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File Code: 1570-1

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Subject: Tahoe National Forest Motorized Travel Management Project
Appeal No. 11-05-00-0006-A215

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for the appeals filed on the Tahoe National Forest Motorized Travel Management Plan. This is my recommendation on disposition of the appeal filed by Timothy Feller on behalf of Sierra Pacific Industries appealing the Tahoe National Forest Supervisor, Tom Quinn's Record of Decision (ROD) for the Tahoe National Forest Motorized Travel Management Project Environmental Impact Statement (EIS). The decision was signed on September 21, 2010 and the legal notice of the decision was published on October 19, 2010.

DECISION BEING APPEALED

Over the past few decades, the availability and capability of motor vehicles, particularly off-highway vehicles (OHVs) and sport utility vehicles (SUVs) has increased tremendously. Nationally, the number of OHV users has climbed seven-fold in the past 30 years, from approximately 5 million in 1972 to 36 million in 2000. California is experiencing the highest level of OHV use of any state in the nation. There were 786,914 ATVs and off-road motorcycles registered in 2004, up 330% since 1980. Annual sales of ATVs and off-road motorcycles in California were the highest in the U.S. for the last five years. Four-wheel-drive vehicle sales in California increased to 3,046,866 (1500%) from 1989 to 2002.

Across the nation, unmanaged motor vehicle use—particularly OHV use—has resulted in unplanned roads and trails, erosion, watershed and habitat degradation, and impacts to cultural resource sites. Compaction and erosion are the primary effects of motor vehicle use on soils. Riparian areas and aquatic-dependent species are particularly vulnerable to damage from motor vehicle use. The Tahoe National Forest (TNF or Forest) lacks a clearly defined, designated system of roads and trails designed to best meet the recreational needs of the public and protect sensitive natural resources.

The 2005 Travel Management Rule (36 CFR 212), was developed in response to people's increased use of the National Forests by motorized vehicles and the effects of that use on ecological, physical, cultural, and social resources.

Subpart B of the final Travel Management Rule requires designation of roads, trails, and areas for motor vehicle use. The Travel Management Rule does not require the Forest Supervisor to reconsider decisions authorizing motor vehicle use on the existing National Forest Transportation System (NFTS). Part 261 – Prohibitions, Subpart A (36 CFR 261.13) of the final rule prohibits the use of motor vehicles off of designated roads, trails and areas, as well as use of motor vehicles on roads and trails that is not consistent with the designations.

The Forest Supervisor selected a modified Alternative 6. The decision will:



Add specific routes, as identified on the ROD map, to the NFTS as follows:

- 13.1 miles (346 individual segments) of roads and
 - 48.9 miles (107 individual segments) of motorized trails.
- Establish approximately 244 acres of “Open Areas” at Boca, Prosser, and Stampede Reservoirs as open to highway legal vehicles only.
 - Make the following changes to the NFTS:
 - allow mixed use on a total of approximately 130.8 miles of passenger car roads (with concurrence received from the California Highway Patrol on March 17, 2010), of which approximately 117.5 miles will be open to mixed use only during deer rifle hunting season;
 - allow non-highway legal vehicles to use 122.0 miles of roads as an added benefit of reducing maintenance levels on specific roads where natural resource management objectives can be achieved with a lower road maintenance level;
 - place seasonal restrictions on 1,369.5 miles of roads and motorized trails as follows: (1) on the westside of the Tahoe National Forest, implement wet weather seasonal closures on native surface roads and motorized trails from January 1 through March 31; (2) on the remainder of the Tahoe National Forest, implement wet weather seasonal closures on native surface roads and motorized trails from January 1 through April 23; and (3) allow over-the-snow travel on 3.6 miles of the Fordyce jeep trail when 15 inches of snow is present on the ground; and
 - re-open 11.4 miles (13 individual segments) of existing closed roads (Maintenance Level 1 roads) for motorized use.
 - Amend the 1990 *Tahoe National Forest Land and Resource Management Plan* (Forest Plan) to remove the seasonal restriction for the Humbug Sailor Management Area (#84).

PUBLIC INVOLVEMENT/PROJECT OVERVIEW

The following characterizes the types of public involvement efforts used throughout the Tahoe National Forest’s travel management planning process:

- Numerous public meetings and workshops were held over the past five years to engage the public in helping the Forest Service manage motorized routes on the Forest. These workshops gave the public opportunities for providing comments and feedback on the Forest’s inventory of unauthorized routes, bringing forward ideas for developing the proposed action, discussing the proposed action, and understanding how we developed and analyzed the alternatives presented in the DEIS.
- Over the past five years, numerous informal meetings and briefings were held and regular newsletters were published to share the Forest’s progress on this project with the public. Field visits, face-to-face meetings, and phone calls were regular forms of communication the Forest Service used to actively engage with the public to answer questions and respond to their issues and concerns.

- During the summer of 2006, a variety of interested individuals with a range of perspectives provided suggestions for designing a public participation process that would allow affected individuals, communities, and the visiting public to help the Forest Service begin building the Proposed Action. Approximately 20 individuals provided suggestions for this part of the public involvement process.
- The Forest Service developed a Proposed Action and alternatives based on broad-based and route-specific comments provided by the public during a series of public workshops held during the fall of 2006 as well as through meetings, letters, and phone calls. In addition, several groups submitted alternatives to the proposed action, and these alternatives formed the basis for several of the alternatives analyzed in detail in the DEIS, Supplemental DEIS, and FEIS.

After release of the DEIS in September 2008, comments were received from both the environmental and off-highway vehicle communities, questioning whether the DEIS had either erroneously included or excluded certain routes from the NFTS. To respond to these concerns, the Forest conducted an extensive forest-wide, route-by-route review to ensure the accuracy of the NFTS. The details of this review are presented in Chapter 1 of the Supplemental DEIS, released in February 2010, and carried forward into the FEIS. The overall outcome is that the FEIS displays a NFTS that has approximately 405 fewer miles than that displayed in the DEIS (from approximately 2,800 miles in the DEIS to approximately 2,395 miles in the FEIS). The Forest disclosed these changes in the Supplemental DEIS and provided a 45-day comment period for the public to comment on the environmental analysis. During March 2010, a series of public meetings were held in Sierraville, Nevada City, and Auburn to discuss the analyses presented in the Supplemental DEIS and respond to questions and concerns from the public. In addition, presentations were made regarding the Supplemental DEIS at Board of Supervisor meetings for Sierra, Placer, and Nevada Counties. Finally, the Forest Supervisor personally met with members of the environmental and off-highway vehicle communities to explain the process for defining the existing NFTS and the findings from the review and to get their input on the changes to the NFTS between the DEIS and Supplemental DEIS.

APPEAL SUMMARY

The appeal period for this project ended on December 3, 2010. The current appeal was filed on November 15, 2010 and is timely. For requested relief the appellants requested that:

1. Fix NEPA map errors
2. TNF review of all existing coop road segments for easement status
3. Recalculate investment shares for expanded road use, closed roads to open roads
4. For all coop roads, especially closed roads proposed to be open to the public, reach agreement on late season use and maintenance responsibility for road damage
5. Address liability issues and maintenance issues for roads downgrades from level 3 to 2.
6. Remove all disputed roads in initial MUVVM until resolved
7. Review existing 2003 road maintenance agreement commitments
8. Reach agreement on commitment of road maintenance funding
9. Review funding commitment for enforcement of new TMP
10. Review maintenance program for gates and barricades

The Forest Supervisor held an appeal resolution meeting with the appellant on December 15, 2010, three issues 1-3) were resolved.

ISSUES AND RESPONSES

Issue 1: The TMP map (Alt. 6) shows fourteen road segment easements granted by the TNF to SPI, for which SPI holds a non-cost share easement. The recorded easement clearly articulates SPI is the sole controller of the easement. The TNF has no right to grant public use of these easements, even on their own land, without renegotiating those easements and sharing in the costs. (Appeal, pg. 1)

Response: This issue was resolved during informal appeal resolution meetings.

Issue 2: There are eleven segments of road identified on SPI property for which we can find no record of easement. (Appeal, pg. 2)

Response: This issue was resolved during informal appeal resolution meetings.

Issue 3: The map shows roads which were never built and do not exist. (Appeal, pg. 2)

Response: This issue was resolved during informal appeal disposition meetings.

Issue 4: There are approximately eighty-five shared road segments (limited easements) which are closed to the public and limit or exclude recreational use by the public. The TNF did not share in the original investment that would have included recreational use and the associated road maintenance costs. The process to recalculate the shared cost to the TNF for converting these easements to public use has not been completed. (Appeal, pg. 2)

Response: The Motorized Travel Management Project only addresses roads that are part of the National Forest Transportation System (NFTS) (FEIS, Appendix N 3.08-2, pg. 137). Additionally, the Forest has emphasized their intent to work with those who hold a private interest in and around the Tahoe National Forest (*See* ROD, pg. 15), and to uphold existing rights: “For added routes that require access through other private lands, the necessary permission will be obtained from the private landowner before the route is included on the Motor Vehicle Use Map (MVUM)” (ROD, pg. 15).

Addressing permits, maintenance agreements, or cooperative agreements is outside of the scope of the current analysis (FEIS, Appendix N 3.08-2, pg. 137), but the Forest has indicated that potential situations will be addressed with the interest holder before they are included on the MVUM.

I find that the Forest has adequately addressed private landholder rights for the scope of the current NEPA analysis.

Issue 5: There are fifteen maintenance level 3 coop roads proposed to be down-graded to maintenance level 2. This allows mixed use between commercial and off-road vehicular traffic, increasing SPI’s exposure to liability, and unilaterally shifts the burden of maintenance to SPI. (Appeal, pg. 2)

Response: The Forest Supervisor addressed this issue on page 15 of the ROD. The Forest only downgraded the maintenance level on roads that were already in Maintenance Level 2 conditions on the ground (ROD, pg. 15). This change simply acknowledges the current road condition and reduce future maintenance costs for the NFTS.

The Forest Supervisor went on to acknowledge that the cooperator could temporarily upgrade the maintenance level for these roads, or could prohibit OHV use to mitigate safety concerns as necessary, all subject to NEPA (ROD, pg. 15).

I find that the Forest gave adequate attention to road maintenance levels and included opportunities to address cooperators' concerns.

Issue 6: In the ROD (pg. 35) the TNF recognizes the National Forest Transportation System is already too large to allow for adequate maintenance and administration. SPI believes the TNF must honor previous agreements (See TBA, Section 9-Maintenance). (Appeal, pg. 2)

Response: "Internal and external scoping identified the following significant issues which were used in developing the action alternatives. The significant issues include ...Significant Issue Statement #4: The NFTS is already too large to provide adequate maintenance and administration" (FEIS, pg. 13). The current Tahoe Block Agreement (August 13, 1996), Section 14 cites "No Rights of Use Without Cost Sharing."

The Travel Management Rule 36 CRF 212.5 (d)(1) – Maintenance states "...The Chief may require...the user or users of a road...to maintain the roads in a satisfactory condition commensurate with the particular use requirements of each. The maintenance to be borne by each user shall be proportionate to total use and no individual user shall be required to perform or bear the costs of maintenance other than that commensurate with his use."

FEIS, Chapter 3.08 (pg. 737) acknowledges the significance of insufficient funding to maintain the transportation system by stating "An estimated 28 percent of the TNF road system was fully maintained in 2007." Table 3.08-2 displays Road Maintenance Budget and source of funding, including that from cooperative agreements, for 2003 through 2007.

The Forest Supervisor considered, among other concerns, the effects of affordability when designating roads for inclusion in the National Forest Transportation System. Response to comments (Appendix N, pg. N-137), the FEIS (Chapter 3.08) and the ROD (pg. 29) state "...the Selected Alternative will reduce annual operations and maintenance costs below current levels, resulting in a more affordable Transportation System."

I find the Forest Supervisor followed the direction from the Travel Management Rule 36 CFR 212.5 - Subpart B by considering affordability. I recommend the Forest Supervisor review the terms of the Tahoe Block Agreement with SPI.

FINDINGS

Clarity of the Decision and Rationale

The Forest Supervisor's decision for Motorized Travel Management and supporting rationale are clearly presented in the Record of Decision (ROD) signed on September 21, 2010. His reasons for

selecting Modified Alternative 6 are logical, responsive, and consistent with the direction contained in the Tahoe National Forest Land and Resource Management Plan.

Public participation was adequate and well documented

Public participation was adequate and well documented. A Notice of Intent and Notice of Availability of the DEIS were published in the Federal Register. The project was added to the quarterly Schedule of Proposed Actions. The Forest mailed scoping letters, hosted public meetings, and distributed draft and final EISs to interested groups and individuals. The Tahoe National Forest has maintained current information on planning and activities on its web page. Responses to the comments received are detailed and included as part of the FEIS. The decision of the Forest Supervisor indicates he considered and responded to public input.

Responses to the comments received were detailed and included as part of the FEIS. The ROD indicated the Forest Supervisor considered and responded to public input.

RECOMMENDATION

My review was conducted pursuant to and in accordance with 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. I reviewed the appeal record, including the comments received during the comment period and how the Tahoe Forest Supervisor used this information, the appellant's objections and recommended changes.

Based on my review, I recommend the Forest Supervisor's decision be affirmed. However, I recommend the Forest Supervisor review the terms of the Tahoe Block Agreement with SPI.

/s/ Tyrone Kelley

TYRONE KELLEY
Appeal Reviewing Officer
Forest Supervisor, Six Rivers National Forest