

Draft of a letter to Custer County

The Custer County Board of Commissioners calls upon you to schedule a meeting with the Board to discuss coordination of implementation of the record of decision that you have issued with regard to travel management plan for the Salmon Challis National Forest. As you know the County appealed the record of decision, but that appeal does not in anyway affect your obligation to coordinate regarding the implementation of the record with this County.

As you know the County has pointed out in its appeal and now for purposes of coordinating points out again that the maps with which you worked in developing the routes designated in the record of decision were not complete with regard to the roads that exist, have historically existed, and are in use on the forest. You have suggested in your decision on appeal that a complete inventory is not necessary in order to prepare a Travel Management Plan. We know that the Secretary Agricultural has determined that a complete inventory of all “users created routes” is not necessary. But in the federal register notice of final direction published on December 9, 2008 in volume 73 in federal register 74691, the Secretary made it clear that the final directive was not to require “complete inventory of user-created routes” but that it was necessary to have “a complete inventory” before beginning designation. The Secretary’s comment was in response to comments from the public that stated that a complete inventory of user-created routes was necessary. Insulation of this reasoning for not requiring such a far reaching inventory, his secretary stated: “To clarify this intent, the final directives state that a complete inventory user-created routes is no required, rather than complete inventory is not necessary.” In other words the intent of the final directive is not to say that a complete inventory is not necessary, but that a complete inventory of “user-created routes” is not necessary.

Without an accurate mapping inventory of existing and in use roads that have historically been used in the forest, it was impossible for the forest service to conduct the type of analysis of criteria for the designation of roads as required by the Travel Management rules.

We know that you are aware that 36 CFR Section 212.253 required you to coordinate with this county with regard to the development of a Travel Management Plan particularly, with regard to sub-part B of the rules “designation of roads, trails and areas motor vehicle use.”

The coordination required by the rules is defined by forest service planning rules of 1982. It is those rules which are applicable to all planning done by the forest service since all the substantial rules prepared by the forest service have been rejected by United States District Courts as being prepared inconstantly with NEPA requirements. The Secretary of Agricultural has made it apparent that the 1982 rules do apply today. In a notice of intent to prepare an environmental impact statement for issuances of new planning rules the Secretary of Agricultural designee stated in a state federal register notice published December 8, 2009; “The agencies expectation based upon it experience

with the 2000 rule is that national forest and grass lands will use the 1982 rule provision, as permitted by the transition provisions of the 2000 rule, to revise and amend plans until a new planning rule is issued.”

The 1982 rules provide that in order to satisfy the requirements of coordination with a local government that you do the following;

1. The Forest Service shall consider all land use plans and policies of local government (219.7) (c) (1). The policy of Custer County with regard to the Travel Management Plan was clearly stated to you in the list of roads that should be left open that was provided to you prior to your completion of the record of decision. Those roads were again identified in the appeal that Custer County has filed. Custer County also is aware that many members of the public submitted maps to you showing roads that are in use, and are not just “user-created”; you have ignored those roads and you did not considered them in coordination with the county.
2. The Forest Service shall assess the “inter-related impacts” of the local county policy and federal plans (219.7) (c) (2). There is no indication in the record of decision that you at any time consider the “inter-related impacts” of what you did in the record of decision on the policy of this county with regard to the roads and particularly the RS2477’s, identified to you by the county as necessitating an open status.
3. The Forest Service shall determine how the Federal Plan (your Travel Management Plan) “Should deal with the impacts identified.” (219.7) (d) (3) your record of decision does not indicate in any way how you should deal with the inter-related impacts which we identified and which will be continually identified at the next coordination meeting.
4. The Forest Service shall consider alternatives to resolve “conflicts” between federal and local plans and policies. (219.7) (c) (4). It is those alternatives that we wish to discuss with you in a coordination meeting because we defiant ideas as to how the conflicts can be resolved.
5. The Forest Service shall “meet with” local officials at the beginning of the planning process to “develop procedures coordination.” (219.7) (d) (). You did not develop “procedures for coordination” with this county as we requested. It is time to do so.
6. The Forest Service shall “seek input” from county commissioners to “help resolve management concerns in the planning process.” (219.7) (e) (). We want to provide that information to you at a coordination meeting to help resolve our management concerns in the planning process.
7. The Forest Service shall meet with local government “at a minimum ... prior to recommending the preferred alternative. (219.7) (d) (). Such a meeting at which we could have discussed the differences that exist and did not take place, but it should take place now as a coordination meeting under the provision of section 212.57 of 37 CFR. Section 212.57 provides that you shall “monitor the affects of motor vehicle use on designated roads and trails and in designated areas under your “jurisdiction.” During our coordination meeting we would like to discuss with you monitoring implementation which you

currently using. Once again referring to the 1982 planning rules issued by the Secretary of Agricultural 37 CFR section 219.7 (f) the rule provides that a program of a “monitoring and evaluation shall be conducted that includes consideration of the effects of national forest management on land, resources, and communities adjacent to or near the national forest being planned and the effects upon national forest management of activities on near by lands managed by other federal or government agencies or under the jurisdiction of local governments.” Under that rule the monitoring and evaluation which you should not be conducting must take into consideration the impact on our community and on all the lands within the jurisdiction of Custer County.

The coordination meeting we call for is for the purpose of coordinating, not for the purpose of reopening an appeal. The board carefully considered its options as to whether to attempt to proceed further with the appeals or to enter into the coordination process with regard to implementation. The very general nature of your responses to appeal points, and the mixing and matching of your response to appeal points raised by the various appellants made it clear that this Board would rather rely upon the specific mandate that you are to coordinate rather than to continue to allow the forest service to review it’s own decisions.

We are certain that you are aware that not only that the Travel Management rules and the planning rules require that you coordinate, but also that the Northern District United States Court for the District of California has recently reiterated that mandate. In California Resources Agency vs. United States Department of Agricultural, the District Court for the Northern District of California places a burden upon the Forest Service to coordinate with state and local governments that you did not meet in issuing your record of decision. We expect you to meet that burden however in the ongoing coordination which we are now calling for. In the case that state of California, under authorization of its governor, sued the Forest Service claiming that it failed to meet the requirements to coordinate. The statutory base for the state of California requiring coordination is that same is that which is applicable to Custer County and all local governments. The court stated that the Forest Service failed to meet its requirement to do the following:

1. Consider the “objectives of other state and federal and local governments and Indian Tribes as expressed in there plans and policies.”
2. To assess the “inter-related impacts of these plans and policies.”
3. To determine how “each forest service plan should deal with the impacts identified.”
4. The forest service did not identified “consideration of alternatives” for the resolutions of conflicts between forest service planning and local policy. As a result of the courts finding the forest service failed to coordinate, the forest service plan was put on hold.

Based on the above sited regulatory revisions, we call upon you now to schedule with the Board a meeting in which we can begin to coordinate regard to implementation of your record of decision. If you will call the clerk of the Board to arrange to meet with the Board on one of the following dates would be appreciated:

If neither of these dates is convenient for you please call the clerk by _____ in order to arrange a most convenient date.