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May 15, 2008

Delivered via U.S. Mail and via email to appeals-pacificsouthwest-regional-office@fs.fed.us

Randy Moore, Regional Forester
USDA Forest Service, Regional Office R5
1323 Club Drive
Vallejo, CA 94592

**RE: Appeal from Record of Decision for Eldorado National Forest Public
Wheeled Motorized Travel Management EIS dated March 31, 2008.**

Dear Appeal Deciding Officer and Regional Forester Moore:

Please accept this Notice of Appeal under 36 C.F.R. Part 215 from the above-referenced Decision of the Forest Supervisor, signed March 31, 2008. This appeal is presented on behalf of our clients the BlueRibbon Coalition, as well as its numerous participating individual and organizational members, which specifically include but may not be limited to the California Enduro Riders Association, American Motorcyclist Association D36, and the California Association of 4 Wheel Drive Clubs. Individual and/or organizational members of any of these organizations may submit their own appeal(s) from the Decision. This appeal and any such additional appeals must be independently evaluated and the agency must comply with applicable review procedures for all such appeals. Any communications regarding this appeal should be directed to Paul A. Turcke at the contact information listed above and at pat@msbtlaw.com.

INTRODUCTION

BlueRibbon is an Idaho non-profit corporation with over 10,000 individual, business, and organizational members representing approximately 600,000 individuals nationwide. BlueRibbon members use motorized and non-motorized means, including off-highway vehicles, snowmobiles, horses, mountain bikes, and hiking, to access state and federally-managed lands

thought the United States, including the Eldorado National Forest (“Eldorado”). BlueRibbon members have concrete plans to enjoy such future access to the Eldorado.

BlueRibbon has been actively involved in all administrative processes and litigation referenced in the DEIS. While we appreciate the effort reflected in the FEIS/ROD, there are serious deficiencies which can hopefully still be remedied. The agency, through unwise if not illegal decisions early in the process, placed itself in an unreasonably small range of decision options. While we appreciate that the ROD represents a move from the DEIS preferred alternative toward a more workable travel network, there unfortunately remain many more necessary improvements. We look forward to continuing our involvement in further planning and litigation that will apparently continue to surround management of motorized recreation in the Eldorado National Forest.

APPEAL ISSUES

For any or all of the following reasons, we respectfully request that the Decision of the Forest Supervisor be reversed and remanded to the Forest for proper consideration and further proceedings. As a preliminary matter, we wish to outline the applicable standard of judicial review, as this standard is effectively the one which the Appeal Deciding Officer must apply during the administrative review process. Executive-branch agency decisions are ultimately reviewable by the judiciary, which is empowered to set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or found to be “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A) & (D), see also, *Bonnichsen v. United States*, 367 F.3d 864, 880 (9th Cir. 2004) (“we review the full agency record to determine whether substantial evidence supports the agency’s decision....”).

The arbitrary and capricious standard is deferential and does not allow a reviewing court to substitute its judgment for that of the agency:

The scope of review under the "arbitrary and capricious" standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made....Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies; we may not supply a reasoned basis for the agency's action that the agency itself has not given.

Motor Vehicle Mfrs. Ass’n. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983) (citations omitted) (emphasis added). Arbitrary and capricious review is the mechanism through which the courts can require basic fairness and reasonableness of agency behavior, for “unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on

discretion.” *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167 (1962) (quotation omitted).

Even where an agency can arguably point to substantial evidence supporting its decision, the presence of contradictory evidence might render the decision arbitrary and capricious. Thus, “even though an agency decision may have been supported by substantial evidence, where other evidence in the record detracts from that relied upon by the agency we may properly find that the agency rule was arbitrary and capricious.” *American Tunaboat Ass’n v. Baldrige*, 738 F.2d 1013, 1016 (9th Cir. 1984) (citing *Bowman Transport, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 284 (1974) (agency decision supported by substantial evidence may still be arbitrary and capricious)); see *Atchinson v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973) (where agency modifies or overrides precedents or policies, it has the “duty to explain its departure from prior norms”).

Even substantial evidence cannot properly support a decision if the information was not considered by the decision-maker at the proper stage of the process. Information cannot be presented as a post-hoc rationalization to justify a decision previously made. *Southwest Center for Biological Diversity v. U.S. Forest Service*, 100 F.3d 1443, 1450 (9th Cir. 1996). In the areas identified below, the Decision violates these basic principles.

I. The Selected Road/Trail Restrictions will Cause Increased and Unjustified Negative Impacts to the Human Environment

The Decision fails to provide for sufficient and well-reasoned motorized access opportunities that will fail to reasonably address user needs and could actually cause undue harm to the physical environment.

Then-Chief Dale Bosworth stated upon release of the Travel Management Rule that “[l]and Managers will use the new rule to continue to work with motorized sports enthusiasts, conservations, state and local officials and others to provide responsible motorized recreational experiences in national forests and grasslands for the long run.” USDA Forest Service, News Releases, “*USDA Releases Final Rule for Motorized Recreation in National Forests & Grasslands*,” dated November 2, 2005. “A managed system of roads, trails and area designated for motor vehicle use will better protect natural and cultural resources, address use conflicts, and secure sustainable opportunities for public enjoyment of national forests and grasslands.” Travel Management Rule Final Communication Plan, November 2, 2005, p.5. In fact, “it is Forest Service Policy to provide to diversity of road and trail opportunities for experiencing a variety of environments and modes of travel consistent with the National Forest recreation role and land capability.” Forest Service Manual 2353.03(2).

The Final Travel Management Rule requires the agency to apply “general criteria” when designating roads, trails and areas for vehicle use, which include effects on natural and cultural resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails and areas, and the availability of resources for maintenance and administration. 36 C.F.R. § 212.55(a). The Travel Management Rule further includes “specific criteria” which must be

considered, “with the objective of minimizing” effects on specified resources including soils, watersheds, wildlife and associated habitats and conflicts between vehicle and other uses and within vehicle use types. *Id.* at (b). The Forest Service should be planning for a managed system, and working with all groups, including OHV enthusiasts, in order to comply with not only the agency’s own directives and the Travel Management Rule, but the policies behind the Rule.

With the promulgation of the Travel Management Rule there is a unique emphasis on travel management and, at least in theory, a dedication of human and financial resources to travel planning efforts. As a practical matter, it is essential that sustainable route systems be designed, even if the current process is characterized as a “beginning” or merely the “backbone” of a long-term vision for more extensive future planning. As a general observation, it seems the Eldorado is unjustifiably erring on the side of preservationist caution, which could actually harm the physical environment through the failure to designate a sufficiently extensive or diverse route network. There is nothing in the Travel Management Rule or any Court Order that provides substantive guidance or restriction on informed agency discretion. See, e.g. “National Forests are managed by law for multiple use. They are managed not only for [preservation of natural values, water quality, wildlife habitat, endangered species biological diversity, quiet, and spiritual renewal] but for timber, grazing, mining, and outdoor recreation. These uses must be balanced, rather than one given preference over another.” Travel Management Rule, 70 Fed.Reg. 68266 (middle column) (Nov. 9, 2005). We urge the Forest to create a travel management glass that is half full, rather than creating a recipe for future frustration between user groups and unnecessary friction and environmental damage that will flow from an unduly restrictive motorized travel network. Despite the constraints created by the part 215 appeal process, we believe that substantial improvements can be made, or groundwork for them laid, through the appeal process.

II. The Agency Evaluated an Inadequate Range of Alternatives

It is clear that the Forest Service has failed to meaningfully consider viable alternatives to those formally analyzed in the DEIS/FEIS. NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to the preferred alternative. 40 C.F.R. § 1502.14 (“agencies shall rigorously explore and objectively evaluate all reasonable alternatives.”) The alternatives section is considered the “heart” of the EIS and a NEPA analysis must “explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. A NEPA analysis is invalidated by “[t]he existence of a viable but unexamined alternative.” *Resources, Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993).

All alternatives are closure alternatives. NEPA requires an agency to “rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.12(a)(2000). The agency chose to ignore alternatives that considered new routes to complete loops and enhance existing motorized access and recreation opportunities. In particular, the BlueRibbon proposal for Alternative “R” was effectively discarded from meaningful consideration by the agency.

The agency has improperly ignored viable, if not persuasive, alternatives and proposals in violation of NEPA. The management of and access to these lands are important to BlueRibbon

and many diverse Forest visitors, and we respectfully ask you to review the questionable management decisions made in the FEIS. We specifically request that you expand the range of alternatives and receive additional public comment in order to provide an adequate route network for the Eldorado.

III. The Decision was Illegally Constrained by Forest Plan Standards.

The Eldorado improperly relied on Forest Plan Standards and Guidelines as the sole support for its decision to close some routes. The “Alternatives Not Considered in Detail” section of the DEIS discusses why the Forest Service did not include an alternative that designated all NFS roads and trails equivalent to the recent court order. It states, “[t]his alternative was considered but eliminated from detailed study because...(3) there are some NFS roads and trails on the Forest that have been determined to be non-compliant with ENF LRMP standards and guidelines. Designating these routes would require several significant Forest Plan amendments. The Forest believes these standards and guidelines serve an important role for protecting resources on the Forest and its adjacent lands, and believe that amending these standards and guidelines would jeopardize the health of such resources and cause unnecessary environmental harm.” DEIS, p. 30. The Forest Service also explains why it did not consider an alternative that would designate all routes in the 1977 and 1990 OHV Plan, stating, “[t]here are many routes in the 1977 and 1990 OHV Plans that no longer exist as a result of decommissioning or revegetation, that are inconsistent with ENF LRMP standards and guidelines, or for which there are resource concerns.” *Id.* At a minimum, these statements implicate detailed and technical site-specific conclusions that cannot be casually tossed aside as is attempted in the DEIS. None of these concerns, expressed in our previous comments, were properly addressed in the FEIS.

In this reasoning, and elsewhere in formulating management options, the agency has illegally failed to consider viable alternatives or provide for options the extent of its statutory right and the Court Order. By not considering viable alternatives, including some which may require plan amendment(s), the Forest Service in is violation of the Court Order and its own policy, stated in the DEIS, “to provide a diversity of road and trail opportunities for experiencing a variety of environments and modes of travel consistent with the National Forest recreation role and land capability. Modes of travel include hiking, horseback riding, bicycling, motor vehicle use, and so forth.” DEIS p. 4, *citing* FSM 2353.03 (2) and FSM 2353.2. The Forest Service fails to adequately consider the option of amending the ENF LRMP or to consider other alternatives that would require plan amendment, despite the clear availability of that option. Applicable regulations clarify the agency’s ability to complete such an amendment concurrently with the project analysis, for:

[I]f an existing or proposed use, project, or activity is not consistent with the applicable plan, the Responsible Official may take one for the following steps, subject to valid, existing rights: (1) Modify the project or activity to make is consistent with the applicable plan...; (2) Reject the proposal or terminate the project or activity...; (3) Amend the plan contemporaneously with the approval of the project or activity so that it will be consistent with the plan as amended. The amendment may be limited to apply only to the project or activity. 36 CFR § 219.8 (2006).

In fact, such amendment (under option (3) above) is not only allowable but should logically occur during project-level planning such as travel planning. Forest planning has always been and is becoming even more of a “broad brush” analysis of general and projected guidance to provide rough “sideboards” for further project analysis. This reality is specifically reflected in the unique history on the Eldorado, where the Chief of the Forest Service and the E.D. California Court have each questioned the Forest’s past attempts to adequately analyze the site-specific impacts of a transition from an “open” to “designated route” system of travel management. Forest plans are routinely amended when the more detailed analysis associated with a project reveals shortcomings in Forest Plan direction, changes to the relevant “best available science” or other gaps in the prior (and necessarily limited) agency analysis.

IV. The FEIS Fails to Even Attempt Required Site-Specific Analysis

The FEIS lacks proper evidence necessary to make rational, let alone sound, management decisions. The Forest Service is imposing blanket closures on many widely used roads and trails without site-specific analysis. The Forest still has not completed the site-specific analysis mandated by the 1995 WO decision on appeals to the Forest Plan, which found that closures associated with the change to a designated route system must be supported by site-specific analysis.

This issue was the topic of some analysis in the Court’s 2005 decision, which acknowledged and extended upon the rationale of the 1995 WO appeal decisions:

In a 1995 decision of an appeal by both the CSNC and ORV users, the Chief of the Forest Service (“Chief”) agreed with the ORV Users’ contention that the Forest Service failed to complete an adequate NEPA analysis before issuing the 1990 ORV Plan. The Chief ruled that the Forest Service had not considered the site specific impacts associated with restricting ORV use to designated routes and directed the Forest Service to complete the required NEPA analysis by November of 1997. AR Vol. 6 at 981. Specifically, the Chief ruled that the LRMP EIS is an inadequate substitute for an independent ORV Plan EIS because: “[T]here was insufficient environmental disclosure to implement a policy of ORV closures on the Forest when the 1990 ORV Plan was completed. This site-specific analysis is required at the point when an irretrievable commitment of resources is made. (Sierra Club v. Hathaway, 579 .2d. 1162,1168 (9th Cir. 1978)). Implementation with the 1990 ORV Plan was premature without site-specific rationale on the need for and effects of a closed, unless designated as open policy. AR Vol. 6 at 984.” Accordingly, the Chief directed the Forest Supervisor “to supplement the ORV Plan with environmental analysis that addresses reasonable alternatives to the proposed action, including the No Action alternative, for ORV use in General Forest management areas.” Id. at 983-84. A similar conclusion was reached in response to the appeal of the California Department of Fish and Game (“CDFG”).¹⁹ There, the Chief concluded that: “The new ORV Plan incorporated the environmental analysis of the Forest Plan, but no further NEPA documentation was conducted. Because the designation of open travel routes or closed areas is a site-specific decision, the effects and rationale for that decision must be disclosed at the time there is an irretrievable commitment of resources

and cannot be deferred. *Sierra Club v. Hathaway*, 579 F.2d. 1162, 1168 (9th Cir. 1978) . . . However, we find no site-specific analysis to implement the 1990 ORV Plan. Therefore, the Regional Forester (through the Forest Supervisor) is directed to disclose the environmental consequences of the decision in the ORV Plan to restrict use to designated routes in General Forest areas. In particular, the environmental effects of increased concentration of use on open trails and the effect on visitor experiences should be addressed.”

Order dated February 15, 2005 at 46-47 in *Center for Sierra Nevada Conservation v. Berry*, Case No. CV 02-325 (E.D.Cal.). The FEIS still has not correct this oversight, as the agency has focused only on justifying the routes to be designated open, but has performed minimal, if any, analysis to justify the many existing (or potential) routes that are closed under every alternative.

V. The Decision Lacks Necessary Analysis to Justify Site-Specific Actions

Where the FEIS includes site-specific analysis, such analysis is not properly performed or documented. When federal agencies evaluate technical issues or apply specialized expertise, NEPA requires them to rely on valid sources and to disclose the methodology, present hard data, cite by footnote or other specific method to technical references, and otherwise disclose and document any bases for expert opinion. NEPA does not envision undocumented narrative exposition, instead requiring that, “Agencies shall insure the professional integrity, including the scientific integrity, of the discussions and analyses in environmental impact statements. 42 U.S.C. § 4332(A); 40 C.F.R. § 1502.6. It is a violation of NEPA and the Council on Environmental Quality Regulations for an agency to “couch” technical analysis in vague citations. Specialized expertise often lies at the core of NEPA analysis and the agency must properly present and insure the professional integrity of any technical analysis. *Siskiyou Regional Education Project v. Rose*, 87 F.Supp.2d 1074, 1098 (D.Or. 1999) (quoting *NRDC v. Duvall*, 777 F.Supp. 1533, 1539 (E.D.Cal. 1991)) (internal citations omitted).

The Forest Service has not provided adequate analysis to support many closure conclusions. A “Significant Issue” presented in the DEIS is how the “proposed level of motorized use will adversely affect forest resources, adjacent landowners, and non-motorized recreation opportunities.” DEIS, p. 10. The DEIS identifies eight (8) elements: 1) Resource damage and route proliferation from dead-end routes; 2) Inability to maintain and enforce designated routes; 3) Impacts to non-motorized recreation opportunities; 4) Impacts on private-property; 5) Impacts from designating public motor vehicle use on ML-1 roads; 6) Impacts to forest resources; 7) Increased wildland fire risks; and 8) Impacts to grazing allotment capabilities and livestock. *Id.* Yet, the Forest Service stops there, failing to elaborate on any of these elements in any meaningful detail for any route in the DEIS.

Further, in specific sections of the DEIS, such as the Air Quality section of Chapter Two, the Eldorado states that “[t]he differences in the Alternatives are negligible in terms of their effects on air quality...except that impacts from fugitive dust and vehicle emissions may be reduced [in Alternative B, C, D, and E] because fewer miles of roads and trails would be open for public wheeled motor vehicle use.” DEIS, Chapter 3, p. 56. The Forest Service does not provide a single scientific reference for this conclusion, yet continues to prefer an alternative that

closes over half the roads and trails to motorized use. Another example is in the Soil Resources section which reads, “[t]he wet season closure, which applies to the action alternatives (B, C, D, and E) would be an important tool in regulating use during the rainy season, and could reduce rutting and erosion.” DEIS, Chapter 3, p. 69. Again, there are no scientific studies or articles that support this conclusion; the Forest Service simply offers the conclusory observation that more “flexible methods of wet weather seasonal closures have been found to be difficult even in areas significantly smaller than the ENF...[and will] not be implementable, enforceable, affordable, or consistent.” DEIS, Chapter 2, p. 34. Even if the Forest Services is suggesting that it is “common knowledge” that a decrease in roads and trails is equal to a decrease in soil erosion, it still does not justify the overwhelming amount of route and trail closures suggested in all alternatives of the DEIS. Lastly, relying on a Standard and Guideline from the ENF LRMP, the Forest Service states, “[p]rohibiting public wheeled motor vehicle use of existing routes will result in less erosion to the extent that wheeled motor vehicle traffic is the primary cause of erosion. In most situations, however, erosion is the result of a combination of factors that include a lack of drainage, inadequate maintenance, and poor route design or location.” DEIS, Chapter 3, P. 65.” The Forest Service cannot make blanket closures of routes without scientific support of its conclusions.

In making decisions in the FEIS, The Forest Service arbitrarily and capriciously relies on incomplete, invalid, or nonexistent analysis. The FEIS lacks the foundation necessary make critical, sound management decisions. It also defies the very purpose of NEPA by allowing the Forest Service to make management prescriptions based on the whims and fancies of its employees. The public relies on agencies to uphold professional and scientific integrity in all management decisions. The Forest Service has deprived the people of a valid NEPA process by not providing proper evidence for analysis of the issues.

VI. The Decision Illegally Advances Closures Alleging Wildlife Impacts

The Decision improperly justifies many restrictions based on alleged wildlife management issues. The DEIS insufficiently advances endangered and/or sensitive status species issues as a basis for restrictions. The Eldorado states that “[s]urveys for goshawk presence and reproductive status have been conducted since the late 1980s, and those conducted after 2000 used the current Region 5 survey protocol...[m]anagement direction in the ENF LRMP for the California spotted owl and Northern goshawk that is applicable to this project is to, ‘[m]itigate impacts where there is documented evidence of disturbance to the nest site from existing recreation, off highway vehicle route, trail, and road uses (including road maintenance). Evaluate proposals for new roads, trails, off highway vehicle routes, and recreational and other developments for their potential to disturb nest sites’ (USDA FS 2004b).” DEIS, Chapter 3, p 154. As all viable alternatives are closure alternatives, it is clear that the Forest Service seems to have interpreted “mitigate impacts” to mean complete closures of routes that are remotely close to a nest site. It is also apparent that the Forest Service has also completely disregarded its own directive, which requires such actions only upon finding “documented evidence of disturbance to the nest site from existing recreation.” The Forest Service has again erred on the side of eliminating use with no meaningful site-specific analysis or technical support based, in this instance, on the supposed route(s) proximity to goshawk or spotted owl habitat.

In the DEIS, the Forest Service states that,

Region 5, has generally assumed that activities (including road and trail use) occurring further than 0.25 miles from a goshawk nest site have little potential to affect goshawk nesting (USDA FS 2004b). Grubb et al. (1998) reported that vehicle traffic from roads caused no discernable behavioral response by goshawks at distances greater than 400 meters (0.25 miles) from nests. Little information is available on disturbance distances for goshawks, but, as with other raptors, the risk of flushing from the nest or even nest abandonment is likely to increase as the disturbance distance decreases. The number of dispersed recreation sites accessed by motorized routes in Alternative A is almost twice the number accessed by any of the action alternatives (Table 3-36). The likelihood for human intrusion into goshawk nest stands is highest in Alternative A, resulting in a greater likelihood of breeding disturbances and associated reductions in individual fitness.

DEIS, Chapter 3, p. 173 (emphasis added). Again, this is the type of technical conclusion that must be supported by reasoned discussion and citation to data and/or technical support. The Forest Service cites to the Grubb et al. article stating there was no discernable behavioral response by goshawks at distances greater than 0.25 miles from nests. However, the agency goes on to say that since there are twice the number of routes in Alternative A, there is twice the likelihood for human intrusion. This is a completely irrational statement given its failure to even consider the location of the routes to existing habitat and nest sites. “Perfunctory references do not constitute analysis useful to the decisionmaker in deciding whether, or how, to alter the program to lessen the cumulative environmental impacts.” *NRDC v. Hodel*, 865 F.2d 288, 299 (D.C. Cir. 1988). Again, this statement shows that the Forest Service is basing closures on assumptions and quick judgment, not hard science and transparent, rational analysis as required by NEPA.

As discussed in Section V above, when federal agencies evaluate technical issues or apply specialized expertise, NEPA requires them to rely on valid scientific sources in order to make sound decisions. Here, the Forest Service arbitrarily and capriciously relied on nonexistent analysis and defies the very purpose of NEPA and underlying substantive statutes. The public relies on agencies to uphold professional and scientific integrity in all management decisions. The Forest Service has deprived the people of a valid NEPA process by not providing proper evidence for analysis of wildlife issues.

VII. The Decision Illegally Applies the 2001 Roadless Rule

The Decision does not comply with applicable law governing Inventoried Roadless Areas (“IRA’s”). Alternatives B, C, D, and E do not comply with applicable law governing Inventoried Roadless Areas (“IRA’s”). Due to the applicability of the illegal 2001 Roadless Rule at critical stages of the process, routes in IRAs have been inappropriately stigmatized and have been the focus of a single-minded closure effort.

The 2001 Roadless Rule is illegal and should not be the standard for analysis of IRA management. There is a possibility, if not likelihood, that the 2001 Roadless Rule will be declared illegal during appeal review. Such a change should require the Eldorado to revisit analysis of routes in IRAs and would independently justify the creation of new alternative(s) and receipt of further public comment. Even if the 2001 Roadless Rule is deemed to be the applicable standard, the FEIS interprets the Forest's authority in an unduly restrictive manner. This interpretation is contrary to the regulation and to the representations of the Forest Service and preservationist groups, who contend that the Roadless Rule does not prohibit motorized access to IRAs. See, 2001 Roadless Rule, 66 Fed.Reg. 3251 (Jan. 12, 2001).

VIII. The Decision Improperly Addresses Dispersed Camping and Big Game Retrieval

The DEIS and FEIS both failed to include any meaningful discussion or analysis about dispersed camping or big game retrieval. The Forest Service admits that any limits to recreational use, and the resultant limits on dispersed camping are a "significant issue" and calls for development of a strategy for designating areas for public motor vehicle use of dispersed camping areas with the help of a group of public stakeholders within 6 months of the final decision. DEIS, Summary, p. viii, xi. However, the Forest Service summarily dismisses the issues of dispersed camping and big game retrieval in the "Alternatives Considered But Eliminated from Detailed Study" section of the DEIS:

Designate areas, including OHV use areas and dispersed campsites. Designating areas for OHV use and motor vehicle use of dispersed campsites was not identified as part of the purpose and need for this project. Part of the purpose and need for this project is to "provide public wheeled motor vehicle route access to dispersed recreation opportunities," whereas the designation of areas for future dispersed camping is beyond the scope of the project. Therefore, this alternative was eliminated from detailed study. (DEIS, Chapter 2, p. 31)

Designate areas for cross-country travel for big game retrieval. Designating areas for cross-country travel for big game retrieval was not identified as part of the purpose and need for this project and is outside the scope of the project. Therefore, this alternative was considered but eliminated from detail study. (DEIS, Chapter 2, p. 32)

Every alternative, with the exception of legally-required but non-viable Alternative A, call for "wheeled motor vehicles limited to one vehicle length from the edge of the route surface for parking and dispersed camping." DEIS, Chapter 2, p. 34. Later in the document, the Forest Service makes a similar statement, "[p]arking of motor vehicles for dispersed camping and day use will be limited to within one vehicle length of designated roads and trails, as consistent with TMR (36 CFR 212/251/261/295)..." DEIS, Chapter 3, p. 340. No further analysis is given.

The "one vehicle width" rule only exists in proposed agency guidance and is not, by its own terms, a "dispersed camping" prescription. Forest visitors have not historically, and would not safely or rationally, "camp" within one vehicle width of a road. This "rule" only addresses

the width of a designated route, not dispersed camping along the route. Put differently, the “one vehicle width” rule is effectively a prohibition against dispersed camping.

The issues of dispersed camping and big game retrieval were hotly debated during promulgation of the Travel Management Rule. The Final Rule, consist with the balance adopted on other issues, concludes that local decisionmakers can best consider options through project-level planning. See, 70 Fed.Reg. 68274 (middle column)(Nov. 9, 2005). It is notable that Region 5 has developed informal guidance for its Forests in addressing these topics, and that the DEIS neither acknowledges nor complies with this guidance. The version “V1.2” of this guidance, dated May 3, 2007, is currently posted on the Region 5 website at http://www.fs.fed.us/r5/routedesignation/pdfs/guidance-for-parking-dispersed_camping-big_game.pdf. It specifically states “[i]t is well-recognized that National Forests have historically provided camping opportunities outside of developed campgrounds.” *Id.* at 5. It “recommends” that California Forests, in the process of proposing designations limiting the use of motor vehicles, specify the distance and/or time periods within roads/trails allowable for dispersed camping, and further counsels that such distance be “no more than 50 feet from the end of a designated road or trail.” *Id.* We question whether this standard is sufficient as it is not consistent with what many other Forests are proposing, but the important point vis-à-vis the DEIS is that the Eldorado has not even attempted to discuss or follow the Region guidance on dispersed camping.

Similarly, for big game retrieval, the Region 5 guidance acknowledges the importance of analyzing this topic in conjunction with the route designation process and advises that any proposed designation allowing for limited cross-country travel for the purposes of big game retrieval “should be analyzed carefully by your [Inter-Disciplinary Team] and Forest Supervisor.” *Id.* at 4. The DEIS does not follow this recommendation, instead ducking the issue and summarily and erroneously concluding the topic is outside the scope of the present analysis. DEIS, Chapter 2, p. 32.

The Eldorado is acting arbitrarily and capriciously and/or failing to act to the extent of its statutory right in ignoring these two important topics. We recognize that these can be difficult additional topics to add to the analysis, but the failure to address these issues at the same time as limiting travel to designated routes will invite confusion and further distrust of and resentment toward the Forest. The Forest should immediately conduct an analysis on remand or through an independent process to include an additional alternative(s) specifically analyzing these topics, and either designating specific routes providing access to historical dispersed camping sites/areas, or at least considering the 50 foot or some other standard to address dispersed camping needs and practices on the Forest.

RELIEF REQUESTED

In sum, it appears that the Forest Service decided to eliminate OHV routes and found convenient excuses as justifications. In light of the foregoing, the BlueRibbon Coalition and its co-appellants respectfully requests the Agency expeditiously grant any and all of the following relief from the decision:

- (1) Withdraw the Decision;
- (2) Remand the Decision for further analysis;
- (3) Stay implementation of the Decision pending further analysis; or
- (4) Identify immediate projects/routes that the Forest shall address through project-level analysis to add appropriate mileage back into the transportation system.

We specifically request the opportunity for informal disposition, oral presentation, and or any procedural opportunities provided for or consistent with applicable regulations.

Sincerely,

MOORE, SMITH, BUXTON & TURCKE, CHTD

A handwritten signature in black ink, appearing to read 'Paul A. Turcke', written over the printed name below.

Paul A. Turcke

/PAT

cc: BRC, CERA, AMA 36, Cal4