UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

March 31, 2009

Jim Upchurch
Forest Supervisor
Inyo National Forest
351 Pacu Lane Suite 200
Bishop, California 93514

Subject: Draft Environmental Impact Statement for Inyo National Forest Public Motorized Travel Management, Inyo, Mono, Fresno, Madera, and Tulare Counties, CA and Mineral and Esmeralda Counties, NV (CEQ# 20090021)

Dear Mr. Upchurch:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Our detailed comments are enclosed.

EPA commends the Forest Service for its efforts to address the many challenges inherent in developing a balanced Public Motorized Travel Management Plan that responds to recreational and resource management demands. We acknowledge that the Travel Management Plan process is a positive step in addressing resource impacts from motorized uses. The permanent prohibition of cross country travel off designated routes and the switch from unmanaged to managed motorized recreational use will likely result in significant environmental benefits.

We have rated the Draft Environmental Impact Statement (DEIS) as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "*Summary of Rating Definitions*") due to our concerns regarding the scope of the travel management planning process, and the designation of various routes associated with existing significant soil and water resource impairment, or located in Critical Aquatic Refuges. Additional information is also necessary to fully describe seasonal closures, monitoring, and enforcement commitments.

We urge consideration of an alternative which does not include designation of routes located in Critical Aquatic Refuges. We recommend elimination of routes with existing soil and water resource impairment located in watersheds with a high risk of impaired water quality and that exceed the 4.5 mile per square mile road density threshold.

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EPA is aware of the decision by the Pacific Southwest Region of the Forest Service to limit the scope of the travel management planning process to prohibition of motorized vehicle travel off designated routes, addition of unauthorized roads and trails to the National Forest Transportation System (NFTS) so they may be designated for motor vehicle use, and changes in vehicle class and season of use. The rationale for the limited scope of this process is schedule constraints and limited funding and resources.

We acknowledge the constraints of funding and resources; nevertheless, we had hoped the Forest Service would take this opportunity to review and rationalize the NFTS, pursuant to Travel Management Rule direction to identify the minimum road system needed (36 CFR Part 212 Subpart A); to address known road-related resource impairments and use conflicts of both the existing NFTS and unauthorized user-created system; and to align the transportation system with maintenance and enforcement capabilities. We note a similar request has been made by Senator Feinstein (see attached letter).

Route designations are only part of what is needed to reduce the ongoing adverse impacts to water quality and other resources from the NFTS. We continue to believe a more holistic approach to travel management planning, whereby route designations are guided by travel analysis, known locations of resource impairment, and prior determination of the minimum road system needed, would better serve the long-term interests of the public, Forest Service, and National Forest resources.

We appreciate the opportunity to review this DEIS. When the Final Environmental Impact Statement (FEIS) is released for public review, please send two (2) hard copies to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3521, or contact Susan Sturges, the lead reviewer for this project. Susan can be reached at (415) 947-4188 or sturges.susan@epa.gov.

Sincerely,

Kathleen M. Goforth

Kathleen M. Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures:
Detailed Comments
Summary of Rating Definitions
Letter from Senator Dianne Feinstein to Regional Forester, December 18, 2008

cc: Susan Joyce, Inyo National Forest

EPA DETAILED DEIS COMMENTS INYO NATIONAL FOREST PUBLIC MOTORIZED TRAVEL MANAGEMENT PLAN, INYO, MONO, FRESNO, MADERAL, AND TULARE COUNTIES, CA AND MINERAL AND ESMERALDA COUNTIES, NV, MARCH 31, 2009

Scope of the Alternatives Analysis

Provide information on the minimum Forest road system needed and how this information was used to formulate the alternatives. The scope of this action includes prohibition of motorized vehicle travel off designated routes, the addition of unauthorized user-created roads and trails to the National Forest Transportation System (NFTS) so they may be designated for motor vehicle use, and changes to vehicle class and season of use. The draft environmental impact statement (DEIS) also states that unauthorized routes not included in this proposal are not precluded from future consideration for addition to the NFTS and inclusion on the Motor Vehicle Use Map (MVUM)(p. 3). We believe a holistic approach to travel management planning, whereby route designations are guided by travel analysis, known locations of resource impairment, and prior determination of the minimum road system needed, would best serve the long-term interests of the public, Forest Service, and National Forest resources.

> ***Recommendations:***
> The final environmental impact statement (FEIS) should describe the information that was used to formulate the motorized travel management alternatives, and the relationship of that information to the requirement to identify the minimum road system needed for safe and efficient travel and administration of National Forest System lands (36 CFR Part 212 Subpart A, Section 212.5(b)). The FEIS should describe how the minimum road system needed will be identified pursuant to the requirements of the Travel Management Rule (36 CFR Part 212 Subpart A).
>
> The FEIS should describe the factors that would be used in the consideration of future additions of unauthorized routes. We recommend that such factors include travel analysis and identification of the minimum road system needed.

Expand the scope of the action to include current roads and trails with known impacts. A current estimate of system road deferred maintenance for the Inyo National Forest (Forest) is $29,000,000.00 (p. 433). An annual maintenance cost estimate of $2,445,265 would maintain the existing NFTS roads in their current condition, but would not address the backlog of deferred maintenance (p.433). Based on the current appropriated annual road maintenance budget of $800,000 for Fiscal Year 2009 plus anticipated State Off-Highway Vehicle (OHV) funds of $200,000, there is a shortfall of $1,445,265 to complete annual routine maintenance on the existing NFTS (p. 441). Uncompleted maintenance would be added to the deferred maintenance total. EPA is concerned with the Forest Service's ability to adequately address known road-related resource impairments, given the acknowledged lack of maintenance funds and this proposal to add to the NFTS additional miles of roads and trails known to contribute to soil and water resource impairment.

Recommendation:
We recommend the Forest expand the scope of this action to consider, for seasonal or permanent closure to public motorized use, current NFTS roads and trails with known resource impacts.

Water Resource Concerns

Select a preferred alternative which avoids and minimizes adverse effects to aquatic resources, including perennial creeks, alkali flats, wet meadows, and fens. Off-highway vehicle (OHV) routes and motorized vehicles can adversely affect water quality, sensitive fish habitat, and other riparian and aquatic resources by compacting soil, disturbing or eliminating vegetative cover, decreasing water infiltration, and increasing surface runoff and erosion. These effects are magnified on steep slopes or in erosive, unstable soils. A proposed route has the greatest potential to affect riparian resources if it crosses natural stream channels or there is a continuous surface flow path between any part of the route prism and a natural stream channel during a runoff event. Such hydrologically connected routes can dramatically increase stream sedimentation, increase stream peak flows, and serve as conduits for transport of chemicals from road spills or roadside area applications (p. 170). Alternatives 2, 3, 4, and 6 would propose, for motorized use, 11 to 25 routes that cross perennial streams.

The DEIS identifies ten unauthorized routes with known impacts to the hydrologic function for wet meadows and alkali flats. Of those, the Proposed Action (Alternative 2) proposes seven unauthorized routes for designation with two of the routes having known major impacts. The project analysis area also contains 28 confirmed fens (peat-forming wetlands). Because of the large historical loss of this ecosystem type and the extensive time it takes for a fen to form naturally (up to 10,000 years), remaining fens are quite rare. Three wet meadow areas in the project area may be fens, but have not been verified as such. One of the confirmed fens and 3 of the possible fens are within 100 feet of proposed unauthorized routes. Due to their perennially saturated condition and typically gentle terrain, fens are particularly vulnerable to damage from motorized vehicle travel, including impacts from changes in hydrologic function (p. 217).

Recommendation:
We recommend selection of an alternative which avoids and minimizes adverse effects to riparian and aquatic resources, and further recommend elimination of routes that transverse perennial creeks, wet meadows, alkali flats, and fens.

Avoid designation of routes with existing resource impairments in watersheds with high risk of cumulative watershed effects or over-threshold road densities. Route densities above 4.5 miles per square mile may present a high risk in terms of excessive sediment reaching stream channels leading to improperly functioning watersheds (p. 187). 12 watersheds in the project area already have a high risk of impaired water quality by exceeding the 4.5 mile per square mile road density threshold (p. 202). EPA is concerned with the designation of existing, unauthorized trails known to have soil and water resource impairment requiring mitigation, especially given the

challenge of enforcing motorized use across a vast landscape, and the backlog of maintenance needs.

> ***Recommendation:***
> We recommend elimination of routes with existing resource impairments that are located in watersheds with a high risk of impaired water quality and that exceed the 4.5 mile per square mile road density threshold.

Describe and implement seasonal closures. Provide information on wet weather conditions and related environmental impacts. EPA has concerns regarding potential impacts of motorized vehicle use during wet conditions when soils and aquatic systems may be more vulnerable to erosion. We are also concerned with the potential adverse effects of over-the-snow OHV use, if permitted. Chapter 2 of the DEIS and Appendix A: Proposed Actions by Alternative include seasonal closures for specific trails. However, the DEIS does not expand on these seasonal closures nor the criteria that would trigger their use. Furthermore, the DEIS does not describe winter or wet weather conditions nor whether wet weather use of existing NFTS and unauthorized roads and trails results in significant environmental impacts.

> ***Recommendations:***
> EPA recommends expanded use of seasonal closures as a means to avoid and minimize adverse resource effects of roads, trails, and motorized use. The FEIS should provide information on winter and wet weather conditions and, if present, any significant environmental impacts caused by wet weather road and trail use.
>
> The public motorized travel management plan should state whether over-the-snow OHV use (other than snowmobiles) is permitted, and if so, under what conditions. We recommend the Forest Service consider prohibiting such activity when the snow is less than one foot deep in order to protect vulnerable tundra and alpine vegetation.
>
> OHV use during spring conditions, over routes that are part mud and part snow, is particularly destructive and should be prohibited. We recommend wet weather and/or seasonal route closures be considered as a tool to avoid and minimize adverse impacts of motorized use on native surface roads, and related erosion, sedimentation, and water quality effects. Once a road closure occurs due to wet road conditions, we recommend considering a policy of keeping the road closed until the end of the wet season in order to minimize public confusion and simplify enforcement.

Correct statement regarding compliance with federal Clean Water Act. Page 168 of the DEIS indicates compliance with the Clean Water Act (CWA) by national forests in California is achieved under State law; however this statement is not entirely accurate. Discharges of dredged or fill material into waters of the United States require authorization by the U.S. Army Corps of Engineers (Corps) under CWA Section 404. The Federal Guidelines at 40 CFR Part 230 promulgated under CWA Section 404 (b)(1)

provide substantive environmental criteria that must be met to permit such discharges into waters of the United States. These criteria require a permitted discharge to: (1) be the least environmentally damaging practicable alternative (LEDPA); (2) avoid causing or contributing to a violation of a State water quality standard; (3) avoid jeopardizing a federally listed species or adversely modifying designated critical habitat for a federally listed species; (4) avoid causing or contributing to significant degradation of the waters of the United States; and (5) mitigate for unavoidable impacts to waters. This particular CWA regulatory program is not delegated to the State of California. If the proposed project involves discharge of dredged or fill material into waters of the United States, a permit from the Corps may be required.

> *Recommendation*: We recommend that the FEIS describe the requirements of CWA Section 404 as they relate to the project and correct the inaccurate statement that compliance with the CWA by national forests in California is achieved under state law.

Sensitive Habitats

Avoid designation of routes within Critical Aquatic Refuges. Critical Aquatic Refuges (CAR)s contain either known locations of threatened, endangered, or sensitive species; highly vulnerable populations of native plant or animal species; or localized populations of rare native aquatic- or riparian-dependent plant or animal species (p. 171). Alternative 3 would impact habitat of the Forest Service designated sensitive Mountain Yellow-Legged Frog. Cumulative impacts to the frog's habitat include contributing sediment that may be contaminated with petroleum products, which could cause frog mortality (p. 364). The Little Hot Creek CAR contains habitat for the Threatened Owens Tui Chub. Cumulatively, the effects of each of the Alternatives combined with the effects of all present and reasonably foreseeable future activities could contribute additional sediment that could fill in the ponds and reservoir containing tui chub habitat within 20 years. Reducing the miles of available routes within the watershed would effectively reduce the amount of sediment and dust that could affect tui chub habitat (p.368).

> ***Recommendation:***
> We recommend removal from designation all routes within Critical Aquatic Refuges which may adversely affect vulnerable populations of threatened, endangered, and sensitive aquatic species.

Monitoring and Enforcement

Develop, describe, and implement a Travel Management Plan Monitoring and Enforcement Strategy. It is important that wildlife protection, vegetation management, and erosion control goals be achieved to minimize the potential adverse effects of the Motorized Travel Management Plan. Effective enforcement is especially critical given the proposal to designate routes with existing resource concerns requiring mitigation prior to use (p. 27). We believe the public and decision makers would benefit if a strategy is developed that includes specific information on funding, monitoring and enforcement criteria, thresholds, and priorities.

Recommendations:
We recommend development of a detailed Travel Management Plan Monitoring and Enforcement Strategy. Such a Strategy should include specific information on the monitoring and enforcement program priorities, focus areas (e.g., issues, specific locations), personnel needs, costs, and funding sources. We recommend the FEIS demonstrate that the proposed monitoring and enforcement strategy is adequate to assure that motorized vehicle use will not violate access restrictions or exacerbate already identified road-related resource problems. We recommend the Monitoring and Enforcement Strategy be periodically updated (e.g., annually or biennially).

Climate Change

Address climate change and its potential effects on proposed route designations. A number of studies specific to California have indicated the potential for significant environmental impacts as a result of changing temperatures and precipitation.[1] Climate change effects and the need to adapt to climate change are emerging issues which should be considered in this action. According to the Government Accountability Office (GAO) report entitled, "Climate Change: Agencies Should Develop Guidance for Addressing the Effects on Federal Land and Water Resources" (August 2007), federal land and water resources are vulnerable to a wide range of effects from climate change, some of which are already occurring. Roads and their use contribute to species stress through habitat fragmentation, increased disturbance, introduction of competing invasive species, and increased fire risk; which may further exacerbate species' ability to adapt to the changing climate.

Recommendations:
The FEIS should include a discussion of climate change and its potential effects on the Forest as they relate to the route designation decision and final National Forest transportation system. Of specific interest are potential cumulative effects of climate change and the NFTS on the connectivity of wildlife and threatened and endangered species habitat, air quality, water quality, fire management, invasive species management, and road maintenance.

We recommend the discussion include a short summary of applicable climate change studies, including their findings on potential environmental effects and their recommendations for climate change adaptation and mitigation measures.

Full Disclosure and Procedural Comments

Commit to route-specific environmental analysis for user-created route additions. On some National Forest System lands, repeated use by motor vehicle travel has resulted in unplanned and unauthorized routes. These trails were generally developed without environmental analysis or public involvement and may be poorly located and cause unacceptable environmental impacts (p. 2). EPA is concerned with the addition of

[1] For example: Our Changing Climate: Assessing the Risks to California, A Summary Report from the California Climate Change Center, July 2006; Climate Change and California Water Resources, Brandt, Alf W.; Committee on Water, Parks & Wildlife, California State Assembly, March 2007.

unauthorized user-created trails to the NFTS which may not have undergone site-specific environmental analysis or public involvement.

Recommendation:
The FEIS should state how the Forest will ensure specific user-created routes are adequately evaluated pursuant to NEPA requirements. Where prior site-specific environmental analysis has not occurred, we recommend the FEIS specify the manner and criteria by which specific user-created routes would be analyzed prior to the route's addition to the NFTS or its designation for public motorized use.

U.S. Environmental Protection Agency Rating System for
Draft Environmental Impact Statements
Definitions and Follow-Up Action*

Environmental Impact of the Action

LO – Lack of Objections

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC – Environmental Concerns

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO – Environmental Objections

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU – Environmentally Unsatisfactory

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 – Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 – Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 – Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND
ADMINISTRATION - CHAIRMAN
SELECT COMMITTEE ON INTELLIGENCE

United States Senate
WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

December 18, 2008

Randy Moore, Regional Forester
Pacific Southwest Region
USDA Forest Service
1323 Club Drive
Vallejo, CA 94592

Dear Regional Forester Moore:

I am writing regarding the Forest Service's current efforts to implement the Travel Management Rule and designate routes in California's National Forests that are accessible to motorized traffic, including off-highway vehicles.

It is my understanding that the Tahoe National Forest plans to add roads to the existing motorized route system and publish a route system map cataloguing the roads open for public motor vehicle use.

I am concerned, however, that as part of the effort for designating the route system the Forest Service did not consider a process for removing existing system roads that may be unneeded or damaging to the environment. I believe that adding routes to the system without a science-based analysis of existing roads or plan to de-designate unneeded roads is misguided, particularly given the $169 million road maintenance backlog in the Tahoe National Forest.

I am also concerned that the Tahoe National Forest plans to publish a route system map, which may leave the public with the impression that all roads present on the map will be permanently open to motorized vehicle access -- unless the public is simultaneously notified of a process to identify and remove unneeded roads. Without a caution that system maps may be subject to further review, it could be difficult for the Forest Service to remove roads that are found to threaten public safety, cause environmental damage or conflict with other forest uses in the future.

As the Forest Service continues with travel management plans in California, I request that the Agency to complete comprehensive analyses of existing system roads in each National Forest and develop a process for identifying and removing unneeded

roads prior to publishing route system maps. This level of analysis will help ensure that the Forest Service can afford to maintain a National Forest system that provides public access for motorized recreation while minimizing environmental impacts.

I look forward to being updated on your progress toward designating motorized travel systems in California's National Forests. Best regards.

Sincerely,

Dianne Feinstein
United States Senator

DF:jw:db