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Letter to the Editor (LTE) 1, Legal Foundation

The Deschutes National Forest is where we exercise, socialize, escape technology, and connect to nature. It's why many of us moved here and stay here. It's why many people visit Central Oregon, thereby supporting our tourism industry. It's not an exaggeration to say the forest, mountains, rivers, and lakes help define who we are as individuals and as a community. Because we recognize the importance of the forest in our lives, we also support its conservation.

DogPAC believes in the FAIR concept – that Forest Access Is a Right and a Responsibility. We must treat the land and those that use it with respect. At the same time, our access must be abridged only through processes that are legally, ethically, and scientifically sound.

We entrust this treasured resource to Deschutes National Forest (DNF) employees, whom we pay to manage our public land. Based on a review of the forest's own internal documents, we believe that the Deschutes National Forest is *knowingly mis-using federal regulations to deny dog owners access to their public lands.*

If you care about accessing your forest, a healthy tourism industry, or simply good governance, read on.

DogPAC is a grassroots non-profit organization that supports restrictions that are legally, ethically, and scientifically sound. For the past 3+ years, we have sought to work collaboratively with the Forest Service and other recreation groups to achieve sound policies. We are making progress on one aspect – the groomed winter trail. We appreciate the forest's engagement on this.

However, the forest has been unwilling to address fundamental access issues – or even to present a compelling rationale for why the forest's restrictions are so extensive. The forest would like you to believe that restrictions on dog owners are both common and necessary. They are not. *The Deschutes has more miles of leash restrictions than all other national forests in Oregon combined.*

Via a Freedom of Information Act (public records) request, we have learned a lot about how the DNF manages our forest. We believe DNF employees should follow the law. The Forest Service seems to agree, and one of its guiding principles is: "We follow laws, regulations, executive direction, and congressional intent." We believe the DNF has failed to do so when managing dog owner access.

The Forest Service uses the Code of Federal Regulations (CFR) as a foundation for the local orders that restrict access. The three local orders restricting dog owner access on the DNF are based on 36 CFR 261.58(s), which states that "When provided by an order, the following are prohibited... Possessing, storing, or transporting any bird, fish, or other animal or parts thereof, as specified in the order."



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We do not know anyone that goes hiking with their pet fish or mountain biking with their dog's body parts. It is self-evident that this CFR does not apply to recreation with dogs. In an internal email, the forest's chief law enforcement officer at the time stated: "In no case is 261.58(s) an appropriate regulation for managing domestic dog issues." She went on to say the forest should use "regulations appropriately (as intended by Congress)... Otherwise, we are 'bluffing' the public and we risk losing our credibility."

In the thousands of pages of documents provided by the DNF, we did not find any records of Forest Service employees defending 261.58(s) as a legally-sound basis for restricting dog owner access. The law enforcement officer encouraged the forest to seek a legal opinion from the OGC (Office of General Counsel). The documents indicate that this was done verbally, and that OGC did *not* support the forest's use of CFRs for this purpose. Apparently, a formal opinion was not sought, presumably because the forest believed that OGC might confirm that the restrictions could not be based on this CFR. As one staffer observed, "we may not want to hear the answer" if we get OGC involved.

Despite internal opposition and lack of legal foundation, the forest implemented the bluff. Over the past several months, we have raised this, and other concerns, with Deschutes National Forest leadership, by email and in person. They have not meaningfully addressed the issue.

Recreation management is difficult because access to public lands is so important to citizens. It is for precisely this reason that we support and expect sound management policies.

The Forest Service motto is "Caring for the land and serving people." If you believe this forest should serve the public and follow the law, take action. Go to www.forestaccess.org to email Forest Service Chief Tom Tidwell, call the Forest Service regional office in Portland, or otherwise support this effort.

This is your forest. Help us ensure that it is well managed.