

PACIFIC CREST TRAIL REASSESSMENT INITIATIVE

May 9, 2011

Randy Moore, Regional Forester
Pacific Southwest Region
U.S. Forest Service
1323 Club Drive
Vallejo, Calif. 94592-1110

Re: Pacific Crest Trail Closure Order of 1988; Public Participation in Review Process

Dear Mr. Moore:

We are following up on our request that the 1988 closure order that prohibits bicycles on the Pacific Crest Trail (PCT) be reevaluated. Our current main concern is that the Forest Service not act unilaterally and reissue the closure order. We wish to have an opportunity to explain why we think it no longer is justifiable.

Our letter of November 12, 2010, asserted that reconsidering the closure order is overdue under Forest Service policy. We judge from your reply of December 16, 2010, that some sort of review will occur, and we wish to be included in it. The PCT no-bicycles rule is too important a restriction to be reviewed internally only.

The need for review has become even more important following President Obama's executive order of January 18, 2011 (No. 13563, 76 Fed. Reg. 3821). It states that when "rules [are] outmoded, ineffective, insufficient, or excessively burdensome" the agency must "modify, streamline, expand, or repeal them."

President Obama stated in a January 18, 2011, *Wall Street Journal* essay that the order is meant to eliminate regulations that "are not worth the cost," are "excessive," or in light of recent experience no longer make sense.

The executive order states that revised rules must “specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.” That means regulating nonmotorized PCT travel on the basis of impacts and not by specific means. We will be prepared to argue that the impacts of bicycles are less than those of horses and, in some respects, less than those of overnight backpacking.

Moreover, the executive order specifies that “each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.” The current blanket ban on bicycles on every inch of the PCT, no matter how remote and/or little-used, does not provide the flexibility that the order requires.

Whatever informal views Forest Service personnel may hold regarding bicycles on the PCT, there needs to be public notice and an opportunity for public comment before any decision about the continued viability of the 1988 closure order is reached.

A 2006 court case brought by horse riders who wanted to challenge a Forest Service planning decision that could affect their access to trails held that the Forest Service could not implement the plan without receiving public input. *Back Country Horsemen of America v. Johanns*, 424 F.Supp.2d 89 (D.D.C. 2006).

16 U.S.C. § 1612(a) “requires the Forest Service to ‘establish procedures . . . to give . . . the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.’” *Back Country Horsemen*, at 94.

There is little question that the PCT bicycle closure order is a standard, criterion, and/or guideline and that the PCT is a program. The first point is self-evident. The second is shown by the fact that the Forest Service calls the PCT a program. The title of the employee who manages the PCT is the “Pacific Crest Trail Program Manager.”

Additional evidence of the PCT’s program status is found on a Forest Service website devoted to the PCT, which lists 45 public entities as having PCT involvement. These include federal, Indian nation, British Columbia, and California entities.

“[I]t is clear that the Forest Service’s maintenance of the National Trail System constitutes a ‘Forest Service program’ within the meaning of NFMA [16 U.S.C. § 1612(a)]. For instance, in *Oberson v. United States*, 311 F.Supp.2d 917 (D.Mont. 2004), the court discussed the ‘Forest Service process of identifying hazards on trails’ as one aspect of ‘the Gallatin National Forest trail program.’ *Id.* at 939. Similarly, another district court noted that ‘the Forest Service adopted [a] land management plan [that] had as one of its many goals the designation at the program level of . . . 338 miles of equestrian/hiker trails.’” *Back Country Horsemen*, at 95, n.3.

We continue to hope that you will agree that the PCT's bicycle prohibition needs reevaluating and that the public must be involved in that process.

Respectfully submitted,

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