



United States
Department of
Agriculture

Forest
Service

Humboldt-Toiyabe
National Forest

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File Code: 1570-1
#08-04-17-0006 A215
Date: November 27, 2007

Peter Browning
President
High Sierra Hikers Association
P.O. Box 8920
South Lake Tahoe, CA 96158

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Dear Mr. Browning:

In accordance with 36 CFR 215.18, I have reviewed the appeal record, Environmental Assessment (EA), Decision Notice and Finding of No Significant Impact (DN/FONSI) for the Alpine Winter Recreation Project on the Carson Ranger District.

My review focused on the project documentation and the issues raised in the appeal you filed on behalf of High Sierra Hikers Association. In reviewing your appeal, I have considered the recommendations of the Appeal Reviewing Officer regarding the disposition of your appeal. A copy of that recommendation is enclosed.

APPEAL DECISION

I am affirming the decision by Carson District Ranger Gary Schiff.

I find that the activities documented in the EA, DN/FONSI, and the project record are in compliance with applicable laws, regulations, and policy. A more detailed response to the appeal issues is enclosed.

This constitutes the final administrative determination of the United States Department of Agriculture under 36 CFR 215.18 (c).

Sincerely,

/s/ Edward C. Monnig
EDWARD C. MONNIG
Forest Supervisor



cc: Dave Marlow

Alpine Winter Recreation Project
#08-04-17-0006 (A215)
High Sierra Hikers

APPEAL ISSUE 1: Forest Service (FS) violated FACA by assembling a very small group of interested parties to provide recommendation and advice on recreation issues in Alpine County. Environmental Assessment (EA) alternatives were limited to those recommended by the group, and the NEPA decision was based on the advice of the group. Input from others was not considered.

RESPONSE: The project record indicates that winter recreation use on National Forest System lands in the Forestdale area of Hope Valley has been the subject of longstanding conflict and litigation since the early 1990s. A recent U.S. District Court decision remanded the decision for winter travel management in the Forestdale area back to the FS for further evaluation.

Alpine County Resolution 2006-28 committed the County to joint development with the FS of a winter recreation strategy built collaboratively with input from user groups (Alpine County Resolution 2006-28, 5/16/2006, p. 1). The County sought high quality opportunities for all user groups, diverse winter recreation opportunities, minimized conflict between users, and opportunities across Alpine County (not limited to the Forestdale Creek Road area).

With Alpine County's substantial financial support, the District contracted with California State University at Sacramento, Center for Collaborative Policy to facilitate public stakeholder meetings (Requisition AG-9360-P-06-0017, 12/06/05, and Amendment, 6/08/06). The Alpine County Ad Hoc Winter Recreation Strategy Dialog participants convened and completed their discussions prior to the Districts formal initiation of NEPA "scoping" (Alpine County Ad Hoc Winter Recreation Strategy Dialog agenda/meeting notes, 7/19/06-1/9/07). The facilitator and two non-FS co-chairs led participants. Participants signed "Guidelines for Dialog," confirming their commitment to address all relevant interests, foster improved communication and understanding, and identify as many points of agreement as possible, without the requirement of reaching consensus. Dialog meeting notes from their last meeting on January 9, 2007, reiterated that the FS "cannot commit simply to adopt the proposed package" (draft meeting summary, Alpine County Ad Hoc Winter Recreation Dialog, 1/9/07, p. 2).

A comparison of Dialog meeting notes and the EA indicate that some of the participants' suggestions were incorporated by the District into the Proposed Action, while others were not, including: 1) dump station; 2) paving at Forestdale road entrance; 3) snowboard mid-winter alternatives; 4) sno-park at Burnside; 5) parking or sno-park designation at Sagehen (Monitor Pass); 6) Monitor Pass motorized boundary; 6) Mono and Douglas Counties user access; and 7) Deer Valley Creek crossing (DN/FONSI, p. 6).

The District formally initiated NEPA scoping on February 6, 2007, with a public mailing. They complied with Council on Environmental Quality (CEQ) NEPA regulations on Scoping and Inviting Comments by having "an early and open process" and "affirmatively soliciting comments from those persons or organizations who may be interested or affected" (40 CFR 1501.7, page 874; 40 CFR 1503.1(a)(iii)). The project record contains scoping comments submitted by over 125 individuals and groups, including the High Sierra Hikers Association (HSHA) and individual Dialog participants.

Alpine Winter Recreation Project
#08-04-17-0006 (A215)
High Sierra Hikers

The District also complied with FS regulations requiring a 30-day Notice of Proposed Action comment period prior to the District Ranger's decision (36 CFR 215.5(b)(iv)). The project record contains comments submitted by over 45 individuals and groups, including the HSHA. Commentors also included individual Dialog participants. Each of their comments, consistent with those received from most non-Dialog commenters, express conceptual support for the project, with specific reservations.

The EA acknowledges that the collaborative efforts of the motorized and non-motorized groups resulted in a comprehensive winter recreation strategy (EA, p. 2). The District Ranger further acknowledged in his decision that comments were received "from both groups and individuals that were represented by the 'Winter Recreation Strategy Group' and those that were not. All were carefully considered and addressed to the best of our ability and within jurisdictional authority" (DN/FONSI, Public Involvement, p. 6).

The Federal Advisory Committee Act (FACA) governs the establishment and termination of advisory committees within the executive branch of the Federal government. It regulates groups established to advise Federal government agencies, as a means of furnishing expert advice, ideas, and diverse opinions to the Federal government (5 USC, App. 2, §2; 41 CFR, Parts 101-6; 102-3; Federal Advisory Committee Management - Final Rule). The District Ranger developed the proposed action based on input received in the public comment process from groups and individuals that did not participate directly in the Alpine County Ad Hoc Winter Recreation Strategy Dialog. Therefore, the Dialog did not operate in an advisory capacity and did not improperly influence the decision process in violation of FACA.

APPEAL ISSUE 2: The Alpine Winter Recreation Project requires an Environmental Impact Statement (EIS) because of the increases in motorized access throughout vast portions of the County, the significant effects of snowmobile impacts (noise, air pollution), and direct impacts resulting from construction activities.

RESPONSE: Guidance on the appropriate level of environmental documentation is provided in the Code of Federal Regulations (CFR) at 40 CFR 1500.4, 1500.5, 1501.3, and 1501.4 and in the FS Handbook on Environmental Policy and Procedures (FSH 1909.15).

Regulations in 40 CFR 1501.3 and 1501.4 describe recommendations for agency consideration on whether to prepare an EA or EIS. Ultimately, the Deciding Official has the responsibility to review the EA and determine whether the Proposed Action has a significant effect on the quality of the human environment using the definition of "significantly" found in agency policy and regulations (FSH 1909.15, sec. 43.1 and 1909.15, sec. 05; 40 CFR 1508.27).

The EA discloses environmental consequences of both the Proposed Action and No Action Alternatives to the human environment, including specific disclosures related to non-motorized recreation, noise, and air quality (EA, pp. 3-5):

Alpine Winter Recreation Project
#08-04-17-0006 (A215)
High Sierra Hikers

- **Non-Motorized Recreation:** The Proposed Action would result in improved non-motorized access and parking. Portable toilets and interpretive panels would provide local area information. Public health and safety would benefit. Forest Road 079 to Scott's Lake would be closed to motorized traffic. Overall backcountry experience would improve, and wilderness trespass may decrease. These improvements would not occur under the Proposed Action (EA, p.10).
- **Noise:** Snowmobile noise would remain the same or decrease in some areas under the Proposed Action. Non-motorized users would be subject to less noise in areas closed to snowmobiles. The No Action Alternative would not alter existing noise levels (EA, p. 13).
- **Air Quality:** The slight increase in snowmobile use under the Proposed Action would not likely degrade current air quality levels. Recent Environmental Protection Agency emission control standards for snowmobiles would also help to maintain or slight improve air quality. Those same standards would maintain or slightly improve air quality under the No Action Alternative, as well (EA, p.12).

The DN/FONSI for the Alpine Winter Recreation Project documents the District Ranger's review of the environmental effects described in the EA, and provides the rationale for his conclusion that ". . . these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared." The FONSI specifically documented the Ranger's conclusion that the Proposed Action complied with the Forest Plan and all applicable laws and regulations (DN/FONSI, pp. 6-7).

Based on these findings, the District appropriately analyzed and documented the project with an EA and DN/FONSI, consistent with law, regulations, and FS policy (40 CFR 1500.4[q]; 40 CFR 1500.5[l]; 40 CFR 1501.3; 40 CFR 1501.4; FSH 1909.15 [43.1]; and FSH 1909.15[05]).

APPEAL ISSUE 3: NEPA requires that other alternatives must be considered. The FS failed to consider any alternatives that would meet project objectives while protecting current non-motorized uses.

RESPONSE: NEPA requires Federal agencies to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal involving unresolved conflicts concerning alternative uses of available resources (42 U.S.C. 4321, sec. 102[E]; 40 CFR 1501.2[c]). There is no requirement to analyze an infinite range of slightly different alternatives or any specific number of alternatives (CEQ's 40 Most Asked Questions, Nos. 1-3).

The EA documents that comments from all perspectives were used to refine the Proposed Action and Purpose and Need, and to develop the issues analyzed. It specifically concludes that no major issues requiring the development of additional alternatives were identified (EA, p. 2).

In addition to the Proposed Action, the EA addresses the No Action Alternative in detail. That alternative maintains current management of non-motorized recreation (EA, p. 3). Analysis of

Alpine Winter Recreation Project
#08-04-17-0006 (A215)
High Sierra Hikers

this alternative determined that access, parking, and the variety and quality of the non-motorized experience would not improve, and that parking, user conflict and other challenges would not be resolved (EA, pp. 9-10; DN/FONSI, “Other alternatives considered,” p. 6).

Given the lack of significant issues generated from scoping efforts, the District decision to analyze only a No Action and a Proposed Action alternative provided an adequate range of alternatives for the Alpine Winter Recreation Project.



File Code: 1570-1

Date: November 20, 2007

Route To:

Subject: Reviewing Officer Recommendation, Alpine Winter Recreation Project, Appeal #08-04-17-0006-A215

To: Appeal Deciding Officer

This is my review and recommendation on the disposition of the following appeal on the Alpine Winter Recreation Project Decision Notice and Finding of No Significant Impact (DN/FONSI), signed August 27, 2007.

There were two appeals filed on this project: Peter Browning on behalf of the High Sierra Hikers Association and Kati and Walter Bell as lead appellants, on behalf of adjacent homeowners Connie and John Shelton and Jean and Dave Van Den Berg.

Project Background

This project is located in Alpine County, California on the Carson Ranger District, Humboldt-Toiyabe National Forest. The decision is intended to create conditions where high quality winter recreation opportunities will exist in Alpine County. Because of the outstanding scenery and generally favorable snow conditions, Alpine County is an increasingly popular destination for back-country and cross-country skiers, snowshoers and snowmobilers. A recent U.S. District Court decision remanded the decision for winter travel management in the Forestdale area to the Forest Service (FS) for further evaluation.

In reconsidering the plan for Forestdale, the FS decided to address winter travel management planning on a larger scale in order to provide more opportunities to balance motorized and non-motorized use. In regard to recent collaborative efforts, the FS has worked with a winter recreation strategy group representing a wide variety of viewpoints. Based on these and other discussions, the District concluded that there is a growing demand for improved parking, restroom facilities, overnight camping, day use, and, in some cases, separated motorized and non-motorized areas.

Appellant's Request for Relief

The appellant, Peter Browning on behalf of High Sierra Hikers Association, requests relief in the form of a reversal of the decision made on August 27, 2007, DN/FONSI signed by District Ranger Gary Schiff. The appellant believes that this decision violates the Federal Advisory Committee Act (FACA) and the National Environmental Policy Act (NEPA).

The appellants, Kati and Walter Bell, acting as lead appellants on behalf of adjacent homeowners, believe that the FS actions and written commitments to date on the requested mitigation steps are insufficient to ensure that these mitigation steps will be completed in such a



manner to avoid the negative impacts of the overnight parking area on homeowners living adjacent to this project.

Appeal Summary

Following is a summary of the appeal issues raised by the two appellants.

Appellant High Sierra Hikers Association appeal issues:

- FS violated FACA by assembling a very small group to recommend and advice. The Environmental Assessment (EA) alternatives were limited to those recommendations by the group and the input from others was not considered.
- The project requires an Environmental Impact Statement (EIS) because of the increase in motorized access throughout vast portions of the County and the significant effects of snowmobile activities and direct impacts resulting from construction activities
- The FS failed to consider any alternatives that would meet project objectives while protecting current non-motorized uses.

Appellant Kati and Walter Bell appeal issues:

- The decision fails to consider appellants comments.
- The FS did not obtain the required interagency commitments that would allow for appellants suggested mitigation to be achieved.
- Local homeowners were not invited to be part of the joint study group and their perspectives as residents were not considered.

Findings

As Appeal Reviewing Officer, my role is to review the substantive quality and correctness, or appropriateness, of the project decision with respect to clarity, comprehension, effectiveness of public participation, and requested changes. My findings are based on my review of the decision and project record, in accordance with 36 CFR 215.19.

1. Clarity of the Decision and Rationale

The District Ranger's decision is clearly described in the DN/FONSI. The rationale for the decision is logical and the analysis to determine no significant impacts is appropriate. The decision is consistent with the stated Purpose and Need.

2. Comprehension of Benefits and Purpose of the Proposal

The Purpose and Need are clearly defined and the District followed the direction from the previous U.S. District Court decision, which was to review the process of providing winter recreation activities in the area.

3. Consistency of the Decision with Policy, Direction, and Supporting Information

I find the decision to be consistent with the agency policy and Forest Plan direction. The EA and DN/FONSI and the project record adequately disclose the environmental effects and provide sufficient evidence and analysis to make a reasoned and informed decision.

4. Effectiveness of Public Participation Activities and Use of Comments

Through the scoping and comment period, no additional issues were brought forward; therefore, no additional alternatives needed to be addressed. The public participation was very adequate. All participants had the opportunity to comment and attend meetings. The FS had no involvement in establishing the joint study group and no involvement in inviting the public to the joint study group. The District has promoted a great deal of cooperation with Alpine County and the surrounding community.

5. Requested Changes and Objections of the Appellant

The appellant requests reversal of the decision. In my review of the appeal, I did not find that the appellants presented a compelling argument in contrast to the information provided in the EA and DN/FONSI, which the District Ranger used to make his decision. I feel the decision and record adequately address and refute the appellant's rationale for reversing the decision.

Recommendation

Based on my review of the EA, DN/FONSI, and supporting documentation in the project record, I recommend that the decision made on August 27, 2007, by District Ranger Gary Schiff be affirmed.

s/Jack L. Isaacs
Jack L. Isaacs
Appeal Reviewing Officer