

**RECREATION OUTDOORS COALITION
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April 7, 2010

USDA Forest Service
ATTN: Data Quality Official
Mail Stop 113, 1SW Yates Building
1400 Independence Ave, SW
Washington, DC 20250-1143

Subject: Request for Reconsideration under the Data Quality Act

Dear Sir/Madame:

I am requesting reconsideration and a Department of Agriculture review of your March 31st response to my Data Quality Act (DQA) request, dated February 1. In requesting this review, I find the following statements in your March 31st letter particularly troublesome:

1) "The panel selected to review this Data Challenge concluded the reports meet the requirements of the Data Quality Act pertaining to the utility and transparency as well as objectivity and quality. There, we have found no reason to correct the information."

Response:

The Lassen National Forest (LNF) had statistically valid traffic count data from a 2005 Engineering Report of forest roads that was conducted by volunteers from the Recreation Outdoors Coalition under the supervision of a retired Forest Service Engineer and licensed State of California Traffic Engineer. In the absence of better data, this information should have been used to prepare the Forest's engineering reports for motorized mixed use (MMU). Instead, LNF engineers chose to disregard the data. The utility, transparency and objectivity standard of the DQA has not been met.

2) "The engineering analysis performed by a qualified engineer only analyzes that information which is available . . . As you correctly point out, there is no traffic count data nor is there any crash data available for the Lassen NF's roads. If such data were available, it would be displayed in the engineering reports under the USDA guidelines."

Response:

Traffic count data and an engineering analysis of crash probability and crash severity using objective benchmarks from the 2005 Engineering Report were available and submitted with our February 1st letter for your review. LNF engineers did not use or even reference this data in their engineering reports and in the Draft or Final Environment Impact Statements (EIS) for travel management. In our comments to the Draft EIS, ROC asked the LNF to establish benchmarks for each risk factor so all roads could be judged in a uniform and objective manner. This was not done and their risk assignments are subjective. Because the LNF's 2009 engineering reports differ significantly from the 2005 Engineering Report, I can only assume the LNF's reports are biased.

3) "in your letter, you state . . . the engineering reports, 'reflect a well-known bias by the Forest's engineering staff against continuing to allow motorized mixed use on unpaved Forest roads that have had no known MMU crashes or other safety problems.' My staff was unable to find any evidence or bias on the part of the engineers on the Lassen NF."

Response:

In addition to the 2005 Engineering Report, I also sent you four engineering reports for maintenance level (ML) 3 roads on the Modoc National Forest, immediately adjacent to the LNF. In November 2009, the Forest Supervisor authorized motorized mixed use on 513 miles of ML 3 roads on the Modoc National Forest. In January 2010, the LNF Forest Supervisor authorized motorized mixed use on only 9.3 miles of ML 3 roads. The other 75.7 miles of proposed motorized mixed use roads were dropped due to safety concerns identified in the LNF's engineering reports. These roads have been safely used by non-highway legal vehicles (OHVs) for decades with no history of mixed use accidents on the LNF – ever! Why is this traditional use unsafe now?

Traffic counts on the Modoc NF were taken over several random days and time periods totaling between 22 to 175 hours/road. LNF engineers counted traffic between 30 minutes to 3 hours/road. At least 12 of the road reports have no date listed so ROC is unsure if the listed traffic counts were actually taken. This reflects sloppy, incomplete work with no scientific validity. Instead, LNF engineers should have used data from the 2005 Engineering Report.

In addition, I sent you documents and resolutions from County Boards of Supervisors and Public Works Directors who manage unpaved county roads that connect with LNF roads. The LNF's engineering reports for motorized mixed use contradict the conclusions of experienced County Public Works Directors and mixed use decisions on similar unpaved county roads that flow into the LNF's road system. Findings in the LNF's engineering reports also conflict with motorized mixed use recommendations for ML 3 roads on the Modoc National Forest. This is further evidence of bias.

After reviewing the conclusions in the 2005 Engineering Report, the previous LNF Forest Supervisor proposed to allow motorized mixed use on all the ML 3 and ML 4 roads that were

sampled, comprising 72 miles of roads. Data collected in the 2005 Report is representative of all the Forest's unpaved ML 3 and 4 roads. The 2009 LNF engineering reports now disagree with the 2005 data.

4) Your March 31st response did not discuss the California Vehicle Code. Region 5 and Region 6 have different interpretations of the California Motor Vehicle Code. The Region 5 Regional Forester's motorized mixed use policy contradicts the opinion of the California Highway Patrol (CHP), the regulatory agency in charge of interpreting and enforcing the California Vehicle Code. CHP says unpaved national forest system roads do not meet the definition of a "highway" per Section 38001(a), California Vehicle Code. The Region 6 Regional Forester concurs with CHP. This conflict needs to be resolved.

5) The same failings in the LNF 2009 engineering reports are evident in your March 31st letter. LNF engineering reports do not reflect the kind of professional judgment or scientific accuracy we expect to meet DQA standards. Data in the engineering reports are missing or inaccurate, vehicle classes are not described, speed data is inconsistent with data in the Forest Service INFRA Roads database, traffic counts are meaningless, and other County or Forest Service engineers allow motorized mixed use on the roads they manage, contrary to LNF engineering recommendations. Most of the "data" is not even data, it is an engineer's opinion. The LNF did not attempt to collect valid data.

Your March 31st letter does not respond to the specific flaws ROC found in the LNF engineering reports. You did not address the following:

- a. The LNF's failure to use vehicle count and vehicle class data from the 2005 Engineering Report or to collect their own statistically valid data.
- b. The LNF's failure to use objective benchmarks to assess the risk of crash probability and severity for each road (such as those found in the 2005 Engineering Report).
- c. The LNF's assignment of traffic speeds that conflict with LNF INFRA Roads database and prudent driver speeds from the 2005 Engineering Report.
- d. How you considered the engineering reports from the Modoc National Forest and County resolutions that allow motorized mixed use on their unpaved road systems.
- e. How you considered the application of the California Vehicle Code, and the conflicting interpretations between Region 5 and the California Highway Patrol, and between Region 5 and Region 6.
- f. How you considered the fact the LNF has had a long history of motorized mixed use on forest roads without a single mixed use accident. How do you reconcile this with LNF engineering reports that conclude these roads are now unsafe for continued non-highway legal vehicle travel? What factual data support these conclusions?

Your letter states: "In conclusion, the information you provided was carefully considered. After a careful review and discussions, I concluded there is no correction of information necessary." To support this finding, the letter references the Code of Federal Regulations and

Forest Service Manual direction. It does not respond to the specific Data Quality Act concerns we raised in our February 1st letter (items a-f above).

Under the Freedom of Information Act, I am requesting all of the documentation related to your careful review, including the names of the review panel, their job titles and credentials, and the panel's specific findings (notes, e-mails, meeting discussions, reports, etc.) in response to my DQA request. I understand you have 20 days to provide this information.

I am disappointed you consider the LNF's engineering reports to be quality work under the DQA and Forest Service policy. They do not reflect the professionalism I expect from Forest Service employees or prudent use of taxpayer dollars. If a contract engineer performed this kind of substandard work, the contract would be terminated.

I request all LNF engineering reports be re-written using the best available data and with coordination with our local counties and adjacent national forests to ensure each agency's road management strategies for motorized mixed use are considered and integrated. I also request this work be contracted out to a professional traffic engineer to reduce the perception of agency bias.

Thank you.

Sincerely,

/s/ Sylvia Milligan

SYLVIA MILLIGAN
Recreation Outdoors Coalition

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