

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[CA-339-04-1610-DR]****Establishment of Interim Final Supplementary Rules on Public Lands in the Headwaters Forest Reserve Managed by the Arcata Field Office, California****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Establishment of Interim Final Supplementary Rules with requests for comments.

**SUMMARY:** In accordance with the approved Headwaters Forest Reserve Resource Management Plan, the Bureau of Land Management (BLM), California State Office, is issuing interim final supplementary rules and requesting comments. These interim final supplementary rules will apply to the public lands within the Headwaters Forest Reserve, Arcata Field Office, Humboldt County, California, and will be effective upon publication and remain in effect until publication of a final supplementary rule. BLM has determined that these rules are needed to protect the area's natural resources and provide for the health and safety of the public and neighboring residents. These rules do not propose or implement any land use limitations or restrictions other than those included within BLM's decisions in the Headwaters Forest Reserve Approved RMP, or allowed for by existing law or regulation.

**DATES:** The interim final supplementary rules are effective November 9, 2005. We invite comments until January 9, 2006.

**ADDRESSES:** Mail or hand deliver all comments concerning the interim final supplementary rules to the Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

**FOR FURTHER INFORMATION CONTACT:** Robert Wick, Planning and Environmental Coordinator, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95519, 707-825-2321. E-mail: [rwick@ca.blm.gov](mailto:rwick@ca.blm.gov).

**SUPPLEMENTARY INFORMATION****I. Public Comment Procedures**

Written comments on the interim final supplementary rules should be specific, confined to issues pertinent to the interim final supplementary rules, and should explain the reason for any recommended change. The Record of Decision for the Headwaters Forest Reserve Resource Management Plan was

signed on June 29, 2004, and represents the final decision of the Bureau of Land Management Director regarding management of Reserve lands. Therefore, comments requesting changes to the management plan are outside the scope of this comment period. Where possible, comments should reference the specific section or paragraph of the rule which the comment is addressing. BLM need not consider or include in the Administrative Record for the final rule; (a) Comments that BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or; (b) comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521, during regular business hours (7:45 a.m. to 3:45 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

**II. Background**

The BLM is establishing these interim final supplementary rules under the authority of 43 CFR 8365.1-6, which allows BLM State Directors to establish such rules for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue rules of less than national effect without codifying the rules in the Code of Federal Regulations. Upon completion, the rules will be available for inspection in the Arcata Field Office; the rules will be posted at the Arcata Field Office; and they will be published in a newspaper of general circulation in the affected vicinity.

BLM is establishing these interim final supplementary rules for the Headwaters Forest Reserve, designated by Congress in the 1998 Interior

Appropriations Bill (Pub. L. 105-83). The Headwaters Forest Reserve is located approximately 6 miles southeast of Eureka, Humboldt County, California, within T.3N., R.1E., Secs. 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29; T.4N., R.1E., Sec. 31; T.4N., R.1W., Secs. 35, 36, Humboldt Meridian. The interim final supplementary rules will allow for implementation of the resource protection and public use decisions in the Headwaters Forest Reserve Resource Management Plan/Final EIS (RMP). The RMP was prepared as a requirement of the Congressional legislation and with full public participation and multi-agency collaboration.

The BLM finds good cause to publish these supplementary rules on an interim final basis, effective the date of publication, for the protection of the reserve's unique and sensitive ecosystem and to provide for public health and safety. The Headwaters ecosystem provides critical habitat for several Federally-listed threatened and endangered species that are sensitive to impacts associated with public use. These species include the northern spotted owl, marbled murrelet, and several salmonids. Lands adjoining the Reserve include an area of private residences and large blocks of active industrial timberlands with extensive heavy equipment use. The rules are necessary for the safety of both public land visitors and these adjoining landowners.

The interim final supplementary rules will facilitate the implementation of the management actions contained in the RMP and ROD for the Headwaters Forest Reserve completed in 2003 and 2004, respectively. Throughout development of the RMP, BLM strived to create an open planning process. This planning process was designed to engage and involve public interest groups from the local to the national level, concerned individuals, Federal and state resource agencies, and local and Tribal governments. The plan was completed in cooperation with the California Department of Fish and Game (DF&G) which manages an easement on Reserve lands for the state of California. Therefore the plan also followed all public and agency involvement requirements of the California Environmental Quality Act (CEQA) and the associated Environmental Impact Report (EIR) process. DF&G has also designated the Reserve as a state Ecological Reserve. All interim final rules in this notice are consistent with state policies and laws guiding public use of ecological reserves.

The following is a summary of the collaborative planning process which has led to the Record of Decision.

**Public Scoping:** A public scoping process for preparation of the RMP and related EIS/EIR was conducted from May 18, 2000 to August 18, 2000. Public and agency input was solicited through three public meetings (in Eureka, San Francisco, and Sacramento), use of a Web site offering information and electronic comment input, establishment of dedicated telephone lines for information requests and comment input, and provisions for submission of written comments by mail. BLM summarized scoping comments, and prepared a scoping report in October 2000.

**Draft RMP Development:** The BLM Arcata Field Office developed a draft RMP, based on the scoping comments and concerns from public resource agencies and local Tribal governments. Planning updates were mailed to persons and organizations that had participated in the scoping process.

**Draft RMP/EIS/EIR:** A public/agency review period for the draft plan/EIS/EIR was conducted according to requirements of NEPA and CEQA. A 90-day review period was established via publishing a notice of availability of a draft EIS in the **Federal Register** on May 31, 2002, publishing a notice in newspapers of general circulation and mailing a notice to all persons and organizations on the RMP mailing list.

The public review period extended from May 31, 2002, to September 6, 2002. During this period, public meetings were held in Eureka (July 16, 2002), Sacramento (July 24, 2002), and San Francisco (July 25, 2002). Court reporters were present at all of the meetings and verbatim transcripts were prepared. Several means of submitting comments were provided: Verbal comments at the public meetings, telephone voice mail center, e-mails, or written letters. The draft RMP comment period resulted in comments from over 6,400 parties.

**Proposed RMP and Final EIS/EIR:** The Proposed RMP and Final EIS/EIR were released on October 7, 2003, and a Notice of Availability was published in the **Federal Register** on October 10, 2003. The document was distributed by mail to a mailing list that had been updated to include persons and organizations that previously commented. A transmittal letter from the Arcata Field Manager described the process for filing protests to the plan within a 30-day period. The protest filing deadline was November 10, 2003. The plan decisions relating to the interim final supplemental rules were

analyzed in the final EIS and the rules were published as an appendix in the Proposed RMP.

**Consistency Requirements:** In accordance with planning regulations at 43 Code of Federal Regulations 1610.3-2(e), the Proposed RMP/Final EIS/EIR was sent to the Governor of California on October 6, 2003, for a 60-day review of consistency with state or local plans, policies, and programs. In a letter dated December 6, 2003, the Governor's Office of Planning and Research (OPR) determined that the Proposed RMP was not inconsistent with any State or local plans, policies or programs.

**Plan Protest Resolution:** The BLM Director has addressed and resolved all protests concerning adoption of the approved RMP. According to BLM regulations (43 CFR 1610.5-2(b)), the decision of the BLM Director on plan protests is the final decision of the Department of the Interior.

### III. Procedural Matters

#### *Executive Order 12866, Regulatory Planning and Review*

These interim final supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These interim final supplementary rules will not have an annual effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities. These interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These interim final supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. The interim final supplementary rules only impose rules of conduct on recreational users of public lands in the Headwaters Forest Reserve and will have a positive effect on public health and safety.

#### *Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)*

The interim final supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The interim final supplementary rules do not in any way apply to private property or affect private land rights. Several of the rules

will serve to reduce impacts of public land users on adjoining private properties, so will serve to benefit these landowners. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

#### *Executive Order 13132, Federalism*

The interim final supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The planning process and EIS/EIR that determined the need for these rules was conducted jointly by the BLM and the State of California. The interim final supplementary rules affect land only in one state, California, and do not address jurisdictional issues involving state government.

#### *Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that these interim final supplementary rules would not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have found that these interim final supplementary rules do not include policies that have Tribal implications. The BLM consulted during the RMP process with the three Tribes whose historical territories include the reserve. All three Tribes concurred with the decisions in the RMP. The interim final supplementary rules do not affect lands held for the benefit of Indians, Aleuts or Eskimos.

#### *National Environmental Policy Act*

These interim final supplementary rules in and of themselves do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). However, they are a component of a larger plan (Resource Management Plan) that constitutes a major Federal action. BLM has prepared a draft environmental impact statement/final environmental impact statement (DEIS/FEIS) on the Resource Management Plan that analyzes each decision corresponding to

the interim final supplementary rules. In addition to this analysis, the interim final supplemental rules were directly published in the final EIS. These documents are on file and available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The Record of Decision has also been completed and is also on file at the specified address.

#### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if supplementary rules would have a significant economic impact, on a substantial number of small entities. These interim final supplementary rules only regulate behavior of recreational visitors to the Headwaters Forest Reserve, and will not affect business or commercial use of public lands, or use by small organizations or small governmental jurisdictions. Therefore, BLM has determined under the RFA that these interim final supplementary rules would not have a significant economic impact on a substantial number of small entities.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

These interim final supplementary rules are not a “major rule” as defined at 5 U.S.C. 804(2). They merely contain rules of conduct for recreational use of certain public lands and have no effect on business, commercial or industrial use of public lands.

#### *Unfunded Mandates Reform Act*

These interim final supplementary rules do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or the private sector of more than \$100 million per year; nor do they have a significant or unique effect on small governments. These interim final supplemental rules only apply to public land recreation users and do not require anything of state, local or Tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

#### *Paperwork Reduction Act*

These interim final supplementary rules do not contain information collection requirements that the Office of Management and Budget must

approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### *Author*

The principal authors of these interim final supplementary rules are Dan Averill, Headwaters Forest Reserve Manager, and Bob Wick, Planning and Environmental Coordinator, Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

For the reasons stated in the preamble and under the authorities for supplementary rules found under 43 CFR 8365.1–6, the California State Director, Bureau of Land Management hereby issues interim final supplementary rules, effective upon publication, for public lands managed by the BLM in the Headwaters Forest Reserve, to read as follows:

#### *Definitions*

**Headwaters Forest Reserve**—Encompasses all public lands and associated access easements held by BLM within T.3N., R.1E., Secs. 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29; T.4N., R.1E., Sec. 31; T.4N., R.1W., Secs. 35, 36, Humboldt Meridian. Public access easement routes will be clearly identified by on-site signing and descriptive information. All references to the “Reserve” in this notice are referring to the Headwaters Forest Reserve as defined here.

**Camping**: The erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

**Guided BLM Hike**—A hike conducted by BLM employee or volunteer. Guided hikes may be conducted by other representatives under written permission of the BLM authorized officer.

**Designated Trail**: A trail developed, maintained, and explicitly identified for public use by the BLM. All designated trails will be identified by a combination of trailhead maps and on-site signing listing allowable uses.

**Firearm or other projectile shooting device**—Includes all firearms, air rifles, pellet and BB guns, spring guns, bows and arrows, slings, paint ball markers, other instruments that can propel a projectile, or any instrument that can be loaded with and fire blank cartridges.

#### *Interim Final Supplementary Rules for the Headwaters Forest Reserve*

The following rules apply to all visitors to the Headwaters Forest Reserve. Employees and agents of the

BLM will be exempt from these rules during performance of specific official duties as authorized by the Reserve Manager.

1. The northern portion of the Reserve, accessed via the Elk River Road is open for day use only, from sunrise to sunset.

2. The southern portion of the Reserve, accessed via the Felt Springs Road, is open only for guided BLM hikes. Hikes will normally be conducted from May 15 through November 15, based on suitable dry weather conditions. All other times, public access to the southern end of the Reserve is not allowed.

3. Dogs are allowed on the Elk River Corridor Trail and must be under voice control of the owner/possessor at all times, or on a leash. Pets are otherwise not allowed within the Reserve.

4. Pedestrian use is allowed only on designated trails.

5. Bicycles are allowed on the Elk River Corridor Trail to the posted end point approximately 3 miles from the parking area. Bicycles must stay on the designated trail at all times.

6. Motorized vehicles are not allowed.

7. Equestrian use is not allowed.

8. Discharge or use of firearms or other projectile shooting devices is not allowed.

9. Hunting and fishing are not allowed.

10. Camping is not allowed.

11. Swimming or wading of humans or dogs in creeks or rivers is not allowed.

12. Campfires, charcoal grills, cookstoves, fireworks or other incendiary devices capable of producing open flames, sparks or embers are not allowed.

13. Vegetation gathering is not allowed.

#### *Penalties*

Under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a), and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than \$1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

#### **Mike Pool,**

*State Director.*

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