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*Delivered via U.S. Mail and Facsimile to 530-621-5297*

Eldorado National Forest  
Forest Supervisor Ramiro Villalvazo  
Eldorado National Forest Travel Management DEIS  
100 Forni Road,  
Placerville, CA 95667

**RE: Comments to Eldorado National Forest Public Wheeled Motorized Travel Management Draft Environmental Impact Statement**

Dear Mr. Villalvazo:

Please accept the following comments to the Eldorado National Forest Public Wheeled Motorized Travel Management Draft Environmental Impact Statement ("DEIS"). These comments are submitted on behalf of our clients, the BlueRibbon Coalition, the California Association of 4 Wheel Drive Clubs, the California Enduro Riders Association, American Motorcyclist Association District 36 and the California Off Road Vehicle Association (collectively, the "Recreational Groups"). Individual and/or organizational members of the Recreational Groups may submit additional comments, which should be considered distinct and independent from these comments and the agency should independently analyze and respond to each such comment. Our comments are designed to support and amplify the comments from the Recreational Groups, their members and enthusiasts. We are aware of the controversial nature of travel planning, in general and on the Eldorado. The purpose of our comments is to outline the proper legal context and analysis to be used in interpreting route-specific comments. Any communications regarding these comments should be directed to Paul A. Turcke at the contact information listed above.

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 DEIS, there are serious deficiencies in the DEIS which can hopefully be remedied. 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.

We note the existence of and hereby incorporate by reference two letters we have presented to the Eldorado addressing the current travel planning process. Specifically, we provided letters dated August 2, 2007 and September 6, 2007. We have not yet received a response to either letter from the Eldorado. Again, we reiterate and incorporate by reference the comments and legal analysis presented in those letters and ask that you formally respond to them in the FEIS.

“Motorized recreation is a legitimate use” of the National Forests.<sup>1</sup> “The number of OHV users in the United States has climbed tenfold in the past 32 years, from approximately 5 million in 1972 to 51 million in 2004.”<sup>2</sup> The Forest Service needs to provide for this increase in demand by properly maintaining the existing route system and looking for areas to construct new, environmentally compatible routes.

Then-Chief Dale Bosworth stated in a News Release for the Travel Management Rule, “[I]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.”<sup>3</sup> “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.”<sup>4</sup> 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.”<sup>5</sup> 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.

At the outset, we wish to emphasize that this process affords an unprecedented opportunity to conduct effective travel management planning. 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

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<sup>1</sup> Travel Management Rule Final Communication Plan, November 2, 2005, p.5.

<sup>2</sup> *Id.*

<sup>3</sup> USDA Forest Service, News Releases, “USDA Releases Final Rule for Motorized Recreation in National Forests & Grasslands,” dated November 2, 2005.

<sup>4</sup> Travel Management Rule Final Communication Plan, November 2, 2005, p.5.

<sup>5</sup> Forest Service Manual 2353.03(2).

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 the Court’s Order in *Sierra Nevada Conservation v. Berry*, Case No. CV-02-325-LKK 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.

**A. Mischaracterization of BlueRibbon’s Recreation Alternative: The Need for an Adequate Range of Alternatives**

Overall, BlueRibbon finds the DEIS disappointing. BlueRibbon submitted a pro-motorized recreation alternative to the Forest Service, however it is apparent that the agency has decided to essentially ignore BlueRibbon’s input. All alternatives are closure alternatives and decrease the linear mileage of roads and trails by amounts virtually unprecedented in Forest System travel planning. For example, Alternative D, the “Preferred” Alternative, purports to close 1,198.8 miles of current NFS roads and trails to public use. DEIS, p. 23, Table 2-6. According to the DEIS, the total of all roads and trails proposed for designation as open for public motorized vehicle use on NFS land are: Alternative A (No-Action) - 3,379.4 miles; Alternative B – 2,025.6 miles; Alternative C (Proposed Action) – 1,906.0 miles; Alternative D (Preferred Alternative) - 1,727.0; and Alternative E - 1,552.6 miles. DEIS p. 44-45.<sup>6</sup> Alternative A, the “No Action” Alternative, is the only alternative that seems to even remotely consider protecting motorized recreation on the Eldorado and is the only Alternative that does not consider large seasonal closures. However, even Alternative A is inadequate, confusing and does not even attempt to comply with the Travel Management Rule. In the initial “Comparison of Alternatives” Section, Alternative A is described as allowing “for public wheeled motor vehicle travel on 3,379.4 miles of routes and does not prohibit cross-country travel.” DEIS, Chapter 3, p. 44. Conversely, in Chapter 3, it is stated that Alternative A, “includes the most motorized road and trail mileage of all the alternatives (3379.4). Cross-country travel is prohibited.” DEIS, Chapter 3, p. 344.

It is clear that the Forest Service has failed to meaningfully consider viable alternatives to those formally analyzed in the DEIS. NEPA imposes a mandatory procedural duty on federal

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<sup>6</sup> Mileage includes roads designated as include ML-3 to -5 surfaced roads. Mileage is significantly less when ML-3 to -5 roads are not included: Alternative A (No-Action) - 2,252.8; Alternative B - 1,361.5; Alternative C (Proposed Action) - 1,241.2; Alternative D (Preferred Alternative) - 1,061.3; Alternative E - 887.9.

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 (9<sup>th</sup> Cir. 1993).

Numerous proposals from BlueRibbon have been discarded from formal analysis by the agency. See, DEIS, Chapter 2, p. 33 (discussing BlueRibbon “Alternative R”). The agency has improperly ignored these 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 DEIS. We specifically request that you expand the range of alternatives and receive additional public comment in the manner outlined in our letter dated September 6, 2007 in order to provide a range of motorized route options that better encompasses the route network historically mapped, maintained and traveled on the Eldorado.

#### **B. All Alternatives Arbitrarily and Capriciously Implement Forest-Wide Large-Scale Closures to Motorized Vehicle Use**

Alternative A is the only alternative in the DEIS which does not consider Forest-wide, large-scale closures to motor vehicle use. However, Alternative A is the embodiment the current condition on the Eldorado which was designed as a temporary interim approach following the decision in *Sierra Nevada Conservation*. This interim network does not provide legally-sufficient recreation opportunity and does not even attempt to comply with the Travel Management Rule. For example, Alternative A apparently allows for cross-country travel when one of the main objectives of the Travel Management Rule is to eliminate cross-country travel completely.<sup>7</sup> The Forest Service could therefore not even reasonably implement Alternative A as a long term management option. The Forest Service needs to at least consider a well written, Travel Management Rule compliant Alternative, such as the one provided by Blue Ribbon.

Our clients are further frustrated by the Forest Service’s apparent strategy of creating a range of alternatives that can only close large portions of the currently existing route system<sup>8</sup>, followed by the unspecified and optimistic promise of working with the public to add routes to the system later. The Forest Service states that it will, “[b]egin working with a collaborative group of public stakeholders within six months of the final decision...[to develop]...and process for considering the addition of routes or changes in management of the designated system...within one year of the final decision.” DEIS, Summary, viii-ix. As indicated above,

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<sup>7</sup> However, it should be noted that the elimination of cross-country travel does not mean that all user-created routes should be automatically eliminated. The Travel Management Rule specifically states, “Some user-created routes are well-sited, provide excellent opportunities for outdoor recreation by motorized and nonmotorized users alike, involve less environmental impact than unrestricted cross-country motor vehicle use, and would enhance the system of designated routes and areas.” Travel Management Rule, 36 C.F.R. 212, 251, 261, and 295. Accessed on October 17, 2007 at [http://rs2477.com/documents/Final\\_ORV\\_Rule\\_11-2-05.pdf](http://rs2477.com/documents/Final_ORV_Rule_11-2-05.pdf).

<sup>8</sup> The route system presented in Alternative A is actually not the currently existing route system.

this approach will lead to an inadequate route network that will illegally concentrate use, create unnecessary environmental impacts, and polarize user groups that should be engaged in a productive collaborative dialogue with the agency.

The Forest Service is required by law to make decisions based on a multiple-use mandate, as outlined in statutes like the Multiple-Use Sustained Yield Act of 1960 (“MUSYA”) and the National Forest Management Act (“NFMA”). In particular, NFMA requires:

In developing, maintaining, and revising plans of the National Forest System pursuant to this section, the Secretary shall assure that such plans –

(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with [MUSYA], and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness... NFMA §6, 16 U.S.C. § 1604(e).

MUSYA provides further clarification of the agency’s duty to provide for “use” of the National Forest System, including outdoor recreation. MUSYA’s policy statement explains:

It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of sections 528 to 531 of this title are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in section 475 of this title... MUSYA §1; 16 U.S.C. § 528.

The Forest Service must comply with this legally-mandated approach to management, which is subject to review under applicable administrative procedures and the Administrative Procedure Act (the “APA”). It is well recognized that the agency has discretion when balancing between “use” and “non-use” under these statutes, and in allocating “use” between the activities listed above. However, the agency cannot arbitrarily and capriciously establish its chosen balance, and must develop a plan “that will best meet the needs of the American People.” 16 U.S.C. § 531(a).

As discussed above, the Forest Service’s failure to even consider a reasonable range of alternatives establishes an improper and preservation-tilted balance between legitimate “uses” of the National Forest as recognized in NFMA and MUSYA. The Forest Service has not accommodated the needs of the public, and has arbitrarily and capriciously chosen to close routes and trails in all alternatives without proper, reasonable evidence to back its decisions.

### **C. The Eldorado Arbitrarily Fails to Even Consider Forest Plan Amendments**

The Eldorado is improperly relying 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.

Further, the Forest Service relies on Forest-Wide Standards and Guidelines to limit motorized trails in deer herd critical winter range and fawning areas to 2.5 miles per square mile.<sup>9</sup> DEIS, Chapter 2, p.7. However, it is unclear whether Alternatives B, C, D, and E are within or exceed ENF LRMP limits, as the Forest Service states, “[a]verage road or trail densities within winter range or fawning habitats do not exceed the ENF LRMP limit under these alternatives. Under these alternatives, the majority of critical winter range habitat is below road densities of 2.5 miles per square mile. Nonetheless, for all deer herds other than the Blue Canyon herd, road densities remain above 2.5 miles per square mile over 35 to 50 percent of deer herd range, depending upon the herd and the Alternative.” DEIS, Chapter 3, p. 195-196 (emphasis added). The Forest Service seems to create concerns regarding the DEIS compliance with LRMP deer herd and route density Standards and Guidelines. The Eldorado appears to be arbitrarily picking and choosing which of the ENF LRMP Standards and Guidelines it wants to enforce or disregard.

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 is in 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

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<sup>9</sup> Forest-wide S&G – Management Practice 27 – Restricted OHV Management (ENF LRMP, p. 4-84): In each deer herd winter range and in fawning areas, motorized trails will be limited to an average of 2.5 miles per square mile. Open roads will be limited to an average of 2.5 miles per square mile.  
Forest-wide S&G – Management Practice 103 – Transportation Management – Roads Regulated (ENF LRMP, p. 4-107): On local roads, regulate or restrict road use in such areas as critical deer winter range and fawning areas to meet an average open road density of approximately 2.5 miles per square mile.

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.

#### **D. The DEIS Makes No Effort to Address Public Access/Private Lands Issues**

The Forest Service has failed to consider making an amendment to the ENF LRMP or to otherwise address rights of way or other means of documenting historical and necessary public access over private lands. The Eldorado, citing to Standard and Guideline, "Forest-Wide S&G, Management Objective 27," which states, "[r]oads and trails for which required rights-of-way do not exist and those located predominantly on private land will not be designated for OHV uses, however, a list will be developed of priority ROW acquisitions needed to complete the desired road and trail system." DEIS, Appendix, p. 418. The DEIS reflects meaningful effort toward this end only for one road, Mud Lake Road. "[T]he Forest Service has worked with the private landowners to acquire a documented public right-of-way that will allow public highway-licensed wheeled motor vehicles only to trailer across the properties to access NFS lands and the Mud Lake road and surrounding areas." DEIS, Chapter 3, p. 256.

We respectfully request that the agency expand these efforts, and we welcome an opportunity to assist in such a process or negotiations. We recognize that the federal agency may have conflicting duties or priorities, and this appears to be a challenge that might be effectively addressed through appropriate public-private partnering to the benefit of all involved. In this vein, we request that the Eldorado at least consider the possibility of a plan amendment in order to outline and begin a process for the clarification or acquisition of such rights of way.

#### **E. The DEIS Lacks Required Site-Specific NEPA Analysis**

