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Dear Mr. Moore,

Please accept these appeal points from Joseph Sand, (commenter 229) owner of Specialized 4Wheel Drive in Sacramento pursuant to 36 CFR Part 215. This document contains the points I am appealing concerning the EDNF FSEIS signed on June 14, known as "42 trails." A number of decisions coming out of this SEIS are, in my opinion, lacking scientific justification, not in conformance with NEPA law, and/or misinterpreting FS guidelines to conform to a prejudicial decision. The responses provided for my SEIS comments are inadequate and unacceptable.

DSEIS Comment: "The document does not provide an alternative that meshes with the facts provided. Many possible and reasonable alternatives could have been developed for consideration, but were not, suggesting that the end result of this process was pre-decided. Because there is no legitimate justification to close trails, Alternative #1 is the only marginally acceptable alternative, as it is closest to a true "no action" alternative."

Agency Response: *The NEPA regulations (40 cfr 1502.13 (D)) require the "No Action" alternative be displayed and that the agency consider a reasonable range of alternatives based on issues brought forward during the initial public scoping period while meeting the Purpose and Need. Alternatives 3, and 4 were developed in response to multiple comments received during scoping. Alternative 3 was designed to open the routes after S&G 100 is met. Alternative 5, described on page 21, in the FSEIS was developed to address comments received on the Draft SEIS.*

Appeal Point: The response misses the point, and bolsters the argument that no alternatives were allowed to be considered that do not conform to the edict: "no trail can be opened to the public without first conforming to S&G 100." No scientific evidence is provided to justify these trail closures, and I do not believe this application of a "standard and guideline" will stand up to legal scrutiny. In short, this is more evidence of a prejudicial decision. The true "no action" alternative would have all of these trails remain open, as they were prior to the FEIS and prior to the SEIS being ordered. More discussion on this point follows later in this document.

DSEIS Comment: "No analysis is offered as to the effects of leaving these trails closed for such an extended period of time. Before closing such historic routes, the effect on the user community, overflow to other recreational areas, economic effect on the local community, deterioration of routes and drainage/erosion due to lack of maintenance must be considered. It is clear that these standards are intended as guidance, to be used wisely and appropriately, not arbitrarily or absolutely, without other considerations."

Response: *The socioeconomic analysis in the 2008 ENF TM FEIS recognized the importance of these routes to the local economy and did not need to be supplemented.*

The original EIS did indeed contain a socioeconomic analysis, an analysis that was, in part, used to reach the original conclusion that all of the "42 trails" should remain open to the public. This response, however, ignores the majority of my comment. The Agency is proposing a long term closure of a significant number of routes which happen to include some of most popular routes in the forest, and which have been open and stable for many decades. This is a massive change from the conditions prior to the SEIS being ordered, and as such requires an appropriate amount of additional scrutiny. It contains, however, no new analysis justifying or accounting for the effects of the new conclusion.

SEIS Comment: "There are no environmental justifications provided for closing 18 trails that do not meet S&G 100, since the "Environmental Consequences" of each alternative is stated to be identical regardless of continued used of the trail."

Agency Response: *The Forest Service reviewed the information provided and visited all of the 42 routes in the field in order to evaluate compliance with S & G #100. The SEIS evaluates compliance with S&G#100 and relevant BMP's for all of the alternatives. The analysis contained in the FSEIS has been supplemented with information concerning the Yosemite toad and Sierra Nevada yellow-legged frog. In particular, information concerning surveys for both species and discussion of potential impacts by alternative,*

Appeal Point: It should be noted that it appears that a portion of this agency response has been accidentally omitted. I will respond to it as written.

In context, this comment pertains to the Agency's decision to close trails not in compliance with S&G 100 rather than leaving them open while mitigation plans are developed.

Two points:

1. It is again stated that lack of "compliance" with S&G 100 is a justification to close a route that has been open for decades. I believe that this is a dangerous misapplication of the guideline. By setting this precedent existing historical and even ancient routes all over California which traverse what is now defined as a "meadow" could be closed, and I would expect an avalanche of lawsuits from those who wish to eliminate roads from all public lands.

2. To the point of my comment, after all of the site visits, evaluations, and studies done in preparation for the SEIS it was *still* concluded that the "environmental consequences" of leaving the routes open did not differ from closing them. This screams ulterior motives and is unacceptable.

3. Most alarmingly, this response states outright that recent information concerning the Yosemite Toad and Sierra Nevada Yellow Legged Frog were significant factors in this decision. This is astounding information since these species, while being considered for listing by the ESA, have yet to attain this distinction, and because this new information has been inserted into this process at the absolute last minute entirely circumventing the legally required public comment under NEPA law. In short, this is a blatant, obvious, and intentional violation of NEPA law.
   I expect that discovery would show that this new information did not, in fact, change the conclusions made in the SEIS, but is rather being used to bolster a pre-decided decision that already existed.

SEIS Comment: "The court has not presupposed, prescribed, or in any way implied expectations as to the resulting decisions to be made in the SEIS other than to mandate "Analysis for RCO#2 Standards and Guidelines #100 pertaining to the meadows on the 42 routes listed in Table A." There is no order mandating conformance. The court order closing 42 routes circumvented NEPA law as would be required if the Agency had chosen the closures, and has been largely seen by the public as a punitive action by the court. As clearly stated in the Order, this is a temporary closure that expires once the required SEIS is completed. While this may have been an appropriate decision within the context of this legal action, as an environmental action it is strictly arbitrary."

Response: *We agree the court has not presupposed, prescribed, or in any way implied expectations to the resulting decisions to be made in the SEIS. The SEIS is required to be consistent with the LRMP, which could mean amending the LRMP or taking a different action to provide for consistency with the LRMP. The order will be finalized when the SEIS is completed and submitted to the court. The SEIS is not complete until all appeals of the decision have been responded to and the decision has been affirmed.*

Appeal Point: I might be missing something, but this response seems to say nothing. While it is certainly the case that no decision is final until the process is complete, the direction being taken by the Agency is clear. This response does not address my concern which comes down to these points:

4. Prior to the SEIS being mandated it was the intention of the Agency to re-open all of the "42 trails".

5. The SEIS does not, in my judgment, bring forward any new facts, information, or scientific studies that justify such a significant change in policy.

6. This response entirely misses one point. The agency is applying S&G 100 as it would when considering opening a new route to justify closing existing routes. This is disguised by the fact that the routes have been *temporarily* closed by court order, but have not been legally closed under NEPA.
   Fact is, I do not believe the court has any ability to close public land, rather they ordered the Agency to do so using the jurisdiction they have over these matters. This took the form of an "emergency closure" which is allowed under NEPA for specific purposes and a limited amount of time, after which it must be withdrawn. Closures beyond this time period require appropriate NEPA procedures. The SEIS which purports to fill this void fails to do so in my estimation by failing to do any analysis on the long term closure of these routes, instead treating them as "closed" trails being considered for "reopening." No

NEPA analysis sufficient to justify a long term closure has ever been done. The unfortunate fact that one judge made the arbitrary decision to close much of the forest does not absolve the Agency from the legal requirements mandated by NEPA.

7. It is clear to me that policy changes must be due to other influences outside of what is published in the SIES or allowed under NEPA law. Whether it is the belief that the court is presuming a particular outcome (such as using S&G 100 as a rule rather than a guideline instead of amending the LRMP), political influences, the fear of being sued, or the blatant and undue influence wielded by environmental groups doesn't matter.

It has long been clear to anyone watching that environmental interests have had undue influence away from the public eye corrupting an otherwise fair process, and that it will take legal action to set the agencies back on the course of serving the public rather than the interest groups with the highest paid lobbyists and lawyers.

Thank you for your time,

Joseph Sand