



United States  
Department of  
Agriculture

Forest  
Service

Intermountain  
Region

324 25th Street  
Ogden, UT 84401-2310

File Code: 1570-1  
#99-04-00-0028

Date: February 22, 1999

Mr. John Bowers  
1433 Hampel Street  
Oakland, CA 94602

**CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED**

Mr. Marcus Libkind  
1391 Moselle Court  
Livermore, CA 94550

**CERTIFIED MAIL - RETURN  
RECEIPT REQUESTED**

RE: Appeal #99-04-00-0028 of Acting District Ranger Gerald O. Grevstad's Decision Regarding the Forestdale Creek Area for Carson Ranger District, Humboldt-Toiyabe National Forest

Dear Mssrs. Bowers and Libkind:

In accordance with 36 CFR 215.17, we have reviewed the appeal record for Acting District Ranger Gerald Grevstad's decision regarding the Forestdale Creek Area Environmental Analysis. I have also considered the recommendation of the Appeal Reviewing Officer (ARO) regarding the disposition of the appeal you filed on behalf of all appellants. The ARO's review focused on the decision documentation and the objections raised in this appeal. A copy of that recommendation is enclosed.

#### **APPEAL DECISION**

My decision is to affirm the Acting District Ranger as to the issues raised in this appeal. The ARO found no evidence that the decision violated law, regulation, or policy and recommended that the decision be affirmed. I concur with the ARO's recommendation. A list of the issues in this appeal and the Forest Service response to each issue is enclosed.

This decision constitutes the final administrative determination of the U.S. Department of Agriculture as provided for in 36 CFR 215.18(c).

Sincerely,

/s/ Jack G. Troyer

JACK G. TROYER  
Appeal Deciding Officer  
Deputy Regional Forester

Enclosures



cc:

Mr. Don Amador  
Western Regional Representative  
Blue Ribbon Coalition, Inc.  
555 Honey Lane  
Oakley, CA 94561

Mr. Robert C. Brown, President  
Lake Tahoe Snowmobile Club  
P.O. Box 13677  
South Lake Tahoe, CA 96151

Mr. Clifford R. Glidden, Deputy Director  
Off-Highway Motor Vehicle Recreation  
California State Parks  
1725 - 23rd Street, Suite 220  
Sacramento, CA 94296-0001

Mr. Ken Harris, President  
California-Nevada Snowmobile Association  
910 Dias Drive  
Chico, CA 95926

Mr. Ronald D. Rawlings, Chairman  
Land Uses Committee  
California-Nevada Snowmobile Association  
Post Office Box 1288  
Pioneer, CA 95666

FORESTDALE CREEK AREA PROJECT  
HUMBOLDT-TOIYABE NATIONAL FOREST  
Appeal # 99-04-00-0028

**APPELLANTS:** The Ski Touring Section of the Loma Prieta Chapter of the Sierra Club; The Ski Touring Section of the San Francisco Bay Chapter of the Sierra Club; Friends of Hope Valley; and the following individuals: John Bowers, John Brissenden, Patty Brissenden, Jim Gibson, Janet Hoffmann, Robin Leong, Marcus Libkind, Terri Michel, Paul Minault, Janis Turner, and Howard J. Whitaker.

**Issue No. 1:** "The decision concludes incorrectly that there does not exist conflict significant enough to warrant additional measures beyond that of alternative #3 (modified)."

**Response:** The Responsible Official considered information gathered at public meetings and responses to comments received in the 30-day predecisional review of the Environmental Assessment (EA) in analyzing the level of conflict in the Forestdale Creek Area [EA, pages 13, 30, and 33; Decision Notice/Finding of No Significant Impact (DN/FONSI), pages 4 and 6]. The decision rationale contained in paragraphs 2 and 3 of page 2 of the December 1, 1998 DN/FONSI provide measures that also address the perceived conflicts.

**Decision:** Affirm the Responsible Official.

**Issue No. 2:** "The Decision errs in its interpretation of relevant provisions of the Code of Federal Regulations and of the Humboldt-Toiyabe Land and Resource Management Plan."

**Response:** Appellants state they believe a significant conflict exists which "mandates" that the District "minimize" the conflict by eliminating motorized use in the area. The Responsible Official made a determination regarding the level of conflict and has the authority to determine the appropriate degree of mitigation to reduce impacts to acceptable levels. Land and recreation resource needs have been considered and adjustments proposed that will mitigate the conflicts between the two primary winter recreational uses. Regulations at 36 CFR 219 and 36 CFR 295 provide support for the decision. Law, regulation, and policy, as well as prevailing planning standards and guidelines for the Alpine Area, Management Area #3, in the Toiyabe Land and Resource Management Plan (Forest Plan), do not require complete prohibition or elimination of selected uses except in the most extreme cases where forest resources are either experiencing damage or are in jeopardy of being damaged or lost. Such is not the case in this setting. Differing value systems and preferences for a diversity of uses are appropriately accommodated in this area of the National Forest land base and its association with lands under other ownerships and jurisdictions. (Forest Plan, pages IV-87 thru 89).

**Decision:** Affirm the Responsible Official.

**Issue No. 3:** "The FONSI is based on a legally inadequate EA."

**Point 1:** "The 1998 EA does not meet the legal requirement that only alternatives which meet the purpose and need of the proposed action be included."

**Response:** The EA on page 2 states, "The purpose of this assessment is to determine if there is a need to close any of the Forestdale Creek Road or area to snowmobile use based upon the issues identified through this analysis." The EA presents five alternatives, all of which were developed after consideration of comments received during the scoping process for this project.

**Point 2:** "The 1998 EA does not differentiate between physical effects and social effects."

**Response:** Physical and social effects are both appropriately disclosed in this EA and are consistent with Council on Environmental Quality (CEQ) regulations at 40 CFR 1508.8 and 1508.14. The discussion of issues to be addressed (EA, pages 5-6) and the narrative and tabular comparisons of the alternatives and environmental consequences (EA, pages 9-17 and 28-33) both indicate a differentiation between the physical and social effects involved in this analysis.

**Point 3:** "The EA is flawed because it assumed Forest Service jurisdiction over Forestdale Road in evaluating the adverse consequences of the alternatives."

**Response:** The October 31, 1997 Stipulated Judgment in The Sierra Club, et al., v. Glickman, et al., directed the District Ranger to consider closure of the "Forestdale Creek Area" in accordance with 36 CFR 295 and all other applicable provisions of law, and to "re-consider" issues of jurisdiction with regard to Forestdale Road. The DN/FONSI clearly states the alternatives were not developed from a consideration of road jurisdiction (Page 7, response to comment 28). Development of alternatives was not limited or constrained by road status, but was based on the issues identified through scoping, consideration of the impacts to resources, and the direction contained in the Stipulated Judgment. Additionally, the EA is an analysis disclosure document, not the decision document, and the range of alternatives was appropriate for the stated purpose and need.

**Point 4:** "The 1998 EA fails to include an analysis of possible conflict between the identified alternatives and applicable regulatory and land management plan policies and standards."

**Response:** See response to Issue No. 2. In addition, the deciding officer reviewed the EA and determined that the decision does comply with the Forest Plan and the National Environmental Policy Act (NEPA) (DN/FONSI, page 3).

**Point 5:** "The 1998 EA does not adequately consider alternatives that provide access to the Blue Lakes Snowmobile Trail system while reducing conflict to a much greater degree than the Preferred Alternative (#3) or Alternative #4."

**Response:** The Interdisciplinary (ID) Team developed and analyzed a reasonable range of alternatives in response to the scoping input and comments received in the 30-day predecisional review period. Blue Lakes was clearly included in this consideration (EA, pages 6, 9 and 15) and in the responses to comments included in the DN/FONSI. The range of alternatives responded to the issues and were within the scope of the stated purpose and need in compliance with Forest Service Handbook 1909.15, Chapter 10, Section 12.3c. Alternatives 2 and 5, as developed and considered, would have provided access to the Blue Lakes area while reducing conflicts in the Forestdale Analysis area.

**Decision:** Affirm the Responsible Official.

**Issue No. 4:** "The EA does not support a FONSI for the Preferred alternative and therefore requires an environmental impact statement."

**Response:** The Deciding Official reviewed 10 factors identified in the FONSI and determined that no significant effects would result with implementation of the selected alternative (DN/FONSI, page 9). Specifically, factor 4, "that determination of the environmental effects did not result in controversy over the degree of harm or effect", was considered in his determination that the user conflict issue was not enough to warrant further analysis. CEQ regulations at 40 CFR 1508.14 state that ". . . social effects are not intended by themselves to require preparation of an environmental impact statement."

**Decision:** Affirm the Responsible Official.

**Issue No. 5:** "The Decision incorrectly states that a large majority of skiers confine their activities to those parts of the analysis area north of Forestdale Creek."

**Response:** The Deciding Officer used and considered several sources of data on which to base an analysis of the extent of user activity in the Analysis Area. Forestdale Monitoring Winter 1997/98 responses, public meetings, and the public scoping and predecisional review of comments all contributed to the bases from which summary conclusions could be drawn. The Carson Ranger District conducted a Forestdale Area Winter use monitoring to determine use patterns with over 60 respondents. The ID Team evaluated the forms and concluded that not many skiers ventured to the top of Forestdale divide. Observations of use in other areas were used to assess the overall impacts and balance of uses presented in the array of alternatives generated by the ID Team. (EA, page 20).

**Decision:** Affirm the Responsible Official.

**OVERALL DECISION:** Affirm the Responsible Official.



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324 25th Street  
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**File Code:** 1570-1  
#99-04-00-0028

**Date:** February 12, 1999

**Subject:** Appeal Reviewing Officer Recommendation,  
Forestdale Creek Area Environmental Assessment

**To:** Jack G. Troyer, Appeal Deciding Officer

This is my review of the December 1, 1998, decision made by Acting District Ranger Gerald Grevstad on the Forestdale Creek Area Environmental Assessment, Carson Ranger District, Humboldt-Toiyabe National Forest. Under a settlement agreement with the Sierra Club, The Carson Ranger District agreed to reconsider closure of the Forestdale Creek Road to motorized vehicle use during the winter and to consider closure of the Forestdale Creek Area to snowmobiles. This decision selects Alternative 3 as analyzed in the Forestdale Creek Area Environmental Assessment, with modifications. The alternative would prohibit all motorized vehicles west of Forestdale Creek Road and construct a cross country ski trail on National Forest System land west of and parallel to the road.

I have reviewed the Forest Service record for this decision, and I have considered the arguments presented in the appeal by John Bowers and Marcus Libkind on behalf of The Ski Touring Section of the Loma Prieta Chapter of The Sierra Club; The Ski Touring Section of the San Francisco Bay Chapter of The Sierra Club; John Brissenden; Patty Brissenden; Robin Leong; Terri Michel; Paul Minault; Janis Turner; and Howard J. Whitaker. In addition, I have reviewed the comments submitted by Ken Harris and Ronald Rawlings, California-Nevada Snowmobile Association; Clifford Glidden, California Dept. of Parks and Recreation; Robert Brown, Lake Tahoe Snowmobile Association; and Don Amador, Blue Ribbon Coalition Inc., as interested parties.

My review was conducted pursuant to, and in accordance with 36 CFR 215.9, to ensure that the analysis and decision are in compliance with applicable laws, regulation, policies, and orders. I have thoroughly reviewed the Decision Notice (DN); the Environmental Assessment (EA); appellant objections, allegations, request for relief; and the pertinent direction within the above referenced Code of Federal Regulations.

### Appeal Summary

#### (a) Appellants objections

In general, the appellants allege the EA and DN are fatally flawed, incomplete and deficient, and as a result, are in violation of the National Environmental Policy Act (NEPA), the Humboldt-Toiyabe National Forest Land and Resource Management Plan (LRMP), and Forest Service Regulations.



Based on these violations, the appellants request the Regional Forester remand the decision and instruct the Acting District Ranger to complete a revised Environmental Assessment which meets the requirements of NEPA and addresses appellant concerns. Specific allegations and objections include the following: 1- Invalid purpose and need; 2- Inadequate range of alternatives; and 3- the Forest Service failed to adequately address conflicts between motorized and non-motorized use in the analysis area, specifically, conflicts between cross country skiing and snowmobile use.

(b) Informal meeting results

Humboldt-Toiyabe Forest personnel held an informal meeting, by telephone, with the appellants on January 4, 1999. No agreement was reached on any issues which would resolve the appeal.

(c) Interested party comments

All Interested Parties commented in support of the decision under appeal. In general, they thought the decision addressed an important need and struck a good balance between competing recreational uses.

## **RECOMMENDATION**

Based on my review of the record, statements submitted by the appellant, and other available information referenced in documents of this record, I recommend that District Ranger Gerald Grevstad's decision to approve the Forestdale Creek Area Environmental Assessment, with modifications be affirmed. Sufficient evidence and analysis were provided in the EA for determining that the proposed project will not have a significant effect on the quality of the human environment.

## **FINDINGS**

The Decision Notice properly reflects conclusions drawn in the EA, which considered the perceived conflict and needs between diverse user groups. NEPA itself does not impose substantive duties mandating particular results, but simply proscribes the necessary process for informed decisions. The Forest Service must compromise between diverse and sometimes competing uses for existing resources (in this case cross country skiers and snowmobilers); and the Forest Service has the discretion to make this compromise unless it acts irrationally. The courts have established that an agency needs to set forth those alternatives necessary to permit a "reasoned choice". And while it is the agency's responsibility to consider a range of alternatives, it does not have to consider every available alternative. In addition, an agency is entitled to discretion in framing its discussion of an alternative and in deciding which alternative to adopt. While there may be other alternatives which the appellants favor, they in the end attempt to place the need of one user group ahead of another and do not address other valid uses. The Forest Service need only consider and evaluate solutions to issues raised during the NEPA scoping and comment process and provide a rational connection between the facts found and the choices made. That the final decision may be contrary to some individual desires (as gathered and documented in public participation activities pursuant to the analysis and project) does not mean that such opinions and expressions were disregarded or ignored.

On the contrary, the documentation suggests that a broad range of participation and comment was solicited and fully considered in the final decision I find no inconsistency with current direction and policies in the subject area and find no violations or nonconformance with applicable laws and regulations governing execution of the project itself or the decisional documentation at issue (i.e., the EA and DN for the project). The EA and DN examine and define a project entirely consistent with agency direction and philosophy concerning ecosystem management and multiple use of public land and resources. Solicitation of public comment and participation in the analysis and decisionmaking process for the project meets statutory or policy requirements for such comment. All of the issues raised on appeal were addressed in the EA, DN or supporting documents.

### **CONCLUSION**

I find the EA and DN at issue to be sufficient in depth and breadth of analysis; to have addressed the questions and concerns raised on appeal; and to conform to applicable laws, regulations, policies, and direction.

My review of the appeal documents and the project record leads me to conclude that the analysis and decision are thorough, comprehensive and appropriate. I can discern no consequential inadequacy or omission, and no violation of law, regulation, policy, or direction apparent in the EA and DN for the Forestdale Creek Area.

I recommend that Acting District Ranger Gerald Grevstad's decision be affirmed and the relief requested by the appellants be denied.

/s/ Vernon R. Fleisher

VERNON R. FLEISHER  
Appeal Reviewing Officer