for resilient ecosystems.

D36 Response – Our summary of the various new redefined terms in the PR helps better explain what the term “resilient ecosystems” actually means and that is the goal is to engage in highly restrictive management plans that will severely restrict or prohibit traditional multiple-use including *casual trail access and **SRP authorized activities so ALL BLM lands can be returned to a natural condition where there is little if any public use.

Many rural communities depend on recreation-based tourism as monies raised during times of increased visitation are what help local businesses stay open.

For example, the King of the Hammers – authorized by a SRP - is held each year at the BLMs Johnson Valley OHV Area. It is an international off-road racing event that draws competitors and spectators from around the world.

The High Desert community of Lucerne Valley sees a significant economic benefit from this event.

In a 2022 article in the *Victorville Daily Press* Chuck Bell, president of the Lucerne Valley Economic Development Association, called King of the Hammers a “major” financial boon to “gas stations, the (Lucerne Valley) Market and auto parts store,” as well as other businesses in the town of about 7,000 people. OHV events like this happen annually on BLM lands throughout the West that are managed as intensive use areas for *casual off-road recreation and **SRP authorized competition events.

PR - The proposed rule would define “restoration” in the context of the overarching purpose of this proposed rule which is to promote the use of conservation to ensure the ecosystem resilience of public lands. “Restoration” is a critical component of conservation, alongside protection, and describes acts or processes of conservation that assist the recovery of an ecosystem that has been degraded, damaged, or destroyed. The BLM employs a variety of restoration approaches, including mitigation, remediation, revegetation, rehabilitation, and reclamation. The proposed rule (§ 6102.3) would direct the BLM to emphasize restoration across the public lands and requires the inclusion of a restoration plan in any new or revised Resource Management Plan.

D36 Response - We strongly support restoration of BLM lands that have been damaged by illegal or unauthorized OHV use. Restoration of damaged lands is a key element of a holistic approach to OHV management and restoration of damaged lands by unauthorized use is important in helping keep a riding area open.

However, we strongly oppose the new definition of restoration that when combined with other new definitions and terms will now have a collective goal of returning all BLM lands back – even SRMAs and other intensive use areas - to their natural state. This will have a devastating impact of OHV and many other forms of recreation.

PR - The proposed rule would use the FLPMA definition of “sustained yield.” This proposed rule promotes the use of conservation to achieve resilient ecosystems on public lands, which are essential to managing for multiple use and sustained yield.

D36 Response – The term “sustained yield” under the PR will mean that ALL BLM lands regardless of classification including SRMAs and other intensive use areas will be managed to yield lands that are closed to the public so they can be returned to their natural state. The BLM’s new mandate directs staff to engage in management actions to restrict or prohibit access for casual recreation uses and to not authorize SRP activities so lands can be “protected” and “restored.”

PR - The proposed rule would define “unnecessary or undue degradation” in the context of these regulations to mean “harm to land resources or values that is not needed to accomplish a use's goals or is excessive or disproportionate.” This proposed definition is consistent with BLM's affirmative obligation under FLPMA to take action to prevent unnecessary or undue degradation. The proposed rule would establish overarching principles for ecosystem resilience and would direct the BLM to implement those principles in part by preventing unnecessary or undue degradation in its decision-making.

D36 Response – The new definition of Conservation as a use combined with the PR’s goal to return ALL BLM lands to their natural condition means that agency staff will not be able to authorize OHV and many other *casual recreational activities and **SRP authorized activities including lands managed as SRMAs, Congressionally designated OHV Recreation Areas, and ACECs.

PERFECT LEGAL STORM - FATALLY FLAWED RULE

D36 believes the PR is fatally flawed and will not be able to weather the perfect-storm of anticipated litigation headed its way if not withdrawn because it fundamentally rewrites the “multiple-use” management directives given to the BLM by Congress in the 1976 Federal Land Policy and Management Act.

The Conservation lease program will transfer millions of acres of multiple-use lands open for diverse recreational opportunities to private sector interests that will manage said lands as new defacto wilderness areas where general public access is severely restricted or prohibited.

The PR directs BLM officers to not authorize “disturbance” forms of recreational pursuits that include camping, hunting, fishing, hiking, horseback riding, boating, whitewater rafting, hang-gliding, off-highway vehicle driving, mountain biking, birding and wildlife viewing, photography, climbing, all types of winter sports, and visiting natural and cultural heritage sites.

Also, many of those recreational pursuits engage in group activities that require a BLM Special Recreation Permit (SRP). SRPs are issued to businesses, organizations, and individuals to allow the use of specific public land and related waters for commercial, competitive, and organized group use. BLM officials are now directed to not authorize those activities.

The vague language will invite litigation from extreme environmental groups if the BLM authorizes OHV use or other *causal recreational uses or **SRP authorized activities.

Atmospheric “legal” conditions at the U.S. Supreme Court indicate they are not in support of overreach by regulatory agencies as they seek to implement the environmental agenda of the Administration. The 6-3 decision in *West Virginia v. EPA* where the court ruled the agency overstepped its authority and the recent 6-3 decision by the high court ruling the Biden Administration did not have authority to forgive billions of dollars of student debt illustrates a willingness by the court to address government overstepping their bounds.

On April 5, 2001 U.S District Court Judge Lodge issued an injunction to stop the Roadless Rule’s implementation because - contrary to agency spin- the Rule would actually restrict access of OHV use on high value trails in backcountry areas managed by the Forest Service.

D36 knows we are seeing déjà vu all over again and that a similar fate awaits the PR if it is not withdrawn.

CONCLUSION

D36 clubs and members greatly appreciate the partnership they have with the BLM in California. D36 also appreciates and supports the environmentally sound and sustainable management programs at various BLM OHV Recreation Areas in the state.

However, if the PR mandatory protection and restoration directives are enacted - with a goal to return ALL lands to their natural condition - they will disenfranchise millions of outdoor recreation enthusiasts by restricting access to or closing popular recreation areas. It will also discourage OHV volunteers who donate thousands of volunteer hours working on BLM trail stewardship projects, post wildfire recovery efforts, and maintaining travel management tools such as replacing carsonite signs and trail delineators. At \$23/hr. those volunteer hours currently used by the BLM as a cash match for state and industry trail grants will no longer be generated.

Again, D36 urges the agency to withdraw the PR and start a collaborative process with multiple-use stakeholders including conservation groups so we can find common ground on proven science-based management prescriptions - many of which the BLM is already using.

D36 thanks you for reviewing our comments and looks forward to working with the agency in support of responsible and sustainable OHV recreation on BLM lands for the benefit of current and future generations of outdoor enthusiasts.

Respectfully submitted,

Don Amador

Don Amador, Director
Government Affairs
Cottonwood, CA 96022



June 15, 2023

Director, Lands and Realty Management Staff
201 14th Street SW
Washington, DC 20250-1124

RE: RIN 0596-AD35

Dear Mr. Woodruff and Planning Team:

Please accept these comments from AMA District 36 (D36), a volunteer-based non-profit recreation organization, regarding the Agency's proposal to amend its special use regulations to update the processing and monitoring fee schedules based on current Agency costs; to provide for recovery of costs associated with processing special use proposals, as well as applications; and to remove the exemption for commercial recreation special use applications and authorizations that involve 50 hours or less to process or monitor. D36 represents approximately 4,000 OHV trail enthusiasts participating in amateur competition motorcycle events on National Forest System Roads and Trails designated for motorized use and authorized by special use permits.

This comment letter does not preclude other D36 representatives, clubs, and members from submitting their own comments.

D36 has reviewed the proposed rule amendments and believes their collective weight will disenfranchise important partners by creating a significant fiscal hardship on the motorcycle clubs, riders, and families we represent. Most, if not all, of our clubs, are 501 (c) 7 volunteer-based social clubs or have some other non-profit classification. Other non-profit motorized or non-motorized clubs will also be penalized when trying to host a competition event or group outing.

These agency partners often provide key services such as post-wildfire or storm recovery efforts, such as clearing trails or repairing damaged campgrounds to prepare for a permitted event or group activity. Often, hundreds of volunteer hours are donated to the Forest Service, resulting in closed trails being reopened for general public use and the permitted event.

D36 believes the loss of the 50-hour exemption and other proposed, yet vague, fee increases will force many of those partner clubs to cease applying for a special use permit since events such as an amateur enduro that are many times a "break-even" proposition since the entry fees will not cover the club's

expense for items such as on-site medical services, communications, and other event materials. This proposal threatens those important partnerships and the pre-event volunteer trail work.

In 2011, I was part of a national effort that called for reform of the permitting process because it had become so complicated and costly that most "non-profit club events" could simply not comply with the requirements. In addition, historic and popular competitive events occurring without problems had been subjected to arbitrary fees where permit fees were raised from \$500 to \$10,000 - \$20,000 or more. In some areas, the application process to obtain a special use permit was used to prohibit and/or severely restrict otherwise allowable activities.

D36 commends many of the Forests that we work with in a collaborative manner so that fun and enjoyable competition events or group activities – along with pre and post-event volunteer trail work – can occur in an affordable manner that benefits the users, agency, and general public.

D36 has seen how agency red tape and confusion have impacted the permit process for our events and other forms of recreational group activities on public lands. We urge the agency to amend the proposal to address the concerns stated in this comment letter.

Respectfully submitted,



Don Amador, Director
Government Affairs
AMA District 36
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Cottonwood, CA 96022
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Cell: 925.783.1834



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

OFFICE OF THE ATTORNEY GENERAL

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Anchorage, AK 99501
Main: 907-269-5100
Fax: 907-276-3697

July 5, 2023

Secretary Deb Haaland
U.S. Department of the Interior
Bureau of Land Management
1849 C Street NW, Room 5646
Washington, D.C. 20240
Attention: 1004-AE92

Re: *Proposed Conservation and Landscape Health Rule*

Dear Secretary Haaland:

We, the Attorneys General of 17 states, write in opposition to the recently proposed “Conservation and Landscape Health” rule by the Bureau of Land Management (“BLM”). Published on April 3, 2023, the proposed rule carries much farther-reaching impacts than what may be discerned at first blush. BLM contends that this new rule is permissible under the Federal Land Policy and Management Act of 1976 (“FLMPA”); this is a misleading assertion. Ostensibly, the rule seeks to:

[P]rovide[] a framework to protect intact landscapes, restore degraded habitat, and ensure wise decisionmaking [*sic*] in planning, permitting, and programs, by identifying best practices to manage lands and waters to achieve desired conditions. . . . the proposed rule applies the fundamentals of land health and related standards and guidelines to *all BLM-managed public lands and uses*. Fed.¹

Through this language, BLM attempts to rewrite FLMPA to elevate conservation to be on par with statutorily authorized and historically important multiple uses. While the legal analysis here is subtle, FLMPA does not allow BLM to pursue this proposed course.

Many states, including Alaska, value the breadth and beauty of their public lands. As such, thoughtful conservation is a key principle in our land management policies. However, we recognize that responsible multi-use of these lands is essential to the economic and social health of society. Wise uses of public land provide energy to power our economies, food to feed our people, recreation for much-needed respite, scientific

¹ 88 Fed. Reg. 19584 (Apr. 3, 2023) (emphasis added).

advancement, and, often, serve numerous national security interests. These uses are just a few of many. Indeed, given the millions of acres of public land in our states, this issue goes to the core of our existence. In this newly proposed rule BLM not only rejects our commitment to wise multi-use land management, but the agency also misconstrues the law. Make no mistake, the proposed Conservation and Landscape Health rule twists the language FLPMA to undermine a variety of vital uses. This is an audacious assertion of power by BLM that it does not possess, and Congress did not authorize.

Conservation is naturally a non-use of land. Non-use is neither inherently good nor bad. However, lands set aside for conservation are often prohibited from industrial, recreational, habitable, and other practical uses. As such, some of the most hard-fought and heartfelt political disputes turn on the use versus non-use of land. Lands managed by BLM have historically, and by function of law, been managed to promote multiple uses and multiple goals. This approach has been immeasurably beneficial to the United States and its citizens.

Distinct from multi-use lands, our nation sets aside millions of acres of public land to remain undisturbed. When we think about this country's national parks, its wildlife refuges, designated Wilderness areas, and, in many cases, our national monuments, we imagine breathtaking environments that have been deliberately preserved from extensive, multiple use. Yet, it is important to remember that these landscapes were created in the name of conservation because they balance against lands where multiple use is permitted. Conversely, allowing multiple use on some public land is the counterbalance to our nation's strident conservation efforts elsewhere. Striking a balance between conserved landscapes, like Alaska's Denali National Park and Wyoming's and Montana's Yellowstone National Park, and utilized landscapes, like the National Petroleum Reserve, illustrates the deliberate marriage of aspirational conservation and practical resource use. BLM's proposed rule shatters this balance. The power BLM seeks in its proposed rule is the power to create national-park levels of conservation on land where multiple use is permitted and envisioned by law. For over a century, Congress has managed this balance, at times strictly preserving some lands while opening other lands to important uses, and yet BLM, through its proposed rule, attempts to demote Congress' authority so that it can expand its own power and put a thumb on the scale in favor of conservation. This proposed rule must be challenged for the overreach it represents.

In FLPMA, Congress declared, "[T]hat it is the policy of the United States that goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield *unless otherwise specified by law*."² In fact, Congress made its intentions clear in FLPMA when it authorized BLM to promote multiple uses:

² 43 U.S.C. § 1701(a)(7) (emphasis added).

‘[M]ultiple use’ means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; *a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values*; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment . . .³

In other words, Congress specified that land managed by BLM should be available for mining operations, motorized recreation, natural gas leases, guide concessions, hunting and fishing, tourism, scientific study, just to name a few of the many uses Congress envisioned and authorized. Notably, Congress did not add conservation to FLPMA’s multiple-use framework because conservation is not a form of use. Congress, on the other hand, did foresee land management practices that do not permanently impair the productivity of public land. To this end, BLM is not prohibited from conserving lands. However, this point is very distinct from the notions put forth in BLM’s proposed rule. Conserving lands in certain instances may be a tool to fulfill the multi-pronged purposes of the law, but conservation is not the purpose in and of itself. It is a means to ensure sustained yield and to support the multiple-uses envisioned by the statute.

Contrary to the proposed rule, Congress did not expressly elevate conservation to be commensurate with other uses. Moreover, Congress did not authorize BLM to act as a *de facto* conservation lessor, as the proposed rule would allow. Instead, Congress ensured that its multiple use mandate as written would prevail “unless otherwise specified by law.”⁴ Yet, the proposed rule states, “[e]nsuring resilient ecosystems has become imperative, as public lands are increasingly degraded and fragmented due to adverse impacts from climate change and a significant increase in authorized use.”⁵ This belief, and the proposed rule that encompasses it, is not the byproduct of a change in the law as would be required by Congress, rather it is the latest in a series of bureaucratic power grabs that exceed statutory authorization. The “authorized use” that BLM references so

³ 43 U.S.C. § 1702(c) (emphasis added).

⁴ 43 U.S.C. § 1701(a)(7).

⁵ 88 Fed. Reg. 19584 (Apr. 3, 2023).

derisively here is precisely the forms of multiple use that Congress specified in FLPMA as essential to “best meet the present and future needs of the American people.” In sum, BLM’s proposed rule is in direct conflict with legislation that passed both the U.S. House and U.S. Senate with bipartisan support and President Ford signed into law.

By shoehorning conservation into the multiple-use section of FLPMA through this proposed rule, BLM would grant itself the authority to crush statutorily-mandated multiple use by declaring conservation to be an equal footing management directive. In Alaska, this will create de facto conservation system units (“CSUs”) on BLM-managed lands and attempt to close those Alaska lands to the kinds of uses that promote economic and cultural vitality.⁶ Other states, as illustrated by the signatures below, will be as profoundly impacted as Alaska. If BLM has its way, then it will use this proposed rule to eliminate a wide range of activities. This conservation-or-nothing attitude will significantly reduce the wellbeing of millions of people who derive benefit from the multiple uses that Congress granted. In sum, this proposed action will upend the history and legal framework of BLM-managed lands.

Conservation is important to our states, which is why we exercise forethought in developing and using our states’ resources carefully and wisely. We all want these remarkable lands to remain productive and inspiring for future generations, and we can achieve this goal without BLM’s proposed rule. Speaking from my current role, I can say without fear of contradiction that Alaska is one of the best places in the world to observe

⁶ Beyond the fact that BLM is reaching beyond the plain language of FLPMA, the proposed rule is also inconsistent with the Alaska National Interest Lands Conservation Act (“ANILCA”) “no more” clause and thereby poses a direct threat to approximately 77 million surface acres and approximately 220 million subsurface acres of Alaska land. Additionally, the proposed rule ignores that Alaska is an “intact landscape” and is afforded, under ANILCA, wider discretion to use our lands than BLM may otherwise deem permissible under the proposed rule. Numerous statutory exceptions in ANILCA, which apply to conservation system units—including designated wilderness—do not apply to BLM multiple-use lands being managed to protect wilderness character. In light of the proposed rule, this could result in BLM multiple-use lands being managed more restrictively than existing ANILCA conservation system units (for example, implementation of access restrictions otherwise allowable under ANILCA), or being managed inappropriately to the non-impairment standard in FLPMA Section 603 in the event BLM promotes wilderness recommendations in the future, pursuant to ANILCA Section 1320. More generally, FLPMA section 302(s) provides that “where a tract of ... public land has been dedicated to specific uses according to any other provision of law it shall be managed in accordance with such law.” In Alaska, statutes such as ANILCA, the Naval Petroleum Reserves Production Act of 1976 (“NPRPA”), and the Alaska Native Claims Settlement Act (“ANCSA”), *inter alia*, will conflict with and prevail over BLM’s proposed rule.

harmony between utilizing and caring for land. As shown below, many of my fellow Attorney Generals echo this sentiment regarding their home states. The proposed Conservation and Landscape Health rule mocks our diligent stewardship by suggesting that multiple use is neither careful nor wise, and that the only appropriate use of public land is to lock it up and throw away the key. This attitude, made tangible by the proposed rule, carries a severe and costly impact to the American people. This is not the solution to the challenge of balancing competing interests in land management policy. BLM's proposed rule is harmful policy, it is unlawful, and it will be challenged for the brash overreach that it presents.

Sincerely,



Treg Taylor
Alaska Attorney General



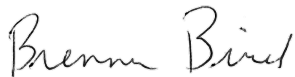
Tim Griffin
Arkansas Attorney General



Raul R. Labrador
Idaho Attorney General



Todd Rokita
Indiana Attorney General



Brenna Bird
Iowa Attorney General



Daniel Cameron
Kentucky Attorney General



Jeff Landry
Louisiana Attorney General



Lynn Fitch
Mississippi Attorney General



Austin Knudsen
Montana Attorney General



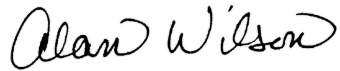
Mike Hilgers
Nebraska Attorney General



Drew Wrigley
North Dakota Attorney General



Gentner Drummond
Oklahoma Attorney General



Alan Wilson
South Carolina Attorney General



Marty Jackley
South Dakota Attorney General



Sean Reyes
Utah Attorney General



Patrick Morrisey
West Virginia Attorney General



Bridget Hill
Wyoming Attorney General



June 13, 2023

VIA ELECTRONIC SUBMISSION

Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C St. NW,
Washington, D.C. 20240

Re: Conservation and Landscape Health (88 Fed. Reg. 19583; April 3, 2023).

Dear Secretary Haaland:

On April 3, 2023, the U.S. Department of the Interior's Bureau of Land Management (BLM) published a proposed rule entitled "Conservation and Landscape Health." The Office of Advocacy of the U.S. Small Business Administration (Advocacy) respectfully submits the following comments on the proposed rule. Advocacy and small businesses support activities to mitigate and restore public lands. Advocacy is concerned, however, that BLM's proposed rule may be contrary to the statutory land management principles laid out in the Federal Land Policy Management Act (FLPMA). Furthermore, BLM's proposed rule does not adequately consider the impacts to small businesses as required by the Regulatory Flexibility Act (RFA). Advocacy makes the following additional comments below.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),¹ as amended by the Small Business Regulatory Enforcement Fairness Act

¹ 5 U.S.C. §601 et seq.

(SBREFA),² gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.³ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁴

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁵

B. The Proposed Rule

The Federal Land Policy and Management Act (FLPMA) of 1976 lays out provisions for BLM to follow in its management of federal lands within the United States.⁶ FLPMA directs the agency to manage the lands in a way that balances the need to preserve and protect certain lands in their natural habitat while also recognizing the need for domestic sources of "minerals, food, timber, and fiber."⁷ FLPMA further directs BLM to follow specific criteria for the development of land use plans. These criteria include principles of multiple use and giving priority to the designation and protection of areas of critical environmental concern (ACEC).⁸

FLPMA defines multiple use as including the management of public lands in a way that "best meet[s] the present and future needs of the American people."⁹ Multiple use is further defined as a combination of uses including but not limited to "recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values."¹⁰ FLPMA also defines six principal uses for land management that include and are *limited* to, "domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production."¹¹

Pursuant to FLPMA, if the Secretary of the Interior issues a land management decision that excludes or eliminates one or more principles of major use for two or more years, the Secretary

² Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

³ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁴ *Id.*

⁵ *Id.*

⁶ 43 U.S.C. § 1701 et seq.

⁷ *Id.* at (a) (12).

⁸ 43 U.S.C. § 1712 (c).

⁹ 43 U.S.C. § 1702 (c).

¹⁰ *Id.*

¹¹ *Id.* at (l). (Emphasis added).

is required to report their decision to Congress. Congress may issue a concurrent resolution of non-approval for the decision.¹² In such an instance, the Secretary must terminate such decision.¹³

On April 3, 2023, BLM published its proposed “Conservation Land Health” rule.¹⁴ The rule proposes three major changes to current land management practices. First, it applies land health standards to all BLM managed lands.¹⁵ This provision requires that BLM use data and information to prepare an assessment of land health for all BLM managed lands, not just those used for grazing, as is the current practice.¹⁶ Second, the rule adds “conservation” as a land use category and allows for conservation leases.¹⁷ These leases would be available to entities seeking to restore public lands or provide mitigation for a particular action.¹⁸ Conservation leases would be issued for an initial maximum term of ten years, but can be extended as necessary to serve the purpose for which the lease was first issued.¹⁹ Third, the rule expands the use of Areas of Critical Environmental Concern (ACECs).²⁰ The rule would emphasize ACECs as the principal designation for protecting important resources, and establish a “more comprehensive framework” to consider areas for ACEC designation.²¹

II. Advocacy’s Small Business Concerns²²

On May 17, 2023, Advocacy held a virtual small business roundtable to discuss the rule.²³ Advocacy also conducted outreach directly to small businesses. Small businesses in agriculture, forestry, and mining spoke to Advocacy about the rule, as well as to representatives of BLM. During this outreach, small businesses expressed concern with BLM’s assertion that the rule would not have a significant impact on their business. They were especially concerned about the impact the new conservation leases would have on other uses and whether this may inhibit grazing, mining, and timber leases. Many small businesses questioned the need for the rule. They also questioned whether the rule was outside the bounds of FLPMA. Small businesses are already providing mitigation and restoration measures as prescribed under the National Environmental Policy Act (NEPA) and other environmental statutes.

¹² 43 U.S.C. § 1712 (e) (2).

¹³ *Id.*

¹⁴ Conservation Land Health, 88 Fed. Reg. 19853, (April 3, 2023).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 19586.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 19584.

²² At the time of filing of this letter many of the stakeholders with whom Advocacy engaged have not yet filed their own comments. Advocacy therefore requests that BLM carefully review and consider the comments of small businesses and their representatives and that any issues not raised herein that are of concern to small businesses be given their due weight and consideration.

²³ See, Office of Advocacy Natural Resources Roundtable (May 17, 2023), <https://advocacy.sba.gov/2023/04/27/small-entity-natural-resources-roundtable-may-17-2023/>.

Advocacy heard from some county executives in Western states where more than 80 percent of land within the county is managed by BLM, and significant portions of the county's economy is tied to these federal lands.²⁴ Small business representatives from Montana indicated that nearly 30 percent of the state's lands are public lands, and that grazing leases are an essential part of farming and ranching in the state. Some small businesses pointed to BLM's own economic report that states that lands managed by BLM account for nearly 201 billion dollars in economic output in the U.S.²⁵ Advocacy heard from some mining representatives who stated that close to 80 percent of their member companies are small businesses.²⁶

Recreation and outfitting industries also have an interest in the rule. Some businesses expressed to BLM that conservation leases may be compatible with outdoor recreation activities and therefore may create opportunities for multi-use leases. Others, however, shared the concerns of other industries and noted that conservation leases may be incompatible with certain types of recreation, including those that require the use of motorized vehicles. Some noted that this could pose accessibility issues for those individuals with limited mobility if BLM, or the conservation lease holder, limits the types of recreational activities that can occur in a particular area.

Advocacy also acknowledges that there may be instances where a small business may find portions of BLM's rule beneficial in providing mitigation opportunities. There may also be new and emerging small businesses because of the proposed rule. While these small businesses may enjoy some benefits of the proposed rule, the rule itself is problematic. Given that the rule has the potential to impact a substantial number of small businesses across various industry sectors BLM must properly and thoroughly consider these impacts and modify the proposed rule's RFA analysis accordingly. Advocacy makes the below comments on the proposed rule.

A. BLM's proposed rule has unintended consequences that are contrary to the agency's goals and the statutory requirements for land management under FLPMA.

1. The proposed rule does not properly explain how conservation leases are compatible with the multiple use land management goals laid out in FLPMA.

FLPMA expressly states that BLM must balance the need to protect and preserve public lands with the principal land uses laid out in the Act.²⁷ FLPMA further states that public lands need to be managed in a way that recognizes the country's need for domestic sources of natural resources and food.²⁸ Within its proposed rule, BLM cites FLPMA §102 (a) (8) as the basis for issuing its proposed rule.²⁹ This section describes that BLM must manage public lands in a manner that will protect the quality of resources and preserve some public lands in their natural

²⁴ Advocacy has not independently verified this data.

²⁵ See U.S. Bureau of Land Mgmt., "The BLM: A Sound Investment for America 2022", (November 2022), <https://www.blm.gov/about/data/socioeconomic-impact-report-2022>.

²⁶ Advocacy has not independently verified this data.

²⁷ 43 U.S.C. § 1701 et seq.

²⁸ *Id.* at 102 (a) (12).

²⁹ *Id.* at 102 (a) (8).

condition.³⁰ FLPMA § 102 (b) states that the policies of the Act, “shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation.” Within this rulemaking, BLM is proposing to create a new category of leases, conservation leases. In creating a conservation land use lease, BLM will disrupt the current multiple use landscape. BLM’s proposed rule states that such conservation leases “would not override valid existing rights or preclude other, subsequent authorizations so long as those subsequent authorizations are compatible with the conservation use.”³¹

BLM has not, however, clarified within the proposed rule how conservation leases will be compatible with the other principal uses laid out in FLPMA.³² In at least two instances, mining and grazing, the proposed rule is incompatible. Without proper clarification from BLM regarding the implications of conservation leases on other uses, and the inevitable incompatibility that may result, the proposed rule has the effect of placing conservation leases above other interests.

This is contrary to the statutory intent outlined in FLPMA. As indicated above, BLM does not have statutory authority to create such additional uses that would make the other principal uses incompatible. According to the statutory text cited throughout this letter, Congress did not intend for land uses to be excluded on a programmatic level. BLM’s rule has the impact of excluding various land uses programmatically simply because of their incompatibility with conservation. While BLM’s objectives in issuing the proposed rule are well-intended, the agency is ignoring the fact that the current multiple use land management landscape is working and does not need the proposed change. This current landscape balances the need to protect and preserve lands while also acknowledging that these lands are necessary for ensuring domestic supply chains for food, minerals, and natural resources, just as FLPMA had intended.

Furthermore, according to FLPMA, these conservation leases would need to be submitted to Congress. These leases could go through rounds of voting in Congress only to be eventually struck down.³³ BLM should therefore reconsider the proposed rule and whether it has statutory authority to take such actions. BLM should consider whether there are alternatives, such as more opportunities for mitigation, rather than creating additional lease categories that are not expressly authorized by FLPMA. Whatever alternatives BLM considers, the agency must require that the leaseholder identify the uses that are consistent with the principal use and be able to justify the exclusion of other principal uses as outlined in the statute. By modifying the rule so that it better aligns with the principles of FLPMA, BLM can ensure that its agency goals and priorities are in line with the statute and retain regulatory durability.

2. The proposed rule offers too much discretion to BLM that may result in elevating conservation above the other principal land management uses.

³⁰ *Id.*

³¹ 88 Fed. Reg. 19583 at 19856.

³² 43 U.S.C. § 1701 (a) (7).

³³ 43 U.S.C. § 1712 (e) (2).

Within the proposed rule, BLM states that conservation leases will be issued for a maximum term of 10 years. The agency then states that it may, “extend the lease if necessary to serve the purpose for which the lease was first issued.”³⁴ Conservation is not a finite use of land in the same way that other uses are. Conservation can be a prolonged and permanently sustained use of land. BLM does not make clear what it will use to measure when a conservation land use has been achieved, nor is this a clear-cut thing that can be measured. Restoration as a land use implies that once the land is restored, the lease has a logical endpoint.

Here, however, BLM has expressly chosen to use the term conservation, and not restoration. This provision of the proposed rule, therefore, would give BLM broad discretion to renew conservation leases indefinitely so long as they meet the purpose for which they were issued. This would all but ensure that other uses such as mining, grazing, logging, and some forms of recreation would not be able to co-exist on these lands, which, once again, is outside the bounds of FLPMA. By locking up a particular public land in an indefinite conservation lease, BLM is neglecting to ensure the sustainability of the domestic supply chain, and instead contributing to the lack of domestically available materials. This may have significant unintended consequences to the domestic supply chain.³⁵

BLM should therefore reconsider whether there are other alternatives that may more adequately achieve the agency’s objectives for the proposed rule. These alternatives may include broader mitigation opportunities on public lands that are more compatible with other land uses. This will ensure that BLM is not overstepping the statutory principles laid out in FLPMA.

3. BLM’s proposal does not account for required actions that lease holders already take with respect to conservation goals and does not consider alternatives.

FLPMA directs BLM to balance and create multiple use land management plans. In doing so, FLPMA defines multiple use as a combination of uses including the six principal land management uses.³⁶ Within BLM’s proposed rule, the agency does not consider and discuss requirements that lease holders are already complying with to meet the agency’s goals for increased conservation. Many small businesses discussed the NEPA compliance measures that they are already taking to restore lands once their activities have expired, and to mitigate the impacts of those activities.

By considering measures that businesses are already taking, BLM can focus its attention on areas for improvement with respect to those activities rather than creating additional land uses that are not statutorily supported. Within its own rule BLM cites restoration of degraded lands and increased mitigation opportunities as reasons for issuing the proposed rule. BLM should

³⁴ 88 Fed. Reg. 19583 at 19586.

³⁵ A lack of domestically available materials may have an impact on renewable energy priorities. These projects require mineral resources such as lithium, copper, and many other locatable minerals. It may also impact domestically sourced food.

³⁶ 43 U.S.C. § 1702 (c), Stating that the six principal land uses include, “domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.”

therefore reconsider whether the provisions of the proposed rule meet these goals, and whether they are statutorily permitted under FLPMA.

B. The proposed rule lacks a proper factual basis for certification that the rule will not have a significant economic impact on a substantial number of small entities.

Within BLM's proposed rule, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.³⁷ Under § 605(b) of the RFA, if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, they must include a factual basis for such certification.³⁸ BLM's certification provides no such factual basis, and offers no information as to how they arrived at this conclusion.³⁹

As noted above, many small businesses are concerned about the impacts the rule may have on both their existing leases and the opportunity for future leases. While BLM is not required to attempt to calculate the impact the proposed rule may have on potential future lease sales, BLM is required to offer a discussion of the impacts the rule may have on current lease holders.

At a minimum BLM should identify the small businesses that currently engage with the agency and/or hold leases. As noted above, many activities would be rendered incompatible with conservation leases which constitutes lost revenue for those businesses. While it is difficult to quantify those potential impacts, they should at least be discussed by BLM and should appear within its RFA analysis. BLM could also have asked for public comment and data directly from small businesses to help inform a more thorough analysis of the impacts.

Advocacy therefore requests that BLM revise its RFA analysis and instead provide a supplemental document with an initial Regulatory Flexibility Act analysis that includes a discussion of the impacted small entities, what if any impacts those small entities may face, and what regulatory alternatives the agency considered.

III. Conclusion

Advocacy appreciates BLM's intention to prioritize restoration of degraded public lands. However, BLM's proposed rule falls short of achieving these stated goals. The rule has unintended consequences that are contrary to the statutory provisions of FLPMA. Furthermore, BLM's RFA certification lacks a factual basis, and does not adequately consider the economic impacts of the rule on small businesses. For the foregoing reasons BLM should consider alternatives to the proposed rule that better align with the statutory provisions of FLPMA and should conduct a proper and thorough RFA analysis for the proposed rule.

³⁷ 5 U.S.C. § 605(b).

³⁸ *Id.*

³⁹ 88 Fed. Reg. 19583 at 19594.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel David Rostker at (202) 205-6966 or by email at david.rostker@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

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U.S. Small Business Administration

Copy to: Richard L. Revesz, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget



June 20, 2023

Director
Lands and Realty Management Staff
U.S. Forest Service
201 14th Street SW
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BY ELECTRONIC MAIL: SM.FS.WO_LandStaff@usda.gov

RE: Coalition for Outdoor Access Comments on U.S. Forest Service Notice of Proposed Rulemaking: Land Uses; Special Uses; Cost Recovery, Strict Liability Limit, and Insurance (#RIN 0596-AD35)

Forest Service Lands and Realty Management Staff:

The Coalition for Outdoor Access (COA) welcomes this opportunity to submit comments on the USDA Forest Service (Forest Service) Notice of Proposed Rulemaking (NPRM) on Land Uses; Special Uses; Cost Recovery, Strict Liability Limit, and Insurance (RIN 0596-AD35), published at 88 FR 14517 (March 9, 2023).

I. INTRODUCTION

A. Comment Overview

For the reasons stated in detail below, we oppose the proposed rule. We believe the proposed rule is built on troubling contradictory assumptions. The rule assumes that the agency can provide better access to National Forest System lands by charging outdoor leaders more money for that access. This assumption ignores the fact that, for many recreational users, fees serve as a major barrier to access, and the way fees will be charged under the proposed rule will sometimes make this barrier insurmountable. As we will illustrate below, the barriers erected by the proposed rule do not always bear a simple linear relationship to the dollar amount of fees charged.

By subjecting recreation permits to the same cost recovery fee system as non-recreational special uses, the proposed rule equates recreation with those other uses. In this respect, the proposed rule ignores the significant and unique programmatic benefits that outdoor recreation provides to the agency and the public. The NPRM also fails to recognize that the increase in fees for outdoor recreation leaders will hit certain leaders in a way that will undermine the agency's efforts to achieve the goals laid out in its Equity Action Plan. Rather than support those goals, the rule will make National Forest System visitation less inclusive.

For these reasons and others that we set forth below, we urge the Forest Service to withdraw the proposed rule and reconsider its plan to increase cost recovery fees for recreation special use permits.

B. Interest of Commenters

The Coalition for Outdoor Access (COA) is an alliance of organizations with a shared interest in improving the recreational permitting systems of the Federal land and water management agencies. COA was founded in 2014 to advocate for system changes that would enable outdoor leaders to provide more opportunities to the public to recreate on Federal public lands. COA's Steering Committee consists of a cross-section of the community of individuals and organizations that provide guided and facilitated recreation and educational services to the public. The services provided by our organizations and other organizations like us make it possible for people to experience public lands in a safe and enjoyable way. The organizations currently represented on the COA Steering Committee are:

- [American Mountain Guides Association](#)
- [Association of Outdoor Recreation and Education](#)
- [National Outdoor Leadership School](#)
- [The Wilderness Society](#)
- [Angler's Covey](#)
- [The Mountaineers](#)
- [REI Coop](#)
- [YMCA of Greater Seattle](#)

Because COA has a representative membership of outdoor leaders working in the recreation space, we are uniquely positioned to comment on this rulemaking. We can offer insights and perspectives on the NPRM from organizations and businesses that provide a wide range of recreation services.

COA also has a Policy Committee that provides additional organizations and outdoor leaders with an opportunity to add their voices and experiences to the work of the Coalition. Three Policy Committee members have signed onto this comment letter: [American Alpine Institute](#), [American Hiking Society](#) and [Human Potential LLC](#). Seven other allied organizations have joined us in submitting this comment: [American Camp Association](#), [Bus for Outdoor Access and Teaching](#), Choose Outdoors, [Latino Outdoors](#), [Northwest Outward Bound School](#), [Outward Bound USA](#) and [Runners for Public Lands](#).

II. EXECUTIVE SUMMARY

A. Core Principles

Our comments articulate four significant concerns with the NPRM. Because of these concerns, we doubt that implementation of the proposed rule will produce an affordable and equitable cost recovery system. The concerns we articulate flow from two core principles that we believe were overlooked when the proposed rule was drafted. These principles provide crucial background and framing to fully understand and analyze the impact of the proposed rule on entities seeking recreation special use and event authorizations. These principles are:

1. Guided outdoor recreation and recreation events provide benefits to the public and to the Forest Service that differentiate them from non-recreational special uses. By inviting people to visit public lands in a safer, lower impact way, recreation permit holders help the Forest Service achieve its visitation land management goals in ways that non-recreational special uses do not. Cost recovery policy should be formulated with these agency benefits in mind.
2. The NPRM assumes that the burdens of cost recovery bear a direct and linear relationship to the dollar amount of a permit applicant's cost recovery fees, and that all recreation permit holders have an equal ability to pay these fees. This assumption overlooks certain financial and institutional realities in the outdoor programming space that make outdoor recreation different from non-recreational special uses. These realities will have the effect of amplifying the burden imposed by the proposed rule when compared to non-recreational uses. As we will explain below, the rule will have a particularly outsized impact on certain types of recreation permit holders. This outsized impact will make the effects of the proposed rule inequitable. We believe this outcome conflicts with the goals articulated in the Forest Service's Equity Action Plan.

We summarize our four core concerns with the proposed rule below. We provide a more in-depth explanation of each of these four concerns and our two core principles in the next section.

B. Data Limitations

Before laying out our core concerns with the proposed rule, we would like to highlight one challenging aspect of the NPRM that has limited our ability to evaluate the rule and envision a remedy that might meet the needs of both the agency and the stakeholder community.

Although the NPRM analyzes the impact of the proposed rule on recreation special use permit applications in great detail, it does so without providing information on how long it typically takes the agency to process these applications. We regard this as a significant oversight, because without this information it is nearly impossible to know the amount of the additional fees a typical permit applicant will be expected to pay under the proposed rule. If we do not know the amount of these additional fees, it is difficult to definitively gauge the impact of the proposed rule. It is also difficult to make an informed judgment about the need for the 50-hour exemption and the degree of impact from new cost recovery requirements related to permit proposals.

The need for additional information is particularly acute regarding permit monitoring. The NPRM explains that the agency can charge a cost recovery fee for monitoring to ensure compliance with a recreation permit. However, it provides no information on how much time is typically spent monitoring a recreation authorization. As we discuss further below in the section on recreation events, our members have seen significant variability in the amount of time spent on monitoring. This variability makes cost recovery fees unpredictable. This suggests that some event sponsors will see sudden and unexpectedly large increases in cost recovery fees under the proposed rule. Unfortunately, without more data on monitoring, it is difficult to know how significant these increases will be.

C. Core Concerns

Even with this data gap, we still see significant cause for alarm in the proposed rule. Our core concerns with the proposed rule are as follows:

1. **The proposed rule would impose significant costs that will burden a wide range of recreation service providers**, including small nonprofit outdoor program providers and similar affinity groups, college and university recreation programs, small outfitters, larger outfitters, independent guides, and recreation event sponsors. The NPRM acknowledges that this rulemaking will have a high impact on entities holding recreation special use authorizations.¹ As noted above, guided and sponsored outdoor recreation activities provide benefits to the Forest Service and the general public. Imposing financial barriers that will hamper—and in some cases effectively bar—recreation service providers from accessing National Forest System (NFS) lands is counterproductive.
2. **The proposed rule directly contradicts equity goals and promises of both the Forest Service and the Biden administration**, as outlined in the Forest Service’s Equity Action Plan and the administration’s America the Beautiful Campaign. By removing the 50-hour cost recovery exemption from recreation special use authorizations, increasing cost recovery fees, and charging and billing for cost recovery prior to the screening and processing of proposals, the proposed rule would create significant financial barriers for many organizations that provide recreation services. These barriers will likely dissuade or inhibit many of these groups from applying for Forest Service permits, and will disproportionately impact smaller and newer organizations, many of which serve historically underserved or excluded communities.
3. **The Forest Service has not adequately demonstrated how the proposed rule will improve customer service such that the benefits will outweigh the costs.** The proposed rule claims the Forest Service will be able to improve access and customer service by charging applicants more fees to process their permit applications. However, it provides no real explanation of how the additional revenue will be used to achieve that goal. In particular, it makes no showing of how the additional revenue will be used to end the troubling practice, disclosed in the NPRM, of assigning lower priority to and deferring the processing of recreation special use applications. Without a clearer showing of how the additional revenue generated by the proposed rule will be used to improve customer service, we remain unconvinced that the benefits of the proposed rule will outweigh the burdens imposed.
4. **The proposed rule does not increase consistency between the Forest Service and the Bureau of Land Management (BLM) on cost recovery.** The NPRM states that one purpose of the proposed rule is to align Forest Service policy regarding cost recovery for pre-application proposals with the policy of the Bureau of Land Management. However, the proposed rule would actually increase inconsistency in other ways. BLM provides a 50-hour exemption for recreation permit applications and applies that exemption to processing time “in any one year.” The Forest Service proposed rule would eliminate the

¹ 88 Fed. Reg. 14523.

50-hour exemption and could lead to multiple cost recovery charges in a single year. If the Forest Service seeks to achieve consistency with the BLM, these policies should not be adopted.

5. **The NPRM creates uncertainty regarding “high-risk” activities.** The NPRM proposes revisions to the liability provisions in the Forest Service’s special use regulations to raise the strict liability limit in tort for “high-risk” special uses. However, the NPRM is unclear on whether any recreational special use activities would be considered high-risk. The examples listed suggest that recreation uses would not fall into the high risk category. However, this should be clarified in the final rule.

D. Recommendations

In response to the concerns that we have identified, COA recommends the following:

- We recommend that the Forest Service **maintain the 50-hour cost recovery exemption for recreation special use authorizations** as it applies to entities that connect members of the public to NFS lands. Doing so would uphold the equity goals and values of the agency and the administration by ensuring NFS lands are more accessible to broader and more diverse populations. Maintaining the 50-hour exemption will also reduce the financial burden of permitting for a range of organizations which would be heavily impacted by the proposed rule. Finally, maintaining the 50-hour exemption will help maintain consistency between the Forest Service and BLM cost recovery policies.
- We recommend that the final **rule eliminate the charging of cost recovery as a separate occurrence for the screening and processing of proposals**. Charging cost recovery for both proposals and applications is duplicative and costly to both applicants and the Forest Service in both time and resources. Likewise, billing prior to meeting with an applicant disincentivizes information sharing and relationship building, decreases the likelihood for win-win outcomes between the Agency and applicants, and adds an additional barrier to promoting equitable and diverse access to NFS lands.
- Finally, we recommend that the agency **implement requirements for authorized officers to prioritize recreation special use authorizations** and applications on par with non-recreation special use authorizations and applications. This prioritization should occur regardless of whether an exemption to cost recovery is provided because of the unique and inherent benefits that guided outdoor recreation and education services deliver to natural resources, the general public, land management agencies, and local economies.

III. DETAILED COMMENTS

A. CORE PRINCIPLES

1. Guided Outdoor Recreation Provides Many Inherent Benefits

Guided and sponsored recreational activities provide inherent benefits to the Forest Service and to the general public that make them different from non-recreational special uses. These benefits include:

- Guided and sponsored recreational activities help the Forest Service achieve its goal of providing high quality outdoor recreation experiences that connect more people to NFS lands.
- Guided and sponsored recreational activities help the Forest Service make forest visitation more inclusive. This is a stated goal of the agency's Equity Action Plan.²
- Recreation permit holders often serve as eyes and ears in the field for the agency, reporting on land and water management issues before understaffed forest units are able to identify those issues themselves. This is a significant benefit to NFS management.
- Guided recreation groups generally adopt user ethics that result in lower impacts than an equivalent number of unguided users. For instance, the seven Leave No Trace principles resulted from a public private partnership in the 1990s between the National Outdoor Leadership School and the Forest Service. These principles have been adopted as a resource management practice worldwide.³ The economic impact of preventing widespread degradation to natural resources that has resulted from industry-wide adoption of these practices and training should not be understated.

We strongly encourage the Forest Service to study the economic and social benefits that guided and sponsored outdoor recreation provides and take those benefits into account in developing final cost recovery rules. We believe this is essential to ensure that recreation special use authorizations are not disproportionately impacted by cost recovery and that outdoor leaders have reasonable and affordable access to Forest Service lands.

2. The NPRM Mistakenly Assumes That All Service Providers have an Equal Ability to Pay Cost Recovery

The NPRM incorrectly assumes all recreation service providers have an equal ability to pay new cost recovery fees. This is made clear by the NPRM's review of the economic impacts of the proposed rule, which analyzes these impacts from a purely monetary standpoint. In doing so, the NPRM assumes a simple linear relationship between the dollar amount of cost recovery fees and the ability of a permit applicant to pay them. This is an oversimplification of the way that the fees will impact certain types of service providers. Universities, nonprofit organizations, small guiding businesses and recreation events with razor-thin revenue margins all face unique

² See <https://www.fs.usda.gov/sites/default/files/Forest-Service-Equity-Action-Plan.pdf>.

³ See "Development of the U.S. Leave No Trace Program: An Historical Perspective," Marion and Reid (2001). https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsbdev2_038125.pdf.

financial challenges that would make paying cost recovery under the NPRM difficult if not impossible.

For example, under the proposed rule, university outdoor program staff would be required to convince their academic institutions to pay significantly higher upfront costs in order to determine whether a permit can be obtained for a student trip. In the tight funding environment of higher education, securing the funding necessary to pay these higher upfront costs will be very difficult. Rather than take on this additional burden, university outdoor program staff will likely take their students somewhere other than the national forests. We see this as an undesirable outcome for both universities and the Forest Service.

Similarly, many nonprofit experiential education programs and similarly situated affinity groups charge participants minimal fees to participate in their programs. They do so because they recognize that some participants do not have the ability to pay large participation fees. This strategy enables them to introduce new participants to the National Forests.

By eliminating the 50-hour exemption and charging proposal processing fees, the proposed rule would significantly increase the amount these programs are required to pay to the Forest Service. Unfortunately, nonprofit programs cannot pass these costs on to their participants because their participants do not have the ability to pay them. This will force many of these programs to go elsewhere.

The challenge is not limited to universities and small nonprofit organizations. Large nonprofit organizations and independent guides operate under business models with very small revenue margins. Increasing proposal, application, and monitoring costs will impose a much more significant burden on these entities than it would on an industrial applicant with larger margins and significant financial resources. As noted above, these additional costs will trickle down to members of the recreating public seeking to hire a guide or outfitter. These additional costs will price some participants out of the market, further exacerbating the disparity between underserved communities and those that can afford a more expensive guided or sponsored recreation experience.

B. COMMENTS ON THE CHANGES TO COST RECOVERY

1. The Proposed Rule will Significantly Impact a Range of Organizations and Businesses That Facilitate Outdoor Recreation and Education

The economic impacts of the proposed rule on small businesses, organizations, non-profits, recreation event sponsors and other entities that COA represents will be significant. As an industry, our organizations function on low margins in pursuit of connecting people to the environment and their public lands. This becomes much more difficult under the proposed rule because it will significantly raise costs for our organizations.

We surveyed COA members to get a better sense of how the proposed rule will impact their programs and activities on the ground. We received fifteen responses, and overwhelmingly found that COA members' outdoor programming would be negatively impacted by the proposed rule.

In total, twelve of fifteen respondents stated that increased fees would increase barriers for participants, particularly low-income participants, thereby limiting access to these outdoor programs. In some cases, the increased fees may completely prevent a program from operating on NFS lands. Below we share some additional details and concerns raised by several of the survey respondents.

Interestingly, the NPRM acknowledges that this rulemaking will disproportionately impact recreation special use authorizations:

Recreation and industry are the only use series in which the number or percentage of businesses as well as potential economic impacts are relatively high compared to those in other use series...The proposed rule could affect a substantial number of small businesses with a recreation special use authorization (6,473) concentrated in local areas influenced by NFS lands, particularly in the case of small businesses conducting outfitting and guiding.”⁴

We urge the Forest Service to work to ensure that recreation special use authorizations will not be disproportionately impacted by the NPRM. This can be done by maintaining the 50-hour cost recovery exemption for recreation special use authorizations and implementing requirements for authorized officers to prioritize recreation special use authorizations and applications on par with non-recreation special use authorizations and applications.

Ensuring that recreation special use authorizations are not disproportionately impacted by cost recovery is particularly important given the numerous benefits that facilitators of outdoor recreation provide to the public, natural resources, and land management agencies. Ensuring that these organizations continue to have equitable access to Forest Service lands is essential.

Below, we describe—with examples—the impact that this NPRM will have on the different types of organizations we represent. We ask the Forest Service to consider the following impacts before adopting the final rule:

a. Small nonprofit outdoor programs

As explained above, some nonprofit experiential education programs and similar affinity groups that seek permits to operate on National Forest System lands charge participants minimal fees to participate in their programs. Some programs waive their fees altogether. These programs provide free or discounted access because they know that some participants do not have the ability to pay participation fees. They do this in order to introduce new participants to the outdoor learning environment and to America’s public lands. For these organizations, the changes to cost recovery fees in the proposed rule will be very significant. Charging for proposal processing and eliminating the 50-hour exemption will dramatically increase the amount these potential permittees are required to pay to access NFS lands.

Because many of their participants have limited ability to pay participation fees, these programs do not have the same ability to pass on additional costs to end users. They will be left with only

⁴ 88 Fed. Reg. 14523.

two options: 1) reduce the amount of programming they provide and divert some of their resources to paying cost recovery fees; or 2) if available, use other public lands that do not charge as much for permits. Neither of these is a very appealing option.

In response to our survey of COA member organizations, a camping director at a regional YMCA reported that a rise in cost recovery fees would create barriers for their low-income participants. This YMCA provides “significant financial assistance” to many families so that they can access premium programs, which include backcountry backpacking and rock climbing. The increased fees would force the organization to reassess the financial sustainability of their special use permits and “could dramatically affect how we take youth into the outdoors.”

It is important to emphasize that these small nonprofit outdoor programs often exist for the specific purpose of providing historically excluded and underserved people with opportunities to visit and learn on public lands. By forcing them to reduce programming or go elsewhere, the proposed rule will undermine the Forest Service’s efforts to diversify visitation to the National Forests and make that visitation more inclusive.

b. College and university recreation programs

There are over 400 outdoor recreation programs at colleges and universities across the U.S., serving tens of thousands of students.⁵ Even more students interact with NFS lands through academic field work opportunities. National Forest System lands provide critical recreational infrastructure for many of the wilderness activities these students enjoy, such as whitewater boating, camping and hiking, mountaineering, caving, rock climbing and more.

Charging for proposal processing will make it much more difficult for many college and university outdoor recreation programs to use NFS lands. Universities are unlikely to provide upfront funding for recreation program staff to pay to have a meeting with Forest Service personnel to discuss whether permit opportunities might be available. Likewise, universities are unlikely to be willing to pay in advance for the costs of screening with no way of knowing whether a permit will be issued. In the tight funding environment of higher education, expecting universities to do so is unrealistic. Even if upfront funding could be obtained, university recreation programs do not generate significant revenue from the student activities they provide on NFS lands. Imposing dramatically increased cost recovery fees will often lead university programs to take their students elsewhere.

Take the example of a university outdoor program that charges ten students \$50 each to participate in a backpacking trip. Under Forest Service rules, the university outdoor program would be required to obtain a permit. If the university is charged 3% of its gross revenue of \$500 for its permit, its calculated permit fee would be \$15, although it would more likely be asked to pay a minimum use fee of \$130. However, under the NPRM, if the university was newly operating in an area, then the cost recovery bill would be at least another \$255, which would more than double the amount of the fees the university would pay to access NFS lands. The

⁵ Marchand, G., Rabinowitz, E., Schwartz, F. & Szolosi, A. (2022). Demographic and Compensation Trends of Collegiate Outdoor Program Professional Staff. Cal Poly Humboldt. <https://scholarworks.calstate.edu/concern/publications/s7526k709>.

university would be forced to significantly increase fees charged to student participants, which will likely price many students out of the market and force the university to cancel the program.

In response to our survey, an outdoor program coordinator at a public university expressed concern about the equity of the increasing cost recovery fees on recreation permitting. The coordinator highlighted that their school subsidizes outdoor programs so that students – many from low-income families – are able to participate at an affordable price. The coordinator stated that these increased fees carry over to participants. They reported that “if prices go up on the front end for us, they end up going up on students as well.” This raises concerns about equitable access to the outdoors for lower income individuals and families.

An outdoor program director at a different public university expressed concern that the increased permit fees, coupled with the financial resources required for professional staff to put together permit renewal information, would pose such a significant financial barrier that they may be unable to continue operating their programs on USFS lands. A third public university outdoor program that operates primarily on USFS lands reported that its program could face elimination as a result of the proposed rule’s increased fees. This program was almost eliminated by the university due to the high cost of operating an outdoor program. Although the program survived, its budget was severely cut and it now has no room for the additional costs that the proposed rule would impose. The fee increases in the NPRM “could be the final straw to end our trips program and perhaps the entire outdoor program.” With many university outdoor recreation programs facing increasing costs and decreasing enrollment, this story is probably not unique.

c. Small Outfitters

If adopted, this proposed rule will significantly impact small outfitters. The business of outfitting and guiding has very thin margins. Market rates for program participation have not kept up with field staff wages and other direct program expenses. It is common for the direct expenses of a guided program (which includes guide wages, permit fees, payroll tax, worker’s compensation, lodging and transportation) to exceed 70 percent of a program’s gross revenue. The remaining 30-percent is spent on indirect expenses such as administrative staff, liability insurance, rent, utilities, equipment, and other common business expenditures.

A good example is the American Alpine Institute, a signatory to this letter. Over the last several years, the Institute’s net profit margin has often been in the 2-percent to 5-percent range. The average for most healthy businesses is 10-percent. This low net profit margin is not uncommon for mountain-oriented guide services. Direct expenses such as permit fees and indirect expenses such as liability insurance create a circumstance where it is hard for an outfitter/guide company to operate sustainably, even if they increase their income with more programs. Increasing the amount small outfitters would be required to pay in cost recovery will have significant financial and social impacts on businesses that already have a difficult time keeping their doors open. If forced to raise prices for guided programs due to these increases in cost recovery, these programs will become less and less accessible to the public.

d. Larger Outfitters

Even the more established outdoor leadership organizations will see significant fee increases under the proposed rule. These larger organizations, which are still small businesses under the Regulatory Flexibility Act, face challenges that may be unique amongst the potential outcomes of the proposed rule.

For example, larger or more established entities are more likely to hold several long standing permits that may have expired or been the subject of deferred action by the Forest Service. As the Forest Service works to reduce this backlog, it is possible that larger outfitters and guides will be subject to cost recovery fees for several permits concurrently. Further, we anticipate that the cost of processing and renewing these permits will be relatively high, due to the complexity and volume of permits that some larger or more well established permittees maintain. This would result in a dramatic increase in fees and would also significantly increase the staff time needed to work with the Forest Service to update outstanding permits.

The Regulatory Flexibility Analysis also highlights another concern for larger organizations. The National Outdoor Leadership School (NOLS) is one of the largest and most established non-profits engaged in outdoor education and recreation. If NOLS falls into the 90th percentile of fees, then it will pay approximately 4%-9% of actual gross receipts to the Forest Service each year. This is significantly higher than what other land management agencies charge on average. Under this scenario, the NPRM would increase the land use fees that NOLS pays *across all land management agencies and jurisdictions* from a current rate of 3.3% to 3.9%-6.7% of actual gross receipts every year.

If NOLS were to experience an increase in fees at the upper end of what outfitters and guides are expected to be charged on average (2.1%), then they would pay 5.1% of actual gross revenue to the Forest Service. Under this scenario, the proposed rule would increase the land use fees that NOLS pays for access to our wilderness classrooms *across all land management agencies and jurisdictions* from 3.3%, to 4.5% of actual gross receipts. Either scenario increases the financial burden significantly above their current contributions *across all land management agencies and jurisdictions*. As a tuition-dependent nonprofit organization, any increase in fees will subsequently result in less dollars being available to support NOLS' programming, staff development and retention, or other expenses necessary for our school to function. It could also lead to higher tuition or dollars currently dedicated to scholarships and access being diverted to cover land use fees.

e. Independent guides

Independent guides typically operate as a sole proprietor "business of one" when providing guiding services on public lands. The outings led by an independent guide most commonly serve a single individual or a very small group. Independent guides are, without exception, small businesses under the Regulatory Flexibility Act.

Independent guides provide a high degree of specialized education and service for the public because they execute all aspects of a guided trip. The independent guide speaks with potential

clients before a trip to gauge their ability and goals, develops an outing that will meet those goals, and then guides the trip in the field. These types of guided experiences are particularly well suited to small groups that are seeking to learn highly specialized skills, visit a unique or remote area, or partake in an activity that can only be conducted in a very small group such as technical alpine climbing, fly fishing on small creeks, and other specific activities that often depend on individualized attention from an expert outfitter.

Because independent guides serve a relatively small number of individuals, their revenue generating capacity is limited. Under the present Forest Service fee structure (50-hour cost recovery exemption, annual fee of 3% of gross revenue), an independent guide pays a fee that is commensurate with the revenue they generate. This parity allows them to operate their unique business model. The proposals in the NPRM to eliminate the 50-hour fee exemption, charge a fee for proposal review, and charge a fee to add new areas to a permit (or make other operational amendments) would have a serious detrimental impact on the financial viability of independent guide businesses.

For example, the NPRM states, “Potential economic impacts could be high for small subsets of small businesses, ranging up to 6% of annual gross receipts for 63 businesses with outfitting and guiding permits.”⁶ Independent guides are most certainly among the “small subset of small businesses” that will experience high economic impacts. Many independent guides will be unable to pay a 6% cost recovery fee on top of a 3% annual permit fee. The change in total fees from 3% of gross revenue to 9% of gross revenue will simply be untenable. Raising prices may not be a viable solution, as independent guides serve a small number of people and losing even a few clients due to increased prices can offset the gains from the price increase.

When accounting for these concerns, it is evident the fee increases proposed in the NPRM will disproportionately impact independent guides and other small outfitting and guiding businesses who have the least ability to absorb the fee increases. As a result, there will be fewer independent guiding operations and by extension fewer offerings for the guided public to experience specialized activities under the leadership of an expert guide.

f. Recreation Events

The Forest Service’s cost recovery proposal for recreational special use permits will also significantly impact recreation events such as mountain biking and trail running races. These impacts will have far reaching implications for the businesses and nonprofit organizations that sponsor these events and for event participants. The new rules could significantly reduce the number of recreation events held on Forest Service lands, and would likely reduce the number of people who can afford to participate in them. These implications raise important equity concerns that should be considered by the Forest Service before it adopts the proposed rule.

To put the impacts of the proposed rule in context, most special recreation event organizers currently pay the Forest Service 3-5% of their gross receipts for their permit. However, they generally do not pay cost recovery fees because they rarely exceed the current 50-hour exemption. By eliminating the 50-hour exemption, charging for initial consultations, permit

⁶ 88 Fed. Reg. 14524.

application processing and renewals, and monitoring, the financial impact on these events could be substantial. Many race companies have a series of races on Forest Service lands and all of these fees will add up. This will greatly increase event costs and cause these companies to pass their rising costs onto their clientele via higher race entry fees.

For example, a trail race with approximately 100 registrations may generate gross receipts of around \$8,500, depending on the entry fee level. If the event sponsor holds a multi-year permit, they would typically pay 5% of gross receipts in permit fees. If they hold multiple events on the same ranger district, the permit fee is generally decreased to 3%. Under this multiple event scenario, the calculated permit fees for this race permit would currently be around \$255.

If the proposed rule is adopted, the event sponsor's cost recovery fees would begin to accumulate immediately with initial discussions about obtaining a permit or renewing an existing permit. This would very quickly double or more than double the total fees the event sponsor pays to host the event. These costs will inevitably be passed on to the event participants through increased registration fees. These increased registration fees will lead to races being accessible only to financially privileged racers, forcing out those with less means. This pricing out of race participants is an example of how the proposed rule conflicts with the goals set forth in the Forest Service's Equity Action Plan and the American the Beautiful initiative, which we discuss in the next section.

For races that attract a smaller number of entrants, the increased pass-through costs will be much more impactful. They will incentivize race organizers to close down small races and consolidate their offerings into races with a high number of entrants. This could increase the natural resource impacts of these events. In addition, there are a noteworthy number of small once-a-year "hobby" races sponsored by nonprofit organizations. These events work on very thin margins, sometimes barely breaking even or even losing money. Increasing the cost of a recreation event permit for these small financially under-resourced entities may well cause these events to simply go out of business.

Finally, we note again that many uncertainties remain about how the proposed rule would work in practice and its implications for the recreation event community. The NPRM contained no real information about how much time the screening phase for a recreation event permit typically takes or how many hours are required to process an event application, administer the application, and monitor the event.

In particular, the recreation event community's experience with monitoring is widely variable. At some events, Forest Service staff attend and remain all day. At others, the Forest Service has little or no on-the-ground presence. From this, it seems apparent that considerable discretion is left to each Forest Service permitting official. There may be legitimate reasons for this, but the agency should recognize that this discretion leaves recreation event permit holders with significant uncertainty regarding cost recovery for their event. They will have no way of predicting which cost recovery category they will fall into or how much their cost recovery fees will increase under the proposed rule.

2. The NPRM Conflicts with the Administration’s Stated Policies Supporting Equity In Outdoor Access

COA is deeply concerned about the potential impacts that the NPRM could have on equitable and inclusive participation in outdoor activities on NFS lands. Increasing costs will create additional financial barriers to accessing NFS lands that will disproportionately affect smaller, newer, and otherwise disadvantaged organizations and businesses. In this respect, the proposed rule will undermine the Forest Service’s own equitable access goals and similar goals articulated by the Biden Administration.

In July 2022, the Forest Service published its Equity Action Plan.⁷ One of the key elements of the Plan is to “Promote Access to Recreation and Outdoor Experiences within Underserved Communities.” The intended outcome of this equity action is to reduce barriers to access and ensure all people—regardless of race, color, national origin, or income—experience equal access to and equitable benefits from agency programs and services. The Equity Action Plan specifically acknowledges that

[b]arriers to obtaining recreation special use permits (e.g., outfitting and guiding, campground concession, and recreation event permits) are one challenge that can limit valuable economic stimulus in communities of color and socially vulnerable communities.

Moreover,

[w]hen these groups and individuals become aware of permit availability, navigating the application process requires knowledge that socially vulnerable communities have difficulty accessing, putting them at a further disadvantage.⁸

The Plan sets forth various “actions” to address this problem. These actions include promoting social science research on how the Forest Service might increase access to recreation special use permits and outdoor experiences within communities of color and socially vulnerable communities.

Similarly, in January 2021, the Biden Administration issued Executive Order 14008,⁹ which led to the launch of the America the Beautiful Initiative.¹⁰ This initiative seeks to “increase[] access to the outdoors and nature-based recreation in historically underrepresented communities while creating jobs that support restoration and resilience.”

The proposed changes to the cost recovery rules would undermine both the Equity Action Plan and efforts to achieve the goals of the America the Beautiful Initiative. As explained above, the increased fees imposed by the proposed rule will impose significant burdens on emerging

⁷ See <https://www.fs.usda.gov/sites/default/files/Forest-Service-Equity-Action-Plan.pdf>.

⁸ Id. at 40.

⁹ See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

¹⁰ See <https://www.doi.gov/priorities/america-the-beautiful>.

organizations that provide services to underserved and excluded communities. These organizations may need additional agency assistance in navigating the complexities of the permitting process. This will increase the organization's cost recovery bill.

Furthermore, because these increased costs are very likely to be passed through to members of the public that seek the services provided by these organizations, underserved communities with fewer financial resources are likely to be particularly burdened by the increased costs associated with the proposed rule. This will make it more difficult for the Forest Service and the Biden Administration to achieve the goals set forth in the Equity Action Plan and the America the Beautiful Initiative. Instead of imposing higher fees, the Forest Service should seek ways to reduce barriers for organizations that connect individuals from historically excluded communities to NFS lands.

3. The Forest Service Has Not Adequately Demonstrated How the Proposed Rule Will Improve Customer Service

As stated in the introduction, the NPRM is built on a contradictory assumption. The NPRM claims that the agency will be able to provide better access to National Forest System lands by charging outdoor leaders more money for that access. It makes this claim despite the fact that, as we have demonstrated above, these additional costs will impose a significant burden on recreation permit applicants and permittees, a burden that will lead some applicants to take their programs elsewhere.

Given the significant cost burdens imposed by the proposed rule, we think it is vital for the Forest Service to clearly demonstrate its benefits. To do that, it needs to clearly explain how the proposed rule will improve customer service and increase access. The NPRM fails to provide such an explanation. The NPRM states that “increases in annual cost recovery fees under the proposed rule are projected to be \$2.7 million to \$4.7 million” due to “the large number of authorizations that would be subject to the proposed rule” and “relatively large increases in minor cost recovery category fee rates of 100% to 170%, depending on the cost recovery fee category.”¹¹ The NPRM goes on to state that

the proposed rule would establish regulatory conditions for charging cost recovery fees and generating funds necessary to modernize the special uses program. A modernized program would enhance the Agency's ability to provide opportunities [sic] more expeditious and equitable opportunities for meeting public demand for goods and services from special use authorizations by:

- Improving customer service and facilitating rural prosperity and economic development (USDA's strategic goals for FY 2018 through FY 2022);
- Enabling the Agency to respond more quickly to requests for new uses;
- Reducing the backlog of expired special use authorizations; and
- Avoiding deferring action on commercial recreation special use applications and authorizations requiring 50 hours or less to process or monitor due to limited availability of appropriated funds and increasing demand for recreational

¹¹ 88 Fed. Reg. 14521.

services.¹²

What is not provided is any sort of explanation of how “\$2.7 million to \$4.7 million” in new revenue from these “relatively large increases in minor cost recovery rates” imposed upon “the large number of authorizations that would be subject to the proposed rule” would be actually be used by the Forest Service to improve customer service. There is no explanation of how the system will be modernized, nor is there any indication of whether additional staff will be devoted to processing permit applications. Without that explanation, we are concerned that the promised improvements in customer service will not manifest themselves. This is a legitimate and ongoing concern because the Forest Service has many competing priorities. An observer need only review a short history of the so-called “fire borrow” to know the Forest Service has sometimes been forced to divert funds away from their original purpose.

We are particularly concerned about the absence of any explanation of how the additional funds collected will ensure that authorized Forest Service officers will prioritize recreation special use authorizations and applications on par with non-recreational special use authorizations. The agency’s past failure to provide recreation special use permit applications with equal treatment may be the most troubling disclosure in the NPRM. Because of this failure to provide equal treatment, we think it was particularly important for the agency to describe the safeguards that will be implemented to ensure that this neglect does not continue. The NPRM does not describe those safeguards. In the absence of such a description, we are concerned that the agency does not have a realistic plan for addressing this problem.

Finally, the NPRM states that eliminating the 50-hour exemption for recreation permit applications would subject these applications to the customer service standard in 36 CFR 251.58(c)(7), thereby improving customer service.¹³ However, the customer service standard in section 251.58(c)(7) is, on its face, insufficient to guarantee better service because it imposes only limited requirements upon the agency. Section 251.58(c)(7) states that the Forest Service shall “endeavor” to make decisions on minor permit applications within 60 calendar days of receiving the processing fee. The use of the word “endeavor” makes this an aspiration rather than a mandate. If a decision within 60 days is not possible, section 251.58(c)(7) requires the Forest Service to do nothing more than notify the applicant in writing and provide a projected date for completion. That date can be any time. Similarly, for major applications, section 251.58(c)(7) requires 60-day notice of the steps that will be required to process the application. Section 251.58(c)(7) does not require the agency to process an application within a specified time limit, nor does it require an authorized officer to prioritize recreation permit applications on par with non-recreational special use applications.

Because of the absence of a clear explanation of how the additional revenue generated by the proposed rule will be used to improve customer service, we remain unconvinced that the benefits of the proposed rule will outweigh the costs. We urge the Forest Service to explore other ways to ensure that authorized officers prioritize recreation special use authorizations at the same level as non-recreational special use authorizations regardless of whether the 50-hour cost recovery exemption is maintained.

¹² 88 Fed. Reg 14521-22.

¹³ 88 Fed. Reg. 14520.

4. The Proposed Rule Fails to Increase Consistency Between the Forest Service and BLM on Cost Recovery

The NPRM states that one purpose of the proposed rule is to align Forest Service policy regarding cost recovery for pre-application proposals with the policy of the Bureau of Land Management.¹⁴ To do so, the NPRM states that “the Forest Service is proposing to expand the scope of processing fees under its existing cost recovery regulations to include costs for a special use proposal that are incurred before a special use application is submitted, including but not limited to costs incurred in meeting with the proponent (36 CFR 251.54(a)) and screening the proponent’s proposal (36 CFR 251.54(e)(1) and (e)(5)).”

As we explain above, charging for pre-application processing will impose a significant burden on recreation permit applicants and will drive some applicants off NFS lands. In addition, despite its stated goal of achieving consistency between the agencies, adoption of the proposed rule would actually create further inconsistency and confusion between the Forest Service and the BLM on cost recovery. This misalignment can be seen in two key ways.

First, 43 CFR 2932.31(e)(1) of the BLM’s existing regulations exempts special recreation commercial use permits from cost recovery if they take less than 50 hours of staff time per year to process.¹⁵ In this very significant respect, the NPRM is out of alignment with BLM policy in proposing to charge for the first 50 hours of processing time.

Second, if the proposed rule is adopted, Forest Service and BLM would also be out of sync in determining when cost recovery would be applied and when cost recovery charges would be incurred. Under existing 43 CFR 2932.31(e)(1), the BLM applies the 50-hour exemption to staff time needed to process a permit “in any one year.” Thus, BLM assesses cost recovery fees on an annual basis. In contrast, the Forest Service NPRM would charge proponents once for the screening and processing of a proposal, and once for submitting and processing an application, regardless of hours worked. This could result in charging a proponent twice in one year.

Many organizations that provide outdoor recreation services hold permits from multiple land management agencies. While it is reasonable to expect some differences between the policies of the agencies, we are concerned that a significant variance in policy regarding fees for the first 50 hours of processing time could lead to widespread confusion. Differences in the time scale for which cost recovery would be charged could have the same effect.

If one goal of this rulemaking is to increase consistency with the BLM, then the Forest Service should preserve the 50-hour exemption and apply it to processing costs incurred in any one year. Doing otherwise will increase inconsistency between the Forest Service and BLM.

¹⁴ 88 Fed. Reg. 14519.

¹⁵ 43 CFR 2932.31(e)(1).

C. COMMENTS ON HIGH RISK ACTIVITIES

The NPRM proposes revisions to the liability provisions in the Forest Service's special use regulations to raise the strict liability limit in tort for "high-risk" special uses, "such as powerline facilities, oil and gas pipelines, and dams with a high hazard assessment classification." COA interprets this aspect of the NPRM to be saying that the "high hazard assessment classification" does not apply to recreation special uses. However, the NPRM is unclear on this point. We request that the Forest Service make this point explicitly when publishing a final rule.

IV. CONCLUSION

The Coalition for Outdoor Access appreciates the opportunity to comment on the Forest Service's Notice of Proposed Rulemaking. We urge the agency to reconsider this proposed rule and maintain the 50-hour cost recovery exemption for recreation special use authorizations, eliminate the charging of cost recovery as a separate occurrence for the screening and processing of proposals, and ask that any final rule implement requirements for authorized officers to prioritize recreation special use authorizations and applications on par with non-recreation special use authorizations and applications. Doing so will allow COA organizations to continue providing the unique and inherent benefits of facilitated outdoor recreation and education services that we provide to natural resources, the general public, land management agencies, and local economies.

Sincerely,

The Coalition for Outdoor Access Steering Committee:

Matt Wade
Interim Executive Director
[American Mountain Guides Association](#)

David Leinweber
Owner/President
[Angler's Covey Inc.](#)

Jeannette K. Stawski
Executive Director
[Association of Outdoor Recreation and Education](#)

Betsy Robblee
Conservation and Advocacy Director
[The Mountaineers](#)

Liz Tuohy
Acting Director of NOLS Expeditions
[National Outdoor Leadership School](#)

Jeremy Oyen
Senior Manager, REI Experiences
[REI Coop](#)

Paul Sanford
Director of Policy Analysis
[The Wilderness Society](#)

Courtney Aber
National BOLD & GOLD Director
[YMCA of Greater Seattle](#)

Coalition for Outdoor Access Member Organizations:

Jason D. Martin
Executive Director
[American Alpine Institute](#)

Tyler Ray
Senior Director for Programs and
Advocacy
[American Hiking Society](#)

John Lacroix
Owner and Race Director
[Human Potential LLC](#)

Allied Organizations Joining in the Submission of This Comment

Henry DeHart
Chief Operating Officer
[American Camp Association](#)

Micah Leinbach
Executive Director
[Bus for Outdoor Access and Teaching](#)

Bruce Ward
President
Choose Outdoors

Jazzari Taylor
Policy Advocate
[Latino Outdoors](#)

Marc Heisterkamp
Executive Director
[Northwest Outward Bound School](#)

Mike Pigg
Chief Operating Officer
[Outward Bound USA](#)

Kathleen Baker
Managing Director
[Runners for Public Lands](#)

Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., MDT on June 15, 2023. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak

has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 934

Surface Mining, Underground Mining.

David Berry,

Regional Director, Unified Interior Regions 5, 7–11.

[FR Doc. 2023–10497 Filed 5–18–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AD35

Land Uses; Special Uses; Cost Recovery, Strict Liability Limit, and Insurance

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Forest Service (Forest Service or Agency), United States Department of Agriculture, published a proposed rule in the **Federal Register** on March 9, 2023, initiating a 60-day comment period on the proposed rule to amend its special use regulations to update the processing and monitoring fee schedules based on current Agency costs; to provide for recovery of costs associated with processing special use proposals, as well as applications; and to remove the exemption for commercial recreation special use applications and authorizations that involve 50 hours or less to process or monitor. In addition, the Forest Service is proposing to amend its special use regulations to increase the strict liability limit consistent with the strict liability limit established by the United States Department of the Interior, Bureau of Land Management, and to expressly provide for requiring holders of a special use authorization to obtain insurance, as needed. The comment period for the original document closed May 8, 2023. The Agency is reopening the comment period for an additional 30 days from the date of publication of this document.

DATES: The comment period for the proposed rule published at 88 FR 14517 on March 9, 2023, is reopened. Comments must be received in writing by June 20, 2023.

ADDRESSES: Comments, identified by RIN 0596–AD35, should be sent via one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments;



District 36 Motorcycle Competition Committee

Proposal for Rule Book Revision

For submission of rule proposals please review the current District 36 Operations Manual; Section 1.6 Rulebook
Rules must be submitted and posted a minimum of two (2) weeks before being heard at D36 meeting

Instructions: Attach addition sheets if needed.

Fill out form completely, scan and save electronically with rule proposal name and/or number.

Email form to Discipline Steward (if Discipline specific), the Operations Manual Chairman, and Director of Competition
or print form, complete form legibly and hand deliver to appropriate Official (see above)

1. Which rule number is being changed? _____ Paragraph: _____
2. Where will the new rule be placed? _____ Paragraph: _____
3. Which discipline(s) does this rule apply to? All: _____ CC: _____ End: _____ 8h _____ DT: _____ MX: _____
4. Does this impact any other D36 rule? Yes: _____ No: _____ If Yes which Rule(s): _____
5. Does the Steward approve? Yes: _____ No: _____

Steward's Comments:

6. Reason For The Proposal:

7. Exact Rule As Proposed:

Will this rule violate AMA rules? Yes: _____ No: _____ If yes, which rule? _____

Submitted by: _____ District number: _____ Date: _____

Email Address: _____ Phone #: _____

Attach additional sheets as necessary.

For office use only:

Date Received: _____ Date Heard: _____ Effective Date: _____

Rules Committee recommendation: _____

Amended: Yes: _____ No: _____ Passed: Yes: _____ No: _____



District 36 Motorcycle Competition Committee

Proposal for Rule Book Revision

For submission of rule proposals please review the current District 36 Operations Manual; Section 1.6 Rulebook Rules must be submitted and posted a minimum of two (2) weeks before being heard at D36 meeting

Instructions: Attach addition sheets if needed.

Fill out form completely, scan and save electronically with rule proposal name and/or number.

Email form to Discipline Steward (if Discipline specific), the Operations Manual Chairman, and Director of Competition or print form, complete form legibly and hand deliver to appropriate Official (see above)

1. Which rule number is being changed? 1.6.1 Paragraph: _____
2. Where will the new rule be placed? same location Paragraph: _____
3. Which discipline(s) does this rule apply to? All: ☒ CC: ☐ End: ☐DT: ☐ ..MX: ☐
4. Does this impact any other D36 rule? Yes: ☐ No: ☒ If Yes which Rule(s): _____
5. Does the Steward approve? Yes: ☒ No: ☐

Steward's Comments:

I Believe this would be a procedural rule

6. Reason For The Proposal:

To bring our rules up-to-date on how we're currently doing things

Remove the phrase: "in a separate publication to be located in proximity to the meeting minutes" and replace it with the phrase: "Posted on a special page on the D36 website".

7. Exact Rule As Proposed:

1.6.1 Rules Committee meetings may be held in June and October and/or other times as deemed necessary by the Rules Committee Chairman. The Rules Committee may consist of Stewards, D36 officials and concerned D-36 Members. Rule change submissions are submitted to the appropriate Steward; or Rules Chairman if not specific to a discipline. If submitted to the Steward, he/she shall then submit the rule change to the Rules Chairman and the Director of Competition with his/her recommendation. Prior to a final vote by the Active Members taking place, all proposed rule changes are to be published in either the D-36 meeting minutes or posted on a separate page on the D36 website a minimum of 2 weeks prior to the next scheduled meeting. The Rules Committee may review all submitted rules and make a pass or don't pass recommendation to the Active Members. A rule change passes if approved by a majority of the voting members of the Active Members in attendance at the next scheduled meeting. If a rule change passes it will become effective the next race season. (Rev 1 Dec 2023)

Will this rule violate AMA rules? Yes: ☐ No: ☒ If yes, which rule? _____

Submitted by: Bill McGibbon District number: 409G Date: 6/29/2023

Email Address: timekeeping101@gmail.com Phone #: 925.413.2434

Attach additional sheets as necessary.

For office use only:

Date Received: 6/29/2023 Date Heard: _____ Effective Date: _____

Rules Committee recommendation: _____

Amended: Yes: ☐ No: ☐ Passed: Yes: ☐ No: ☐



District 36 Motorcycle Competition Committee

Proposal for Rule Book Revision

For submission of rule proposals please review the current District 36 Operations Manual; Section 1.6 Rulebook Rules must be submitted and posted a minimum of two (2) weeks before being heard at D36 meeting

Instructions: Attach addition sheets if needed.

Fill out form completely, scan and save electronically with rule proposal name and/or number.

Email form to Discipline Steward (if Discipline specific), the Operations Manual Chairman, and Director of Competition or print form, complete form legibly and hand deliver to appropriate Official (see above)

1. Which rule number is being changed? 1.6.2 Paragraph: 6
2. Where will the new rule be placed? Same Location Paragraph: Same Location
3. Which discipline(s) does this rule apply to? All: ☒ CC: ☐ End: ☐ .. ☐ DT: ☐ MX: ☐
4. Does this impact any other D36 rule? Yes: ☐ No: ☒ If Yes which Rule(s): _____
5. Does the Steward approve? Yes: ☒ No: ☐

Steward's Comments:

This is a procedural Rule Proposal

6. Reason For The Proposal:

To change the deadline for submitting Rule Proposals from Oct 15th to September 15th . This will end the last minute crunch in October and November of dealing with rule proposals that takes up a lot of meeting time at the end of the year, time that is better used for District 36 business.

7. Exact Rule As Proposed:

1.6.2 The deadline for submitting rule changes/proposals for the following year's Operation Manual is September 15th of the current year. During the current year, at any time, a rule change/proposal that is deemed an "Emergency" rule proposal by the Rules Chairman or Director of Competition will be submitted to and voted on by the District 36 Board of Directors as soon as reasonably possible and if passed will take effect immediately. (Rev Dec 2023)

Will this rule violate AMA rules? Yes: ☐ No: ☒ If yes, which rule? _____

Submitted by: Bill McGibbon District number: 409G Date: 6/29/2023

Email Address: timekeeping101@gmail.com Phone #: 955.413.2434

Attach additional sheets as necessary.

For office use only:

Date Received: 6/29/2023 Date Heard: 7/19/2023 Effective Date: 12/1/2023

Rules Committee recommendation: _____

Amended: Yes: ☒ No: ☐ Passed: Yes: ☒ No: ☐