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March 11, 2008

Abigail Kimbell
Chief, U.S. Forest Service
1400 Independence Ave., SW
Washington, D.C. 20250-0003

via U.S. Mail and Facsimile to 202-205-1765

RE: Rocky Mountain Region TMR Implementation Schedule

Dear Chief Kimbell:

We are writing to raise concerns about Travel Management Rule implementation in the Forest Service Rocky Mountain Region. Our clients are generally supportive of the Rule and are committed to being effective partners with the agency in the designation effort. However, we believe that the present implementation trajectory creates an undesirable and unnecessary risk to successful designation processes. We provide this letter on behalf of our clients the Trails Preservation Alliance and Colorado Off-Highway Vehicle Coalition, which are trails-based recreation advocacy groups committed to the concept of actively managed recreation networks including designated routes/areas for motorized use which allow for a sustainable amount and diversity of motorized public lands recreation experience.

Travel Management Rule "implementation schedules" are being inappropriately interpreted in Region 2 and beyond. We are generally familiar with historical and ongoing travel planning efforts throughout the agency, and are mindful of the need to strike a balance between making the designation process a top priority and creating enforceable "hard" deadlines. The Final Rule acknowledges the difficulty associated with "hard" deadlines and expressly rejects the desires of some commenters to establish such deadlines. See, 70 Fed.Reg. 68269 (Nov. 9, 2005) ("...the Department disagrees with establishing an enforceable deadline for completion of the [designation] process. Imposing an enforceable deadline for completing designations would subject the Forest Service to legal challenge if, despite its best efforts (perhaps due to controversy involved in the process), the agency is unable to meet the deadline.")

In addition to the potential that a "hard" deadline creates a legal cause of action, such deadlines can illegally impede the planning process. Compliance with NEPA and related statutes has become exceedingly technical, and significant lead time is required for planning scenarios to develop in even moderately-complex decision making processes. A shortcoming in the planning effort may not be apparent for many months, and may take many more months to correct. When

faced with a “hard” deadline a decisionmaker may be unable to take necessary corrective action, at the expense of the end decision and integrity of the process used to achieve it. In short, “hard” deadlines can illegally restrict the discretion of the Deciding Official in route designation or other planning processes.

Notwithstanding the wise decision in the Final Rule to avoid these evils, the current Travel Management Rule Implementation Schedule is inappropriately constraining the planning effort in numerous Region 2 Forests. We value the close communication that our clients and their members have enjoyed with many Forests, and are not questioning the competence or commitment of line officers or personnel in any Forest. However, we are mindful of the difficult position line officers face in responding to the Implementation Schedules. No line officer wants to imply shortcomings in regional or national guidance, nor do they wish to imply a weakness in their planning effort or an inability to get the job “done right.” However, our experience with several Forests indicates that necessary actions and/or corrective steps in the ongoing planning efforts are being overlooked as a result of an overriding emphasis of meeting the Implementation Schedule. For example, our clients have attempted to provide much-needed input to many Forests concerning the existence and status of both system and “unauthorized” routes. The propriety of and need for such user input is formally recognized in the Final Rule. See, *Id.* at 68269 (middle column) (“...some user-created routes would make excellent additions to the system of designated routes and areas. The Forest Service is committed to working with user groups and others to identify such routes and consider them on a site-specific basis.”); at 68279 (middle and right columns) (“User-created routes on NFS lands that have resulted from [previously legal] cross-country motor vehicle use may be identified through public involvement and considered in the designation process under the final rule...”). The Colorado enthusiasts have literally set the standard for such user input through their Trail Inventory Gap resolution (“TIGeR”) Teams which have applied a systematic methodology to collecting and presenting route information. Unfortunately, the TIGeR Team data has been inconsistently received by individual Forests. At least some have included the inability to remain “on schedule” among the excuses for failing to consider such input. The perceived need to comply with the Implementation Schedule is therefore restricting the range of alternatives considered in detail and is limiting public involvement in the designation process.

Implementation of the Final Rule has been fraught with problems, largely due to a perceived to “complete” implementation by some defined date. This unfunded mandate has caused Rangers and Forest Supervisors administrative and organizational confusion and frustration that we fear has not been adequately shared with leadership. This effort is taking place during a time when many forest plans are out of date, the planning regulations in limbo, and those initiatives that have survived or not yet been subjected to judicial review contain myriad ill-defined new terms and processes. The Travel Management Rule is no exception, containing terms like “social sustainability” which are open to interpretation and not meaningfully addressed in the incomplete Recreation and Engineering Handbooks. This lack of standardized guidance and the tension of the Implementation Schedules against the backdrop of an outgoing administration combine to create challenges which the agency has not adequately

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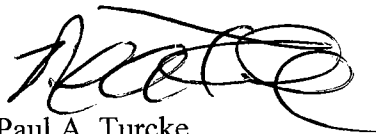
acknowledged or addressed. Many line officers appear to be rushing to issue MVUMs in the absence of best available information or a comprehensive analysis of current and future recreation needs, and rationalizing the half-baked process a "first effort" or "backbone" route network. This approach is outside the established procedure for land management planning, and breeds distrust from the recreating public who have sadly concluded a route even temporarily unopened is effectively a route permanently closed. Many Forests, despite their best intentions, seem locked into seat-of-the-pants "route management" and not integrated access and travel management required by applicable law and policy.

The final route designation decisions in affected Forests will be greatly improved through clarification and/or relaxation of the Implementation Schedule. One option would be to simply eliminate the Implementation Schedule altogether. The current travel planning effort is receiving unprecedented attention and we find it unlikely that any Forest will fail to appropriately prioritize completion of the designation process. If some schedules must remain, we request clarification to the Regional Offices, starting with Region 2, explaining that the Implementation Schedules are aspirational and provide only broad guidance which may be extended or modified under appropriate conditions, which shall specifically include the need to adequately assess the existing condition and provide for public involvement in the designation process. Finally, in some Forests we request that the existing deadlines be immediately extended, to include the White River, San Juan, Pikes Peak, GMUG, Gunnison and San Isabel Forests.

We appreciate your prompt attention to this matter. Please let us know if there is any additional information we may provide to clarify these issues or assist in your analysis. We are not singling out Region 2 in these concerns and intend to address similar issues in other Regions through additional correspondence on behalf of other clients. Again, our clients are committed to successful planning outcomes which will create enjoyable, sustainable and enforceable travel systems but will not sit idly by on a course that sets all of us up to fail.

Sincerely,

MOORE SMITH BUXTON & TURCKE
CHARTERED



Paul A. Turcke

/PAT:cam

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