June 5, 2020

U.S. Department of the Interior
National Park Service
Jay Calhoun, Regulations Program Manager
1849 C Street NW, MS-2472
Washington, DC 20240
Attention: RIN 1024-AE61

RE: Public Comments on Proposed Rule for e-Bike Use on NPS-Administered Lands

Secretary Bernhardt:

Back Country Horsemen of America (BCHA) appreciates the opportunity to comment on the Proposed Rule to change how electrically motorized bicycles (e-Bikes) are managed on National Park Service (NPS) administered lands. BCHA recognizes the important opportunity represented by e-Bikes to serve as an alternative and enjoyable form of transportation on NPS-administered roads. They offer visitors a chance to leave their car or truck behind and, instead, enjoy the splendor and natural beauty of touring national park roads in an environmentally-responsible manner.

The use of e-Bikes on natural surface trails and on administrative roads within our national parks, rivers, monuments and recreation areas, however, would represent a completely different matter. The speed at which e-Bikes are capable of traveling would endanger the safety of all other park visitors, whether they explore their parks on foot or via horseback. **BCHA opposes any effort, including the Proposed Rule, that would attempt to superimpose motorized forms of travel and recreation on trails and administrative roads shared by hikers, equestrians and others.**

About BCHA

Founded in 1973, BCHA is a national 501(c)(3) non-profit service organization. Our mission is to **perpetuate the common sense use and enjoyment of horses in America's back country and Wilderness** and to **ensure that public lands remain open to recreational stock use**. A large part of our mission includes assisting the various government agencies and non-profit organizations in the maintenance and management of public trails and horse camps.

Recreational Conflict and Public Safety

The Proposed Rule is absent any recognition of, or request for, information from the public on the potential recreational conflicts and safety hazards associated with the proposed imposition of electric bikes on trails and administrative roads. This section of our public comment letter addresses the adverse and potentially significant social impacts of the Proposed Rule, including impacts related to recreational conflict and public safety.

Proposed Rule Fails to Address Recreational Conflict

The social science literature is replete with studies addressing recreational conflict and defines it primarily in terms of "goal interference" between one form of recreational activity versus another. For example, feelings of conflict have been documented to occur among trail users when acts of great speed, reckless behavior, or environmental damage (presumably caused by others are witnessed). Literature reviews published by the federal government clearly state that "Speed is a major source of conflict between trail users."[1] As described below with reference to the NPS's Proposed Rule, recreational conflict of this nature can lead to reduced opportunity and displacement of recreationists from places they would normally frequent.[2,3]

Hikers and equestrians travel along natural surface trails at speeds that average 3 miles per hour (mph) or less. Of the three classes of e-Bikes addressed in the Proposed Rule, both Class 1 and Class 2 e-Bikes provide motor-assisted speeds up to 20 mph, while Class 3 e-Bikes provide the rider with a motor assist up to 28 mph. Capable riders can exceed the maximum motor-assisted speed. **The Proposed Rule fails to recognize the significant discrepancy in the range of potential speeds by trail users and the resultant safety hazards that are certain to accrue should e-Bike use be authorized for use on trails and administrative roads.** The following picture and caption is taken from an advertisement that promotes the sale of e-Bikes.

By prompting local NPS superintendents to "allow (e-Bike use) where other types of bicycles are allowed," Secretarial Order 3376 has effectively (i.e., programmatically) introduced a new and not well-understood user group among NPS-managed trails. **The Proposed Rule does not acknowledge the potential negative consequences to other trail users, including its significant potential for user conflict and inevitable safety hazards. As such, the NPS finds itself in unchartered territory and must address, via programmatic analyses under the National Environmental Policy Act, these issues before issuing a Final Rule**.

Proposed Rule Fails to Address Displacement of Traditional Trail Users

The Proposed Rule clearly ignores decades of practice and the principle of managing trails for the primary intended uses, or purposes, for which they were designated. By compelling NPS superintendents to allow" any or multiple classes of e-Bike use on existing natural surface trails, **the Proposed Rule runs counter to decades of applied recreation management theory that recognizes the**

[1] Federal Highway Administration (FHWA) and the National Recreational Trails Advisory Committee, 1994. Conflicts on Multi-Use Trails: Synthesis of the Literature and State of the Practice. https://safety.fhwa.dot.gov/ped_bike/docs/conflicts.pdf

[2] Moore, R.L. 1994. Conflicts on multiple-use trails: Synthesis of the literature and state of the practice. Fed. Hwy. Admin. Rep. No. FHWA-PD-94-031.

[3] Stokowski, P.A. and C.B. LaPointe. 2000. Environmental and social effects of ATVs and ORVs: An annotated bibliography and research assessment. School of Natural Resources, University of Vermont, Burlington, VT.

need to maintain the desired experiences of traditional and relatively slow-moving trail users. The Rule stands in sharp contrast to agency policy that new uses, including new types of travel, should first be programmatically evaluated for their impact on, and compatibility with, NPS values and resources.

Equestrians and hikers, and particularly those hiking with children, often will choose to avoid trails where there is a potential for encounters with fast-moving bicycles. When selecting among trails available in a given area, a key criterion shared by equestrians is safety concerns and the sometimes unpredictable response of their horses or mules in the event of a surprise on-trail encounter. The ability of e-Bikes to travel at relatively high speeds, combined with their often silent approach, elevate the potential for such dangerous encounters. Thus, **the Proposed Rule and its prompt to NPS superintendents to authorize the use of e-Bikes on non- trails and/or administrative roads would result in many trails and administrative roads being viewed by hikers and equestrians as either less desirable, less compatible for shared use, or outright unsafe for shared use.** Should the NPS adopt the Proposed Rule, it likely would represent the diminishment or even the loss of traditional trail uses. This loss could be realized on the trails and roads in question and within a wider area in cases where the public would not have ready access to trails (or a system of trails) on which there would be options to escape the potential of user conflict and safety hazards.

The Proposed Rule acts to impose a new and largely untested use (e-Bike use) among trail uses without first conducting an analyses of its general compatibility. There exists a wealth of peer-reviewed scientific literature on topics regarding the motivations of outdoor recreationists, their desired experiences, and methods to avoid and minimize user conflict. Yet the Proposed Rule, with its directive to allow e-Bike use on trails and administrative roads, bypasses any evaluation of the prevailing science about public attitudes regarding incompatible recreational uses. Consequently, the Proposed Rule and its intent to compel widespread authorization of e-Bike use on trails and roads would, in many locations, lead to the phenomena of "technological displacement" whereby recreational users with new and more advanced forms of travel degrade the experience of, and displace, traditional trail users such as hikers and equestrians.

The economic consequences of the displacement of traditional trail users, should the Proposed Rule be enacted, must be addressed in the Final Rule. In the United States, the horse industry alone contributes $122 billion a year to the U.S. economy annually.[4] The vast majority of the nation's 7.2 million horses (85 percent) are used for recreational purposes, most notably trail riding. Additionally, the industry employs 1.5 million Americans and one-third of all U.S. households includes a member that is a horse enthusiast. The equine industry and its recreational counterparts are universally opposed to e-Bike use on shared-use trails and are speaking out in unison against any changes that would open such trials to higher-speed, machine powered transport.

Proposed Rule Fails to Address Trail User Safety Hazards

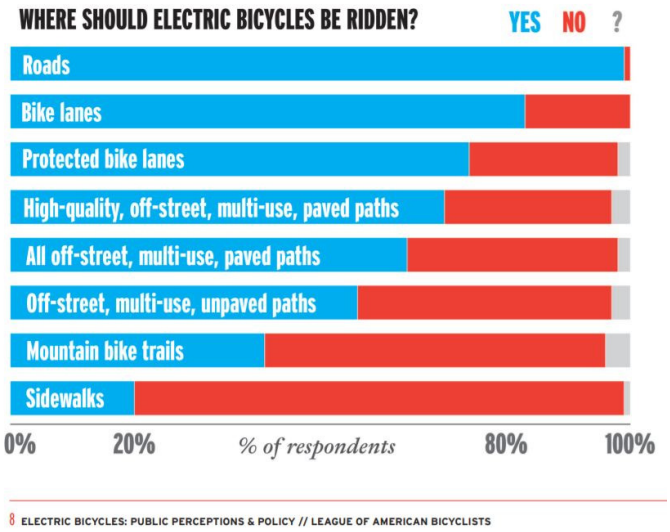
The Proposed Rule fails to address the potential for obvious and potentially ubiquitous safety hazards that would be associated with e-Bike use on trails and administrative roads. As described in the previous section, the rapid speeds at which e-Bikes are capable of traveling on shared-use trails, combined with their often silent approach, would create significant safety hazards for visitors either on foot or on horseback. The safety hazard would be compounded on trails that are either steep, narrow or winding and where sight lines by users traveling in either direction are inadequate.

[4] Economic Impact of the U.S. Horse Industry. American Horse Council Foundation, 2018.

An e-Bike, which is capable of rapid acceleration and speeds in excess of a standard mountain bike,[5] would represent a further danger to other hikers and equestrians, particularly along relatively flat or uphill terrain where higher than normal speeds could be attained via the motorized assist. **Another factor that makes this potential hazard even greater to all trail users is the fact that bicycle helmets commonly in use today are not designed to sustain collisions at speeds much greater than 14 miles per hour.[6] This fact alone renders the Proposed Rule untenable, if not outright irresponsible**.

The Proposed Rule, and its objective to facilitate the addition of fast-moving e-Bikes onto trails and administrative roads shared by hikers and equestrians, would pose a serious safety hazard to traditional trails users—to a degree that has not before been either contemplated or authorized by the NPS, as far as we know. The fact that Proposed Rule was not developed in consultant or collaboration with national hiking and equestrian organizations is all the more troubling. The organizations whose memberships comprise the largest segment of hikers and equestrians nationwide, American Hiking Society and the Back Country Horsemen of America, oppose the intent of the Proposed Rule that would in effect allow electric motorized bicycles on trails.[7] Their opposition is predicated primarily on the basis of the inevitable social conflicts, safety hazards, and impact on user experience that would occur by generally allowing e-Bike use on what traditionally were hiking and equestrian trails.

If the above argument somehow is not convincing, consider the fact that a national survey conducted by the League of American Bicyclists[8] reported that nearly 60 percent of bicyclists surveyed nationwide believe that electric bicycles should not be ridden on mountain bike trails (see the following graphic).



[5] Hall, et. al, 2019, Pedal-Assist Mountain Bikes: A Pilot Study Comparison of the Exercise Response, Perceptions, and Beliefs of Experienced Mountain Bikers *(JMIR Form Res 2019;3(3):e13643).* DOI:10.2196/13643

[6] Bicycle Helmet Safety Institute, 2019. What are the limits of bike helmet protection? https://helmets.org/limits.htm

[7] Both entities intend to submit organizational comments to the NPS that further elaborate their respective position on the Proposed Rule.

[8] League of American Bicyclists, 2015. Electric Bicycles: Public Perceptions & Policy. Results and Analysis of a National Survey of American Bicyclists. https://www.bikeleague.org/sites/default/files/E_bikes_mini_report.pdf

Proposed Rule Lacks a Risk and Needs Assessment

The Proposed Rule lacks a risk and needs assessment. We argue here that the risk, in terms of potential hazards to public safety, far outweighs any current or future "need" for e-Bikes to share existing trails or administrative roads on which bicycle use is allowed. There exist several recent reports pointing out the fact that little public demand exists for e-Bike access to natural surface trails on U.S. public lands and, more specifically, NPS-managed trails and administrative roads. For example, a 2019 study published in the International Journal of Urban Sustainable Development,[9] makes the following claim about e-Bikes that are used primarily on roads and paved trails for the purpose of commuting, personal use, exercise or general mobility and exploration:

> Although ebikes have become increasingly common in the U.S., they have failed to gain significant market penetration despite their great promise.

We question the origins of current rulemaking proposal, as it clearly has not come in response to a high and unmet user demand for e-Bike use on NPS trails and administrative roads. Rather, what is clear is that the rulemaking proposal came in response to lobbying efforts on behalf of e-Bike and related manufacturers in an effort to expand e-Bike sales should the Department of Interior change its existing regulations and declassify e-Bikes as a motorized use. Yet the cost to public safety clearly is too great. **Consequently, the Final Rule must include a thorough risk and needs assessment, specific to e-Bike use on NPS-administered lands, particularly in light of the significant and potentially adverse risk to public safety that would accrue as a result of its implementation.**

NPS Has a Moral Obligation to Preclude Potential Safety Hazards

The potential safety hazards to hikers and equestrians that would accompany implementation of the Proposed Rule comes with a high potential for liability on behalf of the federal government. This liability would flow from the inevitable significant injuries or fatalities to other trail users that would result from its implementation. Granted, the Federal Tort Claims Act generally shields employees and officers of the federal government from legal claims by members of the general public, An alternative argument, however, is that **the current rulemaking proposal requires consideration of the agency's "moral liability," or moral obligation, with respect to hazards its implementation would thrust upon hikers and equestrians should NPS superintendents authorize e-Bike use on existing trails and administrative roads.**

Proposed Rule is Unworkable and Unenforceable

The Proposed Rule is neither appropriate nor is it workable. **NPS has neither the resources nor the personnel to adequately monitor or enforce e-Bike use on trails and administrative roads.** Even the trained eye often cannot discern among the three classifications of e-Bikes in the field. Thus, restricting the use of one class versus another on a given trail or trails would be unworkable and prove frustrating to the public and to NPS law enforcement personnel.

Many e-Bikes sold on the market today are built with an appearance similar to the three classes of e-Bikes addressed in the Proposed Rule, yet exceed the maximum power and speed specifications envisioned by it. A search on YouTube yields dozens of tutorials on how to "hack" or override the speed

[9] Meyer, Adam. 2019, Motivations and barriers to electric bike use in the U.S.: Views from online forum participants. International Journal of Urban Sustainable Development. DOI: 10.1080/19463138.2019.1672696

constraints programmed into nearly every e-Bike in production. These facts underscore the claim that the NPS could neither adequately monitor nor enforce e-Bike use on trails and administrative roads.

Conclusions

BCHA does not dispute the important fact that e-Bikes have the potential to introduce people to the wonder and excitement of exploring their national parks and public lands and, in particular, create opportunities for people who would not otherwise have the physical ability to strike out on their own without the motor assist provided by e-Bikes. We understand that e-Bikes have their place on public lands and we embrace their potential benefits to the recreating public. Our chief argument remains, however, that e-Bikes must be treated as a motorized use and should not be authorized for use on trails and administrative roads shared by hikers and equestrians. The relatively low speed that currently characterizes uphill travel by mountain bikes would become a thing of the past if e-Bikes were introduced in such a fashion. Even riders of Class 1 e-Bikes have the potential to approach 20 miles per hour when traveling uphill, irrespective of most grades that might be traversed.

The concept of multi-use trails where hikers, equestrians and mountain bikers share a common path would likely be a casualty of the current rulemaking. The NPS has a responsibility to ensure that this does not occur and could accomplish this by abandoning the current rulemaking proposal. Now is not the time for the Department of Interior to rush to a decision on a controversial rulemaking proposal such as this. The current coronavirus pandemic prevents the opportunity for full public engagement, including public meetings and other participation opportunities, on a proposal for e-Bike use that could impact the safety and enjoyment of all national park visitors.

Sincerely,

Darrell Wallace
Chairman

Post script:

FASTER IN THE ROUGH

This bike is blazing fast over the roughest trails. We gave the
axle path that reduces rear wheel "hang-up" on big rocks and
momentum, control, and speed.

The picture and caption above are taken from an advertisement that promotes the sale of a motorized electric bicycle. In this instance, the manufacturer clearly targets a young and adrenalin-seeking demographic through the use of statements such as:

- The e-Bike is “blazing fast over the toughest trails,”
- Its design “(makes) it easy to maintain speed in dicey conditions,”
- Its motor “amplifies your pedaling input by a mind blowing 410%,”
- “At peak assist, it’s like having four of you powering the pedals…,” and
- “This is the bike that lets you summit the longest, nastiest climbs with energy to spare so that you can bomb down the longest, nastiest descents.”

The e-Bike depicted has “the most powerful motor on the market” at 250W nominal and a 700 watt-hour battery. As such, it falls well within the parameters of a Class 1 e-Bike as defined within the NPS’ Proposed Rule. It would therefore represent fair game for any NPS superintendent to authorize the pictured e-Bike for use on existing trails or administrative roads, should the Proposed Rule remain as-is or if it is not abandoned outright.

The picture above appears to underscore a break-the-rules mentality by depicting this “blazing fast” e-Bike rider as either uninterested or incapable of traveling within the trail tread (thereby failing any test of the minimum impact ethos). Any message encouraging “share the trail” with other users or to yield or exercise caution when approaching hikers or equestrians is absent. While perhaps all fine and good for use and enjoyment on a closed-course e-Bike park, an encounter with a thrill-seeking rider on such a machine is the last thing an equestrian wants to encounter while trying to enjoy any trail or administrative road in a national park, national river, national monument or national recreation area.