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Date: January 13, 2011

Subject: Tahoe National Forest Motorized Travel Management Project
Appeal No. 11-05-00-0010-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 Kyra on behalf of Friends of Greenhorn, California Association of 4 Wheel Drive Clubs, Nevada County Woods Riders, California Trail Users Coalition, Merced Dirt Riders, Friends of Tahoe Forest Access, American Motorcycle Association, Grass Valley 4 Wheelers, Webilt Four Wheel Drive Club and High Sierra Motorcycle Club 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 December 2, 2010 and is timely. For requested relief the appellants requested that the decision be withdrawn, prepare a Supplemental EIS which examines the entire system of recreational routes presently on the Stanislaus National Forest; restore the presently occurring, lawful access across public and private lands, and remove the newly imposed Wilderness standards from the areas of general Forest access known as Recreation Opportunity Spectrum (ROS) primitive motorized, semi-primitive motorized, roaded natural, and rural classifications.

Alternatively, and much more economically, withdraw the Decision and instead, continue implementation of the current Tahoe LRMP Forest Plan Direction and prior OHV Plans.

Prepare an alternative that examines the outcome of simply banning cross country travel but keep all existing routes open. That would be the baseline alternative.

The Forest Supervisor held an appeal resolution meeting with the appellant on December 8, 2010, but no issues were resolved.

ISSUES AND RESPONSES

Issue 1: The Forest Service failed to analyze an adequate range of alternatives-no alternative analyzed the existing situation. (Appeal, pp. 13-18; 33-37)

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. While there were 13 additional alternatives considered in response to public comments on the project, the alternatives either did not meet the purpose and need required for the project and therefore fell outside the scope of the project or were eliminated from detailed analysis for another reason listed in Chapter 2 of the FEIS. In addition, 7 other alternatives were considered for detailed analysis before a decision was made. 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..."

Minimum road system alternatives address 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.

Climate change is addressed in Chapter 3.0 with focus on effects of the alternatives on greenhouse gas emissions specifically addressed in Chapter 3.01. Known elements of climate change and the possible effects of this project on the subject matter are listed. None of the alternatives resulted in known measurable direct and indirect effects.

I find the Forest Supervisor analyzed an adequate range of alternatives.

Issue 2: The FEIS lacks the site-specific analysis required by NEPA at the project level. (Appeal, pp. 18-19; 30)

Response: The FEIS Appendices A, I and J all pertain to site-specific roads and list rationales for including or not including them in the road system, mitigation measures for roads in riparian areas, and roads specifically analyzed for mixed use. Appendix H also includes the cumulative effects for all reasonably foreseeable projects which are also site-specific in nature.

There are also site-specific routes listed as surveyed by a wildlife biologist and documented in the field notes referenced in the project record under record number 2049. Project record numbers 0496 and 0497 also include site-specific data. These documents expand on the rationales for route

exclusions and resource data for the proposed route additions respectively. Other documents referenced in the specialist reports section of the project record that are site-specific are as follows: 0423 Botany survey notes, 2001 Restoration and rehabilitation needs, 2002 OHV monitoring, 2003 Watershed field surveys, 4119 Watershed OHV monitoring, 4118 Visitor use monitoring. These project record files are available to the public upon request.

The analysis process at the site-specific and forest scales is explained in Chapter 3.0 of the FEIS. In addition, as with many agency large scale analysis, page 53 mentions the Incomplete and Unavailable Information disclosure which explains that in the instance(s) when information is unavailable or incomplete, there are other methodologies used to still analyze for the effects of the project and the unavailable or incomplete information is always indicated.

As mentioned in the FEIS Chapter 2, pages 4-5, during the comprehensive review of the DEIS in response to public comment, the Supplemental DEIS involved individual validation of every trail or road on the NFTS.

For all of the reasons listed above, I find that the Forest Supervisor did an adequate job of site-specific analysis, including addressing comments from the public with site specific issues.

Issue 3: By making the Forest less accessible and increasing the roadless characteristics the Forest Service violates NEPA, 40 CFR 1500.3 & .6, Organic Act, Multiple-Use Sustain-Yield Act, National Forest Management Act, and the National Roads and Trails Act. (Appeal, pp. 19-25; 57-58)

Response: The various Acts and policies cited by the appellant allow – and in fact, *require* – the Agency to balance a variety of resources, including recreation and extractable resources such as timber and minerals, with the need to protect watershed condition, and the long-term sustainability of such resources without impairment of the land’s productivity. While each of the Acts can appear to hold one resource as dominant over another, the cited Acts and many other policies and direction guiding the Forest Service, including roadless area rules, require the balance of resource provision with resource protection.

The Multiple-Use Sustained Yield Act stated that no specific use could predominate, and that an appropriate level of resource production should be maintained without impairment of the productivity of the land. The Forest Service must administer the renewable surface resources of the national forests for multiple use and sustained yield of the various products and services obtained from these areas. The Agency must give appropriate consideration to the relative values of the resources of particular areas. The Act authorizes the Secretary to cooperate with interested state and local governmental agencies and others in developing and managing the national forests.

The Organic Administration Act of 1897, under which most national forests were established, states: "No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States..."

The National Roads and Trails Act ensures that consideration is given to providing an adequate system of roads and trails within and near the national forest, and states that this system of roads is “essential”; however, it does not provide direction that would require public access to all existing

routes or national forest lands or to a specific threshold of these. The TNF Decision is consistent with direction in this act.

The Appellant cites violations of NEPA, alleging the Forest Service does not have authority to make this Decision. As outlined in 36 CFR, part 212, the Forest Service is required to administer the Forest transportation system on NFS lands as directed by Executive Order (EO) 11644, amended by EO 11989. These Executive Orders direct Federal agencies to ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands. It is within the Forest Service authority to manage the Transportation System and associated resources on National Forest System lands.

The Forest disclosed effects, methodology and indicators for analysis of roadless areas on page 748 of the FEIS, including effects on nine Roadless Area Characteristics. Effects, methodology and indicators for other resources are described in detail in each section in Chapter 3 of the FEIS and summarized in Chapter 2, page 43, Table 2-14. In the FEIS, Appendix N (Response to Comment 1.00-31) the Forest responded to a similar concern raised regarding the release of Inventoried Roadless Areas to multiple use in the 1984 California Wilderness Act.

The determination of the Tahoe Forest Supervisor that adding only a limited number of motorized routes within Inventoried Roadless Areas and in other areas of the Forest with competing needs and resources is not in conflict with direction of any of the cited Acts or provisions. The 2001 RACR directs that the agency provide “lasting protection for Inventoried Roadless Areas within the National Forest System.”

I find that the Forest Supervisor did not violate any of the Acts cited by the appellant by designating a system of motorized trails and roads for public use, and making determinations that other routes are not appropriate for public use.

Issue 4: The Agency places itself above congress by creating wilderness without authority in violation of the Wilderness Act, the California Wilderness Act, the Multiple-Use Sustained-Yield Act Tahoe LRMP, and NEPA-Purpose and Need. (Appeal, pp. 25-28; 79)

Response: The appellant alleges that the Forest Supervisor violated his authority by designating wilderness or creating “de facto” wilderness areas. The Forest Supervisor did not propose, analyze, nor make a decision on designating or proposing Wilderness as part of the Travel Management EIS/ROD. As the Appellant states, the authority to designate Wilderness is reserved for Congress.

The appellant states that failure to designate roads in IRAs or other areas of the Forest creates “*de facto*” wilderness, constituting a Decision to manage these areas as designated wilderness. While exclusion of motorized vehicles is one component of wilderness, there is a substantial difference between areas without motorized roads and wilderness. All other activities that would be non-conforming in designated wilderness are still allowed in areas on the Forest where routes have not been designated for motorized use.

IRAs are managed to maintain certain values and characteristics such as high quality or undisturbed soil, water, and air resources; a diversity of plant and animal communities and their habitat; and primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed

recreation. As described in the FEIS on page 748, the Forest Supervisor considered nine characteristics of Inventoried Roadless Areas. Wilderness characteristics were only considered for Citizens Inventoried Roadless Areas (CIRAs), which is appropriate, given that the primary element of CIRAs is their potential for Wilderness designation.

Based on the rationale for the decision described throughout the ROD and in the FEIS, it is clear that the Forest considered an array of criteria and potential effects on many different resources, not just for the suitability for future designation of wilderness areas. Criteria for guiding designation of motorized trails and roads are shown in Chapter 2, page 42 in Table 2-13. In each resource section in Chapter 3 of the FEIS, methodologies and indicators considered for effects are described and are summarized in Chapter 2, page 43 in Table 2-14. It is clear in the ROD (especially on pg. 11) that the TNF supervisor considered the myriad criteria and their effects on many other resources when determining whether to add roads to the system.

Though very few motorized trails were added to the existing NFTS in Inventoried Roadless Areas, the selected alternative will result in over 150 miles of motorized roads and trails providing access to recreational opportunities within IRAs. Similarly, the final Decision results in approximately 2470 miles of legal motorized public roads and trails in about 836,000 acres of non-wilderness land.

I find that the Forest Supervisor did not violate the Wilderness Act, the California Wilderness Act, the Multiple-Use Sustained-Yield Act, Tahoe National Forest LRMP, or NEPA-Purpose and Need.

Issue 5: The ROD, FEIS and the TMR not only violate the Wilderness Act, but they also cause the Forest to be in contempt of two courts by actively managing under the 2001 and 2005 Roadless Rule. (Appeal, pp. 29-31)

Response: There is currently a conflict among the federal courts regarding the validity of the 2001 and 2005 Roadless Rules. While it is true that a District Court in Wyoming has found the 2001 Rule invalid, the Northern District Court of California has explicitly thrown out the 2005 rule and reinstated the 2001 rule. *California ex rel. Lockyer v. USDA*, 459 F. Supp. 2d 874 (N.D. Cal 2006). The Ninth Circuit Court of Appeals affirmed the ruling of the Northern District Court. Meanwhile, the Wyoming District Court decision is currently under appeal.

On August 18, 2008 Deputy Chief of the Forest Service, Joel Holtrop wrote a letter in response to this situation. The letter stated that there was confusion about the status of the law, and that “additional information would be provided as it was made available.” Given the status of the law in 9th Circuit, it was reasonable for the Forest to conclude that it must manage Inventoried Roadless Areas in a way that would comply with the 2001 Rule, and as a practical matter, the Forest’s decision is not in conflict with either the 2001 or the 2005 Roadless Rule. It is not a violation of either rule to analyze the impacts of the proposed action and alternatives on roadless area characteristics, which is what the FEIS displays. Additionally, there is nothing in the Forest Plan or Forest Service policy that prevents a Forest from designating trails as the Forest has done in this case (FEIS, Appendix N 2.00-44, page 145).

I find that the Forest Supervisor’s decision is consistent with applicable law.

Issue 6: The Forest Service changed its management practices on Level 3 roads without proper rulemaking in violation of the FSH. (Appeal, pp. 31-33)

Response: NFTS roads are each maintained in one of three categories: Maintenance Level 1 roads closed to motor vehicles in long term storage (closed roads), Maintenance Level 2 roads maintained for high clearance vehicles only (high clearance roads), and Maintenance Level (ML) 3 to 5 roads maintained for standard four-wheel passenger cars (passenger car roads)” (FEIS Appendix N, 3.08-8, pg. 133).

As stated in a letter written on 1/13/09 from the Regional Forester to Forest Supervisors ‘Consistent with 23 USC 101 and 23 CFR 460.2, the Forest Service considers these ML 3 to 5 roads to be public roads and highways. Under 36 CFR 212.5(a)(1), state traffic laws generally apply on National Forest System roads (FEIS, Appendix N, 3.08-8, pg. 133).

Those roads maintained for standard passenger cars are subject to the Highway Safety Act and are considered by the Forest Service to be highways for purposes of the California Vehicle Code (CVC). The Highway Safety Act necessitates that a qualified engineer for the Forest Service does a mixed-use analysis to determine crash probability and crash severity. Designating NFTS roads for motorized mixed use involves safety and engineering considerations (FEIS, Appendix N, 3.08-8, pg. 133).

In Appendix N, Response to Comment 3.07-21, page 133, the Forest acknowledged that they have not historically enforced ML 3-5 roads as “highway” roads, but past lax enforcement does not mean that the rules have changed or that existing rules should not now be enforced. The Forest went on to analyze the safety of each road that was considered for mixed use and gave site specific safety concerns for each.

Additionally, the Forest worked with California Highway Patrol (CHP) and Forest Service regional leadership to ensure a common understanding of Forest Service policy and federal regulation with California Vehicle Code (CVC) (FEIS, Appendix N 3.08-8, pp. N-138 to 140).

I find that the Forest adequately analyzed the proper standards for maintenance level 3 roads and properly put emphasis on the safety of all Forest users.

Issue 7: The Forest Service failed to analyze the cumulative effects of the decision in violation of NEPA and ESA. (Appeal, pp. 33-43; 58-59)

Response: NEPA regulations specify that cumulative effects analyses be carried out in accordance with 40 CFR 1508.7 and “The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis” dated June 24, 2005 (36 CFR 220.4(f)). In its analysis of cumulative effects on the recreation experience, the forest confined the analysis to lands within the forest administrative boundary (FEIS, pg. 709), and provides a rationale for the bounding. In Appendix N, Response to Comments (pp. N-70 to 71), the forest explains that using a larger spatial area for the cumulative effects analysis, as suggested by the appellant, would have precluded meaningful site-specific analysis due to the continually evolving nature of road and trail management on adjacent national forests.

The forest considered effects from those present and reasonably foreseeable future actions with the potential to affect the recreation resource, including road and trail construction, rerouting trails, restoring unauthorized routes, reclaiming road spurs, and decommissioning roads. Projects with the most likely potential for affecting motorized and non-motorized opportunities are listed in Table

3.07-14 and analyzed for each alternative on pages 712-718 of the FEIS. A full list of the present and reasonably foreseeable future actions considered in this analysis is found in Appendix H (Reasonably Foreseeable Projects and Cumulative Effects).

Concentration of use is addressed in Chapter 3.11 of the FEIS and in responses to comments received on the DEIS (Appendix N). The forest acknowledges the potential for motor vehicle use to become more concentrated in certain areas, possibly leading to perceptions of crowding and reduction in safety compared to existing conditions (Appendix N, pg. N-126). The Selected Alternative authorizes the use of roads or motorized trails that have been determined to be generally safe (FEIS, Chapter 3.08). The forest intends to manage this through agency mapping and signing, working with user groups, designing trails to reduce average trail speeds, increasing sight distances in problems area, and other methods (pg. N-127). In its analysis, the forest also recognized the uncertainty surrounding a user's perception of crowding, future recreation use levels, and use patterns (FEIS, pg.827; and pp. N-126 to N-127). In its analysis, the forest states that while a reduction in miles available for motorized use can be assumed to increase the density of riders on the remaining road/trail system, the extent and location of riders feeling crowded is extremely difficult to predict (FEIS, pg. N-126), making more in depth analysis speculative.

Scoping is required for all Forest Service proposed actions, with the methods and degree of the scoping effort varying based on the scope and complexity of the project (36 CFR 220.4(e)(2)). Scoping and other public involvement efforts conducted by the Tahoe National Forest are described on pages 838-839 of the FEIS, and included multiple meetings, workshops, and comment periods, as well as publication of the NOI in the Federal Register and legal notices in the forest's newspaper of record (Project Record #0249, 0392, 0156, 0166, and 0182). Based on input received from the public, the forest developed and refined the alternatives considered in the FEIS. As shown in Table 2-13 of the FEIS, NFTS additions and changes were proposed based on a variety of criteria, including, but not limited to, routes specifically requested by the public. For some routes not requested by the public, other information specific to the route, such as its connectivity to existing trail networks, was used to identify needed additions and changes to the NFTS in the alternatives. (Appendix A, pp. A-500, A-532, and A-545.)

The appellant alleges that the Forest Service did not properly consult with the US Fish and Wildlife Service due to its failure to adequately consider cumulative effects. As documented in the project record, the Tahoe National Forest initiated Section 7 consultation under the Endangered Species Act of 1973, as amended, with the U.S. Fish and Wildlife Service (Service) for the threatened Lahontan cutthroat trout (LCT) on August 22, 2007. Consultation for the threatened California red-legged frog (CRLF) was initiated on October 21, 2009.

The BAs document the direct, indirect, and cumulative effects associated with each action proposed in the alternatives, including proposed additions to the NFTS, reopening of Maintenance Level 1 roads, seasonal use restrictions, and the designation of open areas (LCT BA, pp. 14-30; CRLF BA, pp. 15-29). Based on the effects analyses, the forest reached the determination that the action alternatives may affect but is not likely adversely affect the Lahontan cutthroat trout, the California red-legged frog, or their designated critical habitat (LCT BA, pg. 30; CRLF BA, pg. 29). In letters dated July 7 and August 13, 2010, the US Fish and Wildlife Service concurred with the determinations, concluding the informal consultation process as required by the Endangered Species Act.

I find the Forest Supervisor adequately considered cumulative effects as required by the National Environmental Policy Act and the Endangered Species Act.

Issue 8: The Forest Service violated CEQ because: a) Chapter 2 comparative tables do not reveal the magnitude of change that implementation of the proposed action will be. b) The Forest Service does not use the data from Chapter 3 to formulate the comparative tables in Chapter 2. c) In Chapter 2, both draft statements present the same technically legal but incomplete *No Action* alternative. d) The Forest Service has shown no evidence that an analysis of the vast majority of the original ~2,500 miles of unclassified mileage ever occurred. (Appeal, pp. 45-47; 50-52)

Response: a) and d) As noted by the appellant, the mileage figure for unauthorized routes was revised during the planning process. The difference between the 2,500 miles of unauthorized routes identified in the Notice of Intent (NOI) and the 1,400 miles in the Draft EIS was explained in Appendix N (pg. N-26) of the FEIS. As explained, the mileage of unauthorized routes shown in the NOI included routes that were not actually unauthorized (i.e., routes that were found to be part of the existing, authorized NFTS or previously closed or decommissioned). The figure also included more than 1,000 miles of routes located on private land. Since the Forest Service does not have jurisdiction for routes on private land, the mileage figure was clarified in the DEIS to include only those unauthorized routes located on NFS land.

In the DEIS, unauthorized routes were defined to include user-created routes, temporary roads, and Maintenance Level 1 roads (Appendix N, pg. N-26). Maintenance Level 1 roads are part of the transportation system but closed to motor vehicles in long term storage (FEIS, pg. 736). Recognizing the difference between Maintenance Level 1 roads and user-created routes, the forest divided the 1,400 miles of unauthorized routes into two categories in the SDEIS and FEIS: 897 miles of user-created routes and 514 miles of Maintenance Level 1 roads, some of which were being driven by the public (SDEIS, pg. 2; FEIS, pg. 2).

The 1,400 miles of unauthorized routes were considered for addition to the NFTS or, in the case of the Maintenance Level 1 roads, reopening for public motorized use based on the criteria presented in Table 2-13 (FEIS, pg. 42). Appendix A (Site Specific Road, Trail and Open Area Information) includes the rationale for either excluding or including each road/trail/area in the Preferred Alternative. Some routes were not proposed in any of the alternatives, for reasons including resource protection, safety concerns, and previous closure or decommissioning (Project Record #0496, Route Exclusion Rationale).

b) The appellant states that Chapter 2 presents different route mileage totals than Chapter 3. However, the reference cited by the appellant (FEIS, pg. 713) displays the cumulative totals of all roads and motorized trails within the forest --NFTS, private, County, as proposed NFTS additions -- while pages 40 to 41 of Chapter 2 present total mileage for NFTS roads only. While there are some minor discrepancies in the total miles of NFTS and unauthorized routes presented in the EIS, the forest manages an existing network of 2,396 miles of NFTS roads and trails (ROD, pg. 20). In its EIS, the forest considered 897 miles of unauthorized routes for possible addition to the NFTS and 514 miles of Maintenance Level 1 roads for possible changes to the NFTS.

c) In its inventory, the Tahoe identified 897 miles of unauthorized routes and 514 miles of Maintenance Level 1 roads (FEIS, pg.2). The environmental effects of the No Action Alternative

associated with the continued use of unauthorized routes and cross country travel are analyzed in detail in Chapter 3 (Affected Environment and Environmental Consequences) of the FEIS. In addition, the forest considered an alternative that would add all unauthorized routes to the NFTS (FEIS, pp. 33-34). This alternative was eliminated from detailed study because it (1) Did not address the criteria contained in 36 CFR Part 212, Subpart B of the Travel Management Rule, (2) Was inconsistent with Forest Plan direction for Restricted Motor Vehicle Travel Management (TNF LRMP 2007 as amended), (3) Would not adequately protect resources, and (4) Would have required adding routes to the system without a public right-of-way.

I find the Forest Supervisor did not violate the CEQ regulations in his presentation of the alternatives data and consideration of the No Action alternative.

Issue 9: The Forest Service did not respond to our comments requesting analysis of the affected activities, such as the benefits of motorized access and failed to provide a sufficient number of miles to provide access (only 61.4 out of the original ~2,500 miles). (Appeal, pp. 48-50; 52-56)

Response: The appellant requests that “an accounting of the [societal/social] benefits of motorized access” be analyzed in the EIS. In Chapter 3.07 (Recreation Analysis), the Forest showed a methodology for analyzing recreational benefits and compared how the different alternatives provided these. In Chapter 3.11 (Social Impact Analysis), the Forest discussed the effects of the alternatives on various social and economic benefits, and described these in quantifiable terms relative to each alternative – particularly relevant are pages 835-838. Response to Comment 3.11-4 on page N-151 points to the location of these analyses. Describing and quantifying personal values related to the experience of motorized use and comparing their relative value in the various alternatives would be difficult and subjective. In this case, the analysis results would likely parallel and be similar to those which are described in the chosen methodology described in the FEIS.

The appellant had submitted a comment on the DEIS and SDEIS requesting that an alternative with all existing routes be analyzed. The Forest responded to this concept in Appendix N, Comment 2.00-14 on page N-43. While the Forest considered an alternative known as the “Responsible Recreation Alternative”, it was not analyzed in detail. Similarly, the appellant asked for all routes to be included in analysis. The Forest responded to this comment in Appendix N, Comment 1.00-20 on page N-33. The Forest also considered but did not analyze in detail an alternative that would add all unauthorized routes to the system. This and other alternatives considered but not analyzed in detail are described on pages 33-37 in Chapter 2 of the FEIS.

The appellant also had commented that all “2500 miles” of unauthorized routes that were originally discussed in the NOI should be analyzed, as compared to the 1400 miles ultimately analyzed in the FEIS. The appellant states that the Forest failed to respond to this request. The Forest explains the discrepancy in detail in responding to Comment 1.00-8 on page N-26. The vast majority of these (1,035 miles) were determined to be on private property within the Forest boundary, so would be outside of the scope and authority of the Forest to make determinations for public access; the remaining changes in miles were relatively minor data correction errors and are explained in more detail in the Forest’s response.

The appellant states that the Agency has failed to “discuss...any responsible opposing view which was not adequately discussed in the draft statement” and unlawfully refused to work with affected

publics. Public participation is described in various locations through the FEIS, including Chapter 1 page 11, Chapter 4 (Coordination and Consultation), and the ROD on pages 17-18. Additionally, Chapter 2 pages 33-37 (Alternatives Considered but Not Analyzed in Detail) describes consideration of a wide range of opinions in developing alternatives and in shows that elements of these alternatives were incorporated into the selected and other alternatives.

The appellant states that the forest failed to provide sufficient number of miles of motorized routes for access. On page 12 (and other areas) of the ROD, the Forest Supervisor provides a rationale for his determination that the selected alternative provides motorized access to key recreation opportunities and to the vast majority of the forest. The Forest Supervisor also makes it clear in this section that there can be some future modifications and improvements to the system over time.

It is evident that the forest considered and responded appropriately to the comments from the appellant, but did not necessarily resolve every one by materially changing the contents of the analysis, particularly in the manner desired by the appellant.

I find that the Forest Supervisor responded and used an appropriate level of discretion and judgment in determining the material resolution of the comments in the analysis and decision.

Issue 10: The Forest Service violated NEPA by presenting numerous bulky EISs that are inaccessible & confusing; while succeeding in burying the effects of this action from the public, in contradiction to its purpose. (Appeal, pp. 60-65)

Response: The CEQ regulations for implementing NEPA do specify that the text of final environmental impact statements (i.e., the purpose of and need for action, the description of the alternatives, the affected environment, and the environmental consequences) shall normally be less than 100 pages or, for projects of unusual scope or complexity, 300 pages (40 CFR 1502.7 and 1502.10). The Forest Service NEPA regulations (36 CFR 220), prepared in conformance with NEPA and CEQ regulations (per 40 CFR 1507.3 and NEPA section 102(2)(B)), do not set specific page limits for environmental impact statements. While the forest's EIS does exceed the page limit guidelines provided by CEQ, the Responsible Official has the discretion to include the necessary analysis and supporting documentation to inform the decision-maker and the public of the effects of the alternatives. While lengthy, the forest's EIS and appendices provide full discussion of environmental impacts, consideration of public comments, and other materials which substantiate the effects analyses.

In 2003, the Forest Service began the current Travel Management decision-making process for national forests in California (Appendix N, pg. N-28). While a regional interdisciplinary team did provide guidance throughout the process, the Tahoe National Forest assembled a team to conduct the route inventory, collect route-specific data during field reviews, analyze effects, and work directly with the public to gather important input (FEIS, pp. 2, 94, 117, 539, 609, 848-849, N-75, N-112, N-221, etc.). The response to Issue 2 in this appeal provides additional details of the site-specific analysis completed for this project.

The appellant alleges that the effects of eliminating public motorized use of routes were not properly analyzed in the FEIS. The 1,400 miles of unauthorized routes were considered for addition to the NFTS or, in the case of the Maintenance Level 1 roads, reopening for public motorized use based on the criteria presented in Table 2-13 (FEIS, pg. 42). Appendix A (Site Specific Road, Trail and Open

Area Information) includes the rationale for either excluding or including each road/trail/area in the Preferred Alternative. Some routes were not proposed in any of the alternatives, for reasons including resource protection, safety concerns, and previous closure or decommissioning (Project Record #0496, Route Exclusion Rationale).

Because unauthorized routes are not part of the NFTS, the forest does not need to propose action or analyze the direct, indirect, or cumulative effects of that action in order to eliminate public use of the routes (Appendix N, pg. N-27).

Nonetheless, the forest fully analyzed a No Action alternative (FEIS, pg. 22). This alternative represents a continuation of current management or direction, in that there would be no changes to the current NFTS of roads, trails, and areas, and no permanent prohibition on cross-country travel. Use of unauthorized routes would continue, but these routes would not be added to the transportation system or designated for motor vehicle use. This alternative establishes an important benchmark for the assessment of impacts resulting from the existing condition. It provides a point of reference for contrasting existing resource impacts and recreational uses with the action alternatives.

The appellant alleges that the Forest misled the public as to the intent of laws, rules, processes and limits of their authority, confusing the public and minimizing public involvement. Chapter 3 of the FEIS includes a 'Regulatory Framework' section for each resource that briefly summarizes how applicable law, regulation, and other management direction relate to the Travel Management Project. These sections clearly state the intent of each law or regulation and provide the legal framework for the effects analyses included in the FEIS. Compliance with these laws and regulations is documented in the Record of Decision (pp. 28-32).

I find the Responsible Official did not violate NEPA in the preparation of the EIS.

Issue 11: The Forest Service creates a less productive forest in violation of NEPA and the National Forest Roads and Trails Act (how can an inaccessible forest, with few roads and trails possibly be more productive). (Appeal, pp. 65-67)

Response: NEPA requires consideration of 'the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity' (40 CFR 1502.16). As declared by the Congress, this includes using all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans (NEPA Section 101) (FEIS, pg. 52).

The Forest acknowledged that "long term productivity" means many different things to many different people in pages 9 through 16 of the ROD. However, as dictated by the Sierra Nevada Forest Plan amendment, the Forest had to balance these concerns and designate forest roads that met all users' needs (FEIS, Appendix N, Comment # 1.00-7, pg. N-25).

In its analysis, the Forest noted that long term productivity can be increased by reducing routes: "Routes that are not designated for public motor vehicle use will have the potential to revert to vegetated conditions, which will reduce many of the adverse effects related to these routes" (FEIS, pg. 52). While the appellants may disagree that this meets the definition of "productivity," many

other groups do see this as a requirement for a productive forest. The Forest must balance these interests for the benefit of the entire public. The Forest went on to fully acknowledge and analyze the different concerns of the public in the FEIS (pp. 833-842).

I find that the Forest adequately analyzed and balanced concerns of the public to create a Motorized Travel Management plan that considered the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

Issue 12: The Forest Service disregarded the Data Quality Act by making false claims and misrepresenting facts. (Appeal, pp. 67-74; 79)

Response: Under the Data Quality Act and USDA supplementary guidelines, “objectivity” focuses on whether the disseminated information is presented in an accurate, clear, complete and unbiased manner. To ensure objectivity, “USDA agencies and offices will strive to ensure that the information they disseminate is substantively accurate, reliable, and unbiased and presented in an accurate, clear, complete, and unbiased manner.”¹

Under Data Quality Act and USDA supplementary guidelines for requesting corrections to data, “...Requests for correction of information shall be made during the comment period for that action and, the agency's response will normally be incorporated in the next document it issues concerning the matter.”²

Appendix N of FEIS incorporates your and similar comments to the SDEIS (and the corresponding responses) regarding manipulation of the facts, unfounded false statements, and request for corrections. The EIS summarizes existing credible scientific evidence relative to environmental effects and makes estimates of effects on theoretical approaches or research methods generally accepted in the scientific community (FEIS, pg. N-63). With respect to noise impacts under current condition to Spotted Owls, the extensive response to comment 3.03-47 (pp. N-113 to 115) explains the rationale for analysis and conclusions. The response to comment 3.03-30 (pp. N-102 to 103)³ addresses the concern of negative outcome for Alternative 1.

I find that responses to your comments on the SDEIS were incorporated by the Forest into the FEIS, either individually or grouped by similar comments, in compliance with Data Quality Act [Guidelines for Quality of Information]. I also find that the Forest clarified assumptions, limitations of data, and explained rationale for analyses.

¹ USDA Information Quality Activities at: http://www.ocio.usda.gov/qi_guide/index.html

² USDA Information Quality Activities at: http://www.ocio.usda.gov/qi_guide/corrections.html

³ SDEIS Comment 3.03-30 Wildlife impact analysis (assumptions regarding vehicle type)

Issue 13 The Record of Decision and FEIS are arbitrary and Capricious. (Appeal, pp.74-78)

Response: In making his decision, the Forest Supervisor considered the potential for increase in use over time (FEIS, pg. 827; Appendix N, pp. N-126 to N-127), and the needs of the elderly and disabled (FEIS, pp. 839-840; Appendix N, pp. N-152 to N-153). The analysis acknowledges the uncertainty surrounding future recreational use levels on the Forest, as well as the potential for use to become more concentrated in available areas. However, motor vehicle use is already concentrated in

some areas of the Forest, and it's unclear at this time whether implementation of the Selected Alternative will lead to major changes from the existing condition (FEIS, pg. 827). Rather than speculate on the specific transportation and recreation needs of the future, the Responsible Official emphasizes his commitment to working with the public to further enhance the forest transportation system over time (ROD, pg. 13).

As described in the response to Issue 7, the forest confined the recreation resource cumulative effects analysis to lands within the forest administrative boundary (FEIS, pg. 709), and provides a rationale for the bounding. Use of a larger spatial area for the cumulative effects analysis, as suggested by the appellant, would have precluded meaningful site-specific analysis due to the continually evolving nature of road and trail management on adjacent national forests (Appendix N, pp. N-70 to 71).

The forest concluded that cumulative effects would be moderately beneficial to motorized recreation (FEIS, pg. 717). This determination was based on an analysis of effects from those present and reasonably foreseeable future actions with the potential to affect the recreation resource, including road and trail construction, rerouting trails, restoring unauthorized routes, reclaiming road spurs, and decommissioning roads. In addition to existing NFTS routes and unauthorized routes on National Forest System land, the forest considered all other existing routes within the analysis area (Table 3.07-15), including the more than 2,600 miles of roads under County or State jurisdiction or on private land.

I find the Responsible Official's selection of Alternative 6 as described in the Record of Decision was not arbitrary and capricious.

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