Forest Service Rule Would Allow for Expedited Trail Removal – McClintock Amendment Would Ensure Accountability

The Forest Service recently finalized the *National Environmental Policy Act: Categorical Exclusions for Soil and Water Restoration Activities* Rule which would allow for the obliteration and removal of legally-created roads and trails that many off-highway vehicle enthusiasts were promised would be reconsidered for inclusion in Motor Vehicle Use Map (MVUM) revisions. As a result, Representative Tom McClintock (R-CA) introduced an amendment to H.R. 1526, the Restoring Healthy Forests for Healthy Communities Act, that would prohibit the U.S. Forest Service from removing or altering any legally created roads or trails unless there has been a specific decision, which included adequate and appropriate public involvement, to decommission the specific road or trail in question. This amendment passed the full House on September 20.

Background:

The motorized recreation community expressed serious concerns to the Forest Service, in face-to-face meetings, phone conversations, written correspondence and in formal comments that the rule as proposed would allow for the obliteration of legally-created roads and trails that many off-highway vehicle (OHV) enthusiasts were promised would be reconsidered for inclusion in Motor Vehicle Use Map (MVUM) revisions. Unfortunately changes made to the final rule did not adequately address our concerns.

The final rule would allow any "non-system" road or trail to be obliterated via major ground disturbing activity through an expedited process that does not include environmental analysis. Other than minimal comment requirements under NEPA for Categorical Exclusions, the new rule eliminates requirements for meaningful public involvement.

McClintock's amendment to H.R. 1526, if enacted into law, would ensure that a formal decision, including public notification, comment and involvement, must be made to decommission a legally created road or trail before it could be removed.

Further, while "non-system" roads and trails may be off limits to off-highway vehicles as a result of the MVUM they may still be open to other recreational uses, including snowmobiles, yet the final rule would allow a CE to be used to remove these roads and trails ensuring that these user groups never have an opportunity to comment at any point in the process. The agency has, with very few exceptions, failed to analyze the existing and potential future demand for continuing use of non-system routes for non-motorized uses. The McClintock amendment will ensure that all users have voice in the process.

However…….

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 18, 2013

STATEMENT OF ADMINISTRATION POLICY

H.R. 1526 – Restoring Healthy Forests for Healthy Communities Act

(Rep. Hastings, R-WA, and 22 cosponsors)

While supportive of working with States and communities to restore National Forests and rangeland, **the Administration strongly opposes H.R. 1526, which includes numerous harmful provisions that impair Federal management of federally-owned lands and undermine many important existing public land and environmental laws, rules, and processes.** The bill would significantly harm sound long-term management of these Federal lands for continued productivity and economic benefit as well as for the long-term health of the wildlife and ecological values sustained by these holdings. H.R. 1526, which includes unreasonable restrictions on certain Federal agency actions, would negatively impact the effective U.S. stewardship of Federal lands and natural resources, undertaken on behalf of all Americans. The bill also would create conflicts with existing statutory requirements that could generate substantial and complex litigation. A number of the Administration's concerns with H.R. 1526 are outlined below.

Title I would negatively impact forest resources and the Department of Agriculture's (USDA) current statutory obligations to manage forest lands by requiring USDA to sell no less than 50 percent of the sustained yield from the bill's newly created Forest Reserve Revenue Areas (FRRA). The Administration does not support specifying timber harvest levels in statute, which does not take into account public input, environmental analyses, multiple use management or ecosystem changes. The bill would create a fiduciary responsibility to beneficiary counties to manage FRRAs to satisfy the annual volume requirement, which may create significant financial liability for the United States. It would also impede National Environmental Policy Act (NEPA) compliance for projects within FRRA, which undermines the reasoned consideration of the environmental effects of Federal agency actions. The bill also would establish significant barriers to the courts by imposing a requirement that plaintiffs post a bond for the Federal government's costs, expenses, and attorneys' fees.

Title II would give States the ability to determine management on Federal lands, including prioritized management treatments for hazardous fuel reductions and forest health projects without consultation with Federal land agencies, public involvement, or consideration of sound science and management options. The title would also accelerate commercial grazing and timber harvests without appropriate environmental review and public involvement, and would impede compliance with NEPA and Endangered Species Act (ESA) requirements. The Administration supports early public participation in Federal land management. The bill would mandate processes that shortchange collaboration and would lead to more conflict and delay. Further, this title's mandated use of limited budgetary resources would likely reduce funding for other critical projects.

Title III would transfer from Federal agencies to a State-appointed Trust, the rights and responsibilities to manage most lands covered by the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act (O&C) lands, and attempts to create exemptions from NEPA, ESA and other land management statutes. This would undermine appropriate management and stewardship of these lands, which belong to all Americans, would compromises habitat for

threatened and endangered species, and would create legal uncertainty over management of these lands as well as increase litigation risk. Further, Title III also contains seriously objectionable limitations on the President's existing authority under the Antiquities Act to designate new National Monuments in this region.

Title IV would remove authority from the Secretary of Agriculture for management of National Forest lands designated as Community Forest Demonstration Areas, while requiring the Secretary to be responsible for a number of management actions including fire presuppression, suppression, and rehabilitation. This title's proposed management strategies would create a patchwork of management schemes and difficulties for the agency to meet other statutory and regulatory requirements. Federal environmental laws should apply on Federal lands; however, Title IV creates exceptions to, and potentially exemptions from the normal application of these laws, including the Clean Air Act, the Federal Water Pollution Control Act, and the ESA.

If H.R. 1526 were presented to the President, his senior advisors would recommend that he veto the bill.