“Open Unless Posted Closed” Policy for Road and Trails on Public Lands

Background:

- Public access to public lands is in real jeopardy notwithstanding that it is integral to the agency authorizing statutes that provide for multiple uses of public lands.
- Prior to 2005, trails and roads on public lands were generally open for all uses unless specifically marked as closed and as long as those uses complied with the existing land use plan.
- The previous policy of “open unless posted closed” provided widespread access to roads and trails for legal uses on the land including hiking, biking, and motorized use for access to hunting, angling and general recreation.
- This assumption was reversed in 2005 during the George W. Bush Administration when the U.S. Forest Service issued its 2005 Travel Management Rule. The new rule put in place the opposite policy: i.e. that all roads were considered closed unless they were posted as being open.
- Following the Forest Service’s lead, the Bureau of Land Management (BLM) issued similar planning directives, creating the travel management planning that dictates road/trail management on federal lands today.

Problems:

- Rather than protecting roads and trails for recreation, since 2005 there has been **a significant decline in the number of roads and trails available for recreation.**
- Over the years, **the Forest Service and BLM have closed scores of popular roads and trails** used by the public, including official Forest Service and BLM system roads and trails.
- Worse, in many cases, existing system trails that had long been used for recreation and other purposes have been **inadvertently closed because the Forest Service and BLM failed to identify them** when conducting the initial inventory of existing roads required for Travel Management Plans. As Travel Management Plans have been revised, the number of trails presented in the “inventory” of existing roads and trails—the initial starting point for developing a TMP—has gone down.
    - **The Travel Management Plan for the San Rafael Swell is a good example of what happens when the agency fails to complete an accurate and complete inventory of existing roads and trails** before developing a Travel Management Plan.

- Because BLM failed to develop an accurate inventory in this case, the "no action" alternative offered for comment under the draft TMP *omitted* hundreds of miles of existing routes, and additional alternatives were based on incorrect information. While the agency characterized its final decision as a responsible *increase* in motorized access**, it ultimately resulted in the default *closure* of existing routes that had gone unacknowledged and had never actually been evaluated.**

- These changes had **no grounding in law**; they were purely administrative.

- Now agencies claim that in order to address this problem, Executive Orders from the 1970's would need to be repealed, even though Travel Management Planning began in 2005 and never cited these Executive Order's as the authority to create such regulation.
  - These include E.O. 11644 under the Nixon Administration and E.O. 11989 under the Carter Administration

Consequences:

- This policy change has resulted in **widespread closure of roads and trails** that had historically been used by the public for access, recreation, and land stewardship. Since 2005, the demand for trails has continued to rise, yet access continues to decline.
  - For example, of the 28,351 total miles of trails in Colorado, only 8% are open to motorcyclists.
  - Nearly 50% of the public land in Colorado is currently restricted from motorized use—a number that continues to grow with each new land designation.

- Lack of access has led to **over-concentration of use on available trails** as a growing number of users are being pushed onto an ever-shrinking number of trails.

  - As an example, in the last two years, Utah has lost 1500 miles of trails, pushing a growing number of users onto an ever-shrinking number of trails.

- Current policy **closes the door to access for recreation, firefighting, game retrieval and search and rescue,** all of which depend on motorized access.

Requested Action:

The U.S. Forest Service should Repeal Subpart B—Designation of Roads, Trails, and Areas for Motor Vehicle Use of the Forest Service's Travel Management Rule and reinstate its previous policy that road and trails are "open unless posted closed."

As it undertakes revising relevant regulations and policies through future travel management rules, the Forest Service AND Bureau of Land Management should:

- State that Forest Service/BLM roads and trails are open to motorized use unless specifically designated and signed closed;
- Require notice and public comment of any proposed road closures;
- Limit road/trail closures to the smallest area practicable;
- Work collaboratively with recreation groups to conduct trail maintenance and take advantage of the fact that some states have state funding for trail construction and maintenance.
    - For example, Colorado and many other states have funding through OHV permit sales that is used to pay for a significant portion of the motorized trail work on public lands. These trails are open to all other user groups.

Reinstating a policy of "open unless posted closed" will:

- Promote public access and comply with authorizing statutes promoting multiple uses;
- Stop the problem of the overconcentration of users in popular areas by opening access to additional areas;
- Foster better land management practices; and
- Preserve access to public lands for future generations.