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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AMY GRANAT, *et al.*,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF AGRICULTURE, *et al.*,

Federal Defendants.

Case No. 2:15-CV-0605-MCE-EFB (TEMP)

Date: July 28, 2016
Time: 2:00 p.m.
Judge: Hon. Morrison C. England, Jr.
Place: 501 "I" Street
Courtroom: No. 7, 14th Floor
Sacramento, CA

FEDERAL DEFENDANTS' REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT [ECF No. 37]

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APA	Administrative Procedure Act
CEQ	Council on Environmental Quality
CORVA	California Off-Road Vehicle Association
DEIS	Draft Environmental Impact Statement
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
INFRA	Forest Service Infrastructure Database
ML	Maintenance Level
MUTCD	Manual of Uniform Traffic Control Devices
MVUM	Motor Vehicle Use Map
NEPA	National Environmental Policy Act
NFS	National Forest System
NFTS	National Forest Transportation System
OHV	Off-Highway Vehicle
ROD	Record of Decision
SAC	Sierra Access Coalition
SOF	Statement of Facts

I. INTRODUCTION

Almost six years ago, the Forest Service issued a Record of Decision to implement the 2005 Travel Management Rule on the Plumas National Forest. The decision designates a motorized trail network of 364 miles and restricts motorized travel by vehicle class to the designated transportation system on the Forest. The decision addresses the impacts of unmanaged motor vehicle use, which include unplanned roads and trails, erosion, watershed and habitat degradation, and impacts to cultural resource sites while still providing recreational opportunities for OHV enthusiasts and protecting Forest resources for all users.

Plaintiffs complain that the decision "closes" too many of their preferred routes to motorized use. But these routes were never formally authorized in the first instance. The Forest Service conducted a rigorous review of all user-created routes, designated many of those routes, and provided multiple opportunities for public involvement in the decision-making process. Both this Court and the Ninth Circuit have already rejected many of the specific allegations raised by these and other plaintiffs challenging travel management decisions on other National Forests. The decision reflects a careful balancing of competing interests and concerns and complies with all applicable laws. The Court should deny Plaintiffs' motion for summary judgment and grant Federal Defendants' cross-motion for summary judgment in its entirety.

II. ARGUMENT

A. An on-site analysis of all unauthorized routes is not required.

An on-site evaluation of all unauthorized routes was not required and would not have contributed to the Forest Service's or the public's understanding of the environmental effects of the proposed designation. Fed. Defs.' Mem. and Points of Auth. in Supp. of Cross-Mot. for Summ. J. ("Defs.' Br."), 8-12, ECF No. 37-1. Therefore, the Forest Service satisfied the National Environmental Policy Act ("NEPA") and the Travel Management Rule.

As in their opening brief, Plaintiffs do not cite any authority that requires the Forest Service to physically inspect all inventoried routes. Pls.' Resp. and Reply to Fed. Defs.' Cross-Mot. for Summ. J. ("Pls.' Resp."), 1-3, ECF No. 38. That is because no such authority exists.

To the contrary, this Court has repeatedly rejected similar arguments regarding on-site evaluations in challenges to travel management decisions on other National Forests. Defs.' Br. 9-10 (citing *Friends of Tahoe Forest Access v. U.S. Dep't of Agric.*, No. 2:12-cv-1876-JAM-CAD (E.D. Cal. Dec. 19, 2013), *aff'd* No. 14-15336, 2016 WL 761255, at *2 (9th Cir. Feb. 26, 2016); *Ctr. for Sierra Nevada Conservation v. U.S. Forest Serv.*, 832 F. Supp. 2d 1138, 1160 (E.D. Cal. 2011); *Klamath-Siskiyou Wildlands v. Graham*, 899 F. Supp. 2d 948, 964 (E.D. Cal. 2012)). Plaintiffs fail to even acknowledge these cases, let alone explain why this Court should reach a different conclusion here. *See* Pls.' Resp. 1-3.

Instead, Plaintiffs argue the Forest Service must "validate its data for the majority of the routes affected." Pls.' Resp. 2. But the Ninth Circuit has already rejected the argument that on-site validation is necessary to support a decision. *Lands Council v. McNair*, 537 F.3d 981, 991-92 (9th Cir. 2008) ("The Forest Service is at liberty, of course, to use on-the-ground analysis if it deems it appropriate or necessary, but it is not required to do so."). Here, Agency guidance specifies that the route inventory be based on GPS data or maps and directs the Forest Service *not* to create new information. PLU-C-000604 (Route Designation Guidebook directing Forest Service to "[i]dentify and consolidate all existing direction on management of motor vehicles on the Forest. This should not create new information."). Furthermore, the inventory and review process provided a number of opportunities for validation of data, including review of Agency records and multiple public meetings and workshops that provided opportunities for public input on which routes should be considered for designation. *See* Defs.' Br. 5-6 (describing inventory of user-created routes).[1] Plaintiffs have not met their burden to show how on-site "fact checking" would have fostered informed decision-making or public participation.

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[1] One sentence in Federal Defendants' Responsive Statement of Facts erroneously stated that the field review "included all routes proposed by the public." ECF No. 37-3, ¶ 15. The sentence should read "[t]he Forest Service conducted a field review of approximately 410 miles of routes; this included the routes proposed by the public that were not eliminated for other reasons (*i.e.*, located on private land, spur route, etc.)." The Forest Service considered all seventeen routes listed by Plaintiffs. *See* Pls.' Resp. 2 n.1 (listing seventeen routes); PLU-D-012271-73 (spreadsheet providing reasons for why these routes were not suitable for designation).

Plaintiffs cite two examples of mapping "errors" they believe demonstrate flaws in the Forest Service's methodology. Pls.' Resp. 2 (citing PLU-F-000005, PLU-A-000161-62). The first document, PLU-F-000005, is a Forest Service map of areas with OHV restrictions. Plaintiffs claim that the shaded areas showing off-highway vehicle prohibitions or restrictions per the Forest Plan do not align with the borders for semi-primitive non-motorized areas. *Id.* The borders do not align because the data set for semi-primitive non-motorized areas (cross-hatched border) is different from the data sets for the areas with prohibitions or restrictions on motorized wheeled vehicle access in the Forest Plan (mauve and peach shading). PLU-F-000005 (legend); *see also* PLU-C-003089 (map of recreational opportunity spectrum). The cross-hatch shading shows the maximum extent of the vehicle restrictions and overlays both semi-primitive non-motorized areas and areas with restrictions or prohibitions on motorized wheeled vehicle access. *Id.* The second document, PLU-A-000161-62, is Plaintiff Sierra Access Coalitions' appeal of the Record of Decision ("ROD"). It contains an overlay of LiDAR and GIS data (PLU-A-000161) and what appears to be a satellite image from an unidentified source (PLU-A-000162). The LiDAR data was not available at the time of the Forest Service's ROD and was not relied on by the Agency in reaching the decision. Declaration of Katherine Carpenter ¶ 8, ECF No. 25-1. Furthermore, the LiDAR data itself was collected as part of a pilot project and has not been field verified. *Id.* ¶¶ 5, 7. As for the satellite image of unknown provenance, the Forest Service is directed to use its own maps and databases. PLU-C-000604-05. Plaintiffs' two examples do not show that the Forest Service's methodology is flawed.

Plaintiffs then claim the Forest Service did not consider the criteria listed in 36 C.F.R. § 212.55(a) for each user-created route excluded from the first cut. Pls.' Resp. 2-3. Plaintiffs misread the regulation, which applies to routes that are designated for inclusion in the National Forest Transportation System ("NFTS"), not to those that are excluded. The cited regulation is entitled "criteria *for* designation of roads, trails, and areas" and provides that

> *In designating* National Forest System roads, National Forest System trails, and areas on National Forest System lands for motor vehicle use, the responsible official shall consider effects on National Forest System natural and cultural

> resources, public safety, provision of recreational opportunities, access needs, conflicts among uses of National Forest System lands, the need for maintenance and administration of roads, trails, and areas that would arise if the uses under consideration *are designated*.

36 C.F.R. § 212.55(a) (emphasis added). The Forest Service considered these factors for routes proposed for designation; there is no requirement that the Agency consider the same factors for every user-created route that is not proposed for designation. Plaintiffs have not shown that the Project violates the Travel Management Rule.

B. <u>The decision to prohibit non-highway legal vehicles on maintenance level three roads is reasonable.</u>

The Forest Service has the discretion to allow motorized mixed use and reasonably interpreted its own regulations to classify maintenance level 3 ("ML-3") roads as highways on which non-highway legal vehicles are prohibited. Defs.' Br. 12-15. Plaintiffs do not respond to the argument that the Forest Service has the discretion to allow motorized mixed use. Their only response is that non-highway legal vehicles should be allowed on ML-3 roads because the definition of "highway" under California state law does not include "fire trails, logging roads, service roads regardless of surface composition, or other roughly graded trails and roads upon which vehicular travel by the public is permitted." Pls.' Resp. 7 (citing Cal. Veh. Code § 380001). But this state law exclusion does not align with the Forest Service's definition of ML-3 roads, which are "roads open and maintained for travel by prudent drivers in standard passenger cars." PLU-C-000836; Fed. Defs.' Statement of Undisputed Facts ("SOF") ¶ 8, ECF No 37-2. In fact, the state law exclusion more accurately describes the definition of ML-2 roads, which are "assigned to roads open for use by high-clearance vehicles" and allow dispersed recreation and log haul. PLU-C-000848; SOF ¶ 7.

Furthermore, to the extent there is a conflict between the Forest Service's regulation of vehicular traffic on NFTS roads and a state law regulation interpreting the definition of a highway, the Forest Service's regulation controls. *Fid. Fed. Sav. and Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153-54 (1982) ("Federal regulations have no less pre-emptive effect than federal statutes."). The Travel Management Rule expressly provides that "[t]raffic on roads is

subject to State traffic laws where applicable *except when in conflict with designations established under subpart B* of this part or with the rules at 36 C.F.R. part 261." 36 C.F.R. § 212.5(a)(1) (emphasis added). Plaintiffs' citation to this regulation omits this critical exception. Pls.' Resp. 8. "Roads, or segments thereof, may be restricted to use by certain classes of vehicles or types of traffic as provided in 36 C.F.R. part 261." 36 C.F.R. § 212.5(a)(2)(ii). Here, the Forest Service's subpart B designation effectively restricted non-highway legal vehicles to ML-2 roads. PLU-B-00102, 104, 106 (stating that Alternatives 1, 2, and 3 "do not provide mixed use."); PLU-C-000856 (noting that ML-1 roads are closed to vehicular traffic). This designation is within the Forest Service's discretion and complies with all applicable rules and regulations.[2]

Plaintiffs have not shown that the Forest Service's exercise of its discretion to restrict non-highway legal vehicles to ML-1 and ML-2 roads is arbitrary and capricious.

C. <u>The Forest Service sufficiently coordinated with local governments.</u>

The Forest Service complied with NEPA and the Travel Management Rule by coordinating with local governments on this decision. Defs.' Br. 16-18. The Forest Service Manual directs the Forest to "[c]oordinate with appropriate federal, state, county, and other local governmental entities and tribal governments when making travel management decisions." PLU-C-000249-50. Plaintiffs argue that this language must mean more than to afford these governmental entities with the general public notice and comment period. Pls.' Resp. 8. The Forest Service did more than that by holding various meetings and opportunities for Butte and Plumas Counties to participate in this decision-making process. Pls.' Resp. 8. However, coordinate does not mean capitulate to the Counties' desires or plans. *Glisson v. U.S. Forest Serv.*, 138 F.3d 1181, 1183 (7th Cir. 1998) (40 C.F.R. § 1506.2(d) "does not require that the [federal agency] bow to local law – only that it consider it").

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[2] Plaintiffs' citation to *Association of Civilian Technicians, Silver Barons Chapter v. Federal Labor Relations Authority*, 200 F.3d 590, 592 (9th Cir. 2000), is inapposite because that case concerned two federal statutes, not a federal regulation's preemption of a state regulation.

As Plaintiffs note, the Travel Management Rule does not define "coordination."[3] Pls.' Resp. 8. Accordingly, it carries its ordinary meaning. *See Safe Air for Everyone v. EPA*, 488 F.3d 1088, 1097 (9th Cir. 2007) ("As a general interpretative principle, the plain meaning of a regulation governs.") (quotation marks and citations omitted). The Merriam-Webster Dictionary defines the term "coordination" as "the process of organizing people or groups so that they work together properly and well." *See* http://www.merriam-webster.com/dictionary/coordination (last visited July 6, 2016). Thus, the Forest Service's coordination with the Counties was more than adequate. The record demonstrates that the Forest Service provided early notification to the Counties regarding the initiation of the travel planning process, solicited and received their comments on the proposal, remained actively engaged with the County Commissioners throughout the process, and incorporated their comments and concerns into the decision. SOF ¶¶ 28, 59. Nothing more is required under the Travel Management Rule or NEPA.

Plaintiffs argue that the Forest Service was required to analyze the planning and land use policies of affected counties where conflicts were identified. Pls.' Resp. 9. Butte County's appeal letter claimed that the Forest Service did not do this. PLU-A-000320. Yet, Plaintiffs never identified these alleged conflicts with their planning and land-use policies for the Agency's consideration. Coordination is not a one-way street. If Plaintiffs did not clearly identify specific conflicts, they cannot now complain of the Agency's failure to consider them. To the extent that Plaintiffs made new arguments on administrative appeal or in this action, they are waived because they were not raised prior to the decision. *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 553-54 (1978); *Havasupai Tribe v. Robertson*, 943 F.2d 32, 34 (9th Cir. 1991). *Openlands v. U.S. Dep't of Transp.*, 124 F. Supp. 3d 796, 808-09 (2015),

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[3] Plaintiffs cite regulations from the National Forest Management Act ("NFMA") in an attempt to argue the Forest Service did not coordinate with local governments. Pls.' Resp. 8-9 (citing 36 C.F.R. §§ 219.7(a), (c)(1)-(4)). Plaintiffs did not plead a NFMA violation in their complaint and cannot raise it now. *Wasco Prods., Inc. v. Southwall Techs., Inc.*, 435 F.3d 989, 991 (9th Cir. 2006) ("Simply put, summary judgment is not a procedural second chance to flesh out inadequate pleadings."). Furthermore, the decision implements the Travel Management Rule on the Forest and is not a land and resource management plan issued pursuant to NFMA.

does not apply because no conflicts were identified by Plaintiffs that needed to be reconciled.

Plaintiffs failed to show that the Forest Service has concurrent jurisdiction over county roads or why such jurisdiction would require a different decision by the Agency. *United States v. Armstrong*, cited by Plaintiffs, concerns the federal right to regulate non-federal lands in order to accomplish its goals with respect to federal land. 186 F.3d 1055, 1062 (8th Cir. 1999). This case might be applicable if the Forest Service had attempted to control the uses on the county roads in order to make them compatible with the uses on adjoining NFTS roads and trails. However, the Agency did not extend its jurisdiction to county roads. PLU-B-001664 (Forest's response to comment); *see also* PLU-C-001768 (noting that motor vehicle use on State, county, or municipal roads and trails "are not subject to designations made under the final rule."). Further, 23 U.S.C. § 317, also cited by Plaintiffs, allows the United States to appropriate lands for the right-of-way of any highway, which also is not at issue here.

In all, the record shows that the Forest Service was not indifferent to local concerns by the Counties. The Forest gave the Counties adequate notice, solicited their input on the decision, and considered that input in making the decision. Thus, Plaintiffs' claim for a failure to coordinate should be summarily dismissed.

D. <u>The Project complies with NEPA</u>.

1. The Forest Service considered a reasonable range of alternatives.

The range of alternatives enabled the Forest Service to make an informed decision on how to manage previously unregulated motor vehicle use in the Forest. Defs.' Br. 19-21.

Plaintiffs respond that the Forest Service should have considered additional alternatives that included routes from the 697 miles of routes that were not considered for possible designation. Pls.' Resp. 3-5. This response merely repackages the "full spectrum of alternatives" argument this Court and the Ninth Circuit have already rejected. Defs.' Br. 19-20 (citing *Friends of Tahoe*, 2016 WL 761255, at *2).

Plaintiffs' demand for an unspecified number of "alternative combinations" also contradicts case law holding that an EIS "need not consider an infinite range of alternatives, only

reasonable or feasible ones." *City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997) (citing 40 C.F.R. § 1502.14(a)-(c)); *Vt. Yankee*, 435 U.S. at 558 ("Common sense also teaches us that the detailed statement of alternatives cannot be found wanting simply because the agency failed to include every alternative device and thought conceivable by the mind of man."). The range of alternatives is "bounded by some notion of feasibility" and need not consider "remote and speculative" alternatives, or alternatives that are "infeasible, ineffective, or inconsistent with the basic policy objectives for the management of the area." *Vt. Yankee*, 435 U.S. at 551. It makes no sense for the Agency to consider an alternative that includes routes that were already eliminated from further analysis, and Plaintiffs have not cited any case law that would require such an alternatives analysis.

2. The Forest Service took a hard look at the decision's impacts.

The Forest Service took the requisite hard look at the impacts of its decision. Defs.' Br. 22-23. Plaintiffs argue that the Forest Service failed to take a hard look because it did not analyze "how the closure of hundreds of miles of routes to motor vehicles would affect, among other things, the public's ability to camp, cut firewood, retrieve game, and access emergency services." Pls.' Resp. 5. However, this analysis is exactly what the Forest Service did. The Forest Service determined that its decision maintained access to many popular areas and public trails while maintaining other important natural resource values. PLU-B-000017-18. The Forest Service recognized that there was a necessary balance between the desires of motorized recreation enthusiasts and the many benefits to natural resources, such as wildlife habitat, cultural resources, and rare plants impacted by motor vehicle use. *Id*. Plaintiffs simply disagree with the outcome, not the analysis that the Forest Service used to reach its decision. *See Native Ecosystems Council v. Weldon*, 697 F.3d 1043, 1053 (9th Cir. 2012) (mere disagreement with the methodology does not constitute a NEPA violation). Without identifying specific areas, Plaintiffs presume there will not be adequate access due to some routes no longer allowing motor vehicle use. However, the Agency's analysis shows that access will continue to exist for dispersed recreation, firewood retrieval, emergency services, and mobility-impaired visitors.

The Forest Service recognized that without adding some of the unauthorized "user-created" routes to the NFTS, motorized access would be lost to many dispersed recreation activities. PLU-B-000056. The Forest Service considered dispersed recreation opportunities to include camping, hunting, fishing, hiking, horseback riding, and others. PLU-B-000056. Plaintiffs argue that the Forest Service in some places limited "dispersed recreation" to camp sites. Pls.' Resp. 5. The fact that in comparing alternatives the Forest Service focused specifically on dispersed recreation camp sites does not mean that it ignored access to these other opportunities. Instead, the measurement indicators were used to compare equitably each alternative to one another using the same assumptions and methodologies. For example, by looking at the 159 inventoried dispersed camp sites as a factor in analyzing each alternative, the Forest Service could determine how each alternative compared for motorized access to those camp sites. PLU-B-000097. Further, the Forest Service looked at the reason that visitors preferred dispersed recreation areas, namely avoiding the noise and crowds of highly developed areas. PLU-B-000097. The Forest Service also considered that many of the dispersed recreation opportunities, such as hunting, fishing, horseback riding, etc., are antithetical to motorized recreation opportunities, which can create dust and noise, and those seeking a "quiet" recreation experience. PLU-B-000114. These examples show that the Forest Service adequately considered the potential impacts of this decision on dispersed recreation.

The Forest Service did not sidestep the issue of considering any impacts to firewood retrieval. Instead, Plaintiffs create a picture that firewood was unregulated and, but for this travel management decision, would continue to be so. Pls.' Resp. 5-6. That is simply not the case. As previously stated, firewood cutting is regulated by a separate process involving firewood permits, and this decision does not modify the public's ability to cut firewood. PLU-B-001166; *see also* PLU-B-000083 (explaining that the cross-country travel for firewood gathering has not been allowed for over a decade). And the Forest Service reasonably considered the effect of this decision on firewood retrieval and found it to be insignificant. PLU-B-001216.

The Forest Service also looked closely at the issue of emergency services access. It noted that firefighters, among other emergency services, could use any roads, trails, or unauthorized routes needed for fire access. PLU-B-001336. In responding to comments on the draft EIS ("DEIS"), the Forest Service noted that the Travel Management Rule addresses concerns of management of "OHV activity and does not attempt to compare that activity to wildfire suppression activity," recognizing that wildfire is an emergency that threatens human life, property, and natural resources. PLU-B-001160. Additionally, the Forest Service urged commenters to identify any route that is needed for at-risk communities to improve evacuation access. PLU-B-001222. Thus, the Forest Service communicated the possibility of planning efforts for the designation future trails to address any concerns of access and safety.

Lastly, Plaintiffs allege that access for mobility-impaired individuals was not adequately considered. Pls.' Resp. 5. Plaintiffs are wrong. In response to comments on the DEIS, the Forest Service clarified that wheelchairs, even those that are battery-operated, are specifically exempted from the definition of a motor vehicle, thus allowing the same access to those with mobility impairments that existed pre-decision. PLU-B-001741. Plaintiffs have not shown any discriminatory effect on this group as this decision does not disproportionately impact the access of mobility-impaired individuals. "[T]here is no requirement to allow people with disabilities to use motor vehicles on road or trails otherwise closed to motor vehicles." PLU- B-001140 (citing 70 Fed. Reg. 68,285 (Nov. 9, 2005)). The Forest Service must balance all of the concerns and competing interests of groups to allow reasonable access for all. "Reasonable restrictions on motor vehicle use, applied consistently to everyone, are not discriminatory." PLU-B-001741.

The record shows that the Forest Service took the required hard look.

3. The Forest Service appropriately responded to comments.

The Forest Service responded to the hundreds of comments it received on the Project as required by NEPA. Defs.' Br. 23-26; *see* PLU-B-001135-1760 (response to comments).

Plaintiffs argue that the Forest Service ignored public comments that were merely informational in violation of the essential purpose of NEPA. Pls.' Resp. 13. No such violation

occurred. The Forest Service complied with NEPA and the Forest Service Handbook 1909.15 ch. 24.1 in responding to public comments from the DEIS. PLU-C-000443 (Forest Service Handbook). The Agency acknowledged all comments, but in some cases, there was no response or action required on its part when comments did not provide new information or merely reiterated prior comments.[4] As Plaintiffs concede, NEPA is not substantive, so it does not require a particular response from the agency. Instead, it encourages the sharing of information, which was accomplished here by the collection and review of all of the public comments.

In addressing the comments on the variety of trail riding experiences, Plaintiffs now argue that the Forest Service failed to address the interconnectedness of the routes it designated. Pls.' Resp. 13. The Forest Service responded that it considered known loops as an important factor when it made its initial route map of proposed motorized trails. PLU-B-001583. The Forest Service also responded that it recognized that the nearly 3,800 miles of roads and trails available for OHV use provide many connected networks that accommodate extensive riding without the need to use Level 3, 4, and 5 roads as links. PLU-B-001373. And, the Forest Service addressed how its decision affected the opportunities for a varied riding experience on the Forest. Plaintiffs' disagreement with that position is not a violation of NEPA.

Plaintiffs also assert that the Forest Service failed to consider Butte County's request that county roads be considered as loop connectors. Pls.' Resp. 14. Not so. In response to this comment, the Forest Service stated that County roads would be utilized as connectors and "shown as other public roads on our Motor Vehicle Use Map." PLU-B-001223. Additionally, the Forest Service considered all suitable loops and connector routes when completing the route assessment spreadsheets. PLU-D-012271-73; *see* PLU-G-001379 (defining "C" for "connectors" and "L" for "loops" on the OHV spreadsheets).

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[4] For example, one such comment reads, "Protect our lands and species. Save our forests from destruction, please protect the Plumas National Forest." PLU-B-001190. Another reads, "I encourage you to select Alternative 3, which prohibits cross-country travel but does not add new roads or motorized trails to the current unsustainable NFTS." PLU-B-001191.

Plaintiffs posit that the Forest Service did not adequately respond to their objection about the Forest's adoption of a rule requiring parking within one vehicle length of a designated route. Pls.' Resp. 14. The Forest Service responded that "the Travel Management Rule allows a limit for parking of one vehicle length from the edge of the road or trail." PLU-B-001235, -1248. The Travel Management Rule for motor vehicle use for dispersed camping confirms this assertion and leaves the distance from the road to the discretion of the responsible official. 36 C.F.R. § 212.51(b) ("In designating routes, the responsible official may include in the designation the limited use of motor vehicles within a specified distance of certain forest roads or trails where motor vehicle use is allowed."). Plaintiffs then claim that there are conflicting legal rationales in the agency relying on the Forest Service Manual on one hand and also stating that it is not binding on the other hand. Pls.' Resp. 14. There is no conflict here. Forest Service Manual 7716.1(1) states that "[r]oad designations must specify either that they include parking within one vehicle length, or within a specified distance of up to 30 feet, from the edge of the road surface." PLU-A-000056. The Manual gives the Forest a choice, and the Plumas National Forest selected one vehicle length. Plaintiffs also allege, without any support, that virtually every other region allows parking up to 300' from a designated route for dispersed camping. Pls.' Resp. 14. Despite this claim, the guidance for the Pacific Southwest Region, which includes the Plumas National Forest, recommends that motor vehicle use for purposes of dispersed camping be allowed "no more than 50 feet from the end of a designated road or trail." PLU-C-001598. The Forest's decision to use one vehicle length for parking is consistent with the Travel Management Rule and Forest Service guidance. Thus, it was not arbitrary or capricious. The Court should grant summary judgment to Federal Defendants on this claim.

4. The Forest Service was not required to prepare a supplemental EIS.

The changes to the final EIS ("FEIS") were well within the scope of the DEIS analysis and supplemental NEPA is not required. Defs.' Br. 26-28. As in their opening brief, Plaintiffs thoroughly describe changes between the DEIS and FEIS. Pls.' Resp. 11-13. However, they fail to show how these changes were significant so as to require a supplemental EIS or what impact a

supplemental EIS would have had on the analysis by the Forest Service. 40 C.F.R. § 1502.9(c)(1); *see also Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 373 (1989) (an agency need not supplement an EIS every time new information comes to light). The Forest Service's decision should stand because it was not arbitrary and capricious. *Marsh*, 490 U.S. at 377.

Plaintiffs admit that the concepts of seasonal closures and buffer zones were discussed in the draft EIS. Pls.' Resp. 11. They state their true concern is that implementation in the final decision resulted in the closure of additional routes for which they say the public had no opportunity to comment. This is not true. First, the public had the opportunity to comment on any and all routes. Second, applying seasons of use for Forest Service sensitive and federally listed species is a mechanism to ensure compliance with the direction to minimize harassment of wildlife contained in the Travel Management Rule. PLU-B-000066 (mitigations for wildlife species); 36 C.F.R. § 2122.55(b)(2) (specific criteria for designation of trails and areas directing the responsible official to consider effects, with the objective of minimizing "harassment of wildlife and significant disruption to wildlife habitats."). And third, no NEPA supplementation was needed because even with the addition of site-specific season of use restrictions for some routes, the end result remained "qualitatively within the spectrum of alternatives that was discussed in the draft." Council on Environmental Quality, Forty Most Asked Questions, 46 Fed. Reg. 18,026, 18,035 (Mar. 23, 1981).

Plaintiffs also have not shown how the change concerning the term "quiet recreation" was an actual restriction that impacted the decision. Instead, Plaintiffs continue to argue that the term "quiet recreation" was not identified in the DEIS. Pls.' Resp. 12. Yet, it was discussed in the DEIS in the context of "non-motorized recreation activities displaced by proposed motor vehicle use" as an environmental consequence for each alternative. PLU-B-000705-06. The FEIS refined this concept and only made a minor change in how the analysis was presented.

Plaintiffs argue that the elimination of the Sly Creek area and trails in red-legged frog critical aquatic refuge areas required supplemental NEPA. Trail closures not in the DEIS do not automatically require supplementation. *See Russell Country Sportsmen v. U.S. Forest Serv.*, 668

F.3d 1037, 1047 (9th Cir. 2011) (finding the trail closures were a "minor variation that were 'qualitatively within the spectrum of alternatives that were discussed in the draft [EIS].'") (citing Forty Questions, 46 Fed. Reg. at 18,035). Legal compliance with the Endangered Species Act was not the only factor in dropping this area and trails. The Forest Service received a Biological Opinion from the U.S. Fish and Wildlife Service for a plan to include these trails on November 9, 2009. PLU-E-000185-0219. The Biological Opinion identified a "may affect, likely to adversely affect" determination with a risk of incidental take. *Id*. Subsequently, the Forest Supervisor was advised that Alternative 5 with inclusion of these trails and area did not meet the minimization criteria in the Travel Management Rule, and for this reason she requested the U.S. Fish and Wildlife Service to formally retract the biological opinion. PLU-E-000184. The Forest then proceeded with a modified alternative meeting the Route Designation Project Design Criteria to reduce the level of effect to California Red-legged frogs to "no effect" or "may affect, not likely to adversely affect" in order to comply with the Forest Service Region 5 Programmatic Agreement. PLU-E-000226-227; PLU-B-000015. These minor changes reduce impacts to these species and, as such, do not require supplementation. *See Protect Our Communities Found. v. U.S. Dep't of Agric.*, 845 F. Supp. 2d 1102, 1110 (S.D. Cal. 2012) (change reducing environmental impacts does not automatically require new analysis as "minimizing measure's effects on the environment will usually fall within the scope of the original NEPA analysis").

Lastly, Plaintiffs' objection to the Law Enforcement appendix is unclear. Plaintiffs point out that activities like search and rescue and wildfire control are included in law enforcement and claim that the closure of routes will significantly impede user-led maintenance. Pls.' Resp. at 12-13. However, they do not address how the inclusion of this information in the FEIS constituted a substantial change or was relevant to environmental concerns. Therefore, none of the minor changes identified by Plaintiffs in the FEIS warranted supplementation.

5. The Forest Service's analysis of cumulative impacts was reasonable.

The Forest Service's decision to limit the geographic scope of its analysis to within the borders of the Plumas National Forest was not arbitrary and capricious. Defs.' Br. 28-29.

Plaintiffs' response does not even attempt to address the recent ruling by the Ninth Circuit in *Friends of Tahoe*. Pls.' Resp. 15. The Ninth Circuit found that the Forest Service did not act arbitrarily in limiting its analysis of the cumulative impacts to the boundary of the Tahoe National Forest. 2016 WL 761225, at *2. The Tahoe National Forest is one of the unnamed neighboring forests to the Plumas mentioned by Plaintiffs, Pls.' Resp. 15, so Plaintiffs' attempt at distinguishing this decision should be rejected. Moreover, asserting that other forests are also undergoing the travel management designation process did not work in the *Friends of Tahoe* case, and it does not work here. *Id*. (accepting the rationale for not assessing the potential cumulative impacts of the proposed motor-vehicle restrictions in nearby National Forests).

Plaintiffs cite *Natural Resources Defense Council, Inc. v. Hodel*, 865 F.2d 288 (D.C. Cir. 1988), to argue that the cumulative impacts analysis should expand beyond the borders of the Forest. Pls.' Resp. 15. Unlike the migratory species at issue in *Hodel*, there is no certainty that visitors to this forest will travel to other forests nor is there a way to predict such travel with any certainty. Thus, any analysis would be speculative at best. Moreover, as that court noted, the purpose of the requirement for cumulative impact analysis is to prevent agencies from dividing one project into multiple individual actions "each of which individually has an insignificant environmental impact, but which collectively have a substantial impact." *Id*. at 297 (quoting *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985)). That harm is not a concern here. The decision is one project within the bounds of this one forest. So, this claim also fails.

III. CONCLUSION

For the foregoing reasons, Federal Defendants request that this Court deny Plaintiffs' Motion for Summary Judgment and grant Federal Defendants' cross-motion for summary judgment.

Respectfully submitted on this 7th day of July, 2016.

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CERTIFICATE OF SERVICE

I, Davené D. Walker, hereby certify that on July 7, 2016, I caused the foregoing to be served upon counsel of record through the Court's CM/ECF system.

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