



March 16, 2021

Richard Periman  
Forest Supervisor  
Mt. Hood National Forest

Re: Forest Order 06-06-05-20-12 - Clackamas River Ranger District Fire Closure

Dear Forest Supervisor Periman:

American Whitewater, Oregon Outfitters and Guides Association, Blue Sky Whitewater Rafting, Clackamas River Outfitters write regarding our interest in the Clackamas River for recreational boating. We are concerned with the Clackamas River Ranger District Fire Closure that was signed on October 28th, 2020 in response to the Riverside Fire,<sup>1</sup> and that remains in effect with insufficient public engagement. This closure inhibits access to the Clackamas Wild and Scenic River for recreational river users and those with businesses who provide outfitting and guiding opportunities on the river.

We request that the Forest Service meaningfully engage the public and affected parties to provide an opportunity for input on this action. We further request a site tour prior to any decision to extend the Closure Order beyond the current expiration date of April 1, 2021. Key stakeholders that include paddlers, guides and outfitters, Portland General Electric,<sup>2</sup> Oregon State Marine Board, and other relevant groups should be given an opportunity to plan a tour of the Clackamas River access sites in order to assess conditions and determine what work needs to be completed and to be able to assess the future recreation experiences that might exist for the quickly approaching spring/summer recreation season.

### **Impacts to Rural Communities & Local Outdoor Recreation Businesses**

Outdoor recreation in Clackamas County accounted for \$628,307 in trip-related spending, supporting over 7,000 jobs, and providing \$356,266 in GDP contributions.<sup>3</sup> As rural communities start to recover from the impacts of wildfire, extreme weather, and the impacts of the global pandemic, the availability and access to outdoor recreation is integral to their economic recovery.

Less than an hour from Portland, the Clackamas River corridor is an attractive destination for recreators, particularly for anglers and paddlers. Recreation and local outfitting and guiding companies attract business from across the county, state, and country—and even some international visitors. These river

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<sup>1</sup> USDA Forest Service, Mt. Hood National Forest, Forest Order 06-06-05-20-12, Clackamas River Ranger District Fire Closure, October 27th, 2020, <[https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd835669.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd835669.pdf)>.

<sup>2</sup> Portland General Electric manages river access sites in the Clackamas Wild and Scenic River corridor as a condition of their federal hydropower license, Portland General Electric Company, 133 FERC ¶ 62,281, December 21, 2010.

<sup>3</sup> Mojica, J., Cousins, K., Madsen, T., 2021. Economic Analysis of Outdoor Recreation in Oregon. Earth Economics. Tacoma, WA <[https://issuu.com/traveloregon2019/docs/economicanalysisofoutdoorrecreationinoregon\\_otc-ea](https://issuu.com/traveloregon2019/docs/economicanalysisofoutdoorrecreationinoregon_otc-ea)>.

visitors allow the business owners to pay their mortgage, purchase new equipment, pay the utility bills, and cover personal expenses as well as provide direct payments to local businesses for support services like gas and groceries. The regular influx of these visitors allows local business owners to employ seasonal staff, including river guides that spend much of their free time in the community, whether it be participating in other recreation activities or frequenting local establishments. Their actions perpetuate the flow of dollars within the community's economy.<sup>4</sup> Visitors to Clackamas County are essential to its economic health. Visitors from out-of-state bring new money into Oregon's economy, while in-state travelers are recirculating money within Oregon's own economy. The inability to access the Clackamas River corridor will be detrimental to the rural communities and local businesses that depend on seasonal recreation income from visitors to the river corridor and associated world-class outdoor recreation opportunities.

Currently 80-90% of the commonly paddled sections of rivers on the Mt. Hood National Forest are blocked or made impractical to access by the Closure Order. These closures include the only commercially rafted section of river on the Mt. Hood National Forest.

Area closures currently affect these river segments:

- [June Creek section of the Clackamas \(June Creek Bridge to Collowash\)](#)
- [Killer Fang section of the Clackamas \(Collowash to Three Lynx Powerhouse\)](#)
- [Upper Clackamas \(Three Lynx Powerhouse to North Fork Reservoir\)](#)
- [North Fork Clackamas \(to North Fork Reservoir\)](#)

These river segments are outside the closure area but access to them is precluded by the Closure Order:

- [Upper and Lower Collawash \(Mile 5.5 Bridge to Two Rivers Picnic Area\)](#)
- [Big Dog section of the Collawash](#)
- Hot Springs Fork Collawash
- [Elk Lake Creek \(Elk Lake to Forest Road 6380\)](#)
- [Nohorn Creek](#)
- [Roaring River \(Forest Road 4611 to Roaring River CG\)](#)
- [Fish Creek \(to Clackamas River\)](#)
- [Oak Grove Fork of the Clackamas \(to Clackamas River\)](#)

Outdoor recreation, including opportunities to enjoy the rivers above, is a major contributor to the economy of Clackamas County. In 2019, local recreationists and visitors spent \$628 million in Clackamas County.<sup>5</sup> The Upper Clackamas provides world-class outdoor recreation opportunities for residents and visitors, a primary attraction being whitewater paddling and fishing on the river. The recreation values are formally recognized as outstandingly remarkable (i.e. a value of regional

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<sup>4</sup> Ibid, 11-14.

<sup>5</sup> <[https://industry.traveloregon.com/wp-content/uploads/2021/01/Factsheet\\_Clackamas.pdf](https://industry.traveloregon.com/wp-content/uploads/2021/01/Factsheet_Clackamas.pdf)>

and national significance) in the Comprehensive River Management Plan for the Clackamas Wild and Scenic River.<sup>6</sup>

## Process Concerns

The current Closure Order limits access to outdoor recreation opportunities including services provided by small business owners. If extended, the closure would affect the spring and summer recreation season with significant economic impacts on outfitting and guiding services and the community of Estacada. The Closure Order includes “[a]ll National Forest System lands within the Riverside, Lionshead, and Beachie Creek fire perimeters and within the boundary of the Clackamas River Ranger District to provide protection for forest users, firefighting personnel, and other Forest Service employees and partners conducting emergency response work in the aftermath of the fires.”<sup>7</sup>

This Closure Order has been enacted (and subsequently altered and extended) through opaque methods that do not provide the affected public with any information regarding the specific rationale for the closure, the information used to determine its geographic and temporal extent, or the criteria to be used to determine when the Closure Order will be rescinded. Additionally, the Forest Service has provided no substantive means for the public to provide information and input about the closure or its impacts. This leads to an erosion of public trust and the palpable sense that the public is being shut out of public lands without adequate consideration.

Although standardless and vague, relevant statute appears to provide the Forest Service with subjective discretion to implement broad closures for nearly any reason.<sup>8</sup> However, there is a duty to the public—and other statutory requirements—that require the Forest Service to act with a defensible rationale, seek input from the public, and conduct the proper analysis that considers extraordinary circumstances related to concerned resources.

Although not specifically addressed in the Closure Order, the Forest Service appears to rely on the categorical exclusion provided by 36 CFR § 220.6 (d)(1) to exclude this §261.50 closure from analysis under NEPA. Whether technically permissible or not, this use of the categorical exclusion circumvents a “hard look” at the issues and impacts of the agency’s closure action and it precludes public input and review of the information used by the agency in making its decision.

To our knowledge, Mt. Hood National Forest has not prepared a CE checklist for this closure action and, presumably, has not utilized a formal standard of review to evaluate “extraordinary circumstances” or other resource concerns for which evaluation is necessary in order to determine whether, in fact, a CE is applicable to the agency’s action. One of the purposes of a CE checklist is to identify and evaluate

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<sup>6</sup> <<https://www.rivers.gov/rivers/clackamas.php>>

<sup>7</sup> USDA Forest Service, Mt. Hood National Forest, Forest Order 06-06-05-20-12, Clackamas River Ranger District Fire Closure, October 27th, 2020, <[https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd835669.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd835669.pdf)>.

<sup>8</sup> 36 CFR §261.50

whether any extraordinary circumstances are present and may require further analysis under NEPA. Federally designated Wild and Scenic Rivers are an extraordinary circumstance as defined in 7 CFR § 799.33. Their presence in the closure area and the significant and controversial impact of the closure upon the public's ability to utilize these rivers may preclude the applicability of the categorical exclusion provided by 36 CFR § 220.6 (d)(1).

NEPA requires scoping for all agency actions<sup>9</sup>—including those that would appear to be categorically excluded<sup>10</sup>—to ensure public input can be obtained to assist in informing the Forest Service of issues and facts related to the agency's action. Mt. Hood National Forest has not scoped this closure action, even though it is now a sustained, long-term closure that has been modified and renewed since the emergency circumstances of last summer's wildfires have long since ceased. Failure to scope this action may be a violation of NEPA and fails to follow the directives of the Forest Service Handbook (FSH).

As if the Closure Order's paltry explanation of the need and rationale for the closure, the absence of any public scoping, and the lack of a completed CE checklist or NEPA analysis does not constitute a thorough disregard for transparency (and may constitute violation of statute), the Forest Supervisor has also decided to not prepare a case file and decision memo for this closure. Although this discretion is provided in FSH 1909.15 Chapter 30 (32.12), it is confounding to understand why, in absence of any other participatory process or record, the Forest Supervisor would not make the effort to document the rationale and decision in a case file and memo so that the public can review and understand the agency's actions.

Yet still, the closure of National Forest areas is an administrative action subject to the Administrative Procedures Act (5 USC §551 et seq.). Although the Forest Service has decided to not scope the action, prepare a CE checklist or other NEPA analysis, and has decided against preparing a case file and decision memo, the administrative record must still support the agency's decision to issue a closure, otherwise its action may be determined by the courts to be arbitrary and capricious. Due to the complete lack of transparency in the closure process thus far, it is unclear whether the administrative record may support the decision.

Paddling access in other comparable areas affected by high intensity wildfire have not been closed while restoration and hazard mitigation work is underway, including on the North Santiam River, McKenzie River, and North Umpqua River, and to our knowledge, there have been no reports of paddlers being detrimentally affected by ongoing work in those river corridors. Further, American Whitewater has partnered with the Oregon State Marine Board to develop an online tool to document in-stream hazards, such as wood debris, following the recent fires—an effort to increase public awareness of river conditions, increase safety, and to provide an opportunity to avoid unnecessary and burdening public access closures to public waterways in the State.

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<sup>9</sup> 40 CFR §1501.9

<sup>10</sup> See FSH 1909.15 Chapter 30 (31.3)

## **Conclusion and Request**

In reviewing available data about the recent wildfires and by observation, and conversation with local agencies who have been able to make preliminary assessments of the site(s), boating access and river access sites in the Clackamas River corridor were less impacted than other areas. Further, Portland General Electric has publicly stated that they would assist with any hazard tree mitigation that needs to be done at the river access sites they manage;<sup>11</sup> these sites encompass a relatively small area. Our conversations with the Oregon State Marine Board indicate support for an inclusive and collaborative process to further assess site conditions, and plan for restoration and re-opening of these sites. We request a site visit and opportunity to discuss our concerns and a timeline for opening a portion of the river corridor for day use as soon as possible. If the Forest Service intends to further extend the closure, we request that appropriate actions under NEPA be initiated to provide an opportunity for public input, evaluate extraordinary circumstances, and document the decision process. We also request that the Forest Service prepare a case file and a use a decision memo for any extension of this closure as well as for all future closures.

Sincerely,

**Thomas O’Keefe, PhD**  
Pacific Northwest Stewardship Director  
American Whitewater

**Priscilla Macy**  
Executive Director  
Oregon Outfitters and Guides Association

**Peter Giordano**  
Owner  
Blue Sky Whitewater Rafting

**Luke Spencer**  
Owner  
Clackamas River Outfitters

**Tim Thornton**  
Owner  
River Drifters

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<sup>11</sup> At 42:40, Estacada City Council, March 8, 2021, March 8, 2021 City Council Workshop. Presented Online at <<https://www.cityofestacada.org/bc-citycouncil/page/city-council-workshop-virtual-8>>.

cc:

Jackie Groce, District Ranger  
Clackamas River Ranger District  
595 NW Industrial Way  
Estacada, OR 97023-9001

Rachel LaMedica, Acting District Ranger  
Clackamas River Ranger District  
595 NW Industrial Way  
Estacada, OR 97023-9001

Office of the General Counsel  
1220 SW Third Avenue, Room 310  
Portland, OR 97204

Senator Ron Wyden  
911 NE 11th Ave #630  
Portland, OR 97232

Senator Jeff Merkley  
121 SW Salmon St  
Portland, OR 97204

Representative Earl Blumenauer  
911 NE 11th Ave St #200  
Portland, OR 97232

Representative Kurt Schrader  
WCI Building  
621 High St  
Oregon City, OR 97045

Oregon Governor Kate Brown  
900 Court Street NE, Suite 254  
Salem, OR 97301-4047

Tony Dentel, Parks and Recreation Manager  
Portland General Electric  
33831 Faraday Rd  
Estacada, OR 97023

Larry Warren, Marine Director  
Oregon State Marine Board  
435 Commercial St NE, Unit 400  
Salem, OR 97301

Cailin O'Brien-Feeney, Director  
Oregon Office of Outdoor Recreation  
Oregon Parks and Recreation Department  
1645 NE Forbes Road  
Suite 112  
Bend, OR 97701