

73393), as the hearing cancellation notice indicated.

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**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 7**

**RIN 1024-AC99**

**Curecanti National Recreation Area, Personal Watercraft Use**

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing to designate areas where personal watercraft (PWC) may be used in Curecanti National Recreation Area, Colorado. This proposed rule implements the provisions of the NPS general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The individual parks must determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

**DATES:** Comments must be received by May 16, 2006.

**ADDRESSES:** You may submit comments, identified by the number RIN 1024-AC99, by any of the following methods:

—Federal rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

—E-mail NPS at [CurecantiPWC@urscorp.com](mailto:CurecantiPWC@urscorp.com). Use RIN 1024-AC99 in the subject line.

—Mail or hand delivery to: Superintendent, Curecanti National Recreation Area, 102 Elk Creek, Gunnison, CO 81230.

—For additional information see “Public Participation” under **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208-4206. E-mail: [jerry\\_case@nps.gov](mailto:jerry_case@nps.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Additional Alternatives*

The information contained in this proposed rule supports implementation of the preferred alternative for Curecanti National Recreation Area (CNRA) in the Environmental Assessment (EA) published April, 2003, as modified by the errata issued March 10, 2005. The changes to the environmental assessment in the errata were made to modify the preferred alternative and its analysis, to address public comments on the EA, and to clarify the text. The public should be aware that two other alternatives were presented in the EA, including a no PWC alternative. Those alternatives should also be reviewed and considered when making comments on this proposed rule.

*Personal Watercraft Regulation*

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except 21 preserves, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be allowed. On November 7, 2002 PWC use was discontinued at CNRA.

*Description of Curecanti National Recreation Area*

Curecanti National Recreation Area (Curecanti) was established in 1965 to provide for conservation of scenic, natural, historic, archeological, and wildlife values. The goal of the National Recreation Area is to provide for public use and enjoyment while ensuring visitor safety, resource preservation, and conservation. Curecanti is located on U.S. Highway 50 (U.S. 50) west of Gunnison, Colorado.

Three reservoirs, named for corresponding dams on the Gunnison River, form the heart of Curecanti National Recreation Area. The three reservoirs are Blue Mesa Reservoir, Morrow Point Reservoir, and Crystal Reservoir. Blue Mesa Reservoir is Colorado's largest body of water and is

home to the biggest Kokanee Salmon fishery in the United States. Morrow Point Reservoir is the beginning of the Black Canyon of the Gunnison. Crystal Reservoir is the site of the Gunnison Diversion Tunnel, a National Historic Civil Engineering Landmark. In addition to the three reservoirs, recently discovered dinosaur fossils, a 5,000 acre archeological district, a narrow gauge train, and traces of 6,000 year old dwellings further enhance the significance of Curecanti.

*Purpose of Curecanti National Recreation Area*

The purpose and significance statements listed below are from Curecanti's Strategic Plan and General Management Plan. Curecanti National Recreation Area was established for the following purposes:

1. Conserve the scenery, natural, historic, and archeological resources, and wildlife of Curecanti.
2. Provide for public use and enjoyment in such a way as to ensure visitor safety and resource preservation or conservation by establishing and maintaining facilities and providing protection and interpretive services.
3. Manage the lands, waters, and activities of Curecanti in such a way that it does not interfere with the purposes of the Colorado River Storage Project Act and other Bureau of Reclamation agreements affecting the operation of the Aspinall Unit.
4. Mitigate the loss of fish and wildlife resources as a result of the Colorado River Storage Project.

*Significance of Curecanti National Recreation Area*

The following statements summarize the significance of Curecanti:

1. Blue Mesa Reservoir is one of the largest high-altitude bodies of water in the United States. It provides an exciting diversity of water recreation opportunities for windsurfers, sail boaters, and water skiers.
2. The scenic values of the canyon, the needles, the pinnacles, and the reservoirs provide dramatic contrast, which causes visitors to slow down, pause, and reflect on the diversity of the landscape and its spaciousness.
3. Curecanti provides one of the best cold-water fishing opportunities in the nation. This is due primarily to the Kokanee salmon run occurring in Blue Mesa. The Morrow Point and Crystal Reservoirs' trout fisheries routinely attract fishing enthusiasts from throughout the nation because of the high-quality trout fishing and uniqueness of the canyon environment.

4. The prehistoric and historic stories of human culture in the Curecanti area are recorded in the traces and tracks left by Native Americans, miners, railroaders, and ranchers. The cultural history of this area documents not only the human struggles to survive but also how changing human value systems; economic, social, and technological changes; and the importance of water have shaped the use and character of the land and its people. Cultural history contains archeological examples of some of the oldest villages found in North America, predating the building of the pyramids.

5. The narrow-gauge railroad exhibit in Cimarron graphically portrays the story of technology's effects of shaping people and using land; the agony and difficulties of building track in narrow canyons in the winter where the sun seldom shined; and of taking the hard way instead of the easy trail. Examples of a locomotive, tender, and caboose used on the railroad are on exhibit at Cimarron.

The park's mission statement is as follows: "Curecanti National Recreational Area will preserve, protect, and interpret the tremendous collection of nationally significant, diverse natural and cultural resources balanced with the provision of outstanding recreational opportunities."

#### *Authority and Jurisdiction*

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks \* \* \*

16 U.S.C. 1a-1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established \* \* \*

As with the United States Coast Guard, NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of

the National Park System, including waters subject to the jurisdiction of the United States \* \* \*" (16 U.S.C. 1a-2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

#### *PWC Use at Curecanti National Recreation Area*

Curecanti National Recreation Area includes Blue Mesa Reservoir, which was created with the completion of the Blue Mesa Dam. Blue Mesa Reservoir is comprised of three basins: Sapinero, Cebolla, and Iola as well as various arms. The basins are often referred to as the main body of the reservoir to distinguish activities there from activities in the arms.

Approximately 1 million visitors use Curecanti's facilities annually. This figure includes visitors who pursue recreation activities on the reservoir and those who engage in other recreation opportunities. Motorboats and other watercraft have been used in Curecanti since 1975. Personal watercraft have emerged at Curecanti only since their introduction in the 1980s, and particularly since the summer of 1995 when personal watercraft were available for rent from a park concessioner. Park staff believes PWC use has increased since 1995, and a registration survey mailed to vessel users requesting an annual permit revealed that in 2000, 0.69% of over 400 respondents were PWC users. The annual use is estimated to be 792 PWC in 2002, increasing at approximately 2% annually to 965 PWC in 2012. Based on ranger observation, most PWC users are from Colorado, they limit their PWC use to approximately 2 hours, and they wear a wetsuit because of cold-water temperatures and high afternoon winds. In addition, PWC use has conflicted with both bank and boat fishermen from Dry Creek to Bay of Chickens.

Before the ban on PWC use, the General Management Plan and Superintendent's Compendium allowed personal watercraft and other watercraft to operate only on the main body of the Blue Mesa Reservoir and lake arms with speed and zone restrictions. PWC use was prohibited in all other areas of the park through restrictions on horsepower and restrictions on motorized vessels. Personal watercraft generally did not operate at the extreme ends of lake arms because the arms are narrow in width. On the main body of the reservoir, personal watercraft were widely distributed. In addition to the main

body, high-use areas include the Iola Basin and Colorado State Highway 149 (Highway 149) areas. Other locations with limited use include Stevens Creek, Cebolla Basin, Soap Creek Arm, Bay of Chickens, and the main marina at Elk Creek.

This rulemaking is focusing exclusively on PWC use at the park. The park also intends to develop a water/vessel management plan for the use of other vessels.

#### **Resource Protection and Public Use Issues**

##### *Curecanti National Recreation Area Environmental Assessment*

As a companion document to this NPRM, NPS has issued the *Personal Watercraft Use Environmental Assessment for Curecanti National Recreation Area*. The Environmental Assessment (EA) was open for public review and comment from June 11, 2003 until July 13, 2003. The EA is available at [http://www.nps.gov/cure/webvc/pwc\\_use.htm](http://www.nps.gov/cure/webvc/pwc_use.htm).

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Curecanti to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. In March, 2005 an errata was issued. The changes to the environmental assessment were made to modify the preferred alternative and its analysis, to address public comments, and to clarify the text. The assessment assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012. The assessment also compares each alternative to PWC use before November 7, 2002, when the ban took effect. In addition, the Environmental Assessment defines such terms as "negligible" and "adverse." In this document, these terms are used to describe the environmental impact. Refer to the EA for complete definitions.

The environmental assessment evaluates three alternatives addressing the use of personal watercraft at Curecanti:

Alternative A—By using a special regulation, the park would reinstate PWC use as previously managed prior to November 7, 2002, and would add one buffer zone as described below. Under this alternative, PWC use would occur in areas of Blue Mesa Reservoir and portions of the lake arms. Areas appropriate for PWC use would include Sapinero, Cebolla, and Iola Basins; Bay

of Chickens; Dry Creek; Elk Creek; the Highway 149 area; and Lake Fork, Soap Creek, and West Elk arms. Operation of all motorized watercraft would continue to be prohibited in areas east of Beaver Creek within the Gunnison River Canyon and in the area downstream from the East Portal diversion dam. All designated launch areas on Blue Mesa Reservoir (developed and unimproved) would remain open to PWC use. Personal watercraft would be allowed to land on any shoreline at Blue Mesa Reservoir.

The following areas would remain closed to all boating, including personal watercraft, and shoreline entry: Blue Mesa Dam downstream for 225 yards, Morrow Point Dam downstream for 130 yards, Crystal Dam downstream for 700 yards, and East Portal diversion dam upstream for 60 yards. In addition, the following areas would be zoned as flat-wake speed areas: the area upstream from Lake City Bridge to Beaver Creek; the area within the arms of Blue Mesa Reservoir that is less than 1,000 feet from shore to shore at full pool level. These areas will be marked by designated buoys. These arms include Soap Creek Arm, West Elk Arm, Lake Fork Arm, and Cebolla Arm; narrow waterways off the Bay of Chickens and Dry Creek; Elk Creek and Lake Fork Marinas; and Iola and Stevens Creek boat launch areas.

In addition to the areas outlined above, a 100-foot buffer zone from the shoreline would be established at the Stevens Creek campground, as marked by buoys. The buffer area would be zoned as a flat-wake speed area. A buffer zone will provide for the protection of an active Gunnison sage grouse lek and nesting area, and would mitigate potential noise impacts from PWC use and associated shoreline use during the lek and nesting season (mid-March–July).

Alternative B—Same as alternative A, with the following additional restrictions. This alternative would establish a 100-foot buffer zone along the south shore of Blue Mesa Reservoir from 0.5 mile west of Iola to 0.5 mile east of Middle Bridge for soundscape, cultural resource, and wildlife protection as well as to prevent erosion.

Alternative B includes further speed restrictions. Under this alternative, the additional speed restrictions would apply to PWC use in each of the lake arms on Blue Mesa Reservoir from the mouth of each lake arm upriver to the flat-wake areas. In these restricted areas PWC use would need to operate at flat-wake speeds when within 150 feet of another boat, a person in or floating on the water, shore fisherman, a launching

ramp, a dock, or a designated swimming area.

No-Action Alternative—The park would continue the PWC ban. PWC use would not be reinstated and the National Park Service would not take action to draft a special regulation to reinstate PWC use.

Alternative A is the park's preferred alternative because it would best fulfill the park responsibilities as trustee of the sensitive habitat; ensure safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attain a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

This document proposes regulations to implement alternative A at Curecanti National Recreation Area.

The following summarizes the predominant resource protection and public use issues associated with the proposed rule which implements alternative A at Curecanti National Recreation Area. Each of these issues is analyzed in the *Curecanti National Recreation Area, Personal Watercraft Use Environmental Assessment*.

#### Water Quality

Most research on the effects of personal watercraft on water quality focuses on the impacts of two-stroke engines. Fuel used in PWC engines contains many hydrocarbons, including benzene, toluene, ethylbenzene, and xylene (collectively referred to as BTEX) and polyaromatic hydrocarbons (PAH). PAH also are released from boat engines, including those in personal watercraft. These compounds are not found appreciably in the unburned fuel mixture, but rather are products of combustion. Discharges of these compounds—BTEX and PAH—have potential adverse effects on water quality.

A typical conventional (i.e., carbureted) two-stroke PWC engine discharges as much as 30% of the unburned fuel mixture directly into the water. At common fuel consumption rates, an average two-hour ride on a personal watercraft may discharge 3 gallons of fuel into the water. According to the California Air Resources Board, an average personal watercraft can discharge between 1.2 and 3.3 gallons of fuel during one hour at full throttle. However, hydrocarbon (HC) discharges to water are expected to decrease substantially over the next 10 years due to mandated improvements in engine technology.

Cumulative emissions in Blue Mesa Reservoir would be similar to those

previous to the ban on PWC use. In addition to the personal watercraft that use Blue Mesa Reservoir, other two-stroke outboard motorboats, and to a lesser degree the inboard or inboard/outboard motorboats would contribute pollutants to the water. A total of 216 vessels in 2002 and 256 vessels in 2012 are estimated during a peak use day. The EA found there would be negligible adverse effects on water quality based on ecotoxicological threshold volumes. Ecotoxicological threshold volumes are the volume of water needed to dilute the emissions from PWCs. Human health benchmark is the threshold volume of water needed to avoid impacts to human health. All pollutant loads in 2002 and 2012 from personal watercraft and other motorboats would be well below ecotoxicological benchmarks and criteria as described in the EA.

PWC impacts on water quality from benzo(a)pyrene, naphthalene, and benzene based on human health (ingestion of water and fish); and Environmental Protection Agency (EPA) and State of Colorado water quality criteria, would range from negligible to minor adverse in both 2002 and 2012. Cumulative impacts from PWC and other motorboats would be negligible adverse for benzo(a)pyrene and naphthalene. Cumulative water quality impacts due to benzene would be minor to moderate adverse in 2002 and 2012 based on human health benchmarks. Impacts in Blue Mesa Reservoir due to benzene would be reduced to minor adverse impacts when the half-life of benzene is considered. Implementation of this proposed rule would not result in an impairment of water quality.

#### Air Quality

Personal watercraft emit various compounds that pollute the air. In the two-stroke engines commonly used in personal watercraft, the lubricating oil is used once and is expelled as part of the exhaust; and the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>), particulate matter (PM), and carbon monoxide (CO). Personal watercraft also emit fuel components such as benzene that are known to cause adverse health effects. Even though PWC engine exhaust is usually routed below the waterline, a portion of the exhaust gases go into the air. These air pollutants may adversely impact park visitor and employee health, as well as sensitive park resources.

In the presence of sunlight, VOC and NO<sub>x</sub> emissions combine to form ozone. Ozone causes respiratory problems in humans, including cough, airway

irritation, and chest pain during inhalations. Ozone is also toxic to sensitive species of vegetation. It causes visible foliar injury, decreases plant growth, and increases plant susceptibility to insects and disease. Carbon monoxide can affect humans as well. It interferes with the oxygen carrying capacity of blood, resulting in lack of oxygen to tissues. NO<sub>x</sub> and PM emissions associated with PWC use can also degrade visibility. NO<sub>x</sub> can also contribute to acid deposition effects on plants, water, and soil. However, because emission estimates show that NO<sub>x</sub> from personal watercraft are minimal (less than 5 tons per year), acid deposition effects attributable to personal watercraft use are expected to be minimal.

As was the case before the ban on PWC use, negligible adverse impacts for CO, HC, PM<sub>10</sub>, and NO<sub>x</sub> would occur in 2002 and 2012. The human health risk from PAH would also be negligible. Cumulative emission levels would be minor adverse for CO and negligible adverse for PM<sub>10</sub>, HC, and NO<sub>x</sub>. This alternative would maintain existing air quality conditions, with future reductions in PM<sub>10</sub> and HC emissions due to improved emission controls. Overall, PWC emissions of HC are estimated to be approximately 16% of the cumulative boating emissions in 2002 and 2012. Therefore, implementation of this proposed rule would not result in an impairment of air quality.

#### Soundscapes

The proposed rule would manage noise from PWC use in affected areas so that visitors' health, safety, and experiences are not adversely affected and would protect birds, waterfowl, and other wildlife from the effects of PWC noise.

Soundscapes include both natural and human components. Natural soundscapes include all naturally occurring sounds such as waves on the shoreline, running water, bird calls, wind blowing through trees, or the sound of thunder. It also includes "natural quiet" that occurs in the absence of natural or human caused sound. The opportunity to experience natural sounds is an enjoyable part of visits to the recreation area.

Common human-caused sounds at Curecanti include engines from PWC and other vessels, vehicle noise, human vocalizations, radios, and other sounds generated by people picnicking and camping. Human sounds are not unexpected or inappropriate at the recreation area, but are a part of the overall soundscape in an area where

water activities, picnicking, camping, and other recreation use are part of the purpose of the park. Evaluation of the appropriateness of human sounds is accomplished by considering visitor expectation, management guidelines, resource sensitivity, and park purpose.

Specific areas within the park where visitors may be sensitive to noise include the surface of Blue Mesa Reservoir and surrounding campgrounds, picnic areas, and hiking trails, including Stevens Creek, Elk Creek, Dry Gulch, and Lake Fork campgrounds as well as Blue Mesa, Old Stevens, Iola, Dry Creek, Bay of Chickens, Dillon Pinnacles, McIntyre Gulch, and Elk Creek picnic areas. Visitors would likely be less sensitive to noise in those areas located close to U.S. 50, which runs along Blue Mesa Reservoir, often close to the shoreline, and rarely more than 0.75-mile away from the shoreline; therefore, providing a relatively high ambient automobile noise.

Noise sensitive activities that may occur throughout the reservoir and immediate area include boat and shoreline fishing and wildlife watching. Noise related to PWC and other watercraft, and sounds related to other human activity, are typically highest during the summer months, especially at Elk Creek and Lake Fork, where most PWC launch. PWC generate noise that varies in pitch and frequency due to the nature of their construction and use. The two-stroke engines are often used at high speeds, and the craft bounce along the top of the water such that the motor discharges noise below and above the water surface. To recreation area visitors, this irregular noise seems to be more annoying than that of a standard motorboat that is cruising along the shoreline, even though the maximum noise levels may be similar for the two watercraft (approximately 80 to 90 dBA at 50 feet). Additionally, visitors who expect to experience natural quiet may consider the irregular noise of PWC more annoying, especially if the craft is operating in one location for extended periods of time.

The proposed rule would result in a minor to moderate adverse impact at certain locations along the reservoir on days when PWC use is relatively heavy. Minor impacts would occur where use is infrequent and distanced from other park users, for example, as PWC users operated far from shore. Moderate impacts could occur from concentrated PWC use in one area, particularly in the narrow canyon between Cebolla and Iola Basins near Elk Creek, where motorized noise could predominate on busy summer weekends. On the highest

PWC use days of the year, such as a Saturday on the Fourth of July holiday weekend, motorized noise could predominate for most of the day at Elk Creek marina. Although noise levels may be bothersome for some, most visitors to Curecanti on a busy holiday weekend will expect to hear motorized noises, and PWC and other motorized use is consistent with park purpose of supplying visitors with water-based recreational opportunities. The cumulative effect of PWC and boating noise would have a minor to moderate adverse impact because it would be heard occasionally throughout the day. Impacts are generally short term, since noise would usually be of limited duration, except on very busy holidays when motorized noise from PWC, other motorboats, automobiles, and other human-caused sounds can predominate for most of the day at the high use, near shore recreation areas such as Elk Creek.

Therefore, noise from PWC would have minor to moderate adverse impacts at most locations at Curecanti and immediate surrounding area. Impact levels would be related to the number of personal watercraft operating as well as the sensitivity of other visitors. Cumulative noise impacts from personal watercraft, motorboats, automobiles on U.S. 50, and other visitors would be minor to moderate adverse because these sounds would be heard occasionally throughout the day and may predominate on busy days during the high use season. The proposed new buffer zone would have speed and wake restrictions that would provide beneficial improvements to the soundscape values.

Implementation of this proposed rule would not result in an impairment of soundscape values.

#### Wildlife and Wildlife Habitat

The proposed rule aims to manage PWC use to protect fish and wildlife including the bald eagle, great blue heron (park native species of special concern) and Gunnison sage grouse (park native species of special concern and Federal candidate for designation as an endangered species) and their habitats from PWC disturbances. Also, the proposed rule would manage PWC use to protect fish and wildlife from the adverse effects that result from the bioaccumulation of contaminants emitted from personal watercraft.

Some research suggests that PWC use affects wildlife by causing interruption of normal activities, alarm or flight, avoidance or degradation of habitat, and effects on reproductive success. This is thought to be a result of a combination of PWC speed, noise, and ability to

access sensitive areas, especially in shallow-water depths. Waterfowl and nesting birds are the most vulnerable to personal watercraft. Fleeing a disturbance created by personal watercraft may force birds to abandon eggs during crucial embryo development stages, prevent nest defense from predators, and contribute to stress and associated behavior changes. Impacts on sensitive species are documented under "Threatened, Endangered, or Special Concern Species."

PWC use could affect wildlife wherever motorized vessels are allowed. When PWC were allowed throughout the main body and arms of Blue Mesa Reservoir prior to the November 2002 ban, use was most concentrated between Elk Creek and the Lake City Bridge, and in the Soap Creek Arm. Most access was from the Ponderosa Campground and the Elk Creek Marina. Due to cool ambient air and water temperatures throughout the majority of the year, PWC use occurred from June through September with peak use during July and August. Due to heavy winds and wave action on Blue Mesa Reservoir, average time of use for PWC per day was 2 hours.

Within the impact analysis area, wildlife such as waterfowl is most likely to occur near the shoreline due to habitat constraints. Some species such as small mammals may visit the shoreline often, even though their primary habitat is outside of the immediate shoreline area. Other wildlife species that occur within the recreation area occur at the shoreline only infrequently. The addition of flat-wake zoning at the Stevens Creek campground and the expanded wake restriction zones in the lake arms would decrease the likelihood of impacts to waterfowl and other species along the shoreline. In the shoreline buffer areas, noise, physical disturbance, and emissions from PWC would be decreased or eliminated. There are no documented cases of deliberate harassment or collisions with wildlife by PWC users on Blue Mesa Reservoir.

Potential cumulative effects to wildlife and wildlife habitat are related to various visitor activities that occur in proximity to wildlife species. Visitors have access to the shoreline by many types of non-personal watercraft, or by automobile and hiking. Non-PWC boating activities account for over 90% of total boating activity in the recreation area. Wildlife routinely exhibit movement or flight response due to disturbance by powerboats.

Interactions between wildlife and human visitors would be limited

because of the low abundance of wildlife within the high use areas and the dispersion of visitors along the shoreline. Shoreline use tends to be concentrated around developed facilities such as marinas, where habitat characteristics are lacking relative to undeveloped shoreline areas. Visitor interactions would not interfere with feeding, reproduction, or other activities necessary for the survival of the wildlife species. Overall, visitors (including PWC users) at Curecanti would cause moderate, short-term adverse impacts to wildlife that are dispersed over a large area along the shoreline.

PWC use at Curecanti would have negligible adverse effects on fish, and minor to moderate adverse impacts on waterfowl and other wildlife. There would be no perceptible changes in wildlife populations or their habitat community structure. Due to low levels of PWC use, coupled with a lack of substantial habitat areas, any impacts to fish, wildlife and respective habitats would be temporary and short term. The intensity and duration of impacts is not expected to increase substantially over the next 10 years, since PWC numbers would not increase substantially and engine technology would continue to improve under EPA industry regulations. On a cumulative basis, all visitor activities would have moderate adverse effects on wildlife and wildlife habitat. All wildlife impacts would be temporary and short term.

Therefore, implementation of the proposed rule would not result in impairment to wildlife or wildlife habitat.

#### Threatened, Endangered, or Special Concern Species

By implementing this proposed rule, the park aims to protect threatened and endangered species, and species of special concern, and their habitats from PWC disturbances.

The same issues described for PWC use and general wildlife also pertain to special concern species. Potential impacts from personal watercraft include inducing flight and alarm responses, disrupting normal behaviors and causing stress, degrading habitat quality, and potentially affecting reproductive success. Special status species at the recreation area include Federal or State listed threatened, endangered, or candidate species. In addition to Federal and State designated species, Curecanti National Recreation Area contains species that park staff considers to be native species of special concern.

The Endangered Species Act (16 U.S.C 1531 *et seq.*) mandates that all

Federal agencies consider the potential effects of their actions on species listed as threatened or endangered. If the National Park Service determines that an action may adversely affect a Federally listed species, consultation with the U.S. Fish and Wildlife Service is required to ensure that the action will not jeopardize the species' continued existence or result in the destruction or adverse modification of critical habitat.

The following species found in Curecanti are Federally listed or candidates for designation as an endangered species according to the U.S. Fish and Wildlife Service (USFWS): bald eagle (threatened), southwestern willow flycatcher (endangered), yellow-billed cuckoo (candidate), Canada lynx (threatened), and boreal toad (candidate). The Colorado Wildlife Commission maintains a list of special status species including State-listed threatened, endangered, or special concern species. The Federally listed species mentioned above with the exception of the yellow-billed cuckoo are also given special status by the State. Other State listed species that may potentially be affected by the action at Curecanti include the greater Sandhill crane, Gunnison sage grouse, American peregrine falcon, and long-billed curlew. All of these species are listed as special concern species and therefore do not have protected status. However, these species have been determined by the Colorado Wildlife Commission to be at risk of eventual threatened or endangered status. One State-listed (threatened) species that is protected is the Colorado River cutthroat trout, which is also Federally listed as threatened. However, USFWS did not include any fish species in their list of Federally listed species potentially affected by PWC management actions. Also, according to the USFWS, there are no federally listed or candidate plant species at Curecanti National Recreation Area that would be affected by PWC use on Blue Mesa Reservoir. However, there are two plant species that occur within the recreation area that are ranked by the Nature Conservancy's Natural Heritage ranking system. The skiff milkvetch (State listed as "critically imperiled") and the Gunnison milkvetch (State listed as "imperiled") occur in upland sagebrush communities within the recreation area, but do not occur along the shoreline of Blue Mesa Reservoir.

The proposed rule would allow PWC use but would include additional PWC management strategies. A resource monitoring program would be established to monitor future impacts. Also, a 100-foot buffer zone would be

established for Gunnison sage grouse habitat on the northern shore of the main body at Stevens Creek. The establishment of a PWC buffer zone along portions of Blue Mesa Reservoir would potentially have beneficial impacts on threatened and endangered species, particularly the Gunnison sage grouse. Effects from PWC noise, physical disturbance, and access would be decreased along this portion of the shoreline. Under the proposed rule, PWC use in Curecanti National Recreation Area may affect but is not likely to adversely affect bald eagle, yellow billed cuckoo, American peregrine falcon, and both milkvetch plant species. As before the ban, there would be no effect on all other Federal or State-listed species, and no likely effects on park sensitive species.

Cumulative impacts to the special status animal and plant species discussed in the EA include impacts from human presence and all other water-based recreational activities such as boating, swimming, and fishing. In addition, visitors who focus more on upland activities such as picnicking, camping, hiking, and hunting also may cause minor adverse disturbances to the above species in the short term. However, most visitor activities occur in or near already disturbed or developed sites such as boat ramps, marinas, and camp or picnic areas.

Cumulative impacts from activities within Curecanti National Recreation Area may affect but are not likely to affect federally or state listed species or other special status wildlife or plant species in the short term but not in the long term.

PWC use at Curecanti National Recreation Area may affect, but is not likely to adversely affect the federally or state listed bald eagle, Gunnison sage grouse, yellow-billed cuckoo, American peregrine falcon, skiff milkvetch, and Gunnison milkvetch. There would be no effect to all other federal or state listed species. All park sensitive species are unlikely to be affected. Cumulative effects from all park visitor activities would also be unlikely to cause adverse effects to special status species due to lack of species occurrences as well as a lack of access to the species or their habitats in the short or long term.

Therefore, implementation of the proposed rule would not result in impairment of threatened or endangered species.

#### Shoreline Vegetation

Personal watercraft provide access to the shoreline and operators may disembark to explore shoreline areas. As a result, vegetation could be trampled

by visitors. PWC are able to access areas where other types of watercraft cannot, which may disturb sensitive plant species. In addition, wakes created by personal watercraft may affect shorelines and cause erosion. However, vegetation along the reservoir shoreline is generally lacking, so the proposed rule would manage PWC use in order to protect what sensitive shoreline areas there are from PWC activity and access.

Reinstated PWC use could affect vegetation in areas between Elk Creek and the Lake City Bridge and in the Soap Creek Arm where visitor use and shoreline access is concentrated. Potential impacts to vegetation from PWC use include short-term wave action and trampling as a result of PWC operators accessing and walking on the shore. Because vegetation is generally lacking along many shoreline areas, PWC use would result in only negligible, short-term adverse impacts. The primary location of lush riparian vegetation is in more inland and narrow areas of the lake arms. However, the expanded designated flat-wake speed areas in the lake arms would minimize disturbance from PWC and other activities. Thus, adverse impacts to vegetation would be negligible in the lake arms as well. Shoreline erosion at Curecanti is caused primarily by high winds and wave action and is more likely to affect shoreline vegetation when the reservoir is at full pool. Physical processes in combination with PWC and other watercraft use at Curecanti, would result in a negligible to minor adverse impacts on shoreline vegetation because it is generally lacking in concentrated use areas or is protected by restrictive zoning.

PWC use would result in a negligible adverse effect on shoreline vegetation because vegetation along the reservoir shoreline is generally lacking. Areas where vegetation may occur would be protected by wake restrictions. Cumulative impacts would be negligible to minor in the long term due to wind-related erosion, wave action, and other visitor activities such as boating.

Therefore, implementation of the proposed rule would not result in an impairment of shoreline vegetation.

#### Visitor Experience

PWC use is viewed by some segments of the public as a nuisance due to their noise, speed, and overall environmental effects, while others believe personal watercraft are no different from other watercraft and that people have a right to enjoy the sport. The primary concern involves changes in noise, pitch, and volume, due to the way personal watercraft are operated. Additionally,

the sound of any watercraft can carry for long distances, especially on a calm day. The proposed rule aims to minimize potential conflicts between PWC use and park visitors, to seek cooperation with State entities that regulate PWC use, and to provide a wide range of recreational activities consistent with conservation of the natural and cultural values.

Under the proposed rule, PWC use would be reinstated with additional management prescriptions. A new 100-foot buffer zone would be established on the northern shore of the main body at Stevens Creek to protect the Gunnison sage grouse habitat.

*Impact on PWC Users*—There would be minimal changes to PWC use or activity as compared to conditions prior to the 2002 PWC closure. The flat-wake zone near Stevens Creek campground would have a negligible adverse impact on PWC users, since this area is not a high-use area for PWC. The boat ramp at Stevens Creek would remain zoned as flat-wake. The flat-wake zones within the portion of the arms of the lake that is less than 1,000 feet from shore to shore would have a minor adverse impact on PWC users, as these calmer, narrow, areas of the reservoir would not be available for any high speed use.

*Impact on Other Boaters*—Other boaters at Curecanti National Recreation Area would interact with PWC operators on an increasing basis as overall boating numbers increase over the next 10 years. PWC use is expected to increase at a slightly higher rate than other boat use; however, PWC would still only comprise approximately 7% of total boats on Blue Mesa Reservoir in 2012. The main body of Blue Mesa Reservoir does not receive substantial PWC use due to the large expanses of open water and frequent high winds. High-use areas for PWC include Dry Creek, the Soap Creek Arm, Bay of Chickens, near the marinas, and off Highway 149 just south of the Lake City Bridge.

Generally, few non-motorized craft (sea kayaks, canoes, and windsurfers) use Blue Mesa Reservoir, so interactions with these user groups would be infrequent. In addition, flat-wake speed areas would occur within the arms of the lake, including Soap Creek Arm, West Elk Arm, Lake Fork Arm, Cebolla Arm; the narrow waterways off the Bay of Chickens and Dry Creek; and upstream of the Lake City Bridge—calmer waters that lead to creeks favored by canoeists and kayakers. Flat-wake areas would exist at Elk Creek and Lake Fork Marinas, and Iola, Stevens Creek and Old Stevens boat ramps. However, it should be noted that the main violation by PWC users has

historically been violation of flat-wake speed zones, and increased PWC numbers could have an effect on non-motorized boaters at these sites. Some PWC activity exists near the windsurfing beach, but staff observations note that windsurfing activity has been steadily declining over the past few years. Therefore, under the proposed rule, impacts to non-motorized boaters would be negligible to minor adverse.

*Impact on Other Visitors*—There are four campgrounds on the reservoir that have boat launch facilities, and thus have PWC use in the vicinity. Receding lake levels have led to decreased visitation at park campgrounds, and because campgrounds are currently high above the reservoir level, contact between campers and PWC users are low. However, lake levels could rise, camping visitation could increase, and contact between the two user groups could also increase. The 100-foot flat-wake zone at the Stevens Creek campground would reduce noise impacts from PWC on campers. Under the proposed rule, PWC use would have negligible to minor adverse effects on visitors to park campgrounds and minor adverse effects at higher water levels when campgrounds are more accessible from the water.

There is one designated hiking trail along the northern shoreline of Blue Mesa Reservoir at Dillon Pinnacles. Roads and miles of undesignated hiking trails also provide access to much of the Blue Mesa shoreline. PWC use in areas such as these that are popular with both personal watercraft and other shoreline visitors could affect visitors seeking natural quiet. However, anglers who seek solitude can fish in Morrow Point and Crystal Reservoirs, and along the Gunnison River east of Beaver Creek—areas closed to motorized watercraft. In addition, many shoreline visitors are travelers stopping to enjoy the scenery and picnic, not necessarily to have a solitude experience, thus PWC use under the proposed rule would have a negligible to minor adverse effect on hikers and shoreline users.

PWC use would not result in a noticeable change in shoreline visitor experiences because the park provides flat-wake speed areas for non-PWC visitors to enjoy park activities. However, violations of flat-wake speed zones and the expected increase in PWC use at congested areas in the Blue Mesa Reservoir could result in negligible to minor adverse impacts on the experiences of these shoreline visitors.

The primary activities at Curecanti National Recreation Area that could affect visitor experiences include the

number and activities of other visitors and noise from vehicles and motorboats. Increased use or expansion of U.S. 50 would cause an increase in noise levels and increased lakeshore activity. Due to low water levels, several boat launch ramps were unusable in 2002. Although the Bureau of Reclamation regulates lake levels, it is impossible to predict the effects of drought conditions and downstream water needs on future water levels. However, if drought conditions worsen, boat ramps and swim beaches may become unusable, and usable launch areas could become more crowded. It is, however, impossible to predict future water levels. Predictable cumulative impacts related to the use of personal watercraft, motorized boats, and other visitor activities would be negligible to minor over the short and long term.

Reinstated PWC use would result in negligible to minor adverse impacts on experiences for most visitors in the short and long-term under the proposed rule. Swimmers and other motorized boat users would be most affected by PWC use because of the popularity of the day use areas habituated by PWC, especially at Dry Creek Picnic Area, Bay of Chickens, and the windsurfing beach. PWC use would have short- and long-term negligible to minor adverse impacts for visitors who desire a more passive recreational experience and desire natural quiet. Overall, most visitors to Curecanti National Recreation Area would experience negligible to minor adverse effects under the proposed rule and would be satisfied with their experiences at Curecanti National Recreation Area.

Cumulative effects of PWC use, other watercraft, and other visitors would result in short- and long-term, negligible to minor adverse impacts.

#### Visitor Conflict and Safety

The proposed rule would minimize or reduce the potential for PWC user accidents, minimize or reduce the potential safety conflicts between PWC users and other water recreationists, and minimize or reduce the potential user conflicts between PWC users and shore and boat fishermen.

The park has documented, through incident reports, conflicts and complaints between PWC operators and other visitors. The Superintendent also has received a few complaints about PWC activity from both bank and boat fishermen. Most complaints are about wake violations. No PWC accidents have been reported in the last five years. Although there have only been 9 citations involving PWC operators in the last five years, the share of PWC

citations is disproportionately high. In this five-year period, PWC accounted for less than 6% of total watercraft, and over 20% of all watercraft citations. Records of boating violations only include infractions for which citations were issued. Figures do not include verbal or written warnings. The most common infraction was for violation of the flat-wake speed restrictions, especially in marinas. There have been one or two reported incidents involving PWC per year, mostly property damage from vessels grounding or wind related swamping. PWC have the most potential for conflicts with other motorboats, fishermen, and shoreline users because both user groups concentrate in the same areas. Areas of potential conflict are similar to areas of current conflict, at high PWC use areas such as the Iola Basin at Highway 149, Dry Creek picnic area, the Soap Creek Arm, the marinas, and around "Sometimes Island."

Under the proposed rule, PWC operators would have unrestricted use along the Blue Mesa Reservoir shoreline within the impact analysis area, as allowed prior to the November 7, 2002 ban. Use would increase from 9 personal watercraft per typical summer season day to 11 PWC per day by 2012. Peak use days would see an increase from 16 to 20 PWC per day, based on an increase of 2% per year.

*Personal Watercraft/Swimmer Conflicts*—The greatest potential for conflict with swimmers is at the high use areas near Dry Creek Picnic Area, Bay of Chickens windsurfing beach area, and along Highway 149 just south of the Lake City Bridge. This is where many of the park's visitors swim, and these areas include the most PWC areas within the national recreation area. No PWC-related accidents have been documented since 1995.

The park has established flat-wake speed zones to help protect visitors, including the area around Stevens Creek campground and the area within the arms of the lake that is less than 1,000 feet from shore to shore at full pool level. However, violations do occur in these areas, and historically, PWC operators are more likely to infringe on the flat-wake speed rule than other vessel operators. An estimated 16–20 personal watercraft would be operated in the reservoir during peak use days, many of which would likely concentrate near popular swim areas and may violate the flat-wake speed rule to beach, pick up passengers, or change operators. Even though no PWC related accidents have occurred involving a swimmer, the park has received complaints from swimmers about PWC not slowing down as required in the

presence of swimmers. PWC users may operate at speeds of up to 40 mph on the reservoir, and the potential exists for an accident involving a swimmer. Due to the concentration of visitors that use these areas, impacts regarding swimmer safety at these locations are predicted to be minor to moderate adverse.

The remaining park locations would experience little or no conflict between PWC users and swimmers. There are few swimmers in other areas of the park that are frequented by PWC. Thus, conflicts in these segments would constitute negligible adverse impacts. Swimming is not a popular activity at Curecanti due to cold water. Swimmers tend to be in the water for short periods of time and tend to stay close to shore.

*Personal Watercraft/Other Boat Conflicts*—PWC represent an estimated 7% of all vessels at Blue Mesa Reservoir on peak use days. At Curecanti, no vessel accidents (out of 24 accidents from 1995 through 2000) involved PWC. Potential for incidents or accidents at congested boat ramps exists but the impact of PWC use on safety would be considered negligible to minor. PWC may come into conflict with non-motorized boats in the flat-wake speed areas, where PWC have violated the flat-wake speed rules. Impacts to other boaters are predicted to be negligible to minor adverse.

Overall, PWC use would have negligible to minor adverse impacts on other boat users at Curecanti National Recreation Area. Impacts would be concentrated primarily at the boat launches and high PWC use areas.

*Personal Watercraft/Other Visitor Conflicts*—Blue Mesa Reservoir and its shoreline are used by a variety of visitors, including swimmers, motorboat users, kayakers, canoeists, campers, anglers, and hikers. All of these user groups interact with each other and occasionally come into conflict. Some user groups are more distributed than others. For example, kayakers, canoeists, and swimmers tend to stay close to the shore, whereas PWC and motorboat operators tend to operate at least 150 feet offshore, unless landing and taking off. This separation of use reduces the potential for conflicts between the various groups. However, several of these user groups favor the same general location.

The cumulative impact of the various user groups on visitor conflicts and safety under the proposed rule would be negligible to minor adverse over the short and long term.

Reinstated PWC use would have short-term negligible to minor adverse and long-term, minor adverse impacts on visitor conflicts and safety,

particularly in the noted high PWC use locations due to the number of visitors and boats present on high use days, as well as a concentration of conflicting uses. Conflicts at other locations would remain negligible adverse because use is lower and conflicts would be less likely to occur.

Cumulative impacts related to visitor conflicts and safety would be minor adverse for all user groups in the short and long term, particularly near the high-use areas. Cumulative impacts in other areas of the reservoir would be negligible adverse.

#### The Proposed Rule

Under this proposed rule, PWC use would be reinstated, with one new restriction for wildlife protection, in all locations of the recreation area where it was allowed until November 6, 2002. PWC use would be reinstated in areas of Blue Mesa Reservoir and portions of the lake arms. Areas appropriate for PWC use would include Sapinero, Cebolla and Iola Basins; Bay of Chickens; Dry Creek; Elk Creek; the Highway 149 area; and Lake Fork, Soap Creek, and West Elk arms. In addition, all 5 designated launch areas on Blue Mesa Reservoir (developed and unimproved) would remain open to PWC use. Personal watercraft would be allowed to land on any shoreline at Blue Mesa Reservoir.

Operation of all motorized watercraft would continue to be unacceptable in areas east of Beaver Creek within the Gunnison River Canyon and in the area downstream from the East Portal diversion dam. The following areas would remain closed to all boating, including personal watercraft, and shoreline entry: Blue Mesa Dam downstream for 225 yards, Morrow Point Dam downstream for 130 yards, Crystal Dam downstream for 700 yards, and East Portal diversion dam upstream for 60 yards.

At Curecanti, the following areas would remain flat-wake speed areas: the most inland and narrow portions of Soap Creek Arm, West Elk Arm, Lake Fork Arm, and Cebolla Arm; within 100 foot of Steven's Creek campground; the narrow waterways off the Bay of Chickens and Dry Creek; Elk Creek and Lake Fork Marinas; and Iola, Stevens Creek, and Ponderosa boat launch areas.

Finally, in addition to the restrictions for PWC use before the ban, a 100-foot flat wake zone would be established at the Stevens Creek campground for the protection of an active Gunnison sage grouse lek and nesting area. A flat wake zone would mitigate potential noise impacts from PWC use and associated shoreline use during the lek and nesting season (mid-March–July).

#### Compliance With Other Laws

##### *Regulatory Planning and Review (Executive Order 12866)*

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It 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. The National Park Service has completed the report "Economic Analysis of Personal Watercraft Regulations in Curecanti National Recreation Area" (MACTEC Engineering, November 2002). This document may be viewed on the park's Web site at: [http://www.nps.gov/cure/webvc/pwc\\_use.htm](http://www.nps.gov/cure/webvc/pwc_use.htm).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirement of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled "Economic Analysis of Personal Watercraft Regulations in Curecanti National



Recreation Area" (MACTEC Engineering, November 2002). This document may be viewed on the park's Web site at: [http://www.nps.gov/cure/webvc/pwc\\_use.htm](http://www.nps.gov/cure/webvc/pwc_use.htm).

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

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

#### *Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

#### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Paperwork Reduction Act*

This regulation does not require an information collection from 10 or more

parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83-I is not required.

#### *National Environmental Policy Act*

As a companion document to this NPRM, NPS has issued the *Personal Watercraft Use Environmental Assessment for Curecanti National Recreation Area*. The Environmental Assessment (EA) was open for public review and comment from June 11, 2003 until July 13, 2003. The EA and the errata are available at [http://www.nps.gov/cure/webvc/pwc\\_use.htm](http://www.nps.gov/cure/webvc/pwc_use.htm), or copies can be obtained directly from the park. The park encourages the use of the Web site for review and comment, however, a limited number of hard copies and CD-ROMs of the document are available. Send written requests for the EA to Superintendent, Curecanti National Recreation Area, 102 Elk Creek, Gunnison, CO 81230 or phone park headquarters at 970-641-2337, ext. 200. If requesting a copy, please specify your choice of either a hard copy or CD-ROM of the document.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

#### *Clarity of Rule*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example [§ 7.51 Curecanti Recreation Area]) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also email the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

*Drafting Information:* The primary authors of this regulation are: Bill Wellman, Superintendent, Linda Alick, Chief Ranger, Ned Kelleher, District Ranger, Phil Zichterman, Chief of Interpretation, Ken Stahlnecker, Chief of Resource Stewardship, Jerry Burgess, Facility Manager, Curecanti National Recreation Area; Sarah Branswom, Environmental Quality Division; Mike Tiernan, WASO Solicitor's Office, and Jerry Case, Regulations Program Manager.

#### **Public Participation**

You may submit comments, identified by the number RIN 1024-AC99, by any of the following methods:

- Federal rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail NPS at [CurecantiPWC@urscorp.com](mailto:CurecantiPWC@urscorp.com). Use RIN 1024-AC99 in the subject line.
- Mail or hand delivery to: Superintendent, Curecanti National Recreation Area, 102 Elk Creek, Gunnison, CO 81230.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

#### **List of Subjects in 36 CFR Part 7**

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

#### **PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

1. The authority for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Amend § 7.51 by adding paragraph (d) to read as follows:

**§ 7.51 Curecanti Recreation Area.**

\* \* \* \* \*

(d) *Personal Watercraft (PWC)*. PWC may operate within Curecanti National Recreation Area in the following designated areas and under the following conditions:

(1) PWC may operate and land on Blue Mesa Reservoir between Beaver Creek and Blue Mesa dam.

(2) PWC must operate at “flat wake” speeds within Blue Mesa Reservoir in the following areas upstream of designated buoys:

(i) Soap Creek arm at approximate longitude 107°8’9” N latitude 38°30’16” W.

(ii) West Elk arm at approximate longitude 107°16’45” N latitude 38°29’43” W.

(iii) Cebolla arm at approximate longitude 107°12’16” N latitude 38°27’37” W.

(iv) Lake Fork arm at approximate longitude 107°18’19” N latitude 38°27’2” W.

(3) PWC must operate at “flat wake” speeds in the following areas:

(i) Within 100’ of shoreline inside Dry Creek cove.

(ii) Within 500’ of shoreline along old highway 50 and Bay of Chickens.

(iii) At Elk Creek and Lake Fork marinas.

(iv) At Iola, Steven’s Creek, and Ponderosa boat launch areas.

(v) From Lake city bridge east to Beaver’s Creek.

(vi) Within 100’ of shoreline adjacent to Steven’s Creek campground.

(4) PWC may be launched from the following launch ramps:

(i) Elk Creek Marina.

(ii) Lake Fork Marina.

(iii) Iola.

(iv) Steven’s Creek.

(v) Ponderosa.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: March 8, 2006.

**Paul Hoffman,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E6–3938 Filed 3–16–06; 8:45 am]

**BILLING CODE 4310-EH-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 391**

[Docket No. FMCSA–2005–23151]

RIN 2126–AA95

**Qualifications of Drivers; Diabetes Standard**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); request for comments.

**SUMMARY:** FMCSA announces that it is considering whether to amend its medical qualifications standards to allow the operation of commercial motor vehicles (CMVs) in interstate commerce by drivers with insulin-treated diabetes mellitus (ITDM) whose physical conditions are adequate to allow them to operate safely and without deleterious effects on their health. At present, drivers with ITDM are required to obtain exemptions before operating CMVs. Upon completion of this rulemaking, drivers with ITDM might not be required to apply for exemptions from the current rule prohibiting such drivers from operating in interstate commerce. However, unless and until the agency changes the current standard in this rulemaking, drivers with ITDM are prohibited from operating CMVs in interstate commerce, unless such individuals have exemptions from FMCSA. Any action to revise the current standard would be made in conformity with the changes in FMCSA’s existing authority to establish, review and revise physical and medical qualification standards for drivers made by the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which added, among other changes, a requirement that the standards be developed with the assistance of expert medical advice.

**DATES:** You must submit comments concerning this ANPRM on or before June 15, 2006.

**ADDRESSES:** You may submit comments to the DOT Docket Management System Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, in order to allow effective public participation in this rulemaking before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and

timely method of receiving and processing your comments.

• *The Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

• *Fax:* 1–202–493–2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the organization name and docket number or Regulatory Identification Number for this regulatory action. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Refer to the Privacy Act heading for further information. If addressing a specific request for comments in this ANPRM, *please clearly identify the related section heading or question number* for each topic addressed in your comments.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Private Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and the agency will consider late comments to the extent practicable. FMCSA may, however, issue a notice of proposed rulemaking at any time after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, FMCSA, 400