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File Code: 1570-1

Date: January 13, 2011

Subject: Tahoe National Forest Motorized Travel Management Project
Appeal No. 11-05-00-0007-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 Mark Weiss 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 16, 2010 and is timely. For requested relief the appellant requested that the travel plan not be instituted.

The Forest Supervisor held an appeal resolution meeting with the appellant on December 16, 2010, but no issues were resolved.

ISSUE AND RESPONSE

Issue 1: By implementing the Motorized Travel restrictions, the Tahoe National Forest asserts that they do not recognize the granted rights of the Mining Act of July 26, 1866 (HR365) and the General Mining Law of 1872, as amended. This action amounts to a “taking” by restricting vehicle access to locateable mineral deposits. (Appeal, pp. 1-6)

Response: The Forest Supervisor’s decision does not make any determination as to the validity of any mining claims or as to any person’s right to prospect or explore for locateable minerals or to

conduct locatable mineral operations. Rather, the decision merely analyzes and proposes those National Forest System (NFS) roads, trails, and areas on NFS lands that should be open to motor vehicle use by the public. The FEIS discusses mining and mineral operations at numerous places, including FEIS page 3-664 (“Routes used by miners to access their mining claims will remain available for their use regardless of the alternative selected.”), page N-50 (“The decision being made is not applicable to permitted activities, including grazing permits, special use permits, road use permits, and mining plans of operation.”), and page N-145 (“If a mining claim has an approved Plan of Operation, access is approved and granted through that Plan, including the use of roads or trails closed for other uses, if needed...”). Permitted uses are exempted from the decision under 36 CFR 212.51(a)(8) and CFR 261.13(h). In addition, the Forest Supervisor’s decision is consistent with 36 CFR 212.55(d)(1).

Miners’ rights to conduct locatable mineral operations on NFS lands under the United State mining laws are not absolute; miners must comply with reasonable regulations promulgated by the Forest Service to protect NFS lands. The Forest Supervisor’s decision constitutes a reasonable regulation regarding means of access to protect resources on NFS lands within the Tahoe National Forest; it does not affect a miner’s permitted uses or valid existing rights.

I find that the Forest Supervisor’s decision does not violate any of the federal statutes or regulations identified by the appellant.

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. I recommend the Appellants' requested relief be denied on all issues.

/s/ Tyrone Kelley

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