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Placerville, CA 95667
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File Code: 1570
Date: July 20, 2012

Melanie Sue Bowers
Alpine Sportsman's Club
2871 Tahoe Drive
Merced, CA 95340

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
NUMBER: 70091410000081187447

Dear Melanie Sue Bowers,

On July 3, 2012, you filed a Notice of Appeal (NOA), on behalf of the Alpine Sportsman's Club pursuant to 36 CFR 215, of the Amador District Rangers Decision Notice (DN) approving Alternative 1of the Indian Valley Restoration Project Environmental Assessment (EA) that was signed on May 18, 2012.

I have reviewed the entire appeal record, including your written Notice of Appeal (NOA), the DN, EA and supporting documentation. I have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

APPEAL DECISION SUMMARY

I affirm the District Ranger's decision to implement Alternative 1. The Amador District Ranger may proceed to implement the decision 15 days following the date of the last appeal decision on this project.

FOREST ACTION BEING APPEALED

The decision will improve meadow ecosystem function, maintain and enhance plant and wildlife habitat, and continue to provide a clean and consistent water supply for human use.

In order to address the purpose and need, the project will plug and pond approximately 6,000 feet of a low-gradient tributary of Deer Creek within Indian Valley. The work will consist of excavating 27-34 borrow areas (ponds) in order to construct 26-35 plugs. Unauthorized roads and trails will have boulder barricades placed to reduce illegal use by off-road vehicles. Portions of road 9N03 and trail 19E04 will be rocked within the current alignment to allow for access for construction equipment.

APPEAL SUMMARY

See the enclosed Appeal Reviewing Officer letter for a complete discussion of your participation in the National Environmental Policy Act (NEPA) process and the results of informal disposition efforts. In summary, you have established standing to appeal this decision.

APPEAL REVIEWING OFFICER'S FINDINGS

The Appeal Reviewing Officer found that the District Ranger's decision was appropriate and complied with existing laws, policies, and regulations.

The project is in compliance with the Eldorado National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (February, 2004) and other relevant direction.

DECISION

I have considered all the appeal issues raised in making my decision. I have determined that all issues have been adequately addressed by the Responsible Official in the EA, DN, and in the record.

I affirm the District Ranger's decision to implement Alternative 1.

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

KATHRYN D. HARDY
Forest Supervisor

cc: Rick G Hopson, Chuck Loffland, Laura Hierholzer, Patricia M Trimble

USDA United States Department of Agriculture | Forest Service | Eldorado National Forest Georgetown Ranger District | 7600 Wentworth Springs Road Georgetown, CA 95634 530-333-4312 (Voice) 530-333-5511 (TTY)

File Code: 1570 **Date:** July 20, 2012
Route To:

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for this appeal. This is my recommendation on disposition of the appeal filed by Melanie Sue Bowers on behalf of Alpine Sportsmans Club appealing Amador District Ranger, Rick Hopson's, Decision Notice (DN) for the Indian Valley Restoration Project Environmental Assessment (EA).

BACKGROUND

Decision – In comparing the desired conditions specified in the 1989 Eldorado National Forest Land and Resource Management Plan, as amended by the Sierra Nevada Forest Plan Amendment, and the existing conditions within the Indian Valley Restoration Project analysis area, the District Ranger determined there is an immediate need to:

- Improve meadow ecosystem function
- Maintain and enhance plant and wildlife habitat
- Continue to provide a clean and consistent water supply for human use.

The District Ranger selected Alternative 1. The project will plug and pond approximately 6,000 feet of a low-gradient tributary of Deer Creek within Indian Valley. The work will consist of excavating 27-34 borrow areas (ponds) in order to construct 26-35 plugs. Unauthorized roads and trails will have boulder barricades placed to reduce illegal use by off-road vehicles. Portions of road 9N03 and trail 19E04 will be rocked within the current alignment to allow for access for construction equipment.

The Indian Valley Restoration Project was listed in the Schedule of Proposed Actions July 2007. The scoping letter was mailed to local tribal organizations, other agencies, individuals, and groups potentially interested in or affected by the Proposed Action in April 2008. Presentations were given to various groups and organizations from April 2010 through December 2011.

The legal notice of availability of the proposed action for comment was published on August 27, 2010 in the newspaper of record. Copies of the Proposed Action were sent to those who commented during scoping and other interested parties. The Proposed Action was also placed on the Eldorado National Forest web page. There were seven comment letters received by the close of the comment period on September 27, 2010. Melanie Sue Bowers representing the Alpine Sportsmans Club submitted timely comments.

APPEAL SUMMARY

The legal notice of decision was published May 21, 2012; the deadline for filing appeals was

July 5, 2012. The current appeal was filed on July 3, 2012 and is timely.

The District Ranger had a conference call with the appellant Melanie Sue Bowers on July 16, 2012. No issues were resolved.

As relief the appellant requested that the process start over again to determine the true facts and worthiness of this project, in an open process where all voices are heard and given the chance for on the ground meetings and public forums with elected officials.

ISSUES AND RESPONSES

Issue 1: The public was intentionally excluded from presenting opposing views to the project in a public forum and were not allowed to ask questions prior to the end of the comment period. (Appeal, pg. 1)

Response: The appellant asserts that as there was no public forum, the public was excluded from presenting opposing views and that the public was not allowed to ask questions prior to the end of the comment period.

The Council on Environmental Quality (CEQ) regulations and Forest Service regulations and policy do not require public meetings or forums (40 Code of Federal Regulations (CFR) 1506.6 and Forest Service Handbook (FSH) 1909.15 Sec 11.52). It is required that the public has the opportunity to comment, raise questions or provide new information that may affect the decision.

Public Involvement efforts are addressed in the Decision Notice (DN) on page 1-2, in the Environmental Assessment (EA) on page 3, in Appendices A and B of the EA, as well as in the Preliminary EA on page 3 and in Appendix A of the Preliminary EA. These documents describe that the public was notified of the project through a description of the project included in the Eldorado National Forest's Schedule of Proposed Actions (SOPA); mailing of twenty-nine initial scoping notices to adjacent property owners, state and local agencies, local interested groups, and interested individuals in April 2008; mailing of the Preliminary EA to interested individuals in August 2010; and through other public presentations.

I find the District's project record demonstrates there were adequate opportunities for public involvement throughout the NEPA process.

Issue 2: The Alpine County Supervisors and Alpine Sportsmans Club were not provided an opportunity to meet on the ground after numerous requests. (Appeal, pg. 1)

Response: The appellant asserts that there was a lack of public involvement as there were no meetings on the ground regarding this project.

As described under Issue 1, above, Forest Service regulations and policies require that the public has the opportunity to comment on decisions to be made, and that they have the opportunity to raise questions or provide new information that may affect the decision. The regulations and policies do not require public meetings or meetings at the project site.

Public Involvement efforts are addressed in the DN on page 1-2, in the EA on page 3, in Appendices A and B of the EA, as well as in the Preliminary EA on page 3 and in Appendix A of

the Preliminary EA. These documents describe that the public was notified of the project.

I find the District has complied with all the Forest Service policies by providing adequate opportunities for public involvement throughout the NEPA process.

Issue 3

a. **False and misleading statements were included in the project record under communications with Melanie Sue Bowers and the decision incorrectly states that this project was discussed at the October 14, 2006 field meeting related to the Route Inventory. (Appeal, pages 1 and 2)**

Response: The appellant asserts that there are inaccuracies in the EA regarding past communications and field trips regarding the project. The appellant asserts that the Indian Valley Restoration Project was not discussed during a past field trip to Indian Valley that was conducted as part of a previous, unrelated project (Travel Management EIS, 2008).

As described under Issues 1 and 2, above, public involvement efforts are described in the DN, EA and appendices, and the Preliminary EA and Appendix A. The EA (page 3), Appendix A of the EA (page 3) and Appendix B of the EA include a field visit on October 14, 2006 to Indian Valley as one of the opportunities for communication regarding the project with interested parties. It appears there is a difference in perception as to whether the project was discussed during this field visit, based on the information from the appellant and the response to public comments found on page 3 of Appendix A in the EA.

The EA disclosed that the project was included in the ENF's SOPA since 2007, a scoping letter specific to the Indian Valley Restoration Project was disseminated in April 2008 and a comment period was provided after release of the Preliminary EA for the project in August 2010. The EA and project record demonstrate there were adequate opportunities for public involvement through the planning effort and in compliance with regulations and procedures. The difference in perception of whether the project was discussed during the October 14, 2006 visit to Indian Valley does not change the conclusion of compliance with law, regulation, and policy.

I find the District has complied with all of the Forest Service policies and the record demonstrates public involvement occurred throughout the NEPA process.

b. **The decision incorrectly states that a 404 permit was acquired from the Army Corps of Engineers. (Appeal, pg. 1)**

Response: The appellant asserts that the DN and Finding of No Significant Impact (FONSI) incorrectly stated (DN page 5) that a 404 permit had been obtained. She is correct; a 404 Permit had not been obtained. However, a 404 permit is not necessary prior to a decision though it is necessary prior to project implementation. The decision is consistent with the Clean Water Act based on the analysis contained in the EA (pages 19 to 21) and the Hydrology Report (pages 9 to 12).

I find the District complied with the Clean Water Act and the decision was in accordance with law, regulation and policy.

<u>Issue 4:</u> The conclusion that this project was not related to the Indian Valley Road closure (listed under the fourth intensity factor in the FONSI) is false. (Appeal, pg. 2)

Response: The appellant asserts that this project is related to a prior Eldorado National Forest decision and that effort to obtain a right-of-way to allow public use of the existing route within Indian Valley was delayed to avoid public scrutiny of the restoration project.

This issue is addressed in the DN on page 3, in the EA on page 4 and in Appendix A of the EA - Response to Comments on pages 1 and 2 which states "The decision to close the road to public use was the result of a separate decision, the Final Travel Management Record of Decision (2008), and was not part of this project". This project and the prior decision are separate decisions, and while the 2008 Travel Management decision restricted public motor vehicle use of the route into Indian Valley, the prior decision affected many roads throughout the ENF and was focused solely on motor vehicle travel management. The Indian Valley Restoration Project is not dependent on the road being closed to public motor vehicle travel; there is nothing in the project record to indicate the decision to not designate the route into Indian Valley was made to minimize public scrutiny. To the contrary, public scoping and public involvement were completed as required by Forest Service regulation and policy.

I find the District's decision and FONSI were based on facts supported in the project record and are in accordance with law, regulation, and policy.

<u>Issue 5:</u> The SOPA was not updated properly. (Appeal, pg. 2)

Response: The appellant asserts the SOPA was not updated properly in that the scale of the project changed from affecting ¼ mile of stream with 5 to 8 ponds to a scope of affecting over 1 mile of stream with 27 to 34 ponds and there were several 'holds' placed on the project.

CEQ regulations and Forest Service regulations and policy provide requirements for public scoping. The SOPA is a Forest Service document that provides notice of upcoming proposals which may undergo environmental analysis and documentation to interested and affected agencies, organizations and persons. The purpose of the SOPA is to give early, informal notice of proposals so the public can become aware of Forest Service activities and indicate their interest in specific proposals. The SOPA is available on the Forest's internet website (FSH 1909.15.06). Federal regulations specify that the SOPA is not to be used as the sole scoping mechanism for a proposed action (36 CFR 220.4(e) (3)).

As described under Issues 1 and 2, above, public involvement efforts are described in the Decision Notice, EA and appendices, and the Preliminary EA and Appendix A. The EA disclosed that the project was originally included in the ENF's SOPA in 2007, EA page 3. Additionally, this was addressed in Appendix A – Response to Comments on page 3 which states that the "Project was put 'on hold' until the project design was completed, at which time the Preliminary EA was put together and released for public comment, the SOPA was updated October 2010, to reflect the project status change. The SOPA for this project was most recently updated April 2012". The initial scoping letter sent to the public in April 2008 identified that the Forest Service proposed to plug and pond about 3,500-4,000 feet of a low-gradient tributary of Deer Creek in Indian Valley with an estimated five to eight ponds being created. The Preliminary EA, which was circulated to the public for comment in August 2010 proposed to plug and pond 6,000 feet of low gradient stream, consisting of 27 to 34 borrow areas (ponds) and

26 to 35 plugs. In Appendix A of the EA on page 4, it explains that the scale of the project was modified between the initial scoping letter and the Preliminary EA, based on internal scoping to improve the success and to better meet the purpose and need. The EA and project record demonstrate the project was included in the SOPA and updated adequately.

I find the District has complied with all of the Forest Service policies and the record demonstrates public involvement occurred throughout the NEPA process.

<u>Issue 6:</u> One of your intended goals of the project was to raise the ground water level yet, by your own admission, you have no data currently available to support that the ground water level is even an issue. (Appeal, pg. 2)

Response: The appellant contends that the purpose and need for action includes a desire to raise the ground water without any supporting data.

Forest Service regulation and policy require that an EA must include a brief discussion of the need for the proposal. The need for action describes the relationship between the desired ecological condition and the existing condition in order to answer the question, "Why consider taking up any action" (FSH 1909.15 41.21). As stated in the Indian Valley Restoration Project EA on page 2, "there is a need to improve meadow ecosystem function in Indian Valley". The lowering of the water table is one of several identified features of a high-elevation meadow in a degraded condition. The EA identifies (page 2) the degraded condition of the meadow is recognizable by stream channel erosion with gullying and head cutting, lowering of the water table in the meadow, drying of the meadow vegetation, loss of willows, sagebrush encroachment and sedimentation in the stream channel. The existing condition in the project area and identification of the degraded meadow condition is described in the various specialist reports that are a part of the project record, such as the Hydrology Report (dated 4/21/2010 and 5/15/2012) and the Aquatic Biological Evaluation (dated 7/21/2010). An analysis of wet meadow habitat is presented in the EA on page 9, the analysis of the hydrologic resource is located within the EA on pages 19 and 21, and this issue is discussed in Appendix A – Response to Comments on pages 6 - 8. Appendix A contains a discussion of an expected healthier system and watershed which includes an increased seasonal water table as a result of the project.

I find the District's project record demonstrate a clear purpose and need for action with sufficient information and analysis to support it.

<u>Issue 7:</u> The decision is based on inappropriate historical data concerning the original meadow setting and shows how deceptive the whole project is. (Appeal, pg. 2)

Response: The appellant contends that the decision is based on inappropriate historical data regarding the original meadow setting referencing an article published in the Overland Journal that includes an 1855 description of Indian Valley. This article was provided to the appellant by the ENF in response to a 2008 FOIA request by the appellant regarding a separate project, Travel Management.

The EA and DN include a variety of information that provided a basis for the decision. The information was not included in the purpose and need or directly referenced within the EA. It was secondarily referenced in the Heritage Resources section on page 17; "Implementation of this alternative has the potential to restore the meadow to a state that is closer to the original

setting and feeling during Native American occupation of the Valley". It is also referenced in Appendix A – Response to Comments on page 16.

As stated above under Issue 6, the purpose and need includes a variety of features and resource issues that provide the basis for the desired ecological condition. The EA and project record demonstrates that historic information contained in the reference article was not used as a basis for the project, purpose and need or the decision.

I find the District's decision is in compliance with NEPA.

RECOMMENDATION

My review was conducted pursuant to and in accordance with 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. I reviewed the appeal record, including the comments received during the comment period and how the District Ranger used this information, the Appellant's objections and recommended changes.

Based on my review of the record, I recommend the District Ranger's decision be affirmed on all issues. I recommend that the Appellants' requested relief be denied on all issues.

FINDINGS

Clarity of the Decision and Rationale - The District Ranger's decision and supporting rationale are clearly presented in the Decision Notice. His reasons for selecting Alternative 1 are logical and responsive to direction contained in the Eldorado National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (February, 2004).

Comprehension of the Benefits and Purpose of the Proposal - The purpose of the proposal is to improve meadow ecosystem function; to maintain and enhance plant and wildlife habitat; and continue to provide a clean and consistent water supply for human use.

Consistency of the Decision with Policy, Direction, and Supporting Information - The decision is consistent with the Eldorado National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment ROD (February, 2004).

Effectiveness of Public Participation Activities and Use of Comments - Public participation was adequate and well documented. The project was added to the quarterly Schedule of Proposed Actions. The Forest mailed scoping letters, hosted public meetings and distributed a Preliminary EA to interested groups and individuals. Consideration of the comments received are detailed and included as part of the EA. The decision of the District Ranger indicates he considered and responded to public input.

CONCLUSION

Based on the finding above, I recommend the requested relief be denied and that the District Ranger's decision to implement Alternative 1 be affirmed.

Patricia M Trimble

PATRICIA M. TRIMBLE
District Ranger