

DECISION FOR
APPEALS OF THE
RECORD OF DECISION
FOR THE
SIERRA NEVADA FOREST PLAN AMENDMENT
AND ITS
FINAL ENVIRONMENTAL IMPACT STATEMENT

/S/ Dale N. Bosworth
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Reviewing Officer

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Date

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Sierra Nevada Forest Plan Amendment Acronyms and Abbreviations

ACS Aquatic Conservation Strategy
ADA Aquatic Diversity Area
AMP Allotment Management Plan
AMS Aquatic Management Strategy
ASQ Allowable Sale Quantity
AUM Animal Unit Month
BAER Burned Area Emergency Rehabilitation
BHCO Brown-headed cowbird
BLM Bureau of Land Management
BMP Best Management Practice
CAR Critical Aquatic Refuge
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
CRLF California Red-Legged Frog
DEIS Draft Environmental Impact Statement
DFC Desired Future Condition
DFPZ Defensible Fuel Profile Zone
EIS Environmental Impact Statement
EO Executive Order
EPA Environmental Protection Agency
ESA Endangered Species Act
FERC Federal Energy Regulatory Commission
FLAM MAP Flammability Map
FR Federal Regulations
FSH Forest Service Handbook
FSM Forest Service Manual
FYLF Foothill Yellow-Legged Frog
HFQLG Herger-Feinstein Quincy Library Group
ID Interdisciplinary
IDT Interdisciplinary Team
LOP Limited Operating Period
LRMP Land and resource management plan
MOU Memorandum (or Memo) of Understanding
NEPA National Environmental Protection Act
NF National Forests
NFMA National Forest Management Act
NFS National Forest System
NOI Notice of Intent
OHV Off Highway Vehicle
PAC Protected Activity Center
QLG Quincy Library Group
RA Riparian Area

Sierra Nevada Forest Plan Amendment Acronyms and Abbreviations

RCA Riparian Conservation Area
RCO Riparian Conservation Objective
RHCA Riparian Habitat Conservation Areas
RMO Riparian Management Objectives
ROD Record of Decision
RVD Recreation Visitor Day
S&G, S+G Standard and Guideline
SNEP Sierra Nevada Ecosystem Project
SNFP Sierra Nevada Framework Project
SPLAT Strategically placed area treatments
SQS Soil Quality Standards
TEPS Threatened, Endangered, Proposed, and Sensitive
TES Threatened and Endangered Species
USDA United States Department of Agriculture
USDI United States Department of Interior
WIFL Willow Flycatcher
YT Yosemite Toad

Appeal Decision

I. Procedural Background

This is my decision on appeals of the Record of Decision (ROD) for the Sierra Nevada Forest Plan Amendment (SNFPA) and its accompanying Final Environmental Impact Statement (FEIS). On January 12, 2001, Regional Forester Bradley E. Powell signed the ROD approving the Amendment and FEIS. Two hundred and seventy six appeals were submitted under regulations at 36 CFR 217. Two hundred thirty four appeals were received in a timely fashion. A list of the 234 appellants is included in Appendix A at the end of this decision. Eighteen requests to intervene were filed by interested persons, or potentially affected persons or organizations. Intervention status was granted for all eighteen timely requests in accordance with 36 CFR 217.14(a) (See Appendix B). Each appellant and intervenor will receive a copy of this appeal decision. The final appeal decision is also available via the Internet on the Forest Service World Wide Web site at <http://www.fs.fed.us/forum/nepa/lrmpdecisions.html>

The Regional Forester transmitted the record information and documents related to the appeals from the Pacific Southwest Region to the Chief's Office on June 14, 2001.

A. Requests for Stay

Five appellants requested a stay of the Regional Forester's decision approving the ROD. After consideration and review of each individual request for stay, all were denied in accordance with 36 CFR 217.10(b). Appeal regulations governing stays (36 CFR 217.10(b)) are clear in that request to stay approval of a forest plan shall not be granted. The denial of stay requests does not prejudice any of the issues raised in appeals. Likewise, denial does not prevent any future appeal of specific projects or activities, through the appropriate procedures described at 36 CFR 215. Requestors are encouraged to cooperate in local decisionmaking and continue to provide input to management of National Forest System lands. The requests for stay include submissions made by:

- 1) Mr. Dennis Harmon on behalf of the Heavenly Valley Limited Partnership doing business as Heavenly Ski Resort on April 16, 2001, requesting a stay of actions which could be undertaken by national forests, and specifically the Lake Tahoe Basin Management Unit, as covered by the SNFPA in implementing the land allocations and standards and guidelines contained in that Amendment.
- 2) Mr. Bob Roberts on behalf of the California Ski Industry Association on April 16, 2001, requesting a stay of actions which could be undertaken by the 11 national forests covered by the SNFPA in implementing the land allocations and standards and guidelines contained in that Amendment.
- 3) Richard and Christine O'Sullivan on April 16, 2001, requesting a stay of "all individual actions and projects, which reduce grazing contained within the" ROD and FEIS for the SNFPA. They further requested, "all individual actions and projects which reduce grazing contained within the amendments be STAYED

- pending review.” The request was made on behalf of the Nevada Cattlemen's Association and the Plumas-Sierra Cattlemen's Association.
- 4) Mr. Wallace C. Roney of the Roney Land and Cattle Company on April 16, 2001, requesting a stay of “all individual actions and projects, which reduce grazing contained within the” ROD and FEIS for the Sierra Nevada Forest Plan Amendment. He specifically requested that implementation of the Decision Notice (DN), Finding Of No Significant Impact (FONSI) and Environmental Assessment (EA) for Livestock Grazing on Clover Valley, Grays Valley, Benner Creek, Robbers Creek, Silver Lake Allotments, and Clover Valley Special Use Permit Area and the DN, FONSI, and EA for the Pegleg-A21 Project be stayed pending a decision on his appeal of the SNFPA.
 - 5) Ms. Karen Budd-Falen on April 16, 2001, requesting a stay of “all individual actions and projects, which reduce grazing contained within the” ROD and FEIS for the Sierra Nevada Forest Plan Amendment. She further requested, “all individual actions and projects which reduce grazing contained within the amendments be STAYED pending review.” The request was made on behalf of the Nevada Cattlemen's Association and the Plumas-Sierra Cattlemen's Association.

B. Requests for Relief

In connection with the appeal issues, appellants broadly request the Regional Forester to withdraw, revise, or amend the decision. These specific requests for relief are not detailed in this appeal decision because of the numerous appeals received on the SNFPA.

II. Decision Summary

My review of the appellants' concerns provides a focused response to contentions involving complex management issues. Although every contention made in the appeals may not be cited in the same order or format in this decision, all of the appellants' concerns have been considered.

The appellants raise numerous concerns associated with nine broad resource areas: fire and fuels; watersheds; riparian areas; land use and occupancy and special use permits; recreation; forest management; terrestrial wildlife and aquatic species; planning or process concerns; social and economic; and range management.

The Regional Forester's decision met the minimum requirements of Federal law and regulation. I affirm the Regional Forester's decision. However, I believe opportunities exist for refining the decision while further advancing consistency with current agency policy. Therefore I will instruct that certain aspects of the decision be subject to additional review and analysis. The management direction approved in the SNFPA ROD will be allowed to remain in effect during the review.

As I see it, the Forest Service's mission is to work with local individuals and communities to protect and restore the health of the land. Partly, that means finding intelligent, far sighted ways of using some of our natural resources. Partly, it means working together to diversify economies while putting people to work for the health of the land. We need to accomplish our land stewardship goals by looking for creative new ways to get needed work done on the land, get products from it, and build communities together.

Our central mission is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. Over the last several years we have sought to accomplish this goal by building large-scale, and sometimes overly prescriptive, management direction. I believe local decisionmakers acting in collaboration with interested and affected parties can develop flexible solutions that fit specific needs, rather than one-size-fits-all solutions.

So, after a careful examination of the record and consideration of the critical and controversial public land use policy issues surrounding the Sierra Nevada national forests, it is my judgment that certain elements of the decision require further review with regard to the following concerns:

1. Continued high level of recent fire activity.

The Regional Forester selected Modified 8 as an alternative he believed best balanced uncertainty of effects associated with fuel reduction treatment with the risk of wildfire loss to areas of old forest conditions (ROD, p. 29). He further believed that as a result of fewer acres disturbed from treatment, Alternative Modified 8 posed the least risk to aquatic and riparian habitat and associated species at risk, including threatened, endangered, and sensitive species (ROD, p. 29, FEIS Volume 2, Chapter 3, part 3.4, p. 236).

While evaluating the SNFPA I must keep in mind that California continues to have unusually high levels of fire activity. The fuels reduction strategy must be sufficiently aggressive to minimize risk in the urban wildland intermix areas and adequately address threats to wildlife, notably California spotted owl. The FEIS indicates that Alternatives 4 and 6 would treat more acres for fuels reduction, thereby reducing the risk of severe fire (FEIS, Volume 2, Chapter 3, part 3.2, pp. 153 and 292). Alternatives 4 and 6 would provide for a greater number of large live trees than would Alternative Modified 8 (FEIS, p. 155). Both of these measures would seem to provide for long-term protection for wildlife and other resources. Further, the FEIS indicates that Alternatives 4 and 7 would pose only an intermediate risk to aquatic and riparian habitat (FEIS Volume 2, Chapter 3, part 3.2, p. 236), and shows no indication of risks being at an unacceptable level.

I am not indicating that any particular alternative should have been selected, nor am I selecting a new alternative. The big fires of 2000 further underscore the need for active management. The scope of our forest health problem today is enormous. Decades of fire suppression have often produced overcrowded vegetation in our forests, weakening trees

and rendering them more fire prone and more susceptible to pests, diseases, and displacement by invasive species. Too often the result is soil erosion and habitat degradation, especially in sensitive areas such as streams, lakes and wetlands. Therefore, I am instructing the Regional Forester to re-evaluate the decision for possibilities of more flexibility in aggressive fuels treatment while still providing short-term and long-term protection for wildlife and other resource values.

2. Relationship between the SNFPA and national firefighting efforts.

While the Regional Forester notes in the ROD that the SNFPA is consistent with the Cohesive Fire Strategy, he also states that development of the SNFPA preceded development of the Cohesive Fire Strategy (ROD, page 32). Congress has made significant funding available for implementation of the National Fire Plan. The western states, working together with federal, tribal, and local partners drafted a 10-year strategy for restoring our fire-adapted ecosystems to health. On the national forests, we will greatly expand our forest health treatments, starting with the areas most at risk--the wildland/urban interface, municipal watersheds and areas adjacent to neighboring lands.

Catastrophic fire and insect infestations do not respect jurisdictional boundaries. For years we have had controversy over active management on the national forests. We are seeing it spill over onto state and private lands. State and private people are also worried about the impact on their own lands if we cannot do the work we need to do on the national forests. The scale of our forest health problem means we are going to need sustained active management to address it.

I am totally committed to implementing the National Fire Plan. Therefore, I am instructing the Regional Forester to re-evaluate the decision based on possible new information associated with the National Fire Plan.

3. Relationship between the SNFPA and the Herger-Feinstein Quincy Library Group Forest Recovery Act (HFQLG)

This area of concern is related to the Regional Forester's statement (ROD, page 50) that the SNFPA will put limitations on implementation of the HFQLG pilot project. I believe further review is necessary to ensure that the five problem areas identified in the SNFPA were adequately balanced with goals of the HFQLG. Consistent with the issues discussed above, the Regional Forester should review the SNFPA to determine if additional opportunities exist to harmonize the goals of these two efforts.

In sum, the complex and controversial nature of the SNFPA, as well as the value of the resources involved, warrants great care while the best management solutions are sought. The Regional Forester's ROD recognizes that decision frameworks must remain flexible and adaptive. I fully agree and this appeal decision is premised on such a principle. Applying the SNFPA's direction in the interim leaves the agency with effective management direction, but I believe that searching for even more flexible and effective solutions will best serve the land and those who care so much about it.

This decision is the final administrative determination of the Department of Agriculture unless the Secretary, on her own initiative, elects to review the decision within 15 days of receipt (36 CFR 217.17(d)). By copy of this letter, I am notifying all parties to this appeal of this decision.

III. Organization of Decision Letter

The ROD for the SNFPA FEIS was subject to appeal in accordance with the provisions of 36 CFR 217. The appeals received reflect a full range of interests concerned about complex public land use policy issues. Never before have so many appeals been received on a particular project. Given the unusually large number of the appeals, and after consideration and review of the appeals issues, I decided to consolidate all of the appeals and issue one decision. A careful examination of the appeals demonstrated that the issues were sufficiently similar to allow consolidation (36 CFR 217.13(b)).

Further, this appeal decision attempts to present a reasonable approach that provides the flexibility to focus my response as directly as possible on the key concerns raised by appellants. The section titled, "Response to Appeal Issues" is comprised of a section for each of the nine broad resource areas mentioned above. Each resource section contains a table of contents and a response to each of the key appeal issues raised by appellants. Each appeal issue lists which appeals including page citations that raise similar or identical concerns; the appeal issues are not presented in any order of significance. As stated above, although every contention made in the appeals may not be cited in the same order or format in this decision, all of the appellants' concerns have been considered. This appeal decision sets forth findings related to appeal issues raised by the appellants as identified through a deliberative and extensive review process.

A detailed list of key appeal points identified during the appeal review process is available upon request.

IV. Sierra Nevada Forest Plan Amendment

The Sierra Nevada Forest Plan Amendment was prepared under the Multiple-Use Sustained-Yield Act (MUSYA), the Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act (NFMA), the 1982 implementing regulations of the NFMA, and the NEPA (42 USC 4321 et seq) and its implementing regulations (40 CFR 1500-1508). As noted by the Regional Forester, the NFMA "... requires each Forest Supervisor to develop a plan that directs management activities on the national forest." He further states, "This Forest Plan Amendment will guide the management of the Sierra Nevada national forests until they are revised" (ROD, page 2). The SNFPA contributes towards satisfaction of this 1982 NFMA requirement.

As discussed in the ROD (pages 1-7), the decision specifically addresses five problem areas, identified by scientific reviews and public comment, were national forest management needed improvements through updating Regional direction. The five problem areas in the Sierra Nevada region that require regional direction are:

- 1) Old forest ecosystems and associated species;
- 2) Aquatic, riparian, and meadow ecosystems and associated species;
- 3) Fire and fuels;
- 4) Noxious weeds; and
- 5) Lower westside hardwood forest ecosystems.

The goals for the problem areas are to:

- Protect, increase, and perpetuate old forest ecosystems and provide for the viability of native plant and animal species associated with old forest ecosystems,
- Protect and restore aquatic, riparian, and meadow ecosystems and provide for the viability of native plant and animal species associated with these ecosystems,
- Manage fire and fuels in a consistent manner across the national forests, coordinate management strategies with other ownerships, integrate fire and fuels management objectives with other natural resource management objectives, address the role of wildland fire, and set priorities for fire and fuels management actions,
- Reduce and, where possible, reverse the spread of noxious weeds, and
- Maintain and enhance hardwood forest ecosystems in the lower westside of the Sierra Nevada

The SNFPA addresses the five problems because of their urgency and range-wide nature. Four selection criteria were used to determine the problems to be addressed in the FEIS:

- 1) There is new scientific data about the extent, intensity, or duration of the problem;
- 2) The problem occurs at broad geographic scales;
- 3) Environmental risk, as judged by scientists, indicates that action to address the problem should be taken now; and
- 4) The problem is not addressed well elsewhere.

The Regional Forester made the SNFPA decision in conformance with the 1982 NFMA planning regulations (36 CFR 219), noting that although those regulations had been changed (65 FR 67513), “. . . transition language in the new regulations permits this decision to be made under the 1982 Regulations” (ROD, page 2).

The SNFPA at issue in this consolidated appeal decision is a programmatic framework for management of the following areas administered by the USDA Forest Service in the Sierra Nevada and the Modoc Plateau: Humboldt-Toiyabe, Modoc, Lassen, Plumas,

Tahoe, Eldorado, Stanislaus, Sierra, Inyo, and Sequoia National Forests, and the Lake Tahoe Basin Management Unit. Each of these is an administrative unit of the National Forest System. The decision amends the Pacific Southwest Regional Guide, the Intermountain Regional Guide, and the Land and Resource Management Plans for units noted above. The Regional Forester (ROD, page 2) notes the FEIS (Chapter 2) sets forth “. . . management directions, goals and desired conditions amended by my decision [which] guide the overall management . . . [and will] ensure the sustainability of the Sierra Nevada national forests.” The ROD (Appendix A, pages A-22 – A-62) addresses land allocations and associated standards and guidelines.

The standards operate as parameters within which projects must take place. The Regional Forester noted “[t]he amended Forest Plans provide a programmatic framework within which project level decisions are designed and implemented” (ROD, page 48). Approval of any project must be consistent with these management standards. If a project cannot be conducted within these parameters, these safeguard mechanisms in the Plans will prevent such activities from going forward (see *Swan View Coalition v. Turner*, 824 F.Supp. 923, 933 (D. Mont. 1992)), unless the plan is amended to allow the project. Any new projects “. . . must undergo appropriate site specific analysis, and comply with applicable requirements for public participation, environmental analysis and disclosure, and administrative appeal prior to implementation. The amended Forest Plans themselves do not provide final authorization for any activity, nor do they compel that any contracts or permits be advertised or awarded” (ROD, pages 48 and 49). Thus, approval of the SNFPA does not mandate any project decisions.

Finally, the SNFPA ROD addresses monitoring and evaluation (page 33) and incorporation of standards and guidelines and monitoring requirements (page 49). The Regional Forester states it is his “. . . intention that the Adaptive Management Strategy developed for these plan amendments provide the coordinated foundation upon which all Sierra-wide monitoring required of the Forest Service in this ecoregion will be executed” (ROD, page 49). The continuing cycle of approval, amendment, site-specific projects, monitoring, and revision means that planning is never-ending.

In summary, the SNFPA establishes a framework for decisionmaking on the 11 National Forests using programmatic direction as a gateway for compliance with environmental laws at the project level.

VI. General Response to Concerns

In general, the appellants’ concerns were reviewed and addressed in reference to specific laws, regulations and policy in effect at the time the SNFPA and related FEIS were written. I based my review of appellants’ issues on the record and considered whether or not the SNFPA met minimum requirements for legal and technical sufficiency. Many of the appellants’ primary concerns relate to: (1) the methodology and procedure chosen, (2) disclosure of environmental effects at the programmatic level, and (3) analysis of alternative effects. Each topic is briefly addressed below as an introduction to

the appellants' more specific appeal concerns, which are discussed later in this section, and which may be referenced to these topics.

Numerous courts that have considered the nature of forest plans (including plan goals, objectives, and desired future conditions) have concluded that forest plans do not authorize, fund, or implement site-specific activities. Forest plans are permissive in that they allow, but do not mandate, certain activities to take place. They do not make any irretrievable commitment of resources, and they do not contain site-specific decisions (see *Ohio Forestry Assn. V. Sierra Club*, 523 U.S. 726 (1998)). Therefore, a plan EIS is limited in its ability to predict what will occur over the next 10 to 15 years. Likewise, a plan EIS does not display effects of site-specific activities. Due to its programmatic nature, a forest plan EIS is a cumulative impact analysis document, but it is also necessarily somewhat speculative in its display of those impacts. For example, a programmatic plan does not control when, where, or how timber will be harvested at the site-specific level, but merely acts as a framework for future decision-making (see also *Sierra Club v. Robertson*, 810 F.2d 1021, 1027 (8th Cir. 1994); *Resources Limited v. Robertson*, 35 F.3d 1300, 1305, 1307 (9th Cir. 1994)). A detailed overview of forest planning and project level decision making can be found on the Internet at: <http://fsweb.wo.fs.fed.us/em/groups/appeals/overview.htm>.

In reference to methodologies and procedures, agencies have considerable freedom to choose the appropriate procedures to achieve their statutory missions (*Vermont Yankee Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 543-545 (1978)). Concerns cannot simply be disputes over the methodology used by the Government to bring its various levels of decisions into compliance with the NEPA, NFMA, and the ESA. Notwithstanding an appellant's methodological preferences, the Regional Forester's decision must be supportable by the record, and not be arbitrary and capricious. The planners must have utilized a reasonable process to reconcile the various procedural and substantive requirements of these and other environmental laws. Appellants may be dissatisfied with the conclusions reached by the agency, or the methodologies used to reach the conclusions, however, unanimity of opinion, expert or otherwise, is not required for an EIS (*Carmel-by-the-Sea v. United States Dept. of Transportation*, 123 F.3d 1142, 1151 (9th Cir. 1997)) (EIS need only reasonably disclose environmental effects; unanimity of opinion is not required).

In reference to disclosure of environmental effects at the programmatic level, an EIS prepared for a programmatic action such as a forest plan or in this instance a significant amendment of a forest plan, can only disclose the potential programmatic effects of the action. Numerous courts have upheld the principle that the level of disclosure is determined by the nature of the proposed action (see, e.g. *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1357 (9th Cir. 1994) (programmatic EIS need not disclose site-specific effects)). Site-specific disclosure of impacts based upon detailed information is not required in a programmatic EIS and may be deferred to the project level of analysis and decision-making (*Resources Limited, Inc. v. Robertson*, 36 F.3d 1300, 1305 (9th Cir. 1994)). The level and nature of disclosure of effects in a programmatic EIS without any ground disturbing site-specific action would be expected

to differ sharply from that required for a project level action. The detail required in disclosure of effects depends upon the nature and scope of the action (*Seattle Audubon Soc’y. v. Lyons*, 871 F. Supp. 1291, 1317, 1323 (W.D. Wash. 1994), affirmed, 80 F.3d 1401 (9th Cir. 1996); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992)). Disclosure of “implementation” of a land and resource management plan, and related site-specific environmental effects, is a level of detailed disclosure that is neither required by law, nor appropriate for a programmatic NEPA document.

Analysis of alternative effects is a key topic related to various issues. So long as “the adverse environmental effects of the proposed action are adequately identified and evaluated, the Agency is not constrained by NEPA from deciding that other values outweigh the environmental costs” (*Robertson v. Methow Valley Citizens’ Council*, 490 U.S. 332, 350 (1989)). The discussion of environmental effects of alternatives need not be exhaustive: “[w]hat is required is information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned” (*Dubois v. USDA*, 102 F.3d 1273, 1287 (1st Cir. 1996), quoting *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 836 (D.C. Cir. 1972)).