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Acting Director William Perry Pendley
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Mailed to: U.S. Department of the Interior,
Director (630), Bureau of Land Management,
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Washington, D.C. 20240
Attention: RIN 1004-AE72

Re: RIN 1004-AE72 Subject: Proposed Rule for Electric Bicycles – “Increasing Recreational Opportunities through the use of Electric Bikes”

Dear Acting Director Pendley,

The International Mountain Bicycling Association (IMBA) provides the following comments on the RIN 1004-AE72 proposed rule (hereafter referred to as the “Rule”) for the definition and management of e-bikes, including e-mountain bikes (eMTBs) on BLM lands.

IMBA would like to thank the BLM and its staff in the state field offices for the numerous conversations we have had with members of your team. We also want to thank the BLM for acknowledging and incorporating key recommendations and concepts we provided in our previous comments on this subject. Our view and understanding of this issue continues to evolve and these comments represent the latest in our assessment. As a mountain bike advocacy organization, IMBA’s mission is to create, enhance and protect great places to ride mountain bikes. Class 1 eMTBs can be a great way for people to enjoy trail-based recreation and we look forward to working with land managers and all stakeholders to achieve the best possible solutions. Our ideal situation is that together we all navigate this emerging technology so bike access is enhanced and protected broadly, and new opportunities to ride bikes (whether non-motorized or electric) are better than ever. To accomplish this, IMBA is focused on creating more trails close to home to grow the quantity and quality of mountain bike trail communities across the U.S., so everyone has access to close-to-home rides and iconic backcountry experiences. Since 1988, IMBA has been the worldwide leader in mountain bike advocacy and the only organization focused entirely on trails and access for all types of mountain bikers in all parts of the U.S. IMBA’s national network of more than 200 local groups, individual riders and passionate volunteers are exemplary trail stewards on public lands across the country and our success has been leveraged and made possible by the local work of these dedicated groups and individuals.

Throughout the 30-plus years IMBA has been advocating for mountain bikes, the sport and its technology has changed dramatically. Once again we find ourselves in an exciting moment as eMTBs have emerged as a new technology in our sport. This exciting new technology has sparked an energetic debate. Open discussions and thoughtful, common sense solutions will help all involved reach positive outcomes for natural surface trail access for both mountain bikes and eMTBs.

The Proposed BLM E-bike Rule is an amendment to the Off-Road Vehicle Regulations. IMBA interprets the regulatory language elements of the Rule to be the final four pages and the rest being

non-legally binding discussion around the Rule. However, this supporting material includes substantial detail suggests a clear intent for how the Rule will be implemented. Despite this, IMBA believes anything intended by the Rule must be explicitly detailed in the Rule's regulatory language. If absent, this will cause public confusion and force BLM managers to decipher and interpret the Rule themselves which will create inconsistencies across public lands and result in enforceability and legal challenges. Therefore, regardless of whether various intents are discussed in the summary, background, or discussion of the Rule, the BLM must include in the final regulations clear direction and authorizations for how BLM officers may implement the Rule.

Elements of the Rule IMBA Supports

1. Support e-bike access to roads and paved pathway infrastructure.
2. Support that the Rule does not make e-bikes synonymous with traditional bicycles.
3. Support appropriate trail access for Class 1 eMTBs as long as access is not lost or impeded for traditional mountain bikes.
4. Support use of a categorical exclusion under 43 CFR 46.210(i) for regulatory rulemakings.
5. Support that the Rule does not automatically open up any new access for e-bikes without first undergoing a NEPA process decision that includes public involvement.
6. Support providing BLM managers discretion to restrict e-bikes access by Class as needed.

E-bike Criteria

Under the Summary, and under III. Discussion of Proposed Rule, §8340.0-5 Definitions (page 7,8) the Rule claims to “amend its off-road vehicle regulations at 43 CFR Part 8340 to add a definition for e-bikes...” Unlike other Department of Interior agencies charged with developing an e-bike rule, the location of the BLM definition for e-bikes is placed clearly under the regulations for governing motorized off-road vehicle use at 43 CFR Part 8340. This suggests the baseline definition for e-bikes is “motorized,” but this is not perfectly clear. The Rule only defines the 3-Class system for e-bikes as an excluded use. The Rule is silent on e-bikes that fall outside these classes. The Rule then excludes the 3 Classes of e-bikes from the motorized classification that meet certain criteria under the e-bike definition. The e-bike exclusion criteria in the Rule is simple. To qualify, the following must be met:

1. e-bike fits under Class 1, 2, or 3 e-bike definition,
2. while being used on roads and trails open to non-motorized and mechanized use.
3. Its use is pedal assisted, not throttle powered, and,
4. a BLM manager has determined through NEPA that, according to the Rule in §8340.5(iii), “e-bikes should be treated the same as non-motorized bicycles.”

These four criteria are all that is necessary for an e-bike to be excluded from the off-road vehicle regulations. If one or more of these four criteria are not met, the e-bike appears to be regulated as a motorized off-road vehicle under 43 CFR Part 8340. Again, this is not clear.

Criteria #1 and #3 create physical manufacturer design and use standards for an e-bike. Nothing in the rule defines how noncompliant e-bikes—those that do not meet the 3-Class criteria—will be classified and managed. E-bikes encompass a broad spectrum of design categories which include a spectrum of three (3) distinct classes defined by the Consumer Products Safety Commission. Some e-bikes fall outside the 3-Class system. Some e-bikes that could otherwise meet the criteria can also be used in ways that do not meet the criteria. Mainly this is done by relying solely on the throttle to power the e-bike but can also include electrical modifications that remove class-defining battery and motor restrictions. The Rule only defines e-bikes within the 3-Classes. The Rule fails to state how e-bikes that fall outside the 3-Class system, or are used in a manner (throttled or speed modified) that are not in compliance with the

criteria, would be treated. The Rule also fails to make any attempt at providing enforceability of these criteria, particularly in ensuring e-bikes meet the 3-Class structure and are used in a manner that is pedal-assisted only. This leaves BLM managers with the burden of determining how to decipher qualifying equipment and ensure conforming uses. This will be where the Rule becomes ineffective. The BLM Rule must demonstrate the manageability of its Rulemaking and how the agency will ensure its e-bike regulations will prove successful.

To address this IMBA recommends the BLM add a statement to the Rule under the definitions of the 3-class system that states:

Devices with electric motors of 750 watts (1 h.p.) or more of power and not included as Class 1, Class 2 or Class 3 in the classification system above, or used in a manner prohibited by the regulations should be managed as motor vehicles under 43 CFR Part 8340.

Criteria #2, focuses on e-bike use on roads and trails open to non-motorized, mechanized use IMBA's interpretation of this is that an e-bike only meets the exclusion criteria "while being used on a road or trail open" to bikes. Roads are often open to bikes as well as cars. There are few instances where a road would be closed to bikes. A possible scenario is a narrow vehicular tunnel or a paved National Monument road where mixing bikes and autos would be considered unsafe. The Rule is unclear on this possible scenario. Would the e-bike be prohibited from such a road? Or would the e-bike simply be considered a motorized vehicle on such a road? The public and BLM managers need to know how this situation will be treated. If an e-bike were ridden on such a road, it appears the e-bike would be considered a motorized vehicle.

Criteria #4 addresses the NEPA process. How an agency manager arrives at a determination is laid out in the Designation Procedures section §8342.2. While the Rule discussion goes into detail and suggests BLM managers have the discretion to determine that e-bikes might be inappropriate or make individualized decisions and restrictions within the classes and between e-bikes and traditional bikes, this is not clear in the Rule language itself. Instead, the Rule, under § 8342.2 Designations Procedures, states "authorized officers should 'generally allow' via the exclusion...Class 1, 2 and 3 e-bikes that meet the criteria unless determined inappropriate." The Rule does not address what factors could make e-bikes inappropriate and the bias created with the directive to "generally allow" seems to tip the scales in one direction, which undermines the purpose of NEPA.

To address this, IMBA recommends the BLM add clarifying language to the Rule that states:

Authorized officers may limit or restrict or impose specific limitations on e-bike use, or may close any road, trail, or portion thereof to such e-bike use, or terminate such condition, closure, limit or restriction after, when taking into consideration public health and safety, natural resource protection, and other management activities and objectives.

Unlawful Directives

Words, phrases and statements in the discussion of the Rule on page 5, and under §8342.2 *Designation procedures*, suggest NEPA is not the sole decision-making process and the Rule comes with certain directives to ensure decisions favor a predetermined or biased outcome. "Directing" authorized officers to "generally allow" any use at all is a potential serious violation of NEPA and will likely result in litigation. IMBA opposes a directive from the Washington Office that would circumvent the public process and tip the scales in any one direction on e-bike access. **These elements carry a predecisional undertone and should be removed from the final Rule as determination on access should be made in a fair and transparent manner through the NEPA process.**

To address this IMBA recommends removing any of these statements from the Rule's supporting information and making edits to the Rule under §8342.2 *Designation procedures* to read as follows:

*(d)(i) Authorized officers should **designate** ~~generally allow~~, as part of a land-use planning or implementation-level decision, **all public roads and trails as either open, limited, or closed to Class 1, 2 and 3 E-bikes**....*

E-bike Appropriateness

IMBA does not support the full scope of what qualifies for the e-bike exclusion or where the exclusion is assigned. The vast majority of e-bike use on BLM lands will not be pavement-based e-bikes but rather trail-based eMTBs. Trails and trail corridors are much more narrow when compared to paved roads and gravel pathways. The social and physical characteristics of trails are more tenuous and the enforceability is more challenging. Tolerances of use, speed, and impacts differ substantially between pavement and natural surface trails. **IMBA recommends, when it comes to natural surface trail designations, the BLM should amend its Rule to limit non-motorized trail use to Class 1 e-bikes only with a supporting NEPA decision.** The use of Class 2 and 3 eMTBs on non-motorized shared use BLM trails are not appropriate due to the design characteristics that define these two classes. The resultant social and environmental impacts of these classes are unacceptable and will likely lead to a backlash against bike trails in general if introduced to trails.

In IMBA's policy recommendation, IMBA chose to make a distinction between Class 1, 2 and 3 eMTBs for a few reasons. IMBA conducted an eMTB study¹ in 2015 that concluded Class 1 eMTBs are not likely to have any more impact than traditional mountain bikes or other trail users when managed appropriately. Class 2 and 3 eMTBs are seen as having trail and social impacts more closely associated with motorized vehicles such as dirtbikes.

Class 2 electric motors can rely solely on a throttle and while the Rule prohibits that, there are no methods discussed in the Rule for how to prevent and enforce this type of use. The intent of the Rule should be to ensure e-bikes be used for transportation and recreation in a similar manner to traditional bicycles. Riders of Class 2 e-bikes can instantly alternate between throttle and pedal power unnoticed, and therefore easily skirt the law and intent of the rule. Throttle-based biking exceeds the threshold of what is acceptable on non-motorized trails. It is counter to the spirit of mountain biking and jeopardizes the integrity of the non-motorized category, as well as being too difficult to enforce. From a resource standpoint, the eMTB study indicates in "Appendix A: Throttle Observations Mini Test" Class 2 throttle assisted eMTBs, when used in throttle mode, will cause significantly more tread area disturbance than a traditional mountain bike would. IMBA also found allowing Class 2 e-bikes on non-motorized trails is counter to the recommendations of the e-bike industry itself. One of the most prominent makers of e-bike motors, Bosch, states on its website, "*Class 2 may not be suitable for singletrack mountain bike trails—it has been shown that they pose greater physical damage to trails due to the throttle-actuation. Class 2 may be better suited for multi-use OHV trails designed for more rugged off-road vehicles.*"² IMBA agrees with Bosch on this and recommends Class 2 e-bikes be prohibited from using the motorized exemption for non-motorized trails.

The aforementioned eMTB study did not address Class 3 e-bikes. However, Class 3 e-bikes have a higher top-end speed threshold (28mph) which is a 40% increase in speed over Class 1. IMBA found

¹ https://b.3cdn.net/bikes/c3fe8a28f1a0f32317_g3m6bdt7g.pdf

² <https://www.bosch-ebike.com/us/everything-about-the-ebike/stories/three-class-ebike-system/>

allowing Class 3 e-bikes on non-motorized trails is again counter to the recommendations of the e-bike industry. Bosch states on its website, “Class 3 eBikes are typically allowed on roads and on-road bike lanes (“curb to curb” infrastructure), but restricted from bike trails and multi-use paths. While a 20-mph maximum speed is achievable on a traditional bicycle, decision makers and agencies consider the greater top-assisted speed of a Class 3 eBike too fast for most bike paths and trails that are often shared with other trail users.”³ IMBA agrees with Bosch on this as well and recommends Class 3 e-bikes be prohibited from using the motorized exclusion for non-motorized trails.

Importantly, this would not ban Class 2 and Class 3 e-bike use on trails, rather, according to page 6 of the Rule, limit it to the “majority of roads and trails of BLM-administered public lands” that currently allow motorized ORV use, and therefore, these Class 2 and 3 e-bikes.

Three-wheeled Cycles and Protecting Singletrack Trails

The Rule adopts the CPSC e-bike definition which also applies to any “two or three-wheeled cycle” within the 3-Class system. The tread width of a three-wheeled cycle is often as wide as 36 inches⁴ but the weight of these tricycles has kept usage numbers low. Electrifying these tricycles, however, greatly expands their potential application and usage. Under the proposed Rule, wide three-wheeled electric tricycles could inadvertently be allowed on singletrack trails, through the broad brush exclusion process, leading to a host of social and environmental impacts. Singletrack trails through both use and design are much narrower, as described below. Most trail enthusiasts prefer narrower trails. Narrower trails help keep speeds to a minimum and minimize soil erosion and maintenance needs.

IMBA is sympathetic to the needs of athletes with challenges and therefore recommends the BLM seek to provide reasonable access for this user group who are at times limited to the stability or design benefits of tricycles. However, IMBA believes no vehicle, or user, should be allowed to cause resource damage to trails by using equipment that is not trail appropriate or fitting to the trail tread. Furthermore, using vehicles wider than the tread can cause safety concerns for other users who may not be able to get out of the way of approaching tricycles. To provide for appropriate access, the BLM could identify trails in its jurisdiction that have an appropriate width corridor and could provide an appropriate experience without causing trail tread damage. The BLM can also create new trails to serve this user experience and provide reasonable access.⁵ Modern machine-built trails are often built with a trail dozer that creates a 48-inch wide trail corridor. This corridor is often later narrowed through natural processes or purposefully with trail obstacles, but the original width could be maintained specifically and purposefully to provide appropriate and reasonable access for three-wheeled cycles where demand exists.

IMBA recommends the BLM be acutely aware of this potential challenge and avoid any unintended consequences through thoughtful and clear planning decisions, or simply proactively prohibit three-wheeled cycles and e-cycles from using singletrack trails with tread widths wider than the trail itself. We recommend establishing a threshold of 15 inches as the bike’s effective combined tread width. Further research may be needed to determine the best measurement, however the narrowest tricycle design has two parallel 4.8 inch tires mounted on two suspension forks with a combined tire tread width equaling under 15 inches.⁶

³ <https://www.bosch-ebike.com/us/everything-about-the-ebike/stories/three-class-ebike-system/>

⁴ <https://outriderusa.com/products/horizon#ptab-tech-specs>

⁵ "Adaptive Sports Accessible" trail focused on providing access for mountain tricycles used by disabled riders <https://www.singletracks.com/bike-trails/jetton-park/>

⁶ Narrowly placed tricycle design where two suspension forks are mounted in parallel with 4.8” tires.

To address the above concerns with appropriateness of various types of e-bikes on trails IMBA recommends edits to §8342.2 *Designation procedures* to read as follows:

*(d)(i) Authorized officers should **designate** ~~generally allow~~, as part of a land-use planning or implementation-level decision, **all public roads and trails as either open, limited, or closed to Class 1, 2 and 3 e-bikes** whose motorized features are being used to assist human propulsion on roads and trails upon which mechanized, non-motorized use is allowed, unless the authorized officer determines that E-bike use would be inappropriate on such roads or trails; and*
*(ii) **To minimize conflicts and ensure compatibility with other uses and minimize damage to soil, and vegetation, authorized officers should PROHIBIT, as part of a land-use planning or implementation-level decision, Class 2 and 3 E-bikes on trails limited to mechanized, non-motorized use, and any three-wheeled E-cycle with a combined tire tread width wider than 15 inches on singletrack trails limited to mechanized, non-motorized use, and***
*(iii) If the authorized officer allows **any combination of** E-bikes in accordance with this paragraph (d), **such as** E-bike users shall be afforded all the rights and privileges, and be subject to all of the duties, of user of a non-motorized bicycle, **while remaining independent of such user.***

Role of National Environmental Policy Act

The BLM claims (p. 18) because this Federal Rulemaking does not change the existing allowances for e-bike access or usage, the proposed Rule doesn't, in and of itself, significantly alter the human environment. Therefore the BLM contends the Rule itself does not require or invoke the National Environmental Policy Act (NEPA) of 1969. It uses a categorical exclusion under 43 CFR 46.210(i) to exclude the Rulemaking from further NEPA analysis when considered a policy and regulatory directive only. Instead the BLM assures any social or physical impacts of allowing or prohibiting e-bikes will be analyzed under NEPA at the field office level and through site-specific or landscape-level planning. IMBA supports this decision. IMBA believes this appropriately places NEPA-based access decisions at the local level with public input on potential social and physical trail impacts, and provides e-bike advocates a well-known process for assessing and gaining access to non-motorized trails. IMBA appreciates and supports the Rule's recognition that a hard look at the local issues and impacts through the NEPA protocol remains the process for any site-specific travel management decisions. The discussion in the Rule around what determines appropriateness of e-bikes or how to undertake NEPA, however, is lacking.

The BLM has been the leader in mountain bike management for federal land management agencies. During the NEPA process, the BLM analyzes decisions based in part on its multiple use and sustainable yield mandate under U.S.C. Title 43 which has helped foster this role. IMBA believes the Rule can further the goals of these mandates and create a quality trail system. However, IMBA cautions that Rule implementation can just as well negatively impact and lead to losses of traditional mountain bike access.

There are potential scenarios where the introduction of some form of e-bikes to non-motorized trails could lead to a negative end result for all bike access. The BLM's mountain bike-focused publication of the "Guide for Quality Trail Experiences" (GQTE) is the gold standard and utilized by land managers across the spectrum from local municipalities, state agencies, and other federal land managers in DOI and USDA. The BLM has invested extensively in seeking to balance multiple-use and provide for high quality non-motorized mountain biking experiences. While eMTBs can fit within GQTE framework and

play a productive role in upholding these mandates, careful consideration for preserving the integrity of the legacy of investments made in traditional mountain bike trail experiences and infrastructure should be paramount. Under 43 USC § 1702 (c) and (h), the regulations define multiple use and sustainable yield. These mandates matter when it comes to the approach to e-bike introduction, the relationship and impact to traditional bike access, and how to balance the competing needs of all other trail uses. When employing wise management practices and trail infrastructure investment under guidance documents like the BLM's GQTE, mountain biking trails become a renewable resource that can serve the public and communities through sustainable yield in perpetuity. This is arguably the main goal of sustainable yield as it is defined in the regulations. Multiple use is defined by phrases like "*judicious use of the land.*" to "*best meet the needs of the American people*" making "*periodic adjustments in use to conform to changing needs and conditions*" of "*renewable and nonrenewable resources, including...recreation*" to create "*harmonious and coordinated management.*" All these phrases apply to management of recreation whether its mountain bikes or eMTBs, and the BLM must not jeopardize one use for another.

The BLM states (p. 7) it expects this Rule to result in an increase in recreational opportunities and e-bike ridership, which the DOI order set out to ensure. Importantly, the BLM also acknowledges the appeal of BLM roads and trails to cyclists is that they often offer a challenging experience which can lead to an inherently remote and desired experience. The BLM understands this Rule "could cause increased ridership on these roads or trails" (p.7) and the site-specific NEPA review process will be the appropriate place to address issues and impacts of such an increase. The BLM specifically requests public comments "on the potential social and physical impacts of e-bike use on public lands" (p.7) in what IMBA assumes is a recognition that issues may arise.

Some past actions on BLM lands have jeopardized the experiences of other users or effectively resulted in loss of access. Losses to access due to eMTB introduction could occur through any combination of circumstances such as a potential erosion of social tolerance of any or all bike trails in general, or lead to surpassing the threshold of shared use for regional destination trails. Class 2 and 3 e-bikes could cause degradation of resources in high use areas, or lead to other wildlife concerns in remote trail systems that grow in use through any level of eMTB introduction. Excessive use, unnatural speeds and/or erosion of the human-powered character of trails can also lead to social conflicts and access losses. The Rule must avoid setting up scenarios where this becomes more prevalent. A possible and maybe inevitable backlash to e-bike access in some locations should not result in undeserved collateral access losses for human powered cyclists who may have enjoyed the area's shared use trails for years prior in harmony with others. It should also not lead to the prevention or delay of new trails being considered simply because e-bikes enter the trail access equation.

Consequently, as stated before, IMBA reiterates Class 2 and 3 e-bikes will promote these negative factors and should not be eligible to utilize a motorized exclusion or trail exemption for BLM non-motorized trails. These potential social and physical risks associated with the introduction of eMTBs on trails could also be minimized if the two categories (e-bikes and traditional bikes) remain separate in their management even if they share access to the same trails under the exemption clause. This way, management responses can be tailored to meet the challenges. It may be necessary for the BLM to restrict the scope of a future trail proposal if it becomes clear eMTBs prove a contentious issue that jeopardizes access for others. The Rule and NEPA process must be clear that e-bikes are not being analyzed as one and the same alongside traditional mountain bikes, but rather they are a separate use with unique characteristics and management considerations and will be evaluated based on their individual level of trail appropriateness. Unfortunately, the Rule is less than clear on this. In both the Summary of the Rule, and the Definitions section. it states, "...e-bikes should be treated the same as

non-motorized bicycles,” yet in the Rule regulatory language under § 8342.2 *Designation procedures*, it is the user of the e-bike who is afforded the same treatment of a traditional bike when it states, *an E-bike user shall be afforded all the rights and privileges, and be subject to all of the duties, of user of a non-motorized bicycle.*” IMBA asks, which is it?

Under §8342.2 *Designation procedures*, IMBA recommends the BLM model e-bike access after the travel management process for motorized road and trail designations, where all public roads and trails are designated as either open, limited, or closed to Class 1, 2 and 3 e-bikes with Class 2 and 3 automatically prohibited from consideration on non-motorized trails.

To address the above concerns, IMBA recommends edits to §8340.5 *Definitions* to read as follows:

(a) *Off-road vehicle means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding:*

(5) *E-bikes, as defined in paragraph (j) of this section, **when operated and managed under the designation procedures of §8342.2:***

(i) *While being used on **designated** roads and trails upon which mechanized, non-motorized use is allowed;*

(ii) *That are not being used in a manner where the motor is being used exclusively to propel the E-bike; and*

(iii) *Where the authorized officer has expressly determined, as part of a land-use planning or implementation-level decision, that **such** E-bikes, **while remaining independent**, should be **authorized to utilize the designated roads and trails in the same manner** ~~treated the same as~~ non-motorized bicycles; and*

Additionally, to address this IMBA recommends edits to §8342.2 *Designation procedures* to read as follows:

(d)(i) *Authorized officers should **designate** ~~generally allow~~, as part of a land-use planning or implementation-level decision, **all public roads and trails as either open, limited, or closed to Class 1, 2 and 3 E-bikes** whose motorized features are being used to assist human propulsion on roads and trails upon which mechanized, non-motorized use is allowed, unless the authorized officer determines that E-bike use would be inappropriate on such roads or trails; and*

(ii) ***To minimize conflicts and ensure compatibility with other uses and minimize damage to soil, and vegetation, authorized officers should PROHIBIT, as part of a land-use planning or implementation-level decision, Class 2 and 3 E-bikes on trails limited to mechanized, non-motorized use, and any three-wheeled E-cycle wider than 15 inches on singletrack trails limited to mechanized, non-motorized use, and***

(iii) *If the authorized officer allows **any combination of** E-bikes in accordance with this paragraph (d), **such** ~~an~~ E-bike users shall be afforded all the rights and privileges, and be subject to all of the duties, of user of a non-motorized bicycle, **while remaining independent of such user.***

Special Designations

On page 10 of the Rule discussion, the BLM provides a few examples where motorized e-bikes might not be appropriate. One notable example is where, “legislation or a presidential proclamation may restrict motorized use of a trail.” IMBA urges the BLM to provide greater clarity on how the intent of

such designations will be treated and under what circumstances it might be inappropriate to apply the e-bike exemption for use on trails that are legislatively intended to be non-motorized.

Specifics of Level of NEPA Performed (not addressed in the Rule)

The type of NEPA and manner in which NEPA will take place in the future to address e-bikes is not discussed in the Rule. Consistent e-bike implementation is important, yet this is left to the BLM offices to determine. Many BLM offices have undergone new Resource Management Plans (RMPS) or Travel Management Plans (TMPS) in recent years. These included significant Environmental Impact Studies (EIA) or Environmental Assessments (EA) will not be repeated or updated for years to come. Since the Rule does not address this future path, the public is left to speculate how it will be addressed. IMBA surmises the BLM will likely take one of three paths for analyzing future e-bike access decisions but would like to see more information to provide clarity and ensure consistency in this regard. The anticipated optional paths are as follows.

1. **New EIS/EA to analyze trail-by-trail use.** While this might be the most ideal and thorough step and one IMBA places high priority on, this is the least realistic or least practical when BLM staff time and planning costs are factored in. However, it may be the most necessary path in many situations, particularly if the public is not unified in their positions. Taking appropriate steps to expedite the NEPA process is necessary but this must not come at the expense of public comment or thorough trail-by-trail and network planning considerations. For new trail proposals that might allow eMTB access, this is the plausible only step..
2. **Determination of NEPA Adequacy (DNA).** A DNA utilizing recent NEPA to make an abbreviated decision on e-bike use, while still scoping for public comment and factoring in potential risks versus value, may be an appropriate step to fast-track a decision where a reasonable public consensus exists around a proposed action. A key element will be demonstrating the recent NEPA is in fact an adequate stand-in for a new NEPA review. Recent NEPA must have assessed and addressed broad trail recreation across a diverse spectrum of users and be able to apply that to assess if and where e-bikes can fit appropriately within the existing trail network. If the recent NEPA resulted in protracted lawsuits around trail access, the conditions likely do not exist for a successful use of a DNA.
3. **Categorical Exclusion (CE).** While possibly appropriate in some circumstances, a CE that waves further necessary NEPA when making trail decisions should be the least likely relied upon process for making e-bike access decisions on trails.

The final Rule should provide better clarity to its authorized officers and the public on the appropriate next steps for implementation. Significant public consternation exists around what this will look like.

Excluding E-bikes vs. Exempting Roads and Trails (not addressed in the Rule)

In analyzing the Rule, IMBA determines an exemption should specifically apply to the trail during the NEPA process and not as an exclusion for the e-bike for two important reasons. E-bikes are subject to private ownership and can be modified or used in a manner that disqualifies an e-bike from the exemption criteria. Not all e-bikes or uses of e-bikes will qualify and not all roads and trails will allow any or all e-bikes. This creates inconsistencies and confusion, making management of this changing dynamic disastrous. From a legal standpoint, to “exclude” is to cause something to be kept out—in this case kept out of the motorized definition. On the contrary, to “exempt” is to authorize something to be allowed in or to remain in (in this case e-bikes on non-motorized trails) and typically based on some set of criteria. Therefore, an e-bike exclusion is less effective since the criteria that must be met fluctuate based on road or trail designations and the type and manner of use. A designated exemption for the road

or trail works better, as it remains consistent and assigned to an unchanging on-the-ground feature.

This exemption process should mirror the NEPA designation process for motorized vehicles where individual roads and trails are either open, limited or closed to the range of motorized vehicles. The e-bike itself still has to meet certain criteria to make use of the trail exemption. All roads and trails should eventually go through this NEPA process to determine where e-bike use can be authorized. Attaching the “exemption” to each designated trail versus the e-bike, allows for the exemption to be recorded in a public database, produced on maps, and consistently enforced.

Admittedly, IMBA is not entirely sure how to word the language to achieve the shift from e-bike exclusion to trail exemption. IMBA thinks e-bikes should be defined under the motorized off-road vehicle definition and limited to designated routes. Exemptions that allow e-bikes should be attached to the road or trail in which they are allowed.

Creating an Electric Assist Vehicle (EAV) Category (not addressed in the Rule)

A significant part of this Rulemaking is because e-bikes are bikes with a motor. E-bikes have essentially antiquated the traditional black and white categories of motorized vs non-motorized. Trails should simply be designated to allow individual uses within the use spectrum and when the spectrum expands the designation of uses allowed can follow suit.

If eliminating the motorized and non-motorized nomenclature is not possible, IMBA recommends the BLM recalibrate its Rule so e-bikes and specifically eMTBs are defined and managed as a set of independent categories (possibly a new electric assisted vehicle or EAV category) and placed between motorized vehicles and non-motorized bikes to capture all current and future electric assisted recreational uses. The BLM should then establish criteria for what constitutes an EAV. Creating a catch-all EAV category can streamline and simplify future management actions and decisions. Electric assist motors requiring some human physical input to engage a motor will likely be applied to other vehicular devices or purposes beyond bikes as both technology and demand evolve. There are already pedalac boats, electric climbing ascenders and other e-assist inventions testing the market. There are ski-bike devices on the market that easily turn an electric fat tire bike into a one wheeled/one ski electric-ski-bike, potentially evading the definition of a two or three-wheeled cycle.⁷ It is not that all future EAVs will be allowed in the same places, NEPA will still need to determine that, but each time another EAV or device is created and public demand for access grows, it will have a fitting category, with defined criteria, to be placed within without necessitating another rulemaking. Managers can then focus their time on where it is deemed appropriate.

Trail Sign Standards (not addressed in the Rule)

The Rule as written will rely heavily on trail signage to ensure public compliance since not all trails will be open to any or all e-bikes. The Rule currently makes no mention for how to sign trails for e-bike use or how to differentiate between classes for individualized designations. IMBA believes the solution is in signage standards and attaching the exemption to the trail versus the e-bike. IMBA recommends the BLM make clear any eventual trail or trail system opened to e-bike use will maintain a trail sign

⁷ Pedalac boats - <https://www.youtube.com/watch?v=-HO1ToueKJI>

Demand for e-assisted skateboards- <https://electric-skateboard.builders/t/push-assist-e-skateboard/72722>

Production electric climbing ascenders

https://www.skylotec.com/eu_en/industry/products/power-ascender/actsafe-acx-power-ascender-poa-001.html

Aspirational E-ski touring spoofs - <https://www.youtube.com/watch?v=cJWkM531Keg>

Ski-bike modifications - <https://www.fatbikeskis.com/>

standard that utilizes separate allowable use demarcations (like those affixed to carsonite signs) to depict both bikes and e-bikes independently. Greater clarity in the Rule is needed to resolve public concerns over aggregated or combined signage practices.

Some believe the Rule will no longer differentiate between e-bikes and traditional bikes where they share access. The Rule can be interpreted in a way that supports this view as well. The following statement gives IMBA pause: on page 25, the Rule states, *(ii) If the authorized officer allows E-bikes in accordance with this paragraph, an E-bike user shall be afforded all the rights and privileges, and be subject to all of the duties, of user [sic] of a non-motorized bicycle.* Limiting trail use to Class 1 e-bikes only will help simplify signage, create public clarity, and prevent the need to demarcate each of the Class 1, 2 or 3 allowances across all the BLMs trails.

Stipulated Trail Funding (not addressed in the Rule)

- a. **Recreation Trail Program (RTP):** The Federal Highway Administration (FHWA) currently defines e-bikes under 23 U.S. Code § 217 (j) 2. RTP grants are administered by FHWA under 23 U.S. Code § 206. Under 23 U.S. Code § 217 (h), the RTP unequivocally prohibits motorized vehicle use of non-motorized trails for recreational purposes and it defines any e-bike as a motorized vehicle. For trails which have been funded by RTP funds stipulated for non-motorized recreation, no e-bikes of any kind would be allowed on those trails even if utilizing the proposed exemption from the BLM Rule. Based on the best available data, research found only a handful of BLM trails have utilized RTP funds stipulated for non-motorized recreation.⁸ There are likely more. Many other mountain bike trails exist on BLM lands that have likely utilized RTP funding, but they appear to fall under other categories that do not limit them to non-motorized use. These trails could be designated to allow eMTBs without violating FHWA and RTP rules. The BLM should publicly identify all trails that have these associated challenges and state what their status is.
- b. **Land and Water Conservation Fund (LWCF):** Trails exist on BLM lands that have likely utilized LWCF funding, but this data has not been available. The state side of LWCF is administered by the State and Local Assistance Programs Division. This is likely the source of funding for trails for recreation, as the federal side is primarily focused on land acquisitions. As of this writing, it remains unclear what impact this Rule may have on the variety of trails that exist thanks to LWCF. The BLM must consider the impact of the Rule on these vital federal funding programs and how that might impact existing uses or restrict future designations.
- c. **State-based User Fee Programs:** Many states have OHV programs or are increasingly discussing recreational use or mountain bike fee sticker programs as funding mechanisms for trail development and maintenance. These programs are generally separated by motorized and non-motorized distinctions. Where will e-bikes fit in? Resolving whether an e-bike is always a bike or always an OHV matters when managing the existing OHV programs or establishing these new non-motorized use programs, and who pays into what program. The BLM Rule complicates this as e-bikes fluctuate between the two diametrically opposed categories when used in different ways. Will e-bike operators on public land trails be forced to pay into both programs or will they be lost in between and not pay into either? These issues will need to be resolved fairly and consistently and the Rule fails to acknowledge its role in the manageability of its lands as it pertains to these complicated issues.

⁸ These are: the Hyatt-Howard Trail in Oregon, Buckskin Passage of the Arizona National Scenic Trail in Arizona, the North Trail and All Seasons Regional Trail in Nevada, the Red Fleet Flow Trail in Utah, and the Meadowood Mason Neck Trails in Virginia.

Conclusion

IMBA appreciates the BLM's committed desire in increasing public access and the thoughtful efforts made in the development of this Rule. IMBA also recognizes this is not a simple issue nor is the public in agreement on the outcome. Getting the Rule right is not only important for appropriate future access for e-bikes, but it is extremely important for preserving world-class access for traditional mountain bikes, which the BLM has been known for.

Sincerely,



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