

**PUBLIC LANDS FOR THE PEOPLE, INC.
A 501 C-3 NONPROFIT CORPORATION**

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May 15, 2008

VIA CERTIFIED MAIL
7007 0710 0002 4173 8924

Re: Final Environmental Impact Statement
Eldorado National Forest
Public Wheeled Motorized
Travel management Plan FEIS.

Eldorado National forest
Public Wheeled Motorized travel Management
Final Environmental Impact Statement
Record of Decision
April 2008

Randy Moore
Regional Forester
USDA Forest Service
Regional Office R5
1523 Club Drive
Vallejo CA. 94592

**Appeal of the Decision to Approve Closure of Roads and Rights of Way
in the ENF to Miners and Associated Mining Activities
AND, 60 Day NOTICE OF INTENT TO FILE CITIZEN SUIT**

Dear Mr. Randy Moore

Pursuant to 36 CFR 215, Public Lands for the People, Inc. ("PLP"), a California 501 c-3 non profit Corporation, as well as PLP representative members Bryan, Hillarie, Drew and Cole Bunting; 4820 Birkdale, Fairfield, CA. 94534, ph. 707-864-9363; Steve Wandt; 8526 Hayden way, Fair Oaks CA. 95628, ph. 916-967-2129; and Bruce Lorraine, P.O.

Box 5514, Auburn, CA. 95604, ph. 530-885-1925, appeal from the above referenced Final Environmental Impact Statement (“FEIS”) and Record of Decision (“ROD”) regarding the Eldorado National Forest, (“ENF”) officially released April 2, 2008. This is also to provide notice, Notice of Intent to File Citizen Suit; and that PLP and representative members allege violations of the Administrative Procedures Act, (hereinafter the “APA”), and their implementing regulations; and, that appellant intends to bring citizen suit for declaratory judgment and injunctive relief, unless the alleged violations as delineated below, and their implementing regulations, are corrected. The responsible official was ENF Supervisor Ramiro Villalvazo, and the ROD is dated March 31, 2008.

The FEIS and the ROD were issued pursuant to an Order dated Aug. 16, 2005 by the Honorable Lawrence K. Karlton in “Center For Sierra Nevada et. al. vs. John Berry, Eldorado National Forest Supervisor et. al.”, United States District Court, Eastern District of California, CIV-S-02-0325 LKK/JFM”. The Order of Judge Karlton prohibited the Forest Service from restricting “other permitted uses, or uses under valid pre-existing rights”.

The issues raised in this appeal are in many respects set forth in appellants comments of 9/5/07 and not considered in the ROD by the responsible official. The customary uses and operations of prospectors, miners, and their valid existing rights and the affect by the agency action, are not dealt with in the ROD.

PLP is a nationwide organization of small scale miners and prospectors. With its constituent members PLP constitutes approximately 40,000 people. Its President is Gerald E. Hobbs.

For PLP and its members, prospecting and mining in the ENF is not recreational. It is an important economic endeavor that has a direct economic impact on family finances, business finances, and in these times, often the difference between having to choose whether to put gas in the car or buy food or medicine for the family. For PLP and its members, prospecting and mining in the ENF is not merely a question of having “fun”. Close the roads to small miners and prospectors in the ENF, and you quite literally take food off the table. With gasoline at \$4.00 a gallon, being able to sell even an ounce of gold for almost \$900 an ounce makes a substantial difference as to the economic choices a family has.

Unfortunately, both the ROD and the FEIS focus almost exclusively on the use of the ENF for recreational purposes, especially its use by the off road community. The ROD does not even mention mining and prospecting. The FEIS in Chapter 3, Section L, Mineral Resources, does in a cursory way deal with mining and prospecting, but what it states is often just plain wrong.

Section L, and the FEIS in general makes no distinction between the environmental impact caused by the general public, including the off road community, and the limited use of the roads by miners and prospectors. It lumps the limited use by miners and

prospectors who have pre-existing rights, including pre-existing property rights granted by Congress, in with the general public whose primary interest is in recreation. Consequently, there is no consideration or analysis of the economic harm caused to miners and prospectors, although their use of the roads, and their environmental impact, is minimal. This is so even though Section L recognizes that; “Miners, prospectors and owners of unpatented mining claims have a statutory right of reasonable access under the mining laws”. That reasonable right to access” is then negated by Section L when it states; “Those alternatives with reduced public wheeled motor vehicle access, particularly within the western portion of the forest where mineral resources are more likely to occur, may have the effect of reducing access for prospecting or exploration, with the subsequent effect of reduction of discovery of new mineral resource commodities.” “Individuals or Companies that conduct prospecting and exploration activities are not usually required to obtain a permit or other form of authorization pursuant to 36 CFR 228...”

Section L recognizes that “Of most important to the management of the ENF is gold.” But then the United States Forest Service (“FS”) tends to the “management” of gold by closing roads, making prospecting and mining for gold unduly burdensome, if not impossible. This is not management, it is prohibition, which itself is prohibited by Judge Karlton’s Order, the pre-existing rights of miners and prospectors, the Code of Federal Regulations (“CFR”), the mining laws, and other Acts of Congress.

Section L states that: “Very little locatable extraction and development has occurred on the Forest in the last decade and there are no actively producing mines at this time.” This is not accurate. The Bureau of Land Management (“BLM”) lists three hundred sixty five (365) valid existing mining claims in the ENF. See Exhibit A. Many, if not most, of these claims are active. Substantial gold production takes place in the ENF.

Prospecting, placer mining and suction dredge mining, all of which are mining operations pursuant to the mining laws and the CFRs, and all of which have valid pre-existing rights pursuant to the mining laws and CFRs, are traditionally common in the ENF, and done in accordance with the rules and customs of miners. PLP members such as Bryan Bunting and his family, and Bruce Lorraine, prospect and mine in the ENF to supplement their incomes. PLP member Steve Wandt prospects and mines gold in the ENF to maintain and sustain a successful retail jewelry business. His creations made from gold mined in the ENF greatly enhance the value of gold extracted from the ENF. These examples can be repeated many times over with other PLP members. All of these examples have a direct beneficial economic impact on the communities in which they live and the communities around the ENF.

Steve Wandt PLP member is a 100% disabled American Veteran; which because of his actual disability requires him to have full vehicular access to his mining claims and his prospecting endeavors in the ENF. To deny vehicular access to Steve Wandt in the ENF is to prohibit his ability to mine and to prospect in the ENF. This is a violation of the Americans With Disabilities Act (“ADA”), 42 USC Sec. 12132.

The closure of roads and rights of way in the ENF contemplated by the FS, unlawfully affect the “permitted uses, or uses under valid pre-existing rights” of miners, in violation of Judge Karlton’s Order.

The Mining Act, 30 USC Sec. 21 - 54 and The Organic Act of 1897 (PUBLIC-No. 2) provides for access by miners to ENF, the use of roads and rights of way in the ENF, and mechanisms by which miners can prospect, explore and develop their mining claims in the ENF. This FEIS and ROD does not attempt to facilitate or foster and encourage mining in the ENF as the Minerals Policy Act 30 USC Sec 21a, requires. The FEIS and the ROD is an actual attempt to prohibit miners from prospecting, exploring, or developing mining claims in the ENF. The FEIS and the ROD are in direct conflict with the rules and customs of miners (valid pre-existing rights), and to the extent the FS attempts to apply their strictures to prospecting, exploration, mining, and mining operations in the ENF, the FEIS and the ROD are to such extent in conflict and invalid.

The closure of roads and rights of way in the ENF contemplated by the FS, unlawfully affect the “permitted uses, or uses under valid pre-existing rights” of miners, in violation of Judge Karlton’s Order. In addition, such a closure is in direct violation of the CFRs applicable to the FS. More specifically such a closure is in violation of 36 CFR 228, including without limitation:

36 CFR 228.1

36 CFR 228.3

36 CFR 228.4

36 CFR 228.5

36 CFR 228.8, including without limitation:

36 CFR 228.8 (f) and

36 CFR.228.12

and

36 CFR 212, including without limitation:

36 CFR 212.1

36 CFR 212.5

36 CFR 212.6, including without limitation:

36 CFR 212.6 (b)

36 CFR 212.55

36 CFR 212.57

and

36 CFR 261, including without limitation:

36 CFR 261.1 (b)

36 CFR 261.13 (i)

All of these regulations provide for access by miners to ENF, the use of roads and rights of way in the ENF, and mechanisms by which miners can prospect, explore and develop

their mining claims in the ENF. These regulations are supposedly an attempt to facilitate, foster and encourage mining in the ENF. The FEIS and the ROD are an actual attempt to prohibit miners from prospecting, exploring, or developing mining claims in the ENF. The FEIS and the ROD are in direct conflict with the CFRs, and to the extent the FS attempts to apply their strictures to prospecting, exploration, mining, and mining operations in the ENF, the FEIS and the ROD are to such extent invalid.

Violation of Pre-existing RS2477 Rights of Way

Neither the FEIS or the ROD deal with the issue of what roads or rights of way are to be closed to miners subject to the Act of Congress RS 2477. These RS 2477 roads and rights of way constitute valid pre-existing rights and can not be taken from miners use in the ENF by the FS, whether by the FEIS, ROD, or any other administrative action of the FS not specifically authorized by Congress. To the extent that the FS intends to close any RS 2477 roads and rights of way to miners for their use in conducting any prospecting, exploration or any other mining operations, such action is invalid and unlawful.

PLP and its member appellants, as members of the public and as citizens of the United States, herefore, declare and have for years accepted the use and routine maintenance of all roads and trails within the ENF whether those trails are actively maintained by the U.S. Forest Service, State, or County; or not. That being said, this use was and has been our public acceptance of our ongoing and continual use of said rights of way and roads pursuant to Act of Congress (R.S.2477). No formal action by the Forest Service is required. Nor is our informal declaration required to be recorded by public

(governmental) authorities. Title to an R.S.2477 right-of- way passes without any procedural formalities and without agency involvement.

Congress repealed R.S.2477 in 1976. But even as Congress repealed R.S.2477, it specified that any valid rights-of- way “existing on the date of approval of this Act”(October 21, 1976) would continue in effect. The Statute thus had the effect of freezing R.S.2477 rights as they were. In other words, the scope of an R.S.2477 right-of- way or road is limited by the established and historical usage of the route as of the date of repeal of the Statute.

To illustrate, there is included an excerpt from the report on Jarbidge. Note:

(Jarbridge was a action by the Nye County, Nevada Supervisor , Dick Carver, to challenge the FS on an illegal road closure by the FS, in where he and 300 volunteers took a Bull dozer to the site of the closed road and reopened it.)

"The 1866 Act created a general right-of-way for settlers to cross these lands at will. It also allowed for the establishment of easements. At this point, it is important to note the definitions of these key terms: A right-of-way is defined as the right to cross the lands of another. An easement is defined as the rights to use the lands of another. Section 8 and 9 of the 1866 Act are the seminal U.S. law defining the rights of ownership in the Jarbidge South Canyon Road. Section 8, which was later codified as Revised Statute 2477, deals with the establishment of “highways” across the land. The term highways as used in the 1866 Act refer to any road or trail used for travel. The right-of-way portion of this act

was an absolute grant for the establishment of general crossing routes over these lands at any point and by whatever means was recognized under local rules and customs.”

According to the Supreme Court of the United States: A contract is a compact between two or more parties, and is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do, a particular thing;...." "A contract executed is one in which the object [10 U.S. 87, 137] of contract is performed; and this, says Blackstone, differs in nothing from a grant..." "A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to assert that right. A party is, therefore, always estopped by his own grant." Fletcher v. Peck, 10 U.S. 87 (1810)

This begs the question as to whether or not R.S.2477 could have ever been repealed in the first place in 1976 by the Federal Lands Policy and Management Act (“FLPMA) 43 USC Sec. 1701 et seq.

The Forest Service may not use its authority to hinder, obstruct, or otherwise materially interfere with the routine maintenance of these roads and trails performed by the public who are the vested property holders of the R.S.2477 rights-of-way. Any acts on the part of the Forest Service to obstruct these routes will be viewed as a public nuisance and are actionable under CA. Civ. Code Sec. 3479 and CA. Code of Civ. Procedure Sec. 731. Historically, conflicts between private users and the definitions used, have been fleshed out and resolved in State courts under State law.

RS 2477 roads and rights of way are preserved by the Federal Land Policy and Management Act , 43 USC Secs. 1701; 1769 (“FLPMA”). The FEIS and ROD are in violation of FLPMA, including without limitation:

43 USC Sec. 1701

43 USC Sec. 1707 (12)

43 USC Sec. 1702

43 USC Sec. 1712

43 USC Sec. 1761

43 USC Sec. 1766 (Lack of Notice and Hearing).

43 USC Sec. 1769

43 USC Sec. 1770

FLPMA is intended to accommodate “valid pre-existing rights” of access to miners in the ENF. The FEIS and the ROD prohibits such access, and does so without any notice or opportunity for a hearing. As a matter of fundamental Constitutional due process covered under the 5th and 14th Amendment of the Constitution of the United States of America, and Art. 1 Sec. 7. (a) of the California Constitution, the FS must give personal individual notice (not just federal register), and the opportunity for a hearing to each individual holder of a mining claim in the ENF, before it can terminate a valid pre-existing right, especially valid pre-existing property rights. This has not been done. Sec. 701 of Public

Law 94-579 states: “(h) All actions by the Secretary concerned under this Act (FLPMA) shall be subject to valid existing rights.” This mandate the FS has unlawfully ignored.

The Federal Land Policy and Management Act of 1976 reiterates that the 1970 Minerals Policy Act shall be implemented and directs that public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals and other resources.

The Minerals Policy Act of 1970 30 USC Sec. 21a, declares that it is the continuing policy of the Federal Government to foster and encourage private enterprise in the development of a stable domestic minerals industry and the orderly and economic development of domestic mineral resources. This act includes all minerals, including sand and gravel, geothermal, coal, and oil and gas.

Violation of Pub. L No 104-208,110 Stat.3009 (Omnibus Consolidated Appropriations Act)

Pub. L No 104-208,110 Stat.3009 clearly states: “No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act [Sept.30,1996]”. Emphasis added.

Congress has forbidden federal agencies from using funds for developing, promulgating, and thereafter implementing a rule concerning rights-of-way.

Members of the public at large and PLP members, have been and continue to exercise their R.S.2477 grant; thus, no final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 shall take effect “unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act.” PLP and its members assume and believe miners, prospectors and members of the general public will be unlawfully cited for exercising their R.S.2477 rights-of-way.

Violation of 30 U.S.C. Sec. 21-54 (Mining Act)

30 U.S.C. Sec. 22 clearly states: “Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States”. Emphasis added.

The ENF cannot be free and open to exploration if the historical means of access by prospectors and miners can be prohibited by FS obstructions, and FS Order prohibitions. Whatever authority the FS may have to reasonably regulate activities incident to mining outside the boundaries of a mining claim, it has no authority to prohibit reasonable and historical means of access.

The FEIS/ ROD proposed temporary and permanent Forest Orders are prohibitive, and not merely regulatory in fundamental character. This closure and proposed temporary Forest Orders are also frustrating the implementation of the Minerals Policy Act 30 U.S.C. Sec. 21a.

Violation of 30 U.S.C. Secs. 612, 613, 615 (Multiple Surface Use Act)

30 U.S.C. 612(b) clearly states:

“Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefore, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefore, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto:” Emphasis added.

Sec. 615, **Limitation of existing rights states:**

“Nothing in this subchapter and sections 601 and 603 of this title shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing

rights of any claimant under any valid mining claim heretofore located, except as such rights maybe limited or restricted as a relinquishment pursuant to section 613 of this title, or as a result of a waiver and relinquishment pursuant to section 614 of this title; and nothing in this subchapter and sections 601 and 603 of this title shall be construed in any manner to authorize inclusion in any patent hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licenses which is otherwise authorized by law.”

The FEIS and ROD proposes to close access intentionally or by misapplication to unpatented mining claims. This closure and its associate temporary and permanent forest orders will materially interfere with claimants’, and prospectors’ existing rights and means to access as provided by 16 U.S.C. Sec. 478 which states in part: “...Nor shall anything in such sections prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof”. Emphasis added.

Again, the closure and its associate temporary and permanent forest orders have a prohibitive, not merely a regulatory, role. The closures are therefore unlawful.

Violation of 16 U.S.C. Sec. 472 (Transfer Act)

16 U.S.C.A Sec.472 clearly states: “The Secretary of the Department of Agriculture shall execute or cause to be executed all laws affecting public lands reserved under the provisions of [section 471](#) of this title, or sections supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands”. Emphasis added.

As pointed out in the earlier violations, the FEIS and ROD will effect the Miners’ rights under the 1872 Mining Law, frustrate the long standing will of Congress and upset 141 years of Miners’ and the Public rights-of-way across Federal Land. The closure is therefore unlawful.

Violation of 42 U.S.C. Sec. 12132 (Americans with Disabilities Act)

42 U.S.C.A. 12132 clearly states: “Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity”. Emphasis added.

Steve Wandt, PLP member, is a 100% disabled American Veteran; which by his actual disability requires full vehicular access to his mining claims and his prospecting endeavors in the ENF. To deny vehicular access to Steve Wandt in the ENF, is to prohibit his ability to mine and to prospect in the ENF. This is a violation of the American Disabilities Act (“ADA”), 42 USC Sec. 12132.

Many of PLP's membership are made up of individuals with disabilities. These individuals have and wish to continue using these public rights-of-ways without discrimination. The closures discriminate against these individuals by exclusion and classification barring the customary usage of the Public rights-of-way. The closures are therefore unlawful.

Violation of 18 U.S.C. Sec. 666 (Misappropriation of Federal Funds)

PLP and its member appellants have become aware that Congress has not specifically appropriated funds for this major federal action, as such, no further studies, inventories, regulatory promulgations or meetings can take place regarding these closures until said monies are in fact specifically appropriated from Congress. PLP and its member appellants are informed and allege FS is misappropriating funds out of its maintenance budget, and thus drying up available funds that were to be used for line item maintenance of National Forest roads and trails. PLP and its member appellants based on information received, allege that any acts of closure of roads and trails (other than temporary emergency closures) that are at the same time specifically funded for maintenance by line item appropriation from Congress, is fraud. Solicited monies from Congress (line item) for maintenance of existing roads and trails that are in turn being used to close roads and trails (or existing closed roads and trails) is fraud upon the United States and violates the valid pre-existing rights of the taxpayer as well. The true and horrendous dollar cost to the United States and its citizens may never be fully known due to the poor accounting practices of the Forest Service as reflected by the General Accounting Office (GAO) for

the last 15 years. The closure is therefore prima facie unlawful.

Conclusion

It would appear to PLP and its members that the FS's efforts to comply with Judge Karlton's Court Order have either intentionally or inadvertently circumvented Judge Karlton's direction as to the meaning of not effecting pre-existing rights.

The FEIS and ROD and proposed road and right of way closures are unlawful as applied to miners, prospectors, and explorers, as well as their associated activities, including without limitation, prospecting, exploring, mining and mining activities of any nature in the ENF. The FS cannot lawfully proceed with its proposed road and right of way closures in the ENF as to these matters, or any mining matters.

Respectfully Submitted

Gerald E. Hobbs

President, (PLP) and on behalf of its appellant members:

Bryan, Hillarie, Drew and Cole Bunting

Bruce Lorraine

Steve Wandt

CC: U.S. Forest Service Chief, Washington D.C.