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Date: January 13, 2011

Subject: Tahoe National Forest Motorized Travel Management Project
Appeal No. 11-05-00-0009-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 Stan Van Velsor on behalf of The Wilderness Society, Forest Issues Group, Public Employees for Environmental Responsibility, Sierra Foothills Audubon Society, Mother Lode Chapter of the Sierra Club, South Yuba River Citizens League, Center for Sierra Nevada Conservation, and North Fork American River Alliance 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 30, 2010 and is timely. For requested relief the appellants requested that:

- 1) The Record of Decision for the Tahoe National Forest Motorized Travel Management Final Environmental Impact Statement be withdrawn and a new analysis and decision be issued that is in compliance with the law.
- 2) During the pendency of that analysis, the Forest Service shall issue a temporary forest order immediately closing the forest to cross-country travel, which shall remain in force until such time as the Forest Service is able to produce a legally sufficient Travel Management Plan and publish its MVUM. This closure order will also include the physical closure of all undesignated routes, and the seasonal closures and dates described in Alternative 4.

The Forest Supervisor offered to meet for an appeal resolution meeting, but the appellant declined.

ISSUES AND RESPONSES APPEAL

Issue 1: The ROD and FEIS violates the National Environmental Policy Act for failure to analyze a full range of reasonable alternatives (net reduction and minimum road system; minimum impact and climate change adaptation alternatives). (Appeal, pp. 3-10)

Response: The FEIS Chapter 1, page 7 states that the project’s Purpose and Need focuses on Subpart B of the 2005 Travel Management Rule which is intended to prevent resource damage caused by unmanaged motor vehicle use by the public and provide for a system of NFS roads, NFS trails, and areas on NFS lands that are designated for motor vehicle use, followed by a decision for the prohibition of motor vehicle use outside designated areas. Seven alternatives were considered for detailed analysis before the decision was made. In addition, 13 additional alternatives were considered but not analyzed in detailed for reasons listed in Chapter 2 of the FEIS. According to CEQ requirements under the National Environmental Policy Act 40 CFR 1502.14, the agency is required to “rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated...”

Specific to the appellant’s issues, Alternative 4 considers the option of adding no motorized routes within Inventoried Roadless Areas (IRAs), however this alternative is not preferred due to its effects on recreational opportunities. In addition, Alternative 3 considered the option of adding no routes to the transportation system (ROD, pp.21-23). Also, as shown in Table 13 on page 763 of Chapter 3.09, all alternatives considered decrease the percentage of existing routes open for motor vehicle use.

The preferred alternative was analyzed and found to have the following results: reduction in erosion, mitigation measures in riparian areas, decreases in ERAs, and consideration for IRAs. In addition, the project record includes a document for site-specific routes in need of restoration and rehabilitation.

Minimum road system alternative refers to Subpart A of the Travel Management Rule and are therefore outside the scope of this project. Once addressed, this Subpart will allow for decisions needed for safe and efficient travel and identify roads that are no longer needed to meet resource management objectives while informing decisions related to future decisions on travel management.

While there is no specific climate change alternative, climate change is addressed in Chapter 3.01 with focus on effects of the alternatives on greenhouse gas emissions. Known elements of climate change and the possible effects of this project on the subject matter are discussed based on informations provided by the Environmental Protection Agency (EPA) 2007 “State of Knowledge” paper. The analysis describes the difficulty in distinguishing greenhouse gases from vehicle emissions at a global scale, therefore any further analysis at a regional or local scale was not expected to provide a practical or meaningful analysis that would inform a decision or provide meaningful differences between any alternatives at this scale.

I find that the Forest Supervisor analyzed a reasonable range of alternatives.

Issue 2: The Purpose and Need statement was artificially too narrow, travel planning must evaluate impacts associated with more than just the “additions” to the system. (Appeal, pg. 10)

Response: On November 9, 2005, the Forest Service published final travel management regulations in the Federal Register (FR Vol. 70, No. 216-Nov. 9, 2005, pp 68264-68291). This final Travel Management Rule requires designation of those roads, trails, and areas that are open to motor vehicle use on National Forest System lands (FEIS, pg. 2). The FEIS examined seven alternatives in detail, which are described in Chapter 2 and analyzed for effects in Chapter 3. There were also 13 alternatives that were not considered in detail, which are described in the FEIS along with explanations of why they were not carried forward for detailed study. This is consistent with the requirements at 40 CFR 1502.14(a), and the definition of a reasonable alternative in FSH 1909.15, Section 14 (FEIS, Appendix N 2.00-36, pg. 53).

“Identifying the minimum road system and proposing additional closure of NFTS roads and trails currently designated as open is outside of the scope of this decision. The Travel Management Rule is comprised of three parts: Subpart A - Administration of the Forest Transportation System; Subpart B - Designation of roads, trails and areas for motor vehicle use; and Subpart C - Use by over-snow vehicles. The immediate focus of national forests in California is on addressing the issue of unmanaged, cross country motor vehicle use through the designation of roads, trails and areas by vehicle class, and if appropriate, time of year, and the production of a Motor Vehicle Use Map... Upon completion of this process, it will be determined how to best proceed in the future with the implementation of Subparts A and C” (FEIS, Appendix N 2.00-36, pp. 53-54).

I find that the Forest Supervisor’s purpose and need statement fits the goals of Subpart B and the current focus of national forests in Region 5. The Forest Supervisor has acknowledged their future commitment to address 36 CFR 212 Subpart A.

Issue 3: The Forest Service’s identified “baseline” transportation system is inaccurate, a violation of NEPA. (Appeal, pp. 11-13)

Response: The Forest Service acknowledged that errors existed in the data used in the DEIS, and made corrections. Chapter 1 of the FEIS describes the 2005 inventory of unauthorized routes and subsequent corrections to it (pg. 2). It includes a section describing the Tahoe National Forest Transportation System, including recent changes to the system that resulted from administrative decisions to close to public use, close seasonally, or decommission roads and motorized trails (pp. 3-4). There is also a section titled Corrections to the NFTS Data in the DEIS – Preparation of a Supplemental DEIS (Chapter 1, pp. 4-6). The database errors have been corrected, and do not constitute a violation of 40 CFR 1500.1 (b).

The Forest previously addressed the concern of errors in the baseline in response to comments 1.00-6 and 1.00-10 (FEIS pp. N-24 to N-25 and N-26 to N-28). This material includes the definition of the Forest transportation system from the Federal Register. The concern regarding the depiction of actual site-specific changes was addressed in response to comment 2.00-43 (FEIS, pp. N-57 to N-60), which includes a map showing the changes.

Although ML1 roads are already part of the baseline NFTS, the change in their management from closed to open has been site-specifically analyzed in the ‘Changes to the NFTS portion of the analysis for each resource (Chapter 3). Information on the individual roads is included in Appendix A. The

consideration of these roads is also described in response to comments on pages N-26, N-160 through N162, N-191, and N-211.

I find that the baseline system was accurately defined and described in the FEIS, in accordance with requirements of NEPA.

Issue 4: The FEIS did not adequately analyze direct, indirect and cumulative impacts of the existing road system, climate change, cultural resources, noxious weeds, terrestrial wildlife, soils, and hydrology. (Appeal, pp. 13-28)

Response: The existing transportation system has been described as part of the Affected Environment and included in the cumulative effects analyses in the various resource sections in Chapter 3. This was described in response to comments 1.00-6 (pg. N-24), 3.00-4 (pg. N-66), and 3.03-21 (pg. N-96) in the FEIS.

The interaction of this project with climate change is discussed in Chapter 3 of the FEIS (pp. 51-52). In summary, the potential for cumulative effects is considered negligible for all alternatives because none of the alternatives would result in measurable direct and indirect effects on air quality or global climatic patterns. The rationale regarding the cumulative effects/influence of climate change is further explained in response to comment 3.00-7 (pp. N-67 to N-68).

The project's effects on cultural resources were considered in accordance with the *Programmatic Agreement Among USDA Forest Service, California State Historic Preservation Officer, and Advisory Council on Historic Preservation Regarding the Process for Compliance with Section 106 of the National Historic Preservation Act for Designating Motor Vehicle Routes and Managing Motorized Recreation on the National Forests in California*. As described in Chapter 3.05 (FEIS, pp. 539-542), available data and monitoring observations were used to determine whether or not the proposed addition of any route to the NFTS would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. All proposed mitigation measures were also reviewed, and those with the potential to affect cultural resources were identified and analyzed for possible impacts. Protection measures have been specified where needed (FEIS Table 3.05-15). Consultation with SHPO occurred regarding the open areas at Boca, Prosser, and Stampede reservoirs. The ROD explains that the decision complies with Travel Management regulations with respect to cultural resources (ROD pg. 28), and with the National Historic Preservation Act (ROD pp. 31 to 32).

The Noxious Weed Risk Assessment and Chapter 3.06 of the FEIS contain information and analysis of project impacts to noxious weeds. Alternative 6 is found to present a high risk of weed establishment in the open areas near Boca, Prosser, and Stampede reservoirs, and a high risk of spreading weeds into new areas from 11 miles of ML1 roads being reopened. The conclusion for Alternative 6 is that the contributions to cumulative effects are insignificant, based on frequent future monitoring to enable weed detection that would be followed by rapid treatment of any infestations. The discussion of direct, indirect and cumulative effects is presented on page 655 to 662 of the FEIS.

The Biological Evaluation for Terrestrial and Aquatic Wildlife, and the EIS Chapter 3.03 contain information and analysis of project impacts to terrestrial wildlife, and a thorough comparison of alternatives. The response to comments under EIS Appendix N-98 through N-106 further clarifies the project design and analysis with regard to impacts to terrestrial wildlife. The ROD also states that "each route proposed for addition to the NFTS was reviewed to assess its potential impact on key

habitats for old forest associated species: the routes to be added to the NFTS under the Selected Alternative avoid protected activity centers (PACs) for California spotted owls and northern goshawks to the greatest extent possible while providing access to important recreation destinations.” (ROD, pg. 12). The appellant raises issue regarding absence of wildlife mitigation measures. While there are only three site-specific mitigation measures listed for wildlife in Appendix A, the primary aspects of the decision that mitigate impacts (*e.g.*, as required under Forest Plan Standards 82, 87, and 89) for off highway vehicle route, trail and road uses in general is the provision of the selected alternative to prohibit public motorized travel off of system roads, open areas, and motorized trails, along with seasonal road closures. Refer to the response for Issue 10, below, for additional information about the terrestrial wildlife analysis.

The analyses of the effects to soils and hydrology are presented in Chapter 3.02. The indicators used in these analyses and the rationale for their use is discussed in the Methodology sections (pp. 92 - 99 for soils and pp. 115 - 122 for hydrology). The direct, indirect, and cumulative effects of each alternative are analyzed and presented (pp. 104 – 113 for soils and pp.130 – 150 for hydrology). The information in the FEIS is summarized from information contained in Appendix A (Site Specific Road, Trail, and Open Area Information), Appendix F (Watershed Analysis), and Appendix L (Relationship of Ecosystem Management Decision Support Model Results to Green, Yellow, Red Field Surveys). Consistency with Riparian Conservation Objectives is described in Appendix I, where Table I-2 lists site specific mitigation measures that were developed based on field conditions. These measures minimize the risk of added routes producing and delivering sediment to aquatic and riparian habitats and minimize impacts to habitat for aquatic and riparian dependent species. The analysis of impacts to soils and hydrology are complete.

I find that the FEIS presents an adequate analysis of the cited resources, and meets the ‘hard look’ standard.

Issue 5: The ROD and FEIS violates the Clean Water Act and fails to take a hard look at water impacts in violation of NEPA. (Appeal, pp. 28-32)

Response: The ROD (pg. 31) states the project was designed to comply with the Clean Water Act (CWA) and its implementing regulations and policies. The primary method for assuring compliance with the CWA is through implementation of Best Management Practices (BMPs), which are implemented as mitigation measures specified in Appendix A (Site Specific Road, Trail and Open Area Information). These mitigation measures would meet water quality objectives and maintain and improve the quality of surface water on the Forest. All of the action alternatives will improve water quality on the Forest (FEIS Chapter 3.02).

The effects on 303(d) listed waterbodies (WQLS) are specifically discussed on pp.132-136 of the FEIS. Appendix I (pp. I-6 to I-7) also discusses the WQLS and consistency with the TMDL Implementation Plan for the Middle Truckee River. The Forest Service briefed the Lahontan Regional Water Quality Control Board on the consistency of this project with the Implementation Plan on May 14, 2008. The response to comment 3.02-14 (pp. N-81 to N-85) also provides a good description of project consistency with the CWA and references additional information in Appendix F. Site-specific analysis is demonstrated by the information presented in Appendix A and Appendix I. Other documents in the project record (Project Record # 2001, Restoration and Rehabilitation Needs; Project Record # 2002, OHV Monitoring; Project Record # 2003, Watershed Field Survey

Results) contain field data and additional site-specific information that formed the basis for the analysis presented in the FEIS.

I find the FEIS presents an analysis that adequately addresses water quality impacts, including effects to WQLS and consistency with developed TMDLs.

Issue 6: The “Purpose and Need” statement is in violation of the Travel Management Rule. (Appeal, pp. 32-35)

Response: The appellant alleges “The Forest crafted and interpreted the purpose and need for this project in such a way that this criteria was only analyzed for those routes that were seen as additions to the system, and not those routes that were already in existence as part of the NFTS.”

The FEIS purpose and need focuses on Subpart B only of the Travel Management Rule (36 CFR 212), addressing unmanaged cross-country travel, while maintaining important motorized access and recreation opportunities for the public, acknowledging a need for limited changes to the TNF transportation system (FEIS, Chapter 1, pg. 7). The purpose and need meets the regulations for implementing the National Environmental Policy Act which says the purpose and need for an EIS “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action” (40 CFR 1502.13).

“This proposal does not revisit previous administrative decisions that resulted in the current NFTS ... Previous administrative decisions concerning road construction, road reconstruction, trail construction, and land suitability for motorized use on the existing NFTS are outside of the scope of this analysis” (FEIS, Chapter 1, pg. 11). The travel management regulations specifically provide that previous decisions establishing the existing NFTS do not need to be revisited in order to implement the travel management regulations (36 CFR 212.50(b); 70 Fed. Reg. 68264, 68269). Impacts associated with the existing NFTS are considered in the cumulative effects analysis prepared for each resource.

I find that the purpose and need does comply with the requirements of the Travel Management Rule (36 CFR 212).

Issue 7: The Travel Management Plan failed to minimize the effects of off-highway vehicles as required by 36 CFR 212.55, and Executive Order 11644, as amended by Executive Order 11989. (Appeal, pp. 35-43)

Response: The Record of Decision (ROD), pages 11 and 12, provides a rationale for the Forest Supervisor’s decision that strikes a balance and protects natural resources by discussing measures taken to minimize potential adverse effects of motor vehicles on natural and cultural resources including limiting time of use (such as wet weather seasonal restrictions) and the number and location of new trails within Inventoried Roadless Areas (IRAs) where pre-designation mitigation is required.

The ROD, pages 18 and 19, provides an implementation strategy that specifies what resource mitigation measures must be in place before a route is open for public motorized use. The Final Environmental Impact Statement (FEIS), Chapter 1, page 8, Purpose and Need, provides criteria for designation of roads, trails, and areas as defined in 36 CFR 212.55, Subpart B of the Travel Management Rule. The FEIS, Appendix N, Response to Comment 2.00-3, pages N-39 though N-40,

discusses Executive Order 11644 and 11989 relative to the Tahoe National Forest Motorized Travel Management planning effort by referencing the Sierra Nevada Forest Plan Amendment Record of Decision (2004) that contains Forest-wide Standards and Guideline (S&G). As indicated these S&Gs are not decision documents, thus the FEIS is needed to produce the MVUM.

The FEIS, Appendix N, Response to Comment 2.00-35, page N-52, discusses Executive Order 11644 relative to the Tahoe National Forest Motorized Travel Management planning effort by stating the Forest Supervisor is not required to select the most restrictive alternative.

The FEIS, Appendix N, Response to Comment 2.00-33, pages N-51 and N-52, provides timing of mitigation measures designed to minimize adverse environmental impacts before a route can be opened for public motorized use by referencing Appendix A (Site Specific Road, Trail, and Open Area Information) of the FEIS. The FEIS, Appendix A displays the site specific resource information and required mitigation measures for all of the motorized routes proposed as additions to the National Forest Transportation System as well as the Maintenance Level 1 roads proposed for re-opening under the alternatives. The FEIS, Appendix L, Relationship of EMDS Model Results to Green, Yellow, Red Surveys, pages L-1 through L-8. The Ecosystem Management Decision Support (EMDS) model assesses soil erosion risk. The FEIS, page 103, describes the Green-Yellow-Red (GYR) Off-Highway Vehicle (OHV) Trail Condition Rating protocol that was used on 100 miles of authorized and unauthorized motorized trails, which is summarized in Appendix A. This data in part was used to determine mitigation actions such as seasonal wet-weather road closures.

I find the Forest Supervisor complied with 36 CFR 212.55, and Executive Order 11644, as amended by Executive Order 11989.

Issue 8: The Forest Service failed to comply with subpart Part A and B because the Agency's Travel Plan should have been informed by a minimum road system analysis. (Appeal, pp. 43-46)

Response: Purpose and Need section of FEIS, Chapter 1 clearly states the objective of meeting Subpart B of the Travel Management Rule to designate roads, trails, and areas for motorized use to address unmanaged motorized recreation, and by making limited changes to the NFTS. The FEIS does not attempt to identify the minimum road system (in support of Subpart A of the Travel Management Rule) prior to designating those facilities open to motorized use as discussed in the Response to Comments section of the FEIS (Appendix N, pp. N-28 to 29). The Travel Management Rule (36 CFR 212) does not require completion of Subpart A before, or concurrently with Subpart B.

I find the Forest Supervisor complied with Subpart B of the Travel Management Rule.

Issue 9: The Forest has failed to properly consider maintenance and administration of roads, motorized trails and motor vehicle areas. (Appeal, pp. 46-49)

Response: The designation of a transportation system within funding capability is beyond the scope of this analysis, and is not a requirement of the Travel Management Rule, Subpart B. The Forest Supervisor shall consider, among other concerns, the effects of affordability when designating roads for inclusion in the National Forest Transportation System (36 CFR 212.5).

The FEIS addresses affordability of designating roads throughout the document:

Identifying affordability as a signification issue (Chapter 1, pg. 13)

Assignment of affordability as a measurement indicator in Chapter 3.08 - Transportation (pg. 741)

Acknowledgement of insufficient funding, and narrative of funding trends throughout Chapter 3.08 – Transportation (pg. 737; Table 3.08-4)

Response to comments (Appendix N, pg. N-137)

ROD (pg. 29) states “...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 in his decision.

Issue 10: The Forest Service violated the National Forest Management Act by failing to comply with the Sierra Nevada Forest Plan Amendment and the Tahoe Land Management Forest Plan for riparian conservation objectives, noxious weed S&Gs and protect wildlife SNFPA S&Gs 82, 87, and 89. (Appeal, pp. 49-51; 54-55)

Response: Riparian Conservation Objectives and the associated S&Gs do not require that roads are located outside of RCAs, only that the impacts of roads on aquatic and riparian habitats and species are minimized. Appendix I (the RCO Consistency Analysis) documents the rationale for finding the project is consistent with each of the S&Gs associated with RCOs. Response to comment 3.02-8 (pg. N-77) also responds to the issue of effects in RCAs.

A Noxious Weed Risk Assessment was prepared for this project and the effects of the alternatives are analyzed and discussed in Chapter 3.05. Based on the commitment of frequent monitoring (SNFPA S&G 47 and 49) and eradication of new infestations (SNFPA S&G 48), the analysis concludes that the small contribution of the selected alternative (Alt. 6) to cumulative effects on noxious weed spread will be insignificant. The analysis demonstrates consistency with the applicable SNFPA S&Gs for noxious weeds.

The analysis of impacts to terrestrial wildlife species presented in Chapter 3.03 included habitat fragmentation (S&G 27, 28). As stated in the response to comment 3.03-23 (pg. N-97), “The Preferred Alternative would affect only 1% of Old Forest Emphasis Areas (OFEAs) within a 200-meter zone of influence from proposed additions to the NFTS motorized recreational opportunities, compared to 17% in the No Action Alternative, where existing motorized trails unauthorized for public motorized use would continue. Existing NFTS motorized routes affects approximately 24 % of OFEAs. The prohibition of cross country travel reduces the impact to OFEAs where motorized cross country travel would be prohibited on approximately 400,000 acres of OFEAs.”

“Each route proposed for addition to the NFTS was reviewed to assess its potential impact on key habitats for old forest associated species: the routes to be added to the NFTS under the Selected Alternative avoid protected activity centers (PACs) for California spotted owls and northern goshawks to the greatest extent possible while providing access to important recreation destinations” (ROD pg. 12).

“In Chapter 3.03 (Terrestrial and Aquatic Species) of the FEIS, a thorough and detailed analysis of effects of motor vehicle use to old forest habitat and associated species was completed, including effects to California spotted owls, goshawk, Old Forest Emphasis Areas (OFEAs), habitat fragmentation, etc. In most cases, additions to the NFTS motorized recreational opportunities were not included within California spotted owl and northern goshawk PACs. For example, out of 180 spotted owl PACs on the TNF, only 4 PACs are intersected by additions to the NFTS motorized recreational opportunities totaling 2.5 miles. About 78 miles of routes unauthorized for public motorized use would not be available for motorized use. In the Preferred Alternative, the proposed additions to the NFTS motorized recreational opportunities either occurred on the edge of a spotted owl PAC or the route was considered to be an important motorized recreational opportunity. Furthermore, the prohibition of cross country travel potentially reduces wildlife disturbance and old forest habitat fragmentation for spotted owl, goshawk, and other old forest associated species. In addition, riparian and meadow habitats were avoided, except when the motorized routes deemed to be sustainable and in good resource condition or with mitigatable resource concerns.” (Response to comment 3.03-25). Responses to comments 3.03-26 through 3.03-28 (pp. N-98 to N-101) provide additional examples from the terrestrial wildlife analysis and support for the conclusion that the project effects are consistent with the SNFPA ROD.

I find that the Forest Supervisor complied with the National Forest Management Act.

Issue 11: The FEIS violates the National Environmental Policy Act for failure to take a hard look at direct impacts to deer from the addition of routes to the motorized system. (Appeal, pp. 51-54)

Response: Effects analysis for deer is described in the MIS analysis (pp. 45-59), the responses to comments (Appendix N, pp. 90-91), and the FEIS in Chapter 3.03. All of the key analyses contained in the MIS report are also found in the FEIS. The ROD contains a narrative discussion of the analysis and rationale for lifting existing seasonal restrictions in the Humbug Sailor management unit, and the associated plan amendment.

A specific appeal issue was raised regarding population trend data for deer. There is an apparent inconsistency between the TNF data, which suggests that subject deer populations are stable to increasing and California Department of Fish and Game data that suggest that the populations are stable to declining. Upon further examination it appears that the discrepancy is a result of different time scales. The cited CDFG data is based on a longer time period (30+ years), during which time broad-scale habitat conditions have become generally less favorable for deer populations. The TNF based their analysis on the most recent 10 years of more localized population data, which suggests the populations are stable to increasing.

I find that the analysis contains a thorough list of issues and indicators, and takes the requisite ‘hard look’ at direct, indirect and cumulative effects to deer.

Issue 12: The Forest has failed to adequately consult with FWS about the impacts from the existing road system and climate change on listed species such as California red-legged frog and Lahontan trout, a violation of the Endangered Species Act. (Appeal, pp. 55-57)

Response: The applicable statute for compliance with the ESA for an individual agency action is Section 7(a)(2). Sections 2 and 9, as raised by the appellants, are either incorporated elements 7(a)(2)

(e.g. the provision for an incidental take statement to avoid Section 9 prohibitions), or do not constitute mandates for individual agency actions. Compliance with Section 7(a)(2) has been completed through informal consultation. The consultation history is as follows:

Oct 2006 – Final species-specific Design Criteria version: Developed at the Regional Level with technical assistance from Fish and Wildlife Service.

Dec 2006 – FWS Concurrence on approach issued at regional level, using Oct 2006 Design Criteria: FWS concurred that TM decisions that incorporate the October 2006 species-specific design criteria would have no effect or no adverse effects on listed species.

April 9, 2010 – FWS provided comments on SDEIS – Lahontan Cutthroat Trout (LCT) (additional info and clarification requested).

April 14, 2010 – FWS provided comments on SDEIS – California red-legged frog (CRLF) (additional info and clarification requested)

June 2010 – LCT BA and transmittal/request for concurrence sent to FWS

July 2010 – CRLF BA and transmittal/request for concurrence sent to FWS. BA included a determination of “May Affect but Not Likely to Adversely Affect Critical Habitat,” even though the Dec 2006 regional informal consultation did not address critical habitat for CRLF.

July 2010 – LCT Concurrence received from FWS. LCT does not have designated or proposed critical habitat.

Aug 2010 – CRLF Concurrence received from FWS. Concurrence included designated critical habitat.

I find that ESA Consultation was completed for both listed species that may be affected, and critical habitat for CRLF, as of August 2010. The Forest fully satisfied requirements under section 7(a)(2) of the Endangered Species Act.

Issue 13: The Forest Service is violating sections 2(c), 7(a)(1) and 9 of the ESA because the agency’s actions have allowed a “taking” of California red-legged frog. (Appeal, pg. 58)

Response: See response to Issue 12.

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