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Paul A. Turcke, Esquire
Moore Smith Buxton & Turcke, Chartered
225 North 9th Street, Suite 420
Boise, ID 83702

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Mr. Turcke:

In accordance with 36 CFR §215.17, we have reviewed the appeal record for the Targhee Travel Plan and the Record of Decision (ROD) signed by Forest Supervisor Jerry Reese, on October 15, 1999. Our review focused on the decision, the project record, the objections raised in the appeal filed on behalf of the Blue Ribbon Coalition, and issues raised by other appellants.

I have also considered the recommendations of the Appeal Reviewing Officer regarding the disposition of this appeal. A copy of that recommendation is enclosed. There was one interested party to this appeal.

Background:

The travel and access management issue has been one of the most contentious issues that the Targhee Forest Supervisor has had to face in his efforts to implement the Revised Forest Plan for the Forest. This issue has surfaced through efforts to update the existing Forest Travel Management Plan to meet the direction established for specific geographic areas in the Targhee National Forest Revised Forest Plan, within timeframes established by the United States Fish and Wildlife Service in its Biological Opinion on the Revised Forest Plan.

The decision framework for Travel Management Planning is generally described as follows:

Programmatic Planning: Programmatic-level decisions are generally made in the Forest Planning process. The Forest Plan evaluates the potential effects of vehicular use on areas, roads, and trails and determines whether and where off-road vehicle use may be permitted. The Forest Plan identifies standards, guidelines, and other sideboards that define or clarify conditions that apply to travel management, such as road density standards. Travel Management Planning is part of the Forest Planning process. It identifies public need for access to National Forest System lands and identifies areas, roads, and trails that will remain open for public use or will be closed to meet resource concerns; i.e., specific road or trail construction and road closures. Orders may be issued to enforce the decisions made in the Forest Plan, i.e., to enforce an area closure.



Implementation Planning: The Forest Plan sets the direction for the management of National Forest System lands. Management of off-road vehicles and other modes of travel shall be in accordance with Forest Plan direction. Site-specific actions necessary to implement management direction in the Forest Plan should be identified and analyzed on an appropriate scale, i.e., watershed or other geographic area. Ground disturbing activity such as building a new road or obliteration of an existing road is analyzed during the implementation of specific projects. Amendments to the Forest Plan also may be considered during the project analysis.

Targhee Revised Forest Plan and Travel Plan

On April 15, 1997, the Intermountain Regional Forester issued a Record of Decision (ROD) for the 1997 Revised Forest Plan (RFP) for the Targhee National Forest. This Revised Forest Plan contained direction for travel management in the form of winter and summer transportation plans (open motorized roads and trails) and more specific direction in the management prescriptions for open road density and cross-country travel. During the summer of 1997, a travel plan map was prepared to represent this management direction and specifically to identify which roads and trails would be open for summer motorized use to meet the road density standard specified in the RFP. Targhee Forest Supervisor Jerry Reese's decision to adopt the 1997 travel plan map was made in a ROD signed August 15, 1997. The August 15, 1997 decision, was followed by approximately 1150 appeals to the Regional Forester. In an appeal decision dated January 14, 1998, the Regional Forester reversed the Travel Plan Map decision due to a lack of notice and comment opportunities and failure to disclose site-specific effects of ground disturbing closure actions.

The appeal decision contained specific direction as to how travel management activities would be performed while the Forest was in the process of correcting the deficiencies. The Regional Forester indicated some conditions might require emergency closures under 36 CFR 261. The Forest Supervisor regarded this direction as applying to the needs for closure in Grizzly Bear Management Units to meet the requirements of the U.S. Fish and Wildlife Service Biological Opinion dated March 31, 1997, which states, "The Forest will, by the end of calendar year 1999, have in place in each BMU or subunit a precise open motorized route standard not to exceed 0.6 mi./sq. mi. and a precise total route density standard not to exceed 1.0 mi./sq. mi." He posted a closure order dated March 24, 1998, and issued a contract to undertake temporary closure of roads to meet the requirements of U.S. Fish and Wildlife Service for effective closures. This work was halted after a lawsuit was filed by the Citizens for a User Friendly Forest and The Blue Ribbon Coalition, alleging failure to meet the requirements of the National Environmental Policy Act (NEPA). Settlement was reached on plaintiffs' Request for a Preliminary Injunction when the Forest Service agreed it would modify the road closures on specific roads/trails; and committed to review and consider all Forest roads/trails during the ongoing NEPA analysis, regardless of activities undertaken during 1998 to alter the status of roads/trails. The lawsuit is pending, awaiting a decision of the court on plaintiffs' motion for summary judgment.

Targhee Travel Plan II: The Forest prepared and circulated a Draft Environmental Impact Statement (DEIS), and considered and responded to comments received in a Final Environmental Impact Statement (FEIS) and ROD. On October 15, 1999, the Targhee National Forest Supervisor signed the ROD for the Targhee National Forest Motorized Road and Trail Travel Plan. Using the direction in the Revised Forest Plan, the Forest Supervisor evaluated which

roads and trails will be open or closed to motorized use to meet the requirements in the Revised Forest Plan and then how those closures will be implemented, i.e., through signing, gating, or various ground disturbing treatments such as earthen berms or ripping the road bed.

Appeals Received: A total of 19 timely filed administrative appeals were received from appellants who had standing under the provisions of Forest Service appeal regulations at 36 CFR 215. Of those appeals, 2 were filed on behalf of County Commissioners, 4 by organizations, and 13 by individuals. Generally, the appeal issues are that: 1) the decision failed to consider a reasonable range of alternatives; failed to analyze or disclose impacts; lacked any meaningful analysis comparing the effectiveness of site-specific road closure methods; did not approach procedural requirements for presentation of technical conclusions; failed to protect Yellowstone Cutthroat Trout populations and habitat; violated the Clean Water Act, Idaho Water Quality Standards, the National Forest Management Act (NFMA), and the Revised Forest Plan; allows motorized use on the Continental Divide National Scenic Trail in violation of the RFP; violated the law by attempting to regulate roads and trails which had been asserted under Revised Statute (RS) 2477; failed to disclose the effects of closing individual roads and trails; 2) that the Forest failed to conduct site specific NEPA analysis; and 3) that the Forest took action on the project prior to starting the NEPA analysis.

APPEAL DECISION

I will use the general decision framework described in this appeal decision to provide clarification as to the requirements and give my reasons for affirming in part and reversing in part Supervisor Reese's decision. After a careful review of the issues and requirements related to the decision made by Supervisor Reese, I have concluded that there is a considerable amount of confusion, both internally and externally. This is caused, in part, by a lack of clarity on exactly what decision was made in this ROD. Actions to implement travel plans through travel management control techniques, such as publishing user maps, posting signs on the ground, gating, and other more aggressive ground disturbing measures, such as road obliteration or decommissioning, also have different requirements for site specific analysis depending on the amount of ground disturbance and associated environmental impacts.

As I interpret the intent of Supervisor Reese in making this decision, it appears to be twofold. First, it was to identify a network of roads and trails that implements the multiple use management direction stated in the form of goals, objectives, and standards and guidelines contained in the prescriptions in the Revised Forest Plan of 1997, in accordance with requirements established in laws, regulations, and agency directives related to policy and procedure. Second, it was intended to approve and allow all necessary activities, including those site-specific actions requiring a significant amount of ground disturbance, such as road decommissioning, to proceed without further analysis and consideration of site specific actions and their effects. The Forest Supervisor viewed the FEIS as sufficient and containing the necessary consideration of alternatives and site-specific effects to provide a sound basis for taking the next steps to physically accomplish the closure actions on the ground.

I am affirming the part of Forest Supervisor Reese's decision pertaining to the programmatic planning for the Targhee National Forest. Supervisor Reese's decision regarding the Travel Management Plan was made after the completion of an Environmental Impact Statement disclosing the consideration of a reasonable range of alternatives, and their effects, to meet the

direction established in the Forest Plan. This action is viewed as an extension of the Revised Forest Plan direction. It provides further details in the form of a map of the roads and trails that are to be left open or to be closed to meet the Revised Forest Plan direction (36 CFR Part 219.21(g) and 36 CFR Part 295.2). As such, it provides focus for further actions to implement the Revised Forest Plan direction, including closure orders and visitor maps to be made available to the public users of the National Forest and is in compliance with the procedural requirements established for such plans.

I also agree with the ARO that the Forest is not required to maximize protection for water quality and the Yellowstone Cutthroat Trout. Instead, the decision must comply with the law and ensure that implementation of the decision does not move the species toward listing. I am affirming the Forest Supervisor on this issue.

Therefore, the Forest Supervisor's decision is affirmed, with the following exceptions:

1. Site-specific analysis of the environmental impacts of closure methods that require surface disturbance is required before any further action is taken. However, the Forest Supervisor may proceed to implement the Travel Management Plan, but may only effect road closures by publishing closure orders and/or travel maps, and installing signs and gates.
2. Actions taken on the Continental Divide Trail shall be consistent with the standards of the National Trails System Act; and,
3. No road closure actions may be taken on roads for which Madison or Teton County has asserted rights-of-way under Revised Statute (R.S.) 2477 until there has been a formal meeting between the Forest Service and each County to seek concurrence with closure plans. If dispute as to road jurisdiction and Forest Service closure plans remains following this meeting, such disputes may be resolved in accordance with Forest Service policy as set out in Deputy Chief Robert C. Joslin's September 25, 1997 letter to Regional Foresters. Pending resolution of disputes that remain following the meetings with the Counties, the Forest may take road closure actions necessary for management and protection of National Forest System land and resources, in accordance with the requirements of this appeal decision to complete site-specific analysis.

I am reversing the Forest Supervisor on that part of the decision that implements the decision through initiating further ground disturbing actions, such as earthen berms and barriers, ripping the roadbed, or other actions which will have potential effects on soil and water resources, other beneficial uses and public safety, until further site specific analysis is completed. From my review, it is apparent that there are uncertainties about many aspects regarding implementation of this decision through additional ground disturbing activities. The required site-specific actions contemplated will require additional analysis and disclosure of effects for the alternative closure actions. Specifically, this pertains to effects relating to human safety, effects on Water Quality Limited Segments, and on Yellowstone Cutthroat Trout Habitat, as well as other sensitive resource concerns, to provide a sound basis for any final decision on how to achieve the effective road closures through ground disturbing or other appropriate actions. I did not find the necessary documentation of the site-specific effects of various closure methods and their potential effects

on soil, water, and human safety in the documents contained in the record.

I want the Forest Supervisor to build upon the tremendous effort put forth to date and proceed with project-level site-specific decision making, including the disclosure of site specific environmental impacts. I am directing the Forest Supervisor to develop a list, by priority, of the areas on which site-specific analysis will be done and provide me with a schedule for completing the necessary work on logical geographic areas of the Forest. First priority must be placed on roads closed under the emergency actions and associated with the existing lawsuit. The schedule will be made available within two months from the date of this decision and shall be updated as necessary if conditions or needs arise for changing priorities. In developing the timelines, reasonable expectations need to be established to assure that the proposed actions are site specific and include sufficient analyses of alternatives as required, including appropriate mitigation measures and disclosure of environmental consequences. The "No Action" alternative for those roads that were closed under the emergency order will be to leave the road in the condition that existed prior to the emergency action taken. This will ensure full consideration of the effects that may result from the change in the condition of the road as it existed prior to those temporary closures. These decisions will be subject to established NEPA procedures and, as appropriate, appeal regulations at 36 CFR §215.

I believe this decision allows the agency to proceed with a travel management strategy within the laws, regulations, mission, and procedures given to us, while at the same time allowing us to incorporate additional information, including any new information, in future site-specific decisions.

This decision constitutes the final administrative determination of the U.S. Department of Agriculture [36 CFR §215.18(c)].

Sincerely,



CHRISTOPHER L. PYRON
Appeal Deciding Officer
Deputy Regional Forester

Enclosure

cc:

Mr. Marv Hoyt
Idaho Representative
Greater Yellowstone Coalition
162 North Woodruff Avenue
Idaho Falls, ID 83401-4335