



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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Project (CA-180-10-02) Finding of No Significant Impact December 2009

It is my determination that this decision will not result in significant impacts to the quality of the human environment. Anticipated impacts are within the range of impacts addressed by the Sierra Resource Management Plan (RMP). Thus, the proposed action does not constitute a major federal action having a significant effect on the human environment; therefore, an environmental impact statement (EIS) is not necessary and will not be prepared. This conclusion is based on my consideration of CEQ's following criteria for significance (40 CFR §1508.27), regarding the context and intensity of the impacts described in the EA and based on my understanding of the project:

- 1) *Impacts can be both beneficial and adverse and a significant effect may exist regardless of the perceived balance of effects.* Potential impacts include soil disturbance within an existing road and temporary noise and dust. *These effects are not significant.*
- 2) *The degree of the impact on public health or safety.* No aspects of the proposed action have been identified as having the potential to significantly and adversely impact public health or safety. In fact, leaving the gate at the current location provides a large turnaround area for vehicles
- 3) *Unique characteristics of the geographic area.* The project area does not contain any unique characteristics.
- 4) *The degree to which the effects on the quality of the human environment are likely to be highly controversial effects.* No anticipated effects have been identified that are scientifically controversial. As a factor for determining within the meaning of 40 C.F.R. § 1508.27(b)(4) whether or not to prepare a detailed environmental impact statement, "controversy" is not equated with "the existence of opposition to a use." *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). "The term 'highly controversial' refers to instances in which 'a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use.'" *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).
- 5) *The degree to which the possible effects on the human environment are likely to be highly uncertain or involve unique or unknown risks.* The analysis does not show that the proposed action would involve any unique or unknown risks.
- 6) *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.* The decision follows the guidelines set in the Sierra Resource Management Plan approved in 2008 as not available for motorized vehicle use by the general public.

7) *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.* No significant site specific or cumulative impacts have been identified. The proposed action is consistent with the Sierra RMP which requires that the Mother Lode Field Office respond to demands in land use authorizations.

8) *The degree to which the action may adversely affect National Historic Register listed or eligible to be listed sites or may cause loss or destruction of significant scientific, cultural or historical resources.* The proposed action would not adversely affect cultural properties listed on or eligible for the National Register of Historic Places.

9) *The degree to which the action may adversely affect ESA listed species or critical habitat.* No ESA listed species (or their habitat) are known to occur in the area potentially affected by the proposed action.

10) *Whether the action threatens a violation of environmental protection law or requirements.* There is no indication that the proposed action will result in actions that will threaten such a violation.

/s/ William S. Haigh

12/10/2009

William S. Haigh
Field Manager, Mother Lode Field Office

Date

DECISION RECORD
CA-180-10-02

1.0 Introduction and Background

The proposed action is the location of a gate within an access road right-of-way on public land.

2.0 Decision

Based on information in the environmental assessment (EA), the project record, public input, and recommendations from my staff, I have decided to implement the proposed action as described in the EA. The existing iron gate at the end of the county-maintained portion of River Road will remain in its current location. Within forty-five (45) days of the date of this decision, Joy and Ronald Lopez (Lopez), who installed the gate, will remove the panels on the gate's east side (the side closest to Lake Don Pedro) to provide non-motorized public access. Pedestrian access by the general public to Bureau of Land Management (BLM) lands located north of the gate will continue to be allowed, and signs will be posted on or near the gate indicating that pedestrian access beyond the gate is allowed.

3.0 Consultation and Coordination

No special status animal or plant species or habitat was found; therefore, consultation with the United States Fish and Wildlife Service was not necessary.

4.0 Public Involvement

Scoping was announced for the project in October 2009, via the BLM's internet site. The EA was available for a formal fifteen (15) day public comment period in October 2009 as posted on Mother Lode Field Office's internet website. Twenty (20) written comments were received, about half from local residents. Sixteen (16) supported keeping the gate in place, while two (2) supported gate removal; one (1) indicated a desire to continue pedestrian use beyond the gate, and one (1) was from Lopez.

5.0 Rationale and Resource Management Plan Consistency

The gate is located on River Road in Tuolumne County, California. River Road begins at the Jacksonville Road Bridge over Lake Don Pedro, and runs in a northerly direction for approximately two miles along a steep hillside adjacent to the lake until it terminates at the Lopez's private property. For most of its length, it is a county-maintained road, a stretch that terminates at a turn-around spot where the gate at issue in this action is located. Beyond the gate, a privately-maintained stretch of road traverses the hillside for approximately 1200 feet until it reaches the Lopez residence. There is no location anywhere along this final 1200 feet that is suitable for use by motorized vehicles to turn around safely. The final half mile of the county-maintained portion of River Road, and nearly all of the 1200 feet that are privately maintained, are located on BLM-administered public lands.

BLM's Sierra Resource Management Plan (RMP) limits motorized vehicle use to routes of travel designated as open by the RMP. This decision was made to protect environmental resources on public lands, provide safe access, and prevent trespass on adjacent private lands, as discussed in more detail in the environmental assessment. Among the routes closed by the RMP was the privately-maintained section of River Road. As holders of a right of way issued in 2006, only the Lopez's, their agents and assigns, are permitted to operate a motorized vehicle along this section of River Road.

The iron gate is located at a safe and convenient turn-around spot at the very end of the county-maintained portion of River Road. There is no other reasonable opportunity between the gate and the Lopez property line for a motorized vehicle to turn around safely. The gate enforces the RMP's closure decision and prevents motorized trespass on public lands. Pedestrian access to BLM lands beyond the gate will continue to be allowed.

The gate replaces a decades-old chain barrier. It provides a more effective means of restricting motorized vehicles than the chain, while continuing to allow pedestrian access to public lands beyond the gate. Because one or more signs will be posted indicating that pedestrian access is allowed, there is little risk that the gate will be perceived as restricting access to these lands.

None of the goals of the Sierra RMP are met more effectively by any of the alternatives considered by the EA. Neither an electric gate nor a camera would preclude motorized vehicle access any more effectively than the iron gate, while a chain fence or barrier would be more vulnerable to removal. In the event that there was no barrier whatsoever, there would be no effective means other than the continuous presence of law enforcement officers to enforce the vehicle closure of River Road. Accordingly, the iron gate best meets the goals of the Sierra RMP.

Based on information in the EA, the project record, and recommendations from my staff, I conclude that the decision is consistent with the management goals, objectives, and strategies laid out in the Sierra Resource Management Plan. The decision is also in compliance with the Endangered Species Act; Section 106 of the National Historic Preservation Act; and other applicable environmental laws, regulations and policies.

6.0 Administrative Remedies

Administrative remedies may be available to those who believe they will be adversely affected by this decision. Appeals may be made to the Office of Hearings and appeals, Office of the Secretary, U.S. Department of Interior, Board of Land Appeals (the Board) in strict compliance with the regulations in 43 CFR Part 4. Notices of appeal must be filed in this office within 30 days after publication of this decision. If a notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal is filed. The notice of appeal and any statement of reasons, written arguments or briefs must also be served upon the Regional Solicitor, Pacific Southwest Region, U.S. Department of Interior, 2800 Cottage Way, E-1712, Sacramento, Ca 95825.

The effective date of this decision (and the date initiating the appeal period) will be Friday, December 11, 2009.

/s/ William S. Haigh

12/10/2009

William S. Haigh
Field Manager, Mother Lode Field Office

Date