

**SIERRA NEVADA FOREST PLAN AMENDMENT
AND RECORD OF DECISION
APPEAL ISSUES**

TABLE OF CONTENTS

Fire	2
Riparian and Watersheds	25
Terrestrial Wildlife and Aquatic Species	26
Forest Management	59
Planning and Procedural	72
Range Management	105
Lands	126
Social and Economic	128
Recreation	149

Fire Issues

Smoke effects on air quality/health and safety

#0002

The appellant contends that “There are maximum air pollution standards set by the Federal Government and California, that we must all live with, Prescribed fires employed by the US Forest Service contribute more air pollution in the Sierra Nevada Mountains than all other human activity.” (#0002 NOA, page 1)

The AQMD will challenge the amount of proscribed burning, as it will create unhealthful air in the Central Valley.” (#0014 NOA, page 2)

#0027

The appellant contends that “Increasing the planned burned acreage appears to be based on a believe there is a willingness by surrounding human populations to accept higher levels of smoke from the planned prescribed fires. Persons with respiratory problems, and the general population, are not willing to put their health at greater risk by further reducing the air quality.” (#0027 NOA, page 1)

#0047

In addition, the air quality standards will not allow such a level of burning.” (#0047, page 1)

#0146

Air quality standards promulgated under the Clean Air Act of 1955, as amended in 1977, further restrict the available window for effective and legal use of prescribed fire. Fires emit large amounts of particulate matter and carbon monoxide, as well as NO_x and VOCs, which are precursors to ozone (USDA Forest Service 2000). (#146, page 85)

#0074

The appellant contends that “and (2) projections of huge population increases in the Sierra Nevada, with the certainty that such populations will not tolerate the safety and health problems represented by wildfire, escaped prescribed fire, or the smoke produced by burning excess fuel instead of processing it into forest products and clean renewable energy. (#0074, page 19)

#0172

It is simply unreasonable and fallacious to believe that the amount of burning projected can be conducted in light of current air quality standards and fuel and weather prescriptive limits.

#0201

Increasing “populations will not tolerate the safety and health problems presented by wildfire, escaped prescribed fire, or the smoke produced by burning excess fuel instead of processing it into forest products and clean renewable energy.” (page 77, #0201 NOA).

#0206

Greatly increased health hazard due to smoke and air pollution from wildfire or prescribed fire... “ (page 9, #0206 NOA). See also Legal Framework (page 12, #0206 NOA).

Mechanical treatment unwise/unsound

#0006, 0010, 0011,0012,0013,0017,0018,0019,0020,0021

The appellant contends that “Mechanical (tractors and bulldozers) treatment of fuels and /or prescribed fires in this area would be unwise and unsound.” (#0006 NOA, page 2)

(#0010 NOA, page 2)(#0017 NOA, page 2)(#0011 NOA, page 2) (#0019 NOA, page 2) (#0012 NOA, page 2) (#0013 NOA, page 2)(#0018 NOA, page 2) (#0020 NOA, page 2) (#0021 NOA, page 2)

Mechanical treatment needed prior to use of prescribed fire

#0014

The appellant contends that “The plan does not adequately address the excessive fuel loads in the forest and the proposed reliance on proscribed burning is unrealistic and dangerous at best. This past summer has proven the potential for catastrophic fire and the need for mechanical release. (#0014 NOA, page 2)

#0047

The appellant contends that “This plan ignores the dynamics of vegetative growth. Mechanical harvesting and removal are necessary prior to the introduction of fire as a tool. It is impossible to bum the acres projected without the undue risk of catastrophic fire (i.e. New Mexico 2000). (#0047, page 1)

#0090

The appellant contends that “According to Professor William McKillop, Professor Emeritus at the University of California at Berkeley and a member of the Framework Science Consistency Check Team, the “Description of the liabilities and difficulties of prescribed fire is inadequate. Any alternative that seeks to use significant levels of prescribed fire without first reducing fuel loading mechanically fails to give adequate recognition to the great difficulties associated with that course of action. There are air quality restrictions, budgetary constraints, dangers of fire escapement (Los Alamos) and very limited periods and opportunities when all of the factors such fuel loadings, fuel moisture, existence of defensible perimeters, and weather conditions, especially wind velocity, are at levels appropriate to burn” “ (#0090, page 3)

#0172

The appellant contends that “3. The level of prescribed burning projected under all of the Alternatives is simply not attainable. There may be some hope of approaching the projected levels of burning where the initial burning is conducted primarily as a follow-up treatment after mechanical understory thinning has been completed, but certainly without mechanical pretreatment these burning goals are not reachable. I believe a simple inquiry by the Framework Team to District Fuels personnel would clearly show that under current rules and risks, the high amounts of burning acreage projected are unattainable without pre-treatment by mechanical harvest

#0172

I am concerned that the proposed prescribed burning is not nearly as selective as mechanical removal in terms of tree selection. Prescribed burning certainly does have its role in terms of a long term solution to the fuels problem in the Sierra, but it should not be advocated as the premier method because of its presumed benign effects. Besides the air pollution and risk of escape, fire does not discriminate well in terms of which trees it kills and which ones it allows to survive. In the heavily fuel laden landscape today, the discriminatory aspects of prescribed fire has much more to do with fuel distribution than with the size, species or crown position of the affected trees. Because of the deep fuel beds, many large trees will be killed in prescribed fires because of the damage trees (ladder fuels) near the bases of large trees oftentimes results in the girdling of the large trees right at their bases..

#0177

The appellant contends that “We are concerned about the Forest Plan’s inadequate treatment of the catastrophic fire hazard in Old Growth Areas. We request a modification of the current plans for fuels treatment in these areas. We salute the Forest Service for providing an aggressive approach to reducing fuels that threaten our towns and lower elevation watersheds from eminent disaster. However, the prescribed fire treatments in the Old Forest Emphasis Areas on the Sierra and Sequoia National Forests are impractical and fail to protect this critical habitat from catastrophic fire. Much of the Old Growth Areas in our forests have dense fuel loads that do not lend themselves to prescribed burning. Therefore, mechanical treatment will be required in many situations. (#0177, page 1)

Constraints on Prescribed fire use

#0027

The appellant contends that “Prescribed fire windows are very narrow because of constraints, such as crew availability, financing, temperature, relative humidity, live and dead fuel moistures, smoke restrictions, acres being treated by others, wildland fires in other parts of the country, wildlife needs, etc. It is very doubtful this type of treatment can realistically be relied upon as the primary method for treating forest fuels.” (#0027 NOA, page 1)

#0146

Fire is generally less selective than mechanical removal and its effects are less predictable. Prescribed fire must be used under a carefully chosen set of forest fuel, soil moisture, and weather conditions. The number of days in which all of the requisite conditions are met is generally limited and it is rare for agencies to accomplish all of the planned prescribed fire treatments in any year. Even when conditions are right for ignition, weather conditions may change during the operation and result in escaped fires. With the increasing encroachment of human development into the forest, such a risk may be unacceptable. (#146, page 85)

#0074

The appellant contends that “The FEIS, Standards and Guidelines and ROD are based upon a limited and arbitrary fire strategy with associated constraints that preclude effectively reducing the threats of catastrophic fire losses. (#0074, page 2)

#0206

Incorrect and deceptive claims made for the amount of fuel reduction that could be done under the standards and guidelines adopted.
(#0206, page 31, 40)

#0146

Finally, the window for prescribed burning will be further constrained by the same limited operating periods (LOPS) that apply to mechanical treatment. Prescribed burning has gained public acceptance as a tool, especially within the environmental community.
(#146, page 85)

#0146

Annual occurrences of escaped fires and associated loss of private property have resulted in significant liability for land managers. Fear of escaped prescribed fire, the uncertainty of weather prediction, and the limited window of acceptable burning conditions will always limit the use of this tool.” (#146, page 85)

#0170

Implementation of the Fire and Fuels Objectives is not Practical. It will be impossible, or at least prohibitively expensive, to accomplish the fire and fuels goals and objectives, while at the same time meeting the resource standards and guidelines as required in the FEIS. The constraints imposed by the limited operating periods, the high number of snags and amount of large down material required to be retained in virtually all of the timbered areas (including “SPLATS”), and various acreage limitations, in combination with air quality regulations, weather and fuel condition windows, and availability of manpower, will severely limit implementation of prescribed fire projects on a large scale. (#0170, page 4??)

#0185

The appellant contends that “The standard, which is the cause for our concern and the basis for this portion of our appeal, is found in the Record of Decision in Appendix A-41.

‘where mechanical treatments are necessary, design treatments to achieve or approach the fuels outcomes described above by reducing Surface and ladder fuels less than 12 inches DBH.’ Even though the standard allows removal up to 20 inches DBH for operability, the standard cannot be implemented. The result will be that no fuels work will be accomplished in these habitats and they will be destroyed by wildfire. (#0189, page 3)??00185??

Fuel treatment funding will not be available

#0027

The appellant contends that “There is a lack of a long term strategy to fund fuels treatment and particularly prescribed burns.” (#0027 NOA, page 2)

#0047

The funding necessary to even remotely consider such a level of burning will never be available.
(#0047, page 1)

#0146

The appellant contends that “Adequate funding to meet the fuels management goals is not likely. (#0146, Page 86)

#0074

The appellant contends that “It is unlikely that the amount of funding needed to reduce fuel loads in a reasonable timeframe will be available from Congressional appropriations alone. Therefore, it will be necessary to maintain a viable timber industry to both harvest and utilize as much of the material as possible, especially in Condition Class 3 areas.”
(#0074, page fire-4)

#0177

reducing surface and ladder fuels less than 12 inches dbh.” As material this small currently lacks any market value. it will be economically unfeasible to perform any fuels reduction projects in this area. As a result, we fear fuels reduction objectives in Old Growth areas will not be met, and our high elevation pine and mixed conifer forests will ultimately succumb to catastrophic fire.
(#0177, page 1)

#0185

This standard is flawed and does not comply with requirements of the National Environmental Policy Act, which requires alternatives to be achievable. By arbitrarily imposing a 12-inch diameter limit, the only prescription available to the manager is pile and burn, pile and chip, or masticate and burn Because of the dense stands (600 trees per acre), these prescriptions will cost over \$500 dollars per acre and if the prescription includes pile burning or mastication and burning, residual trees will be scorched, badly burned or killed.

Congress is not so foolish as to fund such an expensive venture with no visible return for the investment. The result will be nothing accomplished in these habitats and our pine and mixed conifer forests above 4500 feet in elevation will burn catastrophically.” (#0185, page 3)

#0207

The appellant contends that “Mod 8 Requirements Cannot Realistically be Implemented” for reasons including the “cost of fuel treatments” (pages 21 and 22, #0207 NOA);

(6) Increasing threat of catastrophic wildfire/increasing hazard and risk

#0027

The appellant contends that “The fire data in the EIS represents the past and fails to project a fire environment which is becoming increasingly more damaging and risky; it does not visualize the future.” (#0027 NOA, page 3)

#0074

The appellant contends that “The preferred alternative does not reduce the threat of losses to catastrophic wildfires and the decision is not supported by the scientific foundation.” (#0074, page 1, fire-4)

#0090

The appellant contends that “The Sierra Nevada faces tremendous pressures in the future that are only beginning to be felt. These will arise from increasing demand for human recreational use, the threat of catastrophic fire and the loss of habitat for wildlife. The Forest Service acknowledges all of these pressures, but chose to focus only on habitat, giving inadequate attention to the threat of catastrophic fire and no attention at all to human needs. Only the fires in the summer of 2000 forced a small movement late in the planning process in the direction of addressing the threat of catastrophic fire.” (#0090, page 1)

(#0135)

Modified Alternative 8 does not even seem to be the best of alternatives to address the five problem areas the Framework is supposed to address. Modified Alternative 8 costs jobs, over restricts timber harvests that could help control the fires and fuels buildup. Wildfire endangers the forest, wildlife and the public. (#0135, Page 2)

#0146

The appellant contends that “The risk of catastrophic fire accelerates with each passing year. Under the most favorable conditions, Forest Service projections conclude after the first decade one-third more acres will burn catastrophically each year than would have burned under the active management of alternative 4. With that projection, the Forest Service issues a warning that “Modified 8 would have stand level structural requirements that could preclude full implementation of the fuels strategy” (FEIS Vol. 1 pg. 29 Summary). The risk of catastrophic fire could be much higher. Added catastrophic risk jeopardizes non-replaceable forested communities. (#146, page 64)

#0146

The appellant contends that “The focus of the EIS has been wrong from the beginning. Every issue the Forest Service developed relates to the issue of catastrophic fires. why is it so hard for the agency to realize that developing alternatives and strategies that reduce the risk of catastrophic fires should be the focus of this EIS? (#146, page 86)

#0146

The appellant contends that “The Organic Act also directs the Forest Service to protect the national forests from fire and depredation. The Forest Service analysis finds catastrophic wildfire will increase under the Record of Decision. It also finds other alternatives that were not selected would decrease catastrophic losses. The Forest Service did not analyze the affect the selected alternative would have on the build up of insects and disease. The Forest Service has ignored its own analysis and its legal charge by selecting an alternative that fails to protect the national forests from fire and depredation (#0146, page 97)

(#0158, 0159, 0160, 0163)

The appellant contends “The selected alternative fails to accomplish the purpose and need published in the initial Draft EIS The alternative fails to increase old forest conditions, lower Westside hardwoods, and reduce the risk of catastrophic wildfires. Matter-of-fact, the stated action of eliminating timber harvesting from the majority of the national forest lands is counter to reducing catastrophic wildfires.” (#0158, 0159, 0160, 163 NOA page 1)

#0172

Old Forest Emphasis areas have excess growing stock that is larger than 12 inches. It is this sum total of excess growing stock that creates the fuel hazard conditions and the forest health problems associated with high levels of insect mortality. Removal of the 12-inch and smaller trees by burning or mechanical thinning will have only a minor impact upon the overall stand density and thus create only very slight improved growing conditions for the residual trees. The residual trees will continue to be vulnerable to drought, insect attack and of course fire. Unfortunately, allowing or encouraging our forests to consist of over dense conditions in Alternative 8 merely sets us up to repeat the errors of our past by presuming that somehow these lands can support such high volumes of wood fiber without collapse. (#0172, Page ?)

#0201

The appellant contends that “Fires will continue to be a real and serious threat to the Sierra region and throughout the island west for several decades into the future. We would expect that this FEIS address this serious threat but instead the Regional Forester’s preferred alternative shows NO decrease in fire occurrence in the first decade.” (page 2+, NOA #0201);

#0201

“Forest Reserves [of old growth forest] increase risk of catastrophic fire potential.” (page 50, #0201 NOA);

#0202

the Forest Service “ignored its own analysis and its legal charge by selecting an alternative that fails to protect the national forests from fire and depredation (page 2, #0202 NOA);

#0202

The ROD is the result of opinions of scientists more than the factual findings of scientists. The Forest Service readily admits it was a tradeoff decision between the risk of management and the risk of wildfire. The scientists [of] the Forest Service listened to discounted the [sic] fire modeling and past historical records of impending catastrophic wildfire.” (page 13, #0202 NOA);

#0202

“Forest Service FEIS analysis concluded the ecological differences between all alternatives were minimal during the first few decades.... The risk of catastrophic fire accelerates with each passing year. Under the most favorable conditions, Forest Service projections conclude after the first decade one-third more acres will burn catastrophically each year than would have burned under the active management of alternative 4. With that projection, the Forest Service issues a warning that “Modified 8 would have stand level structural requirements that could preclude full implementation of the fuels strategy’ (FEIS Vol. 1 pg 29 Summary). The risk of catastrophic fire could be much higher.” (page 5, #0202 NOA).

#0209

The appellant contends that “The Organic Act also directs the Forest Service to protect the national forests from fire and depredation. The Forest Service analysis finds catastrophic wildfire will increase under the Record of Decision.” (page 2, #0209 NOA);

#0210

“The risk of catastrophic fire accelerates with each passing year. Under the most favorable conditions, Forest Service projections conclude after the first decade one-third more acres will burn catastrophically each year than would have burned under the active management of Alternative 4.” (page 17, #0209 NOA).

SPLATS - Strategic Placement Area Treatments effectiveness

#0028

The appellant contends that “The selected alternative has the highest degree of uncertainty when it comes to implementing the Strategic Placement Area Treatments (SPLATS) across broad landscapes, which translates to the most risky fire reduction strategy among all the alternatives.” (#0028, page 4)

#0206

SPLATS theory was misunderstood by the team and misrepresented and incorrectly implemented.

(#0206, page 33)

#0168

The appellants contend that “The Regional Foresters failed to make an informed decision based on the actual assessment of negative impacts to the California Spotted Owl habitat from experimental treatments like the HFQLG pilot project and the Strategically Placed Area Treatments known as SPLATS but instead decided to permit logging to occur without this information, which violates NEPA.

(#0168, page 22)

#0146

SPLATS, even if implemented, are not without controversy. Forest Service researches Phil Weatherspoon and Carl Skinner, authors of the Sierra Nevada Ecosystem Project for fire analysis expressed concern for the untested concept of SPLATS. The theory is that SPLATS will slow an advancing fire. Drs. Weatherspoon and Skinner are concerned that “they would be quite impractical to install and maintain over time” and may not slow down an advancing fire because of dryer conditions often associated with thinned stands.

(#0146, page ??, 55)

#0074

The appellant contends that “In at least one instance of great significance, i.e. whether some fuel reduction strategy other than the one analyzed (SPLATS) would provide better protection to forest land, the agency was aware of a responsible opposing view (see Appendix B of this appeal)

which was not adequately discussed in the draft statement, but the agency did not respond in the Final EIS or ROD to the issues raised.” (#0074, appeal page 14)

#0170

When these factors are considered along with the inherent uncertainty created by the complexities of fire behavior, and the purely theoretical nature of SPLATS, the models, projections, and conclusions of the fire and fuels section must be seriously questioned. We feel that mechanical treatments, i.e. logging, thinning and biomass, in combination with prescribed fire, would be a much more practical, economical, and successful solution if allowed to be properly implemented. (#0170, page 4??)

#0210

“Strategies that rely on SPLATS ... as the key fire strategy are based on an untested hypothesis ...” (page 51, #0201 NOA);

#0202

“ROD prohibits the construction of DFPZs”, which appellant contends should be included in “the fire risk strategy until SPLATS are proven effective without the need for

DFPZs ” (page 10); “No justification or analysis for [the] change [from one structure per 40 acres in the FEIS to one resident per 5 acres] is offered” (page 10, #0202 NOA);

#0229

The appellant contends that “The USFS has accepted the efficacy of thinning and prescribed burning as well as such ill-advised concepts as SPLATS and DFPZs, despite the fact that very little to no empirical evidence exists to confirm that in fact such activities change fire behavior, ...(page 5, #0229 NOA);

#0229

“Agency planning documents”, among others, give “the erroneous impression that fuels treatments, such as thinning and burning, have been tested and proven effective. “ (page 18, #0229 NOA);

#0229

“The claim that ‘thinning,’ whether commercial or not, will decrease the risk of wildfire continues to be pure conjecture and is unsubstantiated by empirical evidence.” (page 22, #0229 NOA);

Does not adhere/conform to the National Fire Plan

#0028

The appellant contends that “The ROD fails to conform to The National Fire Plan.” (#0028, page 5)

#0074

The FEIS Standards and Guidelines and ROD are also inconsistent with the National Fire Plan. (#0074, page 2)

#0074

In addition, the ROD fails to conform to the National Fire Plan. The Forest Service National Fire Plan, also known as the Cohesive Strategy, directed the Forest Service to develop a 10, 15 and 20-year time frame for strategic reductions in wildfire risk. Additionally, during Land and Resource Management Plan amendments, the Forest Service was to identify land by condition class categories, establish landscape goals and prioritize treatments near “communities at risk, readily accessible municipal watersheds, threatened and endangered species habitat, and other important local features, where conditions favor uncharacteristically intense fires.” (Protecting People and Sustaining Resources in Fire-Adapted Ecosystems pg. 12.) The Framework did not identify categories of fire risk, and it selected a 25year time period for accomplishment. The only priority established is to increase defensibility within the urban interface, whether or not it is a high-risk area. Limitations such as a maximum canopy reduction of 20 percent in dense forests and total tree retention of 20 inches dbh and greater may prevent significant reductions in fire risk. The National Fire Plan goals of 5 percent decrease in acres at

extreme risk from insects and diseases and 25 percent reduction in high risk areas by 2006 will not be met. (#0074, page 5)

#0074

The FEIS and ROD focus on reducing catastrophic wildfires through the use of fuel treatment strategies, reliance on prescribed burning, and acceptance of wildfire losses. Efforts are placed a focusing priorities on treating areas adjacent to communities at risk. However, the pace and scale of activities is insufficient to effectively reduce wildfires and lethal fires. (#0074, Page 85)

#0206

(#0206, page 17-19,32)

#0082

The appellant contends that “The Framework is inconsistent with the National Fire Plan and, if not changed, will either prevent the National Fire Plan’s implementation or render it ineffective.” (#0082, page 1)

(#0146)

The appellant contends that “The Record of Decision fails to conform to the National Fire Plan. . .

The Framework did not identify categories of fire risk, and it selected a 25-year time period for accomplishment. The only priority established is to increase defensibility within the urban interface, whether or not it is a high-risk area. Limitations such as a maximum canopy reduction of 20% in dense forests and total tree retention of 20 inches dbh and greater may prevent significant reductions in fire risk. National Fire Plan goals of 5% decrease in acres at extreme risk from insects and diseases and 25% reduction in high risk areas by 2006 will not be met.”

(#146, NOA pages 74,75, and76)

The appellant contends “The ROD alternative is inconsistent with the National Fire Plan. The ROD states that a 25-year program will be implemented in lieu of the recommended 1 O-20 year timeframe. The alternative fails to identify high-risk areas beyond the urban-wildland interface when Congressional studies have focused on prevailing forest conditions across the forest landscape that constitute high risk. The alternative fails to evaluate for the stated goals of

5% decrease in acres at extreme risk by 2006. The standards and guidelines for restoration practices following catastrophic stand replacing events are contrary to reducing fire danger within our forests. These guidelines generally increase the risk for wildfires. (#0158, 0159, 0160, 0163 NOA page 2)

0221 - The appellant contends that [in addition to certain Acts], “it fails to address the hazardous fuel conditions that exist on national forest lands at the appropriate and safe scale and pace.” (#0221 NOA, page 1+)

#0201

“Because the agency has decided on a complete departure away from timber production and multiple use management strategies in this decision, providing for only small-scale fuel reduction compared to large scale prescribed fire approach, it will take 500 years to fully address the level of fuel now accumulated in our national forests.” (page 3, NOA #0201);

#0201

“The FEIS and ROD focus on reducing catastrophic wildfires through the use of fuel treatment strategies, reliance on prescribed burning, and acceptance of wildfire losses. Efforts are placed on focusing priorities on treating areas adjacent to communities at risk. However, the pace and scale of activities is insufficient to effectively reduce wildfires and lethal fires.” (page 52, #0201 NOA);

#0202

“The Record of Decision fails to conform to the National Fire Plan” (page 11, #0202 NOA);

#0209

“The Record of Decision fails to conform to the National Fire Plan.” (#0209, page 12);

#0210

“ROD fails to conform to the National Fire Plan” (page 7-8, #0210 NOA

#0090

The appellant contends that “The narrow focus on habitat preservation by those pressing for the study led to the high priority accorded by SNFPA to preserving old growth forests. This emphasis is directly contradictory to the importance of removing excessive biomass from the Forests as required by the Cohesive Strategy.” (#0090, page 2)

Stand Structural Requirements preclude implementation of fuels treatment

#0028

The stand level structural requirements could preclude full implementation of the fuels strategy (Vol. Chapter 2 pg. 187). Treatments are limited to one mechanical treatment per decade, although below 6000 feet elevation, the equivalent to 2 treatments per decade with treatments 5-8 years apart are required to maintain effectiveness. Generally after 8 years surface fuels are back to pretreatment conditions (Vol. 2 Chapter 3, Part 3.5 pg. 288). The communities at risk are generally below 6000 feet elevation. Most of the acres treated outside the Urban Wildland Intermix will be plantations or in vegetation types that are not considered sensitive habitat, except for prescribed fire.” (#0028, page 5)

#0074

The stand level structural requirements could preclude full implementation of the fuels strategy (Vol. I Chapter 2, pg. 187). (#0074, page 5)

#0146

The appellant contends that “The FEIS reports stand level structural requirements could preclude full implementation of the fuels strategy (Vol. I Chapter 2, pg. 187). Treatments are limited to one mechanical treatment per decade, although below 6000 feet elevation, the equivalent to 2 treatments per decade with treatments 5 to 8 years apart are required to maintain effectiveness. Generally after 8 years surface fuels are back to pretreatment conditions. (Vol. 2 Chapter 3, part 3.5 pg. 288). The communities at risk are generally below 6000 feet elevation. Most of the acres mechanically treated outside the Urban Wildland Intermix will be plantations or in vegetation types that are not considered sensitive habitat. It is difficult, if not impossible, to maintain all the key habitat elements, such as multi-layered canopies, dead and down logs, and dense overstory cover with fire. The fire strategy is associated with the highest degree of uncertainty. (#146, page 76) Vol. 2 Chapter 3, part 3.5, pg. 304)

#0161, 0162

The appellant contends that “The prescription in Old Forest Emphasis Areas on the Sierra and Sequoia National Forests will destroy the very habitats the Forest Service and the public are seeking to protect and promote. The standard is found in the Record of Decision in Appendix A-41. Even though the standard allows removal up to 20 inches DBH for operability, the standard cannot be implemented. The result will be that no fuels work will be accomplished in these habitats and they will be destroyed by wildfire. This standard is flawed and does not comply with requirements of the National Environmental Policy Act, which requires alternatives to be achievable. By arbitrarily imposing a 12 inch diameter limit, the only prescription available to the manager is pile and burn pile and chip, or masticate and burn. Because of the dense stands (600 trees per acre), these prescriptions will cost over \$500 dollars per acre and if the prescription includes pile burning or mastication and burning, residual trees will be scorched, badly burned or killed. The animal kingdom flourished when our forests were in an open “park-like” condition. To think they would not adapt and do well in a similar setting is inconceivable. The prescription in the Plan will result in our pine and mixed conifer forests burning with intensity not seen before. Wildlife biologists are trained in our universities that wildfire is good for wildlife. Conditions have changed over the last 20 years. The fires we are now experiencing permanently destroy habitats for the spotted owl, fisher, pine martin and the other sensitive species the Regional Forester is trying to protect. (#0161, 0162 pages 2 and 3)

#0272

The standard which requires the design of treatments to achieve or approach the fuel outcomes by reducing surface and ladder fuels less than 12” DBH. Even though the standard allows removal up to 20” DBH for operability the standard cannot be implemented. Appellants maintain that this will result in no fuels reduction work being accomplished in these habitats and everything will be destroyed by fire. (#0272, page 1)??

Inability to sustain ecosystems due to increasing wildfire

#0028

The appellant contends that “The EIS, in its direction to withhold management action fails to address, fires and fuels, as well as riparian habitat and old forest ecosystems.” (#0028, page 6)

#0074

The results of implementing the ROD will lead to forest conditions that cannot be sustained in light of the forest and fire conditions occurring in the Sierra Nevada region.” (#0074, page 2)

#0074

The appellant contends that “Throughout the FEIS process, it has been clear that catastrophic wildfire is the driving force for significant changes in the Sierra Nevada. The ROD does not realistically establish a program to reduce the effects of wildfires on our forest and rangeland ecosystems. Section VIII-K of this appeal describes our conclusions of the failings of the decision. The focus of the EIS has been wrong from the beginning. Every issue the Forest Service developed relates to the issue of catastrophic fires. Old forests are at risk until the potential for catastrophic fires are dramatically reduced. Aquatic and riparian systems are at risk until the threats of catastrophic fires is dramatically reduced. Hardwood forests are at risk until the threats of catastrophic fires are reduced. Even noxious weeds are at risk in this case spreading until the threats of catastrophic fires are reduced. Why is it so hard for the agency to realize that developing alternatives and strategies that reduce the risk of catastrophic fire should be the focus of this FEIS? (#0074, page 5)

#0146

The appellant contends that “Reducing the threats of catastrophic losses across the region is essential to achieving healthy sustainable forest and rangeland conditions. Current forest conditions are unhealthy, are not sustainable, and do not provide the benefits for sustaining viable economic entities, viable communities, and ultimately over the long, run viable populations. Unfortunately, this ROD and FEIS do not achieve the goal of developing sustainable forest conditions in the long run or effectively reducing the threat of catastrophic losses in the short run (#146, page 77)

#0074

The appellant contends that “The FEIS, Standards and Guidelines and ROD are based upon limited and arbitrary fire strategy with associated constraints that preclude effectively reducing the threats of catastrophic fire losses. The results of implementing the ROD will lead to forest conditions that cannot be sustained in the forest and fire conditions occurring in the Sierra Nevada region. (#0074)

#0201

“The assumption that fuel reduction through mechanical treatments pose such a high risk to habitats for species of concern ... were not grounded in sound scientific documentation. The Regional Forester determined that the level of uncertainty and risk of

mechanical treatments was far more detrimental than the certainty of doing nothing will lead to ... habitat destruction by fire.” (page 3&4, NOA #0201);

#0210

The appellant contends that “The Forest Service has ignored its own analysis and its legal charge [of the Organic Administration Act of 1897] by selecting an alternative that fails to protect the national forests from fire and depredation” (page 2, #0210 NOA);

Defensible Fuel Profile Zones/width/threat zone

#0074

Treatments are limited to one mechanical treatment per decade in spite of the demonstrated need for more frequent treatments, and the use of defensible fuel profile zones (DFPZs) should serve as a prominent component of a fuel management strategy. However, the ROD prohibits the construction of DFPZs, in spite of the strong recommendations from Forest Service scientists that DFPZs are a critical part of any fuels- management strategy (see September 11,2000 letter from Dr. Phil Weatherspoon and Carl Skinner to Regional Forester Powell). (#0074, page 5)

#0146

Defensible fuel profile zones (DFPZs) should serve as a prominent initial component of a fuel management strategy with SPLATS, if successful, as a companion. However, the ROD prohibits the construction of DFPZs. (See appendix.)

No justification or analysis for the change is offered. The economic and fire analyses were completed based upon one structure in 40 acres. The change is significant. A defense zone may exist in Lake Tahoe, but generally, private lands surround residential areas. As community lands near the national forest boundary, residents become scattered to far less than one residence per 5 acres.

Unless national forest lands are within .25 miles of one residence per 5 acres, the defense zone will not exist. Without a defense zone, the threat zone does not exist which ends the central focus of the fire strategy. Communities are left unprotected. The economic and fire analyses are invalid.

The FEIS fails to provide an analysis for either a one structure per 40 acres or one structure per 5 acres. A defense zone should not be limited to residences, although priority of construction may be assigned to residential areas. Private lands should be protected from fires initiated on federal lands regardless of the number of structures or the monetary value of the private lands. Many own private lands for the peace and serenity forested lands provide.

#0168

The appellant contends that “a 1.5 mile defense zone is not supported by science. This would put people at jeopardy from increased wildfire winds created by a 1.5 mile defense zone free from forest canopy. This size of defense zone is not supported by the scientific research, not even Forest Service research. Recent studies call for only clearing trees

away from structures for the distance of 30 feet and requiring the structures to be equipped with fire proof roofing and siding. At the very most clearing width could be equivalent to the height of the nearest trees to the structure, not 1.5 miles. Jack Cohen stated that home ignitability, rather than wildland fuels, is the principal cause of home losses during wildland/urban interface fires. Cohen's Structure Ignition Assessment Model (SIAM) indicates that intense flame fronts (e.g. crown fires) will not ignite wooden walls at distances greater than 40 meters (approx. 130 feet) away. (#0168, page 15)

#0172

I have a concern that recent research (Cohen 1999) in California urban interface areas demonstrated that in terms of protecting structures, treatment in the surrounding forest area need to go no greater distances than approximately 40 meters. Yet, in the Framework treatments are going out to 1.5 miles. Although I strongly agree with the proposal to remove excess trees and reduce fuel loading in this zone and across the forest, I believe that the Framework does not present a fair and honest picture of the need to perform similar treatments across most of the forested lands in the Sierra if we are hoping to introduce fire back into the landscape and provide enhanced fire suppression capabilities. (#0172, Page)

#0209

“The defense zone is Limited to 0.25 miles from lands containing one residence per 5 acres; a change made from one structure per 40 acres in the FEIS. No justification or analysis for the change is offered. The economic and fire analyses were completed based upon one structure in 40 acres. The change is significant.” (page 11, #0209 NOA);

Finney Effect - in SPLATs theory

#0074

the standards and guidelines place so many restrictions on the placement, extent, and method of fuel reduction that achievement of the Finney Effect is made impossible (2)in practice by the very document that claims to adopt the Finney Effect as its strategic concept. (#0074, Page 86)

Prescribed fire is unsafe/escaped fires

#0074

Increased risk and loss of private property from escaped prescribed fires. (#0146, page 85)

#0206

FEIS and ROD are incorrect and deceptive in how they use crown bulk density as a measure of fuel reduction effectiveness. (#0206, page 41)

#0168

The appellants contend that “Appellants are concerned about the use of prescribed burns for the Sierra Nevada Forest Plan Amendment. Perhaps 20 percent of controlled burns go out of control to one degree or another. Most of these so-called controlled fires inadvertently burn up trees yet they are not reported as having gone out of control. (#0168, page 75)

Fire risk assessment for each community

(#0108)

The appellant contends that “The FEIS identifies communities and resources at risk but does not display the affects from catastrophic loss from fire, storm, insects or disease on each alternative or estimate its probability or cost. The FEIS should have displayed in the analysis each community at risk based on recent fire location [at least last decade] and frequency in relationship to each community identified at risk then analyzed the effects of each alternative to display to the public the level of risk to people, property and resources as well as the costs associated with those losses. (#0108, page 3

#0146

The appellant contends that “The FEIS identifies communities and resources at risk but does not display the affects from catastrophic loss from fire, storm, insects or disease on each alternative or estimate its probability or cost. The FEIS should have displayed in the analysis each community at risk based on recent fire location [at least last decade] and frequency in relationship to each community identified at risk then analyzed the effects of each alternative to display to the public the level of risk to people, property and resources as well as the costs associated with those losses. (#146, NOA page 68)

#0201

“The FEIS identifies communities and resources at risk but does not display the affects from catastrophic loss from fire, storm,” (page 64, #0201 NOA);

Restore fire to ecosystems

#0146

The appellant contends that “It is very clear that the Record of Decision fails to accomplish the purpose and need established in the EIS, which is in part to: [2] bring greater consistency in fire and fuels management across the national forests.. . and to balance the need to restore fire as a key ecosystem process while minimizing the threat fire poses to structures, lives, and resources. (Vol. 1 pg. 4 & 5 Summary) (#146, page 59)

#0202

“the Record of Decision also fails to accomplish the purpose and need established in the EIS, which is in part to [2] bring greater consistency in fire and fuels management across the national forests ... and to restore fire as a key ecosystem process while minimizing the threat fire poses to structures, lives and resources...” (page 9, #0202 NOA);

#0209

“The Record of Decision also fails to accomplish the purposes and need established in the EIS, which is in part to: ... [2] bring greater consistency in fire and fuels management across the national forests ... and to balance the need to restore fire as a key ecosystem process while minimizing the threat fire poses to structures, lives, and resources ...: (page 10, #0209 NOA);

Logging increases fire severity

#0168

The appellant contends that “The Decision proposes to protect particular forest resources by implementing logging as the management method by which the protection objectives should be carried out, but the decision ignored the growing body of scientific research showing logging to be harmful to these resources as well as a major cause of wildfire intensity and severity.” (#0168, page 3)

#0168

The appellant contends that “It is not proven in the present Framework FEIS that implementation of the selected Alternative, as presently proposed, would result in the primary objectives "to conserve rare and likely important components of the landscape such as stands of mid and late seral forests with large trees, structural diversity and complexity, and moderate to high canopy cover", or that it would achieve the reduction in fire hazard of these areas by logging. Instead, it could result in increased severity and intensity of wildfires in the forest, increased ecosystem disturbance in the forest, degradation of wildlife habitat and watershed, and the reduction of visual and recreational quality in and around the analysis area.” (#0168, page 4)

#0168

The appellant contends that “The alternative selected by the Regional Foresters may be best for providing a supply of timber to the timber industry but the analysis in the FEIS failed to consider the growing body of scientific research that shows logging to be harmful to the ecosystem and a major cause of increased fire danger, wildfire severity and wildfire intensity.” (#0168, page 26)

#0168

The appellant contends that “The Framework FEIS ignored the growing body of scientific research which shows logging to be harmful to the ecosystem and a major cause of increased fire danger, wildfire severity and wildfire intensity. The FEIS acknowledges that many stands are self-thinning, making thinning unnecessary, and that where larger trees have been removed stand replacing fires are more likely to occur.” (#0168, page 172)

#0168

The appellant contends that “For the Forest Service to approve a forest plan that would "increase the potential for catastrophic effects when wildfire, drought or other

disturbances occur", just to "improve the efficiency of initial attack to suppress wildfire", is especially ludicrous because both logging and fire suppression have been a major cause of excess fuels accumulations in the National Forests. President Clinton stated in the GSNM Proclamation that "These forests need restoration to counteract the effects of a century of fire suppression and logging." Proposing more logging which would increase fire hazards and trying to justify the logging because the open spaces created by logging would make fire fighting easier is nonsense. It makes real sense to not log so fire hazards are not created. (#0168, page 27)

#0168

The appellant contend that "The growing body of scientific research shows logging to be harmful to the ecosystem and a major cause of increased fire danger, wildfire severity and wildfire intensity." (#0168, page 29, 74, 82)

#0168

The appellant contends that "Had the analysis in the FEIS considered non-logging alternatives and the growing body of scientific research that shows logging to be harmful to the ecosystem and a major cause of increased fire danger, wildfire severity and wildfire intensity, the Regional Foresters might not have considered logging a "necessary management tool" for the agency to provide a supply of timber to the timber industry, and the fuels reduction treatments might not remove any trees greater or less than 12 inches dbh or reduce canopy cover to any percentage below current conditions. Non-logging alternatives would have proposed removing the brush and ladder fuels, which constitute the excess fuels problem in the forest. The Regional Foresters reached an arbitrary, prejudiced, and capricious decision by precluding analyses of non-logging alternatives." (#0168, page 31)

#0168

The appellant contends that "If the Forest Service is serious about protecting the ecosystem, appellants believe that a hand-treatment, tree pruning, non-logging prescription and the use of goatherds to control brush growth and remove lower limbs of ladder-fuel trees should be specified for the majority of the forest to truly protect the entire habitat from further degradation and loss of species viability." (#0168, page 31)

#0168

The appellant contends that "Logging the trees, which are the least flammable of the forest fuels, is the wrong kind of fuels to be removing. If the goal of the Sierra Nevada Forest Plan Amendment is really to reduce the density of vegetation to reduce wildfire risk, intensity, and severity, then the fuels that should be removed are the most flammable fuels, the brush and lower branches of the ladder fuel trees, not the trees themselves. Proposing more logging and thinning will only create more hazardous fuel accumulations. Logging in any form would increase wildfire risks in the forest and would increase wildfire intensity and severity." (#0168, page 49)

#0168

The appellant contends “Logging will remove the natural fire prevention characteristics of the forest and make fire and fuels management more difficult because open areas created by logging cause fires to accelerate or to burn faster, than when fires burn through moist, green, forested areas with a canopy cover. (#0168, page 51)

#0168

Logging activities will open up stands or create openings adjacent to stands that will increase wind velocity if a wildfire should occur, increasing the flame length of a fire line and the rate of spread of a fire line (Graham et al. 1999). Reduction of canopy cover from timber harvest results in increased sunlight in a stand, promoting the growth of smaller trees and "fine fuels" which are more flammable than the vegetative composition on the current forest floor (Sierra Nevada Ecosystem Project vol. 1). The sunlight also creates drier conditions on a site, allowing fuels to dry out at a more rapid rate, effectively making a longer and more intense fire season (SNEP vol. 1). There is serious and significant debate from field observation and from running fire behavior computer models about whether thinning and similar stand treatments are efficacious at all in reducing wildfire hazard (i.e. DellaSalla et al. 1995, Graham et al. 1999). The result of this is that the immediate effects of management will have the exact opposite of the effect than were described by the purpose and need. (#0168, pages 82 and 83)

#0229

“there is no conclusive evidence that logging reduces the risk of wildfire; “There are no empirical studies that show that logging, in any of its practiced forms actually reduces the extent or intensity of fires.” (page 20, #0229 NOA);

Lack of forestwide/regionwide fuel management plan

#0168

The appellant contends that “Important issues raised by Appellants include but are not limited to: ...Failure to base the plan on a legally valid forestwide or regionwide Fuel Management Plan;” (#0168, page 10)

#0168

The appellants contend that The Forest Service needs a regionwide fire plan that excludes logging and includes an aggressive prescribed burning policy and an appropriate management response to wildland fires. (#0168, pages 76 and 77)

Lack of a Cohesive fire Management Plan

#0168

The appellants contend “ The Framework Plan failed to create a cohesive fire management plan. Instead, the plan leaves this analysis and judgment up to the separate forests to decide, This tactic failed in the past to get Sequoia National Forest to produce a cohesive fire and fuels management plan. Sequoia National Forest has been operating for many years without a cohesive fire management plan.” (#0168, page 20)

#0168

Sequoia National Forest for an example has no Fuel/Fire Management plan as part of the Forest Plan. The forest service is not currently equipped to get full control of all fires regardless of cause, since the Forest Service has no emergency fire management plan and it has insufficient equipment or resources to achieve full control or containment of all fires. At this point, rapid and full containment of wildfires will only happen if it happens naturally.” (#0168, page 75)

#0168

The appellants contend that “Sequoia National Forest does not have a Fuel/Fire Management Plan. Forests that do not have a Fuel/Fire Management Plan must produce a plan that shows whether timber cuts and fuels removal can be done with non-logging treatments and without threatening unique or endangered species or the ecosystem for all of its resources. Sequoia National Forest has failed to create a Fuel/Fire Management Plan based on the latest science, as an amendment to the Sequoia Land Management Plan (#0168, page 99)

#0210

“The ROD fails to accomplish the purpose and needs established in the EIS” with respect to bringing “greater consistency in fire and fuels management across the national forests ...” (page 6-7, #0210 NOA)

Management activities will change fire prevention characteristics

#0168

The appellant contends that “Prohibiting all heat generating sources, like OHV's, from entering these sensitive areas would reduce inadvertent, human-caused wildfire.” (#0168, page 34)

#0168

The appellants contend “The Forest Service should prohibit logging and thus prevent any changes in the natural fire prevention characteristics of the National Forests so the chances of wildland fire are not increased.” (#0168, page 96)

#0168

The appellants contend that “When-used as tools to prevent forest fires, logging and road building are not supported by the best science, they change the fire prevention characteristics of the forest and may actually increase the chance of wildland fire. (#0168, page 98)

Fire rehabilitation standards

#0168

The appellants contend that “Appellants are concerned about the lack of statements in the Sierra Nevada Forest Plan Amendment FEIS about restricting grazing for three years

following prescribed fire so the native wildflower species have sufficient time to germinate following fire.” (#0168, page 64)

#0168

The appellants contend that “The Regional Foresters failed to consider the California Native Plant Society and the Sequoia National Forest multi-agency BEAR Team recommendations to not permit grazing for a minimum of two years following fire to protect resource values.” (#0168, page 120)

Revenue to cover potential cost of fuel treatment/thinning will not be available

#0172

Removal of trees 12 inches or smaller means that a commercially viable operation is not possible. Though we have commercially removed 12-inch trees from the woods in our timber sale operations for years, an operation that primarily entails removal of 12 inch and smaller trees would be totally without profit. The public through Congress would have to subsidize the removal of this 12-inch and smaller material at a cost that probably approaches \$1000.00 or more per acre. A million dollars would possibly do a thousand acres of work. If excess larger trees were removed on a commercial operation, our experience has shown that more than \$1000/acre can be generated by the harvest, thus assuring commercial operability and viability of the thinning effort. A million dollars in appropriated seed dollars to prepare commercial viable projects would allow many thousands of acres to be accomplished. (#0172, Page 3)

Fire risk and hazard not used to delineate old forest emphasis areas

#0172

The FEIS did not incorporate some key references that clearly document the risk and uncertainty associated with trying to maintain overly dense forest conditions in an ecosystem that historically is molded by fire. For example in “The Use of Fire in Forest Restoration” (GTR 341, USDA Forest Service 1996) the authors conclude that for “late successional reserves to sustainably provide critical habitat, old, late-successional forest must be sited where the probability its destruction by fire, insects, or pathogens is low. “Sites at high risk for fires should be managed primarily for early-successional species.” This important reference was apparently not used by the Framework, but even more important the concept of considering fire risk and hazard was not used in selecting where old forest emphasis areas should be located. (#0172, Page 3)

Defense zones not effective

#0172

I have a concern that the highest priority in the Framework is to treat the urban interface area defined in the Framework as Defense and Threat Zone. Though recognition that the interface zone is an area of high fire risk and high values is important, treatment of this area should be considered in broader terms. For example, in much of this area the Forest Service is perhaps the largest single land owner, but the majority of the land is made up

of small individual parcels that are in private ownership. In these instances the Forest Service treatment or lack of treatment will have very little effect upon the incidence and behavior of wildfire. Without the private landowners taking on the majority of the responsibility, changes in fire occurrence will not be effected by Forest Service action; or inaction. So the scenario is set because of the Frameworks direction without validation, that the Forest Service will make treatment of this urban interface zone its highest priority because that is just about the only place the Forest Service can do anything under the Framework, yet the effects will be minimal because private land owners do not choose or can not afford to conduct similar treatments on their own land.

Grazing reduces fuel loads and fire severity

#0203

The appellant contends that “elimination of grazing can increase the fuel load in meadows, thereby increasing the risk of catastrophic fire.” (#0203 NOA, page 30)

#0204

The appellant contends that “In addition, the FS failed to adequately discuss other important environmental impacts related to the elimination of grazing. For example, the elimination of grazing can increase the fuel load in meadows, thereby increasing the risk of catastrophic fire.” (page 36, #0204 NOA).

#0231

The appellant contends that “The exclusion of livestock grazing represents an increase in wildfire hazard risk.” (#0231 NOA, page 2)

#0170

The appellant contends that “ The economic and social impacts of catastrophic wildfire and greatly increased levels of prescribed fire need to be evaluated as they relate to property loss, business disruptions, health care costs, transportation interruptions, etc. (#0170, Page 3)

#0201

“The FEIS and Decision pose management options that employ more costly service contracting and increase the risk and hazards of wildfires, thus assuring the continued escalation of suppression costs and loss of high value resources.” (page 20&21, NOA #0201)

#0229

”The Forest Service failed to incorporate information about externalized costs passed on to communities, businesses, and individuals when National Forests are logged, grazed, mined, leased for oil and gas production, or otherwise developed. These include direct, indirect, and cumulative economic costs associated with: ... 16) increased risk of wildfires caused by adverse changes in microclimate, increased human access, and slash generated by timber sales, grazing, mining, oil and gas leasing, roadbuilding, and other forms of development.” (page 12, #0229 NOA)

Riparian and Watershed Issues

#0015

The appellants contend that the FEIS fails to provide and discuss mitigating measures. More specifically they contend that:

The FEIS does not provide an estimate of how effective the RCA's will function as mitigating measures,

The RCA's are for the most part qualitative,

The BMP's (best management practices) are the same ones that have lead to the degradation of Sierra Nevada watersheds (NOA #15, Page 5).

#0028

The appellant contends that the FEIS fails to address riparian habitat (NOA #28, Page 6; NOA #145, Page 4).

#0145

The appellant contends that the FEIS fails to identify or propose a process for identifying waters meeting or exceeding standards and to prohibit activities that will degrade water quality in these areas (NOA #145, page 3).

The appellant contends that the process for local delineation of riparian areas is inadequately described in the FEIS (NOA #145, Page 4).

“The appellant contends that the width of riparian conservation areas (RCA's) for non-perennial streams (ROD Table 2.11) is insufficient to allow these systems to function properly and provide structural and organic input to aquatic and riparian systems” (NOA #145, page 4).

The appellant contends that the FEIS fails to address riparian habitat (NOA #28, Page 6; NOA #145, Page 4).

“The preferred alternative simply does not attach enough protections to the stream type flexible buffer to ensure maintenance of aquatic ecosystem functions, ... or CWA (clean water act) water quality standards” (NOA #145, Page 5).

The appellant contends that implementation of Riparian Conservation Areas 000 and 18 will lead to continued degradation of aquatic, riparian, and meadow ecosystems (NOA #145, pages 5 and 6).

Appellants contend that the FEIS fails to disclose cumulative effects of the proposed action on aquatic, riparian, and meadow resources (NOA #145, p. 5; NOA #145, p. 5-6, from Joe; NOA #229, p. 28).

The appellant contends that the FEIS failed to use the best available science to protect riparian areas from grazing impacts (NOA #145, page 6.).

#0168

The appellant contends that the FEIS fails to consider irreversible or irretrievable commitment of resources caused by logging in violation of NEPA (NOA #168, Page 11).

The appellant contends that it is not possible to harvest timber (tractor log) and meet long-term soil productivity protection requirements (NOA #168, Page 39).

Appellant contends that the FEIS fails to provide a cumulative effects model that accounts for increased runoff due to compaction on timber sales (NOA #168, Page 42).

The appellant contends that ephemeral streams that have been degraded by past management activities will continue to be degraded by more logging and road building (NOA #168, pages 65 and 66).

#0229

Appellants contend that the FEIS fails to disclose cumulative effects of the proposed action on aquatic, riparian, and meadow resources (NOA #145, p. 5; NOA #145, p. 5-6, from Joe; NOA #229, p. 28).

Terrestrial Wildlife and Aquatic Species Issues

AQUATIC SPECIES AND AMPHIBIANS

(CAR identification)

NOA#0028 page 5: . . . “many watersheds have been identified as "Critical Aquatic Refuge" (CAR) without justification or complete revelation to the public in the Draft EIS. Classification of watersheds as CAR without public input is counter to the spirit and intent of the NEPA process....”

NOA#0074, Section VII, p. 4, NOA#0146, page 162: . . . there “was no mention of a CAR designation for even a portion of the Clavey River in the Draft EIS, there was no opportunity provided for input by the interested public or others. Inserting this designation into the Final EIS and by an obscure reference into the ROD without public participation is counter to the spirit and intent of NEPA and thereby is an improper act.”

NOA#0206, page 46: “The Final EIS takes the limited concept of Critical Aquatic Refuges (CARs) displayed in the Draft EIS and greatly expands CAR acreage and effect without proper basis, disclosure or rationale.”

[Cumulative effects of CARs.]

NOA#206, page 47: “ the reader is not made aware of the cumulative or landscape effect of the CARs across the Sierra Nevada or within the individual forests.”

[Scientific basis for amphibian standards and guidelines.]

NOA#0029, page 3: The appellant asserts that “cattle as a causal factor [in the decline of amphibian populations] fits in neither time nor space. . . the frog and toad standards find no support in science. . .”

NOA#0074, Section V, pages 32-33; #0146, page 35: The appellants assert that the standard for conservation of the Yosemite toad is “vague and impractical. . . The definition of a wet meadow is very vague and can be subjectively applied. . .The fact is that there is no scientific study, not even one, to support the decisions on livestock grazing restrictions that are contained S&G RCA-41.”

#0074, Section V, pages 34 – 53, #0146, pages 35 - 52: The appellants challenge the adequacy of the scientific basis for the objectives, standards and guidelines relating to conservation of the California red-legged frog, by providing a review of the USFWS proposal for designation of critical habitat, and alleging that the FEIS/ROD was flawed because it was overly reliant on the USFWS information. “Our concerns center on the inappropriate use of so-called “science” to support the overly restrictive RLF restrictions.”

NOA #0166, page 20; NOA #0203, page 21; NOA #0204, page 29: “. . .with respect to the Yosemite toad, [and] California red-legged frog, . . . the FS cites absolutely no scientific evidence demonstrating that grazing harms these species. EIS at 3-4.3-29, 3-4.4-218 to 220, 3-4.3-41. Instead, the FS merely assumes that because grazing occurs within the habitat of these animals, it must harm them. Id. Based on this totally unsupported assumption, the FS eliminates or curtails grazing wherever these species are found. Id. The FS's decision to eliminate grazing where these species exist based on a completely unsupported assumption of harm, is wholly arbitrary and capricious, and has absolutely no rational basis whatsoever.”

NOA #0207, pages 36-37: The appellant challenges the scientific basis for the analysis relative to the effects of grazing on the Yosemite toad. “The fact is that there is no proper scientific study, not even one, to support the decisions on livestock grazing restrictions that are contained in S&G RCA-41.”; “. . . the science that is cited in support of these

many restrictions is woefully thin.”; “The bottomline is that the FEIS contains many severe restrictions on grazing based on scientific studies that are non-existent.”

NOA #0231, page 2: “ The EIS fails to thoroughly display the harm in which livestock grazing adversely impacts wildlife species, riparian habitats, and meadow areas.”

[Insufficient protection amphibian viability.]

NOA #0145, pages 9-12: “. . . the FEIS allows for alteration of up to 25% of an RCA without scientific peer review, and potentially even a greater percentage after review. . . Most of the amphibians within the planning area are at-risk. Eight species are highly vulnerable, 9 moderately vulnerable, and another 9 are ranked at low vulnerability. Although there are some specific standards and guidelines that address amphibian vulnerability, the preferred alternative tends to extremes of either very general protections or very narrowly focused protections (e.g., Standard FW-RCA-26). . . In conclusion, the FEIS requires assessments of amphibians within the planning area but fails to require adequate affirmative protection, with limited exceptions. Clearly more stringent and enforceable standards are required to prevent further amphibian declines or the FEIS will remain in violation of NFMA and the ESA.”

NOA #0168, pages 109-112: “. . .Appellants are concerned that the Forest Service does not heed the growing body of evidence of [amphibian] species decline and habitat loss, caused in part by management actions”. . .

[Impacts of fire and mechanical treatment on aquatic systems.]

NOA #0145, page 7: “The FEIS inflates the potential impacts of fire on aquatic ecosystems.”

NOA #0145, page 8: The FEIS makes dubious assumptions regarding the potential risk of wildfire impacts on aquatic systems and the need for fuels reduction within RCAs and CARs. The FEIS concedes that fuels treatments likely will be the management activity to have the greatest impact on watersheds. FEIS 2:3:3.4 at 236. Yet it persists on claiming that "catastrophic wildfire" will have an equally profound effect (thus justifying "preventative" fuels treatments) despite the fact that wildfire is an unpredictable possibility whereas fuels treatments are predictable, planned management activities, that have known and measurable impacts on the landscape. The scientific literature also demonstrates that fire's beneficial impacts on watersheds often far outweigh potential negative impacts (e.g., Rhodes et al. 1994; Beschta et al. 1995; Erman 1996; Kattelman and Embury 1996; Gresswell 1999; Rieman and Clayton, 1997). The FEIS completely fails to assess the risks of fuels treatments on aquatic systems and the benefits of reintroducing fire as a watershed process. Many publications have shown that forest thinnings in fact further degrade watershed functions (see e.g., Rhodes and Purser 1998)

and that post-fire treatments often substantially delay recovery (Beschta et al. 1995; Kattelman and Embury 1996).

[Grazing effects on aquatic.]

NOA #166, page 13; NOA #0203, page 9; NOA #0204, page 14: The appellants assert that “. . .the FS provides little or no scientific evidence that grazing in the Sierra Nevada region is actually having a negative impact on aquatic and meadow ecosystems and associated species. At best, the FS provides evidence that grazing may have, at certain times under certain circumstances, been one of several factors which has negatively contributed to these habitats and species.”

[Viability of aquatic, riparian and meadow species.]

NOA#0145, page 4: “The FEIS lacks critical analysis (NEPA violation) as to the adequacy of the proposed level of protection in CARs to provide for viable populations of endangered, threatened, and sensitive aquatic, riparian, and meadow associated species.”

NOA #0145, pages 8-9: The FEIS permits activities including salvage logging, grazing, fuels treatment, and road construction to occur in riparian areas. These activities affect some of most important habitat components of aquatic, riparian, and meadow associated species. The FEIS fails to assess the impacts of these activities on these species habitat with reference to the quantity or intensity of the potential impacts, but instead makes unsupported generalizations that no negative impacts will occur, because the RCA objectives and standards theoretically will sufficiently protect these resources and species. Lacking the requisite level of analysis, the BO's determinations that the proposed action will not affect viability for riparian, aquatic, and meadow species are not supportable. Rather, the management permitted in the RCA's, CARs, and meadows is very likely to impact the specific habitat characteristics that are important for the riparian, aquatic, and meadow species within and outside of the planning area. Based on the important weight that the BO gives to these characteristics, it is likely that the proposed actions, especially combined with ongoing grazing and other impacts, in RCAs may result in cumulatively significant impacts to species dependent on aquatic, riparian, and meadow ecosystems.

NOA #0145, pages 9 –12: The appellants contend that “The preferred alternatives will provide insufficient protection of amphibians”, expressing concerns specifically about mountain yellow-legged frog and the Yosemite toad.

NOA #0168, page 64: “Appellants are concerned about the logging proposed by the Sierra Nevada Forest Plan Amendment FEIS and ROD and the impact that it could have on aquatic and riparian dependent species. . . . This plan amendment provides little protection since it does not prevent all logging from damaging these areas. There has been new data after the SNEP Report that was not included in the SNEP analysis or the

Sierra Nevada Forest Plan Amendment FEIS. Because the new data shows the decline of species populations, all forest habitats require a greater degree of protection than the SNEP Report specified and greater than the Sierra Nevada Forest Plan Amendment FEIS provides.”

NOA #0168, pages 65-66: “Appellants are concerned about the Sierra Nevada Forest Plan Amendment because it would not prevent logging along ephemeral streams. Permitting logging along ephemeral streams will not protect the aquatic, riparian, and meadow ecosystems that have been allowed to be degraded by past management practices and will continue to be degraded by more logging and roadbuilding. These areas must all be protected. Allowing any more habitat losses will only further impact the viability of the species in these areas. . . The Sierra Nevada Forest Plan Amendment FEIS's alternative 8 modified failed to provide protection for all the species and all their habitats in the forest.”

NOA#168 page 108: “Appellants are concerned that the Forest Service does not heed the growing body of evidence of species decline and habitat loss, caused largely by management actions, including roadbuilding and logging.”

NOA #0168, page 117: “Effects on aquatic/riparian areas are a principal effect of certain livestock grazing practices, especially historic overgrazing, in the Sierra Nevada (Chaney et al. 1993, Erman 1996, Jennings 1996, Kattlemann and Embury 1996, Kondolf et al. 1996, Moyle et al. 1996). The interrelated impacts commonly attributed to overgrazing include vegetative cover, changes in species composition, introduction of exotics, reduction or elimination of regeneration, compaction and cutting of meadow sod, depletion or elimination of deeply rooted vegetation that strengthens banks, loss of litter and soil organic matter, erosion of stream banks, beds and flood plains, loss of overhanging stream banks, destabilization of alluvial channels and transformation to wide shallow channels, initiation of gullies and headcuts, channel incision and consequent lowering of water tables, desiccation of meadows, increased water temperature during summer due to reduction of shade, increased freezing in winter from reduction of insulation and snow trapping efficiency, siltation of streams, bacterial and nutrient pollution, and decline of summer streamflow . . .”

NOA #0168, page 158: “Appellants are concerned about the statements in the Framework Decision, page 22 of 57, FEIS Volume 5, Chapter 3-367, "Very few scientific studies are available to provide definitive answers on how livestock affect water quality. Due to limited scientific information and uncertainty concerning how alternatives may affect water quality, the effects analysis recognized that there might be isolated times and places that different activities may exceed water quality standards. Management to meet water quality standards would be accomplished through our monitoring and adaptive management". The Regional Foresters and the FEIS failed to consider the growing body of scientific research that shows grazing to be harmful to the ecosystem and especially harmful to the watersheds.”

NOA #0231, page 2: “ The EIS fails to thoroughly display the harm in which livestock grazing adversely impacts wildlife species, riparian habitats, and meadow areas.”

[Use of SNEP strategy.]

NOA #0202, page15: “SNEP also developed a riparian protection strategy that was not used by the Forest Service. SNEP is considered the best science, at least up until its published date. SNEP was developed exclusively for the Sierra Nevada range. . . The Forest Service must provide an analysis that justifies a decision that is contrary to the science used in the SNEP report. In particular, it must justify the use of a riparian strategy that was developed for another geographical region over the SNEP strategy developed exclusively for the Sierras.”

NOA #0209, page 16: Under the heading of “Best Available Science”, the appellants contend that “SNEP also developed a riparian protection strategy for the Sierra Nevada that was not used by the Forest Service in favor of a riparian strategy developed for a neighboring region. SNEP is considered a compilation of the best science, at least up until its published date. SNEP was developed exclusively for the Sierra Nevada range.”

[Basis for streamside management zones.]

NOA #0141, page 7: “Forest Plan direction for SMZ delineation seems to have been driven by timber harvest, and is not as easily applied to other forest activities (e.g., grazing allotment planning, recreation, etc.), especially in areas that are not dominated by coniferous vegetation (the Modoc National Forest Plan is a notable exception). Forest Plan direction"implies wider protection zones based on the stream size (the larger the stream,the wider the SMZ), rather than ecological functions of the near-stream areas. The expanded SMZ as a general limit over diverse activities is not a valid management tool, and the SMZ has little or no supporting evidence to relate SMZ to other activities in riparian zones other than timber harvesting. Consequently, to apply the SMZ to other activities based upon the impacts of timber operations is unsupported and unreasonable.”

WILLOW FLYCATCHER

[Willow flycatcher scientific basis.]

Willow flycatcher scientific basis sub-issue: Standards and guidelines are not based on sound science or judgment.

NOA #0026, pages 1 - 2; #0079, pages 1 - 2; #0167, pages 12-13; #202, pages A-1 – A-2: “The collective set of standards (FW-wilf-1-6, Appendix DI-12) for willow flycatchers is . . . not based on sound science or judgment. In establishing these standards the Forest Service ignores the scientific literature and knowledge gained from many years

of monitoring and adaptive management . . . it is obvious that cowbird impacts attributable to grazing livestock are extremely small.”

NOA #0201, page 89: “The grazing restrictions imposed by Mod 8 are based on flawed scientific assumptions or analyses [particularly as related to the willow flycatcher].”

NOA #0220, pages 1 and 2: The appellant asserts that the scientific documentation used in the development of the willow flycatcher standards (FW-wifl-1-6, Appendix. D1-12) would not stand up to peer review and “has resulted in erroneous scientific conclusions based on misconstrued or non-existent data.”

NOA #0207 page 25: “The scientific bases for many of the grazing restrictions in the FEIS are incomplete, inadequate, or non-existent.”

NOA #0207 page 26: The appellant contends that, “The consideration of any proposed management alternatives in the DEIS would lend undue credibility to the available scientific basis. Currently available work cannot serve as a guidance for management. If anything, it points out needs for specific research. We could not find any scientific support for any of the statements implicating cattle grazing as the key threat to WF in the Sierra Nevada contained in the DEIS.

NOA #0207 page 31: “Three scientific premises underlie the severe grazing restrictions imposed on emphasis habitats. They are: 1) there is solid scientific evidence that brown-headed cowbirds are detrimental to the WF in the Sierra Nevada regions; 2) there is solid scientific evidence that brown-headed cowbirds in the Sierra Nevada regions will fly 5 miles to lay its eggs in WF nests; and 3) there is solid scientific evidence that grazing is the primary cause of brown-headed cowbirds being located near WF habitats. The science underlying all three of these premises is totally nonexistent.”

NOA #0207, page 31: “After admitting there is a lack of evidence regarding cowbirds, the FEIS lists eight other factors that affect WF habitat on national forest lands. These include: 1) recreation; 2) hydrologic and vegetative changes resulting from silvicultural treatments; 3) fires; 4) fuel treatments; 5) dams and diversions; 6) mining; 7) road construction and maintenance; and 8) pesticides.”

NOA #0133, page 1: “Conclusions made from the flawed studies of the willow flycatcher are outrageous.”

Willow flycatcher scientific basis sub-issue: Lack of evidence that livestock grazing, pack stock, and saddle stock are a significant factor in the decline of the willow flycatcher. Cowbird impacts attributable to grazing are small.

NOA #0014, page 2: “The proposed 5-mile exclusion for corrals re: the willow flycatcher is excessive and based on unproven science.”

NOA #0026, pages 1 - 2; NOA #0079, pages 1 - 2; NOA #0167, pages 12-13; NOA #202, pages A-1 – A-2: “Yet, throughout the region, the Forest Service proposes to implement standards which are devastating to livestock grazing... There is clearly no evidence that any grazing effects on Willow flycatcher are a driving factor in their population. What evidence does exist, indicates that grazing is not a significant factor. Yet, the management standard FW-wifl-1 is to completely exclude livestock from any meadow where a Willow flycatcher is detected, whether that meadow be one acre or several hundred, and even if the loss of that meadow results in the termination of a livestock operation.”

NOA #0029, page 4: “There are no data available on effects of grazing on flycatcher fitness and long-term population persistence. And the impact of light to moderate grazing on shrub population dynamics is unclear, as the FEIS admits (p. 155). We do know, however, that wiping out areas at Tahoe and other places due to development may have led to the flycatcher decline across the Sierra. That is not due to cows. (FEIS, v. 3, eh. 3, part 4.4, p. 148.)”

NOA #0029, pages 3 and 4: “The FS is coming down on grazing when it does not fit as a cause of decline of a population. The Record of Decision requires that if willow flycatchers are found, no grazing is allowed in the entire meadow. Even for historically occupied sites, where birds are not present, it prohibits all but late season grazing. Beginning in 2003, livestock cannot graze in unsurveyed known sites. Willow flycatchers were common until 1910, and locally abundant through 1940, with noticeable declines after 1950. Cattle, which grazed most heavily from the late 1800’s through the 1930’s, did not cause the decline. The FEIS identified the problem that does fit, development both in the Valley and the Sierras.”

NOA #0074, Section V, pages 25-32; NOA #0146, pages 27–35; NOA #0207, pages 24-34: “The grazing restrictions imposed by the preferred alternative (Mod 8) are based on flawed scientific assumptions or analyses.” . . . “The scientific basis for many of the grazing restrictions in the FEIS are incomplete, inadequate, or non-existent.” . . . “The timing of the stated WF decline and statement of likely causes do not support a finding, or even an inference, that grazing is a primary cause of any WF decline.” . . . “Is there solid evidence that cowbirds are detrimental to the F in the Sierra Nevada areas? The answer is no.”

NOA #0074, Section V, page 32, NOA #0146, Section II, page 33: “Standard FW-wifl-4 restrictions based on cowbird brood parasitism in the Sierra Nevada contradict the cited data of low instances and rare events. The restrictions based on the 5-mile flying radius are a red herring and unfounded.”

NOA #0078, pages 1-2; NOA #0089, pages 1-2; NOA #0098, pages 1-2; NOA #0124, page 1; NOA #0140, pages 1-2; NOA #0194, pages 1-2; NOA #0213, pages 1-2: “In establishing these standards [FW-wifl-1-6] the Forest Service ignores the scientific literature and knowledge gained from many years of monitoring and adaptive management. . . There is no reasonable basis for the extreme adverse action which is targeted towards grazing permits. . . Considering the discussion in the FEIS, regarding

the various impacts to Willow Flycatcher nests, there is clearly no evidence that any grazing effects on Willow Flycatcher are a driving factor in their population. What evidence does exist, indicates that grazing is not a significant factor. Yet the management standard FW-wifl-1 is to completely exclude livestock—from any meadow where a Willow flycatcher is detected, whether that meadow be one acre or several hundred and even if the loss of that meadow results in the termination of a livestock operation.”

NOA #0146, page 65: The appellant contends that, “The risk from grazing is low to willow flycatcher. Surveys in the Sierra Nevada show the greatest cause of willow flycatcher nest mortality was from depredation and losses from inclement weather, rather than anything related to livestock. The willow flycatcher standards provide a significant disincentive for livestock permittees to manage for good willow and riparian habitat. As meadows become good habitat, grazing will be eliminated. Published literature and years of monitoring and adaptive management on the Modoc, Lassen, and Plumas National Forests show that the best way to promote willow growth and expression is by early and mid-season grazing. Late season browsing of willows is often more pronounced, thus changing to late-season grazing is likely to have a negative effect on willow habitat and will cause management problems for ranchers who must comply with strict willow browsing standards.”

NOA #0166, page 19; NOA #0203, page 20: “With respect to some species and ecosystems, such as riparian and meadow species and the willow flycatcher, the scientific evidence cited by the FS regarding potential negative impacts from grazing are mixed, inconclusive, and highly variable. For example, the FS can cite no study which links grazing and harm to the willow flycatcher in the Sierra Nevada Region. EIS at 3-4.4-153. It can cite only two studies which examine the impact of grazing on willow flycatcher in general, one of which concluded that grazing was one of several factors which may harm the species and one of which found no link between grazing and harm to the species. Id. at 153-4. The remainder of the studies cited by the FS are similarly inconclusive. Id. at 154-160. At most, the science relied upon by the FS may be cited for the proposition that grazing may, at certain times and under certain circumstances, be one of several factors which could contribute to the decline of willow flycatchers.”

NOA #0202, page 16, NOA #0210, page 9: “The risk from grazing is low to willow flycatcher. For example, “there are no data available on the effects of light, moderate or heavy grazing levels on willow flycatcher fitness and long-term population persistence” (Vol. 3, Chapter 3, part 4.4, pg. 151-152). Surveys in the Sierra Nevada show the greatest cause of willow flycatcher nest mortality was from depredation and losses from inclement weather, rather than anything related to livestock (Vol. 3, Chapter 3, part 4.4, pg. 151). Surveys in the southern Sierra Nevada have reported that 15% of Willow flycatcher eggs are non-viable which is far higher than the 3-4% reported elsewhere in the literature and far higher than those parasitized by cowbirds. Non-viable eggs have nothing to do with cattle but may be related to concentrations of heavy metals, which has been documented in flycatcher eggs in Arizona (Vol. 3, Chapter 3, part 4.4, pg. 151-152).”

NOA #0204, pages 12, 21: “With respect to the willow flycatcher, the FS admits to having no scientific evidence regarding impacts of grazing on the species in the region. “Specific research on livestock grazing practices in known willow flycatcher sites in the Sierra Nevada is lacking.” EIS at 3-4.4-153.” . . . “The Standards and Guidelines, with regard to the willow flycatcher, are arbitrary and capricious.”

#0207 NOA, pages 25 and 26: “There is currently no sound scientific knowledge basis which justifies the assertion that livestock grazing is a primary factor driving Willow Flycatcher abundance in the Sierra Nevada. A few observation instances suggest that certain livestock grazing practices may lead to alterations of WF habitat which could be detrimental. However, the premise that such management practices ... are currently widespread on lands managed by USFS is highly questionable.”

NOA #0207, page 28: “This S&G and its drastic restrictions on grazing are not supported by the findings and conclusions based on these reports. Livestock grazing is simply not the cause of any WF decline in California.” “The FEIS indicates that livestock grazing occurred with the heaviest intensity in the Sierra Nevada from the late 1800's through the 1930's. (FEIS, Vol. 3. Chap. 3, Part 4.4, p. 146.) It then states that the WF population experienced a dramatic decline only after 1950 and the causes were probably mining, logging, road building, wintering ground deforestation, increased human development, increased use of pesticides, and other as yet undocumented factors. (Id. at p. 147.) The timing of the stated WF decline and statement of likely causes do not support a finding, or even an inference, that grazing is a primary cause of any WF decline. Grazing has also dramatically declined in the Sierra in the last few decades - neither has caused the other until this Mod 8 is implemented.”

NOA #0207, page 29: “The FEIS tries to make the case that livestock grazing has an indirect effect on WF through the association of the brown-headed cowbird. It states that this association can result in potential brood parasitism and nest predation may be higher in grazed versus ungrazed meadows. . . The FEIS makes another startling admission: Because little is known about the actual effects of these grazing-related factors on willow flycatcher productivity and long-term population persistence in the Sierra Nevada bioregion, there is a high degree of scientific uncertainty and therefore potential management risk to the species.”

NOA #0207, page 33: “That scientific studies have not shown cowbirds to be a serious threat to the WF in the Sierra Nevada and there is no evidence that cowbirds are linked to range cattle, even in the rare instance that a brown-headed cowbird has impacted a WF. . . There is just no showing that cowbird brood parasitism in the Sierra Nevada is such a serious threat to the WF that a 5-mile flying capability of the cowbird should form a cornerstone of USFS policy on grazing restrictions as it does in S&G FW-wifl-4. The 5-mile flying radius is a red herring. Even if the cowbird does fly 5 miles, cowbird parasitism of WF nests in the Sierra Nevadas is a rare event. Is there solid scientific evidence that grazing causes brown-headed cowbirds to be located near WF habitat?”

NOA #0209, pages 16-17: “. . .there are no documented studies on the effect of light, moderate or heavy grazing levels on willow flycatcher fitness and long-term population persistence. Nest mortality is generally the result of depredation and losses from inclement weather, rather than anything related to livestock. Finally, documented studies in Arizona found heavy metals may be related to non-viable eggs.”

NOA #0209, page 19: “. . .it is obvious that cowbird impacts attributable to grazing livestock are extremely small.”

NOA #0210, pages 4-5; NOA #209, pages 15-16 with essentially the same wording: “. . . there are no documented studies on the effect of light, moderate or heavy grazing levels on willow flycatcher fitness and long-term population persistence. . . The cause of nest mortality is generally caused from depredation and losses from inclement weather, rather than anything related to livestock. Documented studies in Arizona found heavy metals may be related to non-viable eggs.”

NOA #0210, page 9: “The risk from grazing is low to willow flycatcher. For example, "there are no data available on the effects of light, moderate or heavy grazing levels on willow flycatcher fitness and long-term population persistence" (Vol. 3, Chapter 3, part 4.4, pg. 151-152). Surveys in the Sierra Nevada show the greatest cause of willow flycatcher nest mortality was from depredation and losses from inclement weather, rather than anything related to livestock (Vol. 3, Chapter 3, part 4.4, pg. 151). Surveys in the southern Sierra Nevada have reported that 15% of Willow flycatcher eggs are non-viable which is far higher than the 3-4% reported elsewhere in the literature and far higher than those parasitized by cowbirds. Non-viable eggs have nothing to do with cattle but may be related to concentrations of heavy metals, which has been documented in flycatcher eggs in Arizona (Vol. 3, Chapter 3, part 4.4, pg. 151-152). . . Moreover, the occurrence of cowbirds in the Sierras is said to be associated with pack stations, campgrounds, and rural development, in addition to grazing livestock. It is reported that 44% of nests within the Tahoe Basin were affected by cowbirds. However, region-wide, less than 7% of willow flycatcher nests were affected by cowbirds according to surveys from 1997 to 2000. By reason, it is obvious that cowbird impacts attributable to grazing livestock are extremely small. Yet, throughout the region, the Forest Service proposes to implement standards which are devastating to livestock grazing, by that we mean that a grazing season after August 31st each year, is not long enough to be considered a grazing season.”

NOA #0212, pages 1-2: “There are significant gaps in the science used to develop standards and guides regarding livestock grazing. One of the most notorious examples being standards for Willow flycatcher. The FEIS (Volume 3, Chapter 3, part 4.4, page 154) states, “. . . there are no data available on the effects of light, moderate, or heavy grazing levels on Willow flycatcher fitness and long-term population persistence." There is no clear evidence that grazing effects on Willow flycatchers are a significant factor in their population, yet the management standard adopted is to completely exclude livestock from any meadow where Willow flycatchers are detected, regardless of the size of the meadow! “

NOA #0220, page 2: “ For instance would the USDA –USFS please present for peer review the data referenced to determine the Willow Flycatcher standards (FW – wifl-1-6, Appendix. D1-12) please note “overall effect of grazing page 154-” there are no data available on the effects of light, moderate, or heavy grazing levels on Willow Flycatcher fitness and long-term population persistence.”

NOA #0222, page 24: “The details of the brown-headed cowbird control program have not been developed. The connection and relationship to pack and saddle stock is unknown. The grazing restrictions in willow flycatcher habitat will seriously affect pack and saddle stock users, yet there is no science to substantiate the need for the restrictions. Mitigation measures should be based on sound science rather than assumptions.”

Willow flycatcher scientific basis sub-issue: Standards and guidelines are unnecessarily detrimental to grazing.

NOA #0078, pages 1-2; NOA #0089, pages 1-2; NOA #0098, pages 1-2; NOA #0124, page 1; NOA #0140, pages 1-2; NOA #0194, pages 1-2; NOA #0213, pages 1-2: “There is no reasonable basis for the extreme adverse action which is targeted towards grazing permits. . .Considering the discussion in the FEIS, regarding the various impacts to Willow Flycatcher nests, there is clearly no evidence that any grazing effects on Willow Flycatcher are a driving factor in their population. What evidence does exist, indicates that grazing is not a significant factor. Yet the management standard FW-wifl-1 is to completely exclude livestock-from any meadow where a Willow flycatcher is detected, whether that meadow be one acre or several hundred and even it the loss of that meadow results in the termination of a livestock operation.”

NOA #0146, page 65: “Cowbird impacts attributable to grazing livestock are extremely small, but are the impetus for the proposed standards that limit grazing to after August 31st each year thereby creating an insufficient grazing season.”

NOA #0165, page 2: “The Standards and Guidelines set for the Willow Flycatcher . . . is extremely detrimental to livestock industry. We feel that these standards are not based on sound science or judgment. In establishing these standards the Forest Service ignores the scientific literature and knowledge gained from many years of monitoring-and adaptive management.”

NOA #0167, pages 4 and 5: “All alternatives were created to pacify the USDI Fish and Wildlife Service on perceived unlisted species issues, thus prioritizing habitat preservation over resource activities. Willow flycatcher habitat prescriptions carry this to an extreme. If there are willow flycatchers there – livestock are removed. If the willow flycatchers are not there – the livestock is removed. If the Forest Service does not know if the willow flycatchers are there or not – the livestock are removed. All of this is based on no credible science.”

NOA #0167, page 12: “The collective set of standards (FW-wifl-1 through 6) for willow flycatchers is detrimental to the livestock industry. These standards are not based on sound science or judgment. In establishing these standards, the Forest Service ignores the scientific literature and knowledge gained from many years of monitoring and adaptive management. There is no reasonable basis for the extreme adverse action targeted towards grazing permits.”

NOA #00192, pages 1-2: “The collective set of standards (FW-wifl-1-6, Appendix DI-12) for willow flycatchers is extremely detrimental to livestock industry. The Forest Service has ignored the scientific literature and knowledge gained from many years of monitoring and adaptive management. Your standards are not based on sound science or judgment. . . Consider the following statement taken from the Willow Flycatcher 4.4.2.3. (Volume 3, Chapter 3, part 4/4.,page 143) in the Final EIS. OVERALL AFFECT OF GRAZING PAGE 154 ". . .there is no data available on the effects of light, moderate or heavy levels on Willow flycatcher fitness and long-term population persistence. . . Considering the discussion in the FEIS, regarding the various impacts to Willow flycatcher nests, there is clearly no evidence that any grazing effects on Willow flycatcher are a driving factor in their population. Evidence does exist that grazing is not a significant factor and yet, the management standard FW-wifly-1 is *to* completely exclude livestock from any meadow where a Willow flycatcher is detected, whether that meadow be one acre or several hundreds, and even if the loss of *that* meadow results in the termination of a livestock operation.”

NOA #0194, page 1: “Standards FW-wifl-1 through 6 for willow flycatchers are collectively detrimental to the livestock industry. The Forest Service ignored the scientific literature and knowledge gained from many years of monitoring and adaptive management. The standards are not based on sound science or judgment.”

NOA #0209, page 19: “By reason, it is obvious that cowbird impacts attributable to grazing livestock are extremely small. Yet, throughout the region, the Forest Service proposes to implement standards which are devastating to livestock grazing, by that we mean that a grazing season after August 31st each year is not long enough to be considered a grazing season.”

Willow flycatcher scientific basis sub-issue: miscellaneous contentions

NOA #0128, page 1: “The decision to list [the willow flycatcher] was founded on junk science.”

NOA #0173, pages 1 and 2: “The science used to develop the willow flycatcher conservation strategy is flawed science.”

NOA #0234, page 1: “ They are talking important bird areas for the willow flycatcher nesting habitat. This is an excuse to eliminate grazing.”

[Willow Flycatcher: Dahm & Pittroff. V.I.A. sub]

NOA #0074, Section V, pages 25-27; NOA #0146, Section II, page 28; NOA #0207, page 25: “The scientific basis for many of the grazing restrictions in the FEIS are incomplete, inadequate, or non-existent. The CCA asked two eminent scientists to review ten of the research reports cited in the DEIS for scientific credibility. Many of these same reports are cited in the FEIS. The two scientists are Wolfgang Pittroff, Assistant Professor of Range Animal Science, Department of Animal Science, University of California at Davis, and Fred Dahm, Professor of Statistics, Biostatistics and Biomodeling Laboratory, Department of Statistics, Texas A&M University, College Station, Texas. These scientists produced a report Appendix J, that contains four conclusions regarding grazing and WF: 1. There is currently no sound scientific knowledge basis which justifies the assertion that livestock grazing is a primary factor driving Willow Flycatcher abundance in the Sierra Nevada. . . 2. There are very serious knowledge gaps. These include: (a) *Reliable data on site fidelity and general return rates* (b) *Reliable data on effects of weather events on WF nesting success.* (c) *Reliable data on the effects of nest parasitism by Brown Headed Cowbird.* (d) *Reliable data on the degree of dependence of Brown Headed Cowbird on livestock presence*(e) *Reliable data for an appropriate description of suitable habitat for WF*3. The role of disturbance in the creation of suitable habitat is completely unclear ...4. consideration of *any proposed management alternatives in the DEIS would lend undue credibility to the available scientific basis.* . . ”

NOA #0192, page 1: “The Forest Service has ignored the scientific literature and knowledge gained from many years of monitoring and adaptive management. Your standards are not based on sound science or judgment. With the new information available (Assessment of the Scientific Basis of Management Recommendations regard Willow Flycatcher Conservation in the Sierra Nevada Framework DEIS, Dahm and Pittroff), there is no reasonable basis for the extreme adverse action which is targeted towards grazing. Dahm and Pittroff concluded that, "We could not find any scientific support for any of the statements implicating cattle grazing as the key threat to WF in the Sierra Nevada contained in the DEIS (page 14).” ”

NOA #0173, pages 1-2: “The science used to develop the Willow Flycatcher Conservation Strategy is very flawed science indeed. The California Cattlemen's Association submitted a study conducted by Texas A & M University that refutes most of your findings regarding the interaction of grazing cattle and the Willow Flycatcher. If this is truly a document that wants to utilize the best science available then please at least acknowledge the work that has been done by Texas A & M University regarding the interaction of cattle and the Willow Flycatcher.”

NOA #0174, page 1: “Many of the comments submitted during the last comment period included the analysis document "Assessment of the Scientific Basis of Management Recommendations regarding Willow Flycatcher (*Empidonax Traillii adastus* and *E. t. brewsteri*) conservation in the Sierra Nevada Framework DEIS." Professors Dahm and Pittroff point out the data used to formulate the willow flycatcher standards and guidelines is severely flawed. The FEIS failed to respond to this submission.”

NOA #0175, page 2: “NEPA requires full disclosure of potential scientific controversy and response to all comments. Modoc County submitted during the comment period the document "Assessment of the Scientific Basis of Management Recommendations regarding Willow Flycatcher (*Empidonax traillii adastus* and *E.t. brewsteri*). Conservation in the Sierra Nevada Framework DEIS". This documents casts significant doubt about the validity of the science used to create the management standards for the Willow Fly Catcher. The FEIS fails to respond to any of the points raised in this document as required by NEPA.”

NOA #00192, pages 1-2: “Your standards [FW-wifl-1-6] are not based on sound science or judgment. With the new information available (Assessment of the Scientific Basis of Management Recommendations regard Willow Flycatcher Conservation in the Sierra Nevada Framework DEIS, Dahm and Pittroff), there is no reasonable basis for the extreme adverse action which is targeted towards grazing. Dahm and Pittroff concluded that, "We could not find any scientific support for any of the statements implicating cattle grazing as the key threat to WF in the Sierra Nevada contained in the DEIS (page 14).

NOA #0207, page 34: “Professors Dahm and Pittroff specifically indicate that there is a very serious knowledge gap in the area of reliable data showing the degree of dependence of brown-headed cowbirds on the presence of livestock.”

NOA #0216, pages 2-3; NOA #0218, page 1: “ The FEIS and ROD disregard findings based on California Cattlemen sponsored literature review of information relevant to the willow flycatcher. This literature review has revealed that there has been much incorrect citation of information regarding the species, that very little scientific information exists which supports the restrictions recommended for activities in the vicinity of the species. . The FEIS/ROD makes no reference to the fact that the declining willow flycatcher is not the subspecies located in the central Sierra Nevada, however the excessively restrictive activity related standards and guidelines are recommended regardless.”

[Willow flycatcher – CE and Range.]

NOA #0146, page 6; NOA #0202, pages 5-6; NOA #0210, page 5: “The ESA requires the Service to examine the extent of species and habitat within the species geographical range. The FEIS examines only the habitat on Forest Service system lands. . . it assumed zero habitat exists on private lands. This is obviously in error.”

NOA #0234, page 1: The appellant challenges the scientific basis for the willow flycatcher standards, based on the failure of the FEIS to address offsite impacts to these subspecies, including winter habitat conditions in Mexico.

[Willow flycatcher - identification. VI.C.]

NOA #0026, page 3; NOA #0079, page 3; NOA #0202, page A-2: “For the inclusion as a "known willow flycatcher site", a biologist must identify the "Fitzbrew" song or examine the bird in-hand (Vol. 3 Chapter 3 part 4.4 page 148). This is an unreliable method for determining occupied habitat. . . We think there will be a lot of errors and mis-identification of the willow flycatcher song.”

NOA #0201, page 89; NOA #0207, page 23: The appellants assert that the requirements for surveys of willow flycatcher are unworkable. “A high level of training is needed to distinguish the sounds of various birds. We anticipate many errors . . .”

[Willow flycatcher - rarity.]

NOA #216, pages 2-3; NOA #218, page 1“ The FEIS and ROD disregard findings based on California Cattlemen sponsored literature review of information relevant to the willow flycatcher. This literature review has revealed that there has been much incorrect citation of information regarding the species, that very little scientific information exists which supports the restrictions recommended for activities in the vicinity of the species. Of the four distinct subspecies of willow flycatcher identified, the subspecies *Empidonax traillii extimus*, located in the southwestern part of the United States, has declined. *Empidonax traillii adustus*, and/or *Empidonax traillii brewsteri* appear to be the subspecies found in the central Sierra Nevada. The FEIS/ROD makes no reference to the fact that the declining willow flycatcher is not the subspecies located in the central Sierra Nevada, however the excessively restrictive activity related standards and guidelines are recommended regardless.”

CALIFORNIA SPOTTED OWL

[CSO – Effects of timber harvest and fire.]

NOA #0028, page 2: “Evidence that timber harvesting or other habitat modification has or is affecting the owl has never been produced. Three separate massive reports, the California Spotted Owl Report (CASPO), the Sierra Nevada Ecosystem Project (SNEP), and California Spotted Owl EIS (CALOWL) could not find the linkage between owl decline and habitat modification. The Sierra Nevada Framework does not reveal any linkage in its documents but assumes such in its justification for restricting timber harvests.”

NOA #0074, Section V, page 14: “. . . [California spotted owls] are not threatened by forest management activities and that the real threats are potential habitat losses due to catastrophic fires. The FEIS and ROD continue with the myth that habitat is declining and the owl is somehow threatened by forest management activities. These documents do not adequately recognize the need to increase the level of management and thinning activities necessary to reduce the current accumulation of forest fuel, insect and disease problems, and all of the other factors that current and future overstocking conditions will have on wildlife habitats.”

NOA #0146, Section II, pages 9-10: The appellant contends that, “Despite the Final Environmental Impact Statement and Record of Decision conservation strategies, the USDI Fish and Wildlife Service states: *“Timber sales and fuels management projects that are currently implemented under these guidelines continue to degrade habitat for a species for which listing may be warranted.”* This statement is made despite the uncertainty surrounding the owl population demographics in the Sierra Nevada and the declining population issue, which is discussed in the Environmental Baseline section of the Biological Opinion. The USDI Fish and Wildlife Service reiterated the position that, *“The Service found that the California spotted owls have experienced significant population declines and their habitats are subject to present and future destruction and modifications by timber management and related activities.”* The Final Environmental Impact Statement and Record of Decision conclusions based upon highly suspect data and speculations on the impacts of forest management activities provided unnecessarily adversely affect management options for the Sierra Nevada. ”

NOA #0146, Section II, page 17: “Studies, data, and scientific reviews of California spotted owl populations and habitat, essential to improving the understanding that California spotted owls are not threatened by forest management activities, and that the real threats come from potential habitat loss to catastrophic fires, were not disclosed in the Final Environmental Impact Statement and Record of Decision. The documents continue with the myth that habitat is declining and the owl is somehow threatened by forest management activities. The documents do not adequately recognize the need to increase the level of management and thinning activities to reduce current accumulations of forest fuel, insect and disease problems, and other factors current and future overstocking conditions will have on wildlife habitats. Concerning the subject of changes in species composition, the positive and necessary role forest management and silviculture practices can play in changing species composition to import the current overstocking of white fir in mixed conifer forests is absent in any detail. ”

NOA #0202, pages 13-14: “The conservative approach adopted in the ROD is contributed to the assumed need to protect the California spotted owl. . . The simple fact is the demographic study is inconclusive. No significant trend can be confirmed from the data. . . More important, the studies and the information presented in the FEIS fail to establish a connection in owl declines with habitat modification. . . According to statistics from the demographic studies, there is no significant difference in owl populations between managed and unmanaged lands. There is no significant difference between nesting proportions, owl return rates, missing owl rates, replacement owl rates, owl movements and proportion that fledged young. . . While management practices cannot be identified as a link to owl declines, wildfire can. Numerous PACs have been destroyed in recent years due to wildfire. Incredibly, the ROD is based upon a feeling that the risk of wildfire is less than the risk from management. No evidence is presented to support that opinion. Significant evidence is presented to support the opposite.”

NOA #0209, page 14: “The conservative approach adopted in the ROD is owed to the assumed need to protect the California spotted owl. Owl demographic studies continue to

show marginal gains or declines in owl populations. . . The simple fact is the demographic study is inconclusive. No significant trend can be confirmed from the data. More important, the studies and the information presented in the FEIS fail to establish a connection in owl declines with habitat modification. . . According to statistics from the demographic studies, there is no significant difference in owl populations between managed and unmanaged lands. There is no significant difference between nesting proportions, owl return rates, missing owl rates, replacement owl rates, owl movements and the proportion that fledged young. "To the best of my knowledge, hard science that demonstrates a clear cause-and effect relation between owl population trends in the Sierra Nevada and habitat loss, degradation, or fragmentation resulting from natural or anthropogenic actions, on either private or federal lands is meager. . . Weather is the only clearly evident factor to surface to date." (Review of "A preliminary Report on the Status of the California Spotted Owl in the Sierra Nevada", Jared Verner,). Dr. Verner also presents anecdotal evidence from the study area that contradicts a conclusion that population decline is connected to habitat modification.”

NOA #0210, page 4: "Owl demographic studies continue to show marginal gains or declines in owl populations. More important, the studies and the information presented in the FEIS fail to establish a connection in owl declines with habitat modification. . . According to statistics from the demographic studies, there is no significant difference in owl populations between managed and unmanaged lands. Weather is the only apparent connection according to the owl scientists. While management practices cannot be identified as a link to owl declines, wildfire can. Numerous PACs have been destroyed in recent years due to wildfire. Incredibly, the ROD is based upon a feeling that the risk of wildfire is less than the risk from management. No evidence is presented to support that opinion. Significant evidence is presented to support the opposite.”

[CSO – and human disturbance.]

NOA #0031, page 1: "This plan appears to be based on a false premise, i.e., that man's use of back-country trails and camps is responsible for the decline of species, and that the species will recover if man is excluded. This premise appears to be deliberately specious, since NGOs (Sierra Club, etc.) have admitted that the spotted owl, for example, is not at risk but is being used as a 'poster bird' to gain control over use of forests. Also, the Forest Service (FS) has admitted that major factors in the decline of species are fire suppression and the resulting change of habitat and food supply. They agree that it's mainly crowded "front country" areas where man's impact can be seen, and that man's use of the backcountry has little or no impact.”

NOA #0137, page 7; NOA #0171, page 4: "How can the Endangered and Threatened species CFR's for the Northern Spotted Owl and its Critical Habitat, exempt OHV events from these restrictions, and at the same time the Eldorado National forest [the Sierran National Forests] restrict OHV events[/projects] for the California Spotted Owl which is only listed as a Sensitive Species [with no protection afforded under the law]? The USFWS has determined for spotted owls as published as final rule at 50cfr17, 57FR1796

that : "non-commercial activities are largely associated with recreation and are not considered likely to adversely affect critical habitat. Such activities include hiking, camping, fishing, hunting, cross-country skiing, off-road vehicle use, and various activities associated with nature appreciation." . . . The USFS officials have not provided scientific information or facts to demonstrate any compelling reason why this restriction is warranted."

[CSO – Science.]

NOA #0074, Section V, page 4; NOA #0146, page 6: The appellant contends that the wildlife portions of the FEIS and ROD are based upon inconclusive science, insufficient data sets, fraught with significant data gaps, and contain a strong bias in science advocacy. The results of poor integration of science severely restrict the management options available to effectively manage wildlife habitat within the Sierra Nevada and prevent catastrophic losses to this habitat.

NOA #0074, Section V, pages 4-14; NOA #0146, pages 8-18: The appellants challenge the adequacy of the scientific basis for the objectives, standards, and guidelines, and assessment of management effects leading to development of a conservation strategy for the California spotted owl. The appellant questions the accuracy and use of demographic information, the sensitivity of habitat mapping, the use of terms to describe habitat conditions (e.g., crown closure), the failure to use California spotted owl information and inventories from private lands, and the failure to provide scientific support for the effects of forest management activities on the California spotted owl.

NOA #0168, pages 103-104: "The Forest Service is not providing landscapes with a sufficient proportion of suitable owl habitat on national forest lands to assure replacement-rate reproduction by the spotted owl! . . . The recently established, statistically significant population declines in all demographic studies should cause Forest Service management standards and guidelines to exclude logging and roadbuilding, to help reverse the decline of all forest species. . . Failure of current National Forest stand classification systems to detect, and hence to consider in planning, "residual tree" components (trees 40 inches in dbh and generally older than 200 years) results in poor data, analysis, and planning and loss of habitat and decline in survivability of species."

NOA #0206, page 2: "California spotted owl science has been misused in development of the SNFPA FEIS, with the consequent exposure of Sierran forest ecosystems to catastrophic wildfire, economic vulnerability, and social collapse. . . the resulting FEIS and ROD do not have either legal or scientific validity on key issues. An arbitrary deadline dominated the entire process in at least its final six months, which prevented adequate modeling, analysis, evaluation and integration of results. . ."

NOA #206, page 7: "...the Forest Service failed to conduct the necessary research and 'obtain and keep current inventory data appropriate for planning and managing the resources' (NFMA 2 19.12(d)) related to California spotted owls."

NOA #0206, pages 25-30: The appellant contends that the scientific basis for the prescriptions, standards and guidelines of the Sierra Nevada Forest Plan Amendment FEIS related to conservation of California spotted owls is inadequate. The appellant cites inadequate demographic data and faulty interpretation of existing data, and failure to conclusively establish any links between logging, habitat attributes, and spotted owl viability.

NOA #0206, page 30: “In spite of redrafting and adjusting the selected alternative until the last few days before the Record of Decision was signed, the California spotted owl conservation strategy is still incoherent, incompatible with other resource directions. . .”

NOA # 0216 page 2; NOA #0218, page 1: “Protected Activity Centers (PAC) for California spotted owl nest and roost sites, ...are excessive, are not scientifically based, and provide no direct or indirect scientific link between established standards and the long-term population trend. . .”

[CSO – Population declines and weather.]

NOA #0090, page 4: “The excessive enthusiasm for increasing the amount of old-growth forests in the Sierras is based partially on the perceived importance of increasing habitat for CASPO. There is apparently some valid question now as to whether habitat loss is really the reason for reduced numbers of CASPO, what part weather plays in the CASPO population, whether CASPO can adapt and flourish in new habitats and, even whether the numbers of CASPO really are declining”.

NOA #0210, page 4: “Owl demographic studies continue to show marginal gains or declines in owl populations. More important, the studies and the information presented in the FEIS fail to establish a connection in owl declines with habitat modification. Three separate massive reports, the California Spotted Owl Report (CASPO), the Sierra Nevada Ecosystem Project report (SNEP), and California Spotted Owl EIS (CALOWL) could not find the linkage between owl decline and habitat modification. The SNFPA does not find the linkage either. According to statistics from the demographic studies, there is no significant difference in owl populations between managed and unmanaged lands. Weather is the only apparent connection according to the owl scientists. While management practices cannot be identified as a link to owl declines, wildfire can. Numerous PACs have been destroyed in recent years due to wildfire. Incredibly, the ROD is based upon a feeling that the risk of wildfire is less than the risk from management. No evidence is presented to support that opinion. Significant evidence is presented to support the opposite.”

[CSO – Vegetation treatments and viability.]

NOA #0168, page 7: “The Framework’s Record of Decision details treatments that could continue to degrade the habitat and negatively impact the viability of the California Spotted Owl.”

NOA #0168, page 102: “The decision permits canopy cover reductions in habitat for California spotted owls. Optimum levels of canopy cover for effectively maintaining spotted owl forage habitat is 70 percent and 89 percent is optimum canopy cover for nesting. Minimum canopy cover conditions under which spotted owls will forage and nest are 40 percent and 89 percent, respectively. Spotted owls roost in stands with mean canopy coverage of 89 percent with surroundings of 75 percent. The Forest Service should immediately stop logging throughout all spotted owl habitat in the Sierra Nevada national forests.”

NOA #0168, page 103: “The recently established, statistically significant population declines in all demographic studies should cause Forest Service management standards and guidelines to exclude logging to help reverse the decline of all forest species. ”

VIABILITY

[Viability and MUSYA.]

NOA #0074, Section I, page 10, #0201, Chapter 1, page 11: “The ROD bypasses the authority under the National Forest Management Act concerning "viability" provisions that require providing for viable populations of vertebrate species consistent with the Multiple-use direction in forest plans. . .”

NOA #0201, Chapter 1, page 19: “The diversity section of the NFMA confirms that the NFMA did not make achievement of biological diversity goals dominant over true multiple use objectives, such as timber production. Biological diversity is not a multiple use under the NFMA or MUSYA. The NFMA merely requires regulations that "provide for diversity of plant and animal communities...in order to meet overall multiple-use objectives, and within the multiple use-objectives of a land management plan." 16 U.S.C. 1604(g)(3)(B). Thus, the multiple use objectives in MUSYA (such as timber production), as carried out through each forest plan, dictate what level of biological diversity will be provided, not the other way around as the FEIS does.”

NOA #0201, Chapter 2, pages 57, 75: . . . The focus of the environmental impact statement should be to develop alternative strategies to ensure sustainable forest conditions free of the threat of catastrophic losses. Without that, no wildlife species dependent upon forest habitats can be assured of long-term survival. The question should be flipped from the current assumptions of what habitats do the wildlife need, to what kind of forest conditions can be sustained. ” “

NOA #0201, Chapter 4, page 75: “The diversity section of the NFMA confirms that the NFMA did not make achievement of biological diversity goals dominant over true

multiple use objectives, such as timber production. Biological diversity is not a multiple use under the NFMA or MUSYA.”

NOA #0203, page 14: “The United States Forest Service (USFS) has taken language out of context from 16 U.S.C. 1604(g)(3)(B) and entered this language in the Record of Decision (ROD) as referenced above. Section 1604(g)(3)(B) says, provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, *and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;*” (emphasis added). . .Section 1604(g)(3)(B) requires the Secretary to not only provide for the diversity of the plant and animal communities, but to meet overall multiple-use objectives specifically within a land management plan.”

[Viability and habitat.]

NOA #0145, page 2: ”The NFMA requires the Forest Service to adopt regulations to "provide for diversity of plant and animal communities," and to "insure that timber will be harvested ... only where ... protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water ... where harvests are likely to seriously and adversely affect water conditions or fish habitat." 16 U.S.C. § 1604(g)(3)(B),(E)(iii). The Forest Service's regulations implementing these duties require that "[f]ish and wildlife habitat should be managed to maintain viable populations of existing native ... vertebrate species "36 C.F.R. § 219.19. Federal regulations also require this plan to ensure the continued viability of indicator species. 36 C.F.R. §§ 219.19, 219.27(a)(6). The analysis presented within the FEIS does not provide a basis for finding that adequate habitat is provided to meet this standard.”

NOA #0168, page 65: “This plan amendment provides little protection since it does not prevent all logging from damaging these areas. There has been new data after the SNEP Report that was not included in the SNEP analysis or the Sierra Nevada Forest Plan Amendment FEIS. Because the new data shows the decline of species populations, all forest habitats require a greater degree of protection than the SNEP Report specified and greater than the Sierra Nevada Forest Plan Amendment FEIS provides.”

NOA #0229, page 6: “The project will jeopardize the viability of species that thrive in intact forests or naturally disturbed forests and require down wood and other structural attributes, intervene in natural disturbance processes that are vital to ecosystem sustainability, and degrade water quality and watershed condition. Effects on species at risk such as the California spotted owl, pacific fisher, and northern goshawk are significant and the selected Alternative does not ensure their long-term viability. The analysis on which the Forest has relied is inadequate, flawed and biased in a number of ways, rendering any potential decision arbitrary and capricious.”

[Viability – nonnatives.]

NOA #0202, page 3, NOA #0209, page 4; NOA #0210, page 3: “The Act [NFMA] requires the Forest Service to provide for the viability of native and desired non-native species. The Forest Service through this ROD chose to ignore the requirement to protect trout, a desired non-native species without discussion.”

[MIS TES min population.]

NOA #0229, pages 28-29: “...no population or monitoring data have been presented in either the SNFP Amendment FEIS or BA &E nor has the USFS determined what minimum populations of MIS and TES species are. . . For many of these species the Forest Service has no up-to-date population data describing population numbers, locations, and trends, nor monitoring data on which the agency can rely to determine that the actions proposed in the context of the SNFP Amendment will maintain numbers and distribution of these species sufficient for insuring long term viability. Nor has the Forest Service determined the “*minimum number*” of reproductive individuals that would constitute a viable population. The Forest Service is required by law to determine this minimum number of reproductive individuals before implementing activities that might impact those individuals or populations such as are planned in the SNFP Amendment. The Forest Service cannot permit these activities without knowing the location and number of individuals of these species that would enable determination of whether habitat for each vertebrate is well distributed to facilitate interaction.”

ENDANGERED SPECIES ACT and SENSITIVE SPECIES

[ESA – other statutes.]

NOA #0014, page 1: “This plan is focused mainly on preservation and places the Endangered Species Act above other congressionally mandated acts such as the National Historic Preservation Act; the National Environmental Policy Act; the Multiple Use Act and the Organic Act. Some of the proposed guidelines are in direct conflict with these other acts.”

NOA #0201, Chapter 1, pages 11-12; also NOA #0074, Section I, pages 10 – 11 with very similar wording: The appellants assert that the ROD violates the Endangered Species Act, in that it “mandates that the entire 11 million acres of national forest be managed as though it were “critical habitat” for endangered species. . . The Forest Service must consider species conservation under ESA §7(a)(1). However, this provision creates no authority to structure the agency's entire management system to provide ecological sustainability to the derogation of its duty to provide timber use and other multiple use benefits as this FEIS does. . .”

NOA #0255, page 9: “. . .The ESA does not alter the USFS’s statutory duty to provide for multiple uses of national forest lands. . .The USFS failed in carrying out its function as the management agency and subverted the multiple-use, sustained-yield management objectives in favor of managing the entire eleven million acres affected by the FEIS and ROD as though all of it was critical habitat for listed species.”

[ESA – Timber harvest and extinction..]

NOA #0090, page 4: “. . .where is the scientific evidence that timber harvesting has caused a species to become extinct?”

[ESA – insufficient analysis.]

NOA #0145, page 3: “There is insufficient analysis in the record to support a finding that the proposed management regime will prevent jeopardy to protected species or reverse trends toward listing, particularly for amphibian species.”

NOA #0229, page 35: “We note also that there was no Biological Evaluation prepared for the SNFP FEIS or ROD. Therefore, no agency scientists have approved the provisions of the SNFP with respect to the spotted owl and fisher.”

[ESA – geographical range.]

NOA #0209, pages 6-7: “The ESA requires the Service to examine the extent of species and habitat within the species geographical range. The FEIS examines only the habitat on Forest Service system lands. More detrimental, it assumed zero habitat exists on private lands. This is obviously in error. . .”

NOA #0210, page 5: “The ESA requires the Service to examine the extent of species and habitat within the species geographical range. The FEIS examines only the habitat on Forest Service system lands. In fact, it assumed zero habitat existed on private lands. This is obviously in error.”

[ESA – consultation.]

NOA #0139, page 3: Appellants assert that “Section 7 of the Federal Endangered Species Act required the Forest Service to consult with the Fish and Wildlife Service over listed threatened and endangered species *after* it has proposed an action and prepared a biological assessment. The Forest Service failed to fully develop the proposed action with an accompanying biological opinion in the Draft EIS and submit it to the Fish and Wildlife Service for consultation. The failure to include the required Section 7 review in

the Draft EIS, including measures to ensure the proposed action would not jeopardize listed species or result in adverse modification of critical habitat, effectively precluded all other alternatives from meaningful consideration in the SNFPA FEIS ROD.”

NOA #0146, page 5; NOA #0209, page 6; NOA #0210, page 4: “The Endangered Species Act requires the agency to consult with the Fish and Wildlife Service over listed threatened and endangered species after it has proposed an action and prepared a biological assessment. The Fish and Wildlife Service is obligated to suggest reasonable and prudent measures if the Service believes the proposed action would jeopardize a listed species or result in adverse modification of critical habitat. The Forest Service failed to fully develop a proposed action with an accompanying biological assessment and submit that proposal to the Fish and Wildlife Service for consultation. . . Moreover, the Fish and Wildlife Service freely admits it applied a recovery standard to non-listed species, namely, the California spotted owl, pacific fisher, martin, Sierra Nevada red fox, wolverine, Yosemite toad, yellow-legged frog, willow flycatcher and others. The ESA requires public notices, review and comment before listing species, before designation of critical habitat and before recovery plans are finalized. Here the Service established through the negotiated ROD an assumed listing, critical habitat designation and a recovery plan without a single public review and comment.”

NOA #0165, page 2: “The Endangered Species Act was compromised. Typically, the land management agency submits a proposal to the FWS for review and comment. This process was reversed. . . many species subject to regulation in the FEIS are not even listed.”

[ESA – Applicant status.]

NOA #0165, page 2: “. . . permittees were denied applicant status.”

[ESA – terms.]

NOA #0064, pages 4-5; NOA #0076, pages 5-6; NOA #0137, page 10; NOA #0138, pages 5-6 : “The ROD did not clearly define the terms “adverse” and “disturb” as they relate to human-based activities/impacts on threatened and endangered species.” [As a result,] “the FEIS/ROD presents too great of a risk to developed and dispersed recreational activities. . .”

NOA #0171, pages 6-7 : “. . . the ROD did not clearly define the terms “adverse” and “disturb” as they relate to human-based activities/impacts on species and habitats of interest.” [As a result,] “the FEIS/ROD presents too great of a risk to developed and dispersed recreational activities. . .”

[Sensitive species - science.]

NOA #0030, page 1: “Standards developed to protect sensitive and threatened species are not backed by statistically valid scientific studies.”

NOA #0139, page 3: “Contradictory, or inconclusive, data addressing several of the identified sensitive species in the SNFPA FEIS ROD have been utilized to justify management prescriptions.”

NOA #0170, page 3: “. . . Several of the species the FEIS is purported to protect, such as the California spotted owl and Pacific fisher, are not listed as either endangered or threatened, and there is very little, if any, scientific evidence that a reduction of multiple-use management of these lands would improve their populations.”

[Sensitive Species – critical habitat.]

NOA #0170, page 3: “The FEIS would essentially cause the entire Sierra Nevada range to be treated as if it were critical habitat for a few wildlife species. . . Several of the species the FEIS is purported to protect, such as the California spotted owl and Pacific fisher, are not listed as either endangered or threatened, and there is very little, if any, scientific evidence that a reduction of multiple-use management of these lands would improve their populations.”

NOA #0204, page 6: “Most of the species which the FS claims justify the curtailment or elimination of grazing are not listed under the endangered species act, but are simply characterized as "sensitive species" by the FS. See generally EIS at Vol. 3, Part 4.4. These species include the willow flycatcher and Yosemite toad. Id. Despite the fact that these species are afforded no special legal protections, the FS elevates protection of these - animals to the degree that grazing is modified or eliminated based on the mere suspicion or allegation that harm may occur.”

NOA #0201, Chapter 1, pages 11-12; also NOA #0074, Section I, pages 10 – 11 with very similar wording: The appellants assert that the ROD violates the Endangered Species Act, in that it “mandates that the entire 11 million acres of national forest be managed as though it were "critical habitat" for endangered species. .

NOA #0255, page 9: “. . .The USFS failed in carrying out its function as the management agency and subverted the multiple-use, sustained-yield management objectives in favor of managing the entire eleven million acres affected by the FEIS and ROD as though all of it was critical habitat for listed species.”

CARNIVORES

[Carnivore – scientific basis.]

NOA #0006, NOA #0010, NOA #0011, NOA #0012, NOA #0013, NOA #0017, NOA #0018, NOA #0019, NOA #0020, and NOA #0021 (all page 1): The appellants are writing in reference to a specific recreational residence in an area which supports “according to the study, the highest population of fishers in the entire Sierra Nevada..” The appellants have used this residence for 70 years. The appellants ask “[W]here is the science that says this situation has been a detriment to the life cycle of the fisher? Is there an assumption that any human/wildlife interaction must, in and of itself, be detrimental to the wildlife?”

NOA #0014, page 2: “I strongly question the science used on creating the LOP for endangered species. In the Camp Nelson and Ponderosa area, the highest concentration of Pine Marten is found closest to these residences, not in the old growth habitat.”

NOA #0074, Section V, pages 15-24, #0146, pages 18-27: The appellants challenge the adequacy of the scientific basis for the objectives, standards and guidelines relating to conservation of the Pacific fisher, by questioning numerous aspects of the analysis.

NOA #0168, page 41: “The Regional Foresters and the Sierra Nevada Forest Plan Amendment FEIS and BE failed to discuss the report titled, “Preliminary analysis of fisher population viability in the southern Sierra Nevada”, . . . This report indicates that there is strong evidence that the fisher's population in the Sierra Nevada is declining precipitously due to habitat loss, degradation, and fragmentation, which requires the fisher's protection under the Endangered Species Act. The same evidence shows that the Forest Service is failing to provide sufficient habitat to ensure viable fisher populations, contrary to law (36 C.F.R. Section 219.19). . . This failure to analyze the latest research shows that the cumulative adverse impacts of this Sierra Nevada Forest Plan Amendment, when considered in combination with past negative impacts of past logging projects and natural occurrences in fisher habitat, indicates that the fisher viability could be adversely impacted which could lead to a trend toward federal listing. The Record of Decision for the Sierra Nevada Forest Plan Amendment, which approved the implementation of the Sierra Nevada Forest Plan Amendment, failed to discuss the controversy over the likelihood that it will have negative cumulative effects on the viability of the Pacific Fisher. . .”

NOA #0216, page 2; #0218, page 1: “Protected Activity Centers (PAC) for . . . Fisher den sites, and Marten den sites are excessive, are not scientifically based, and provide no direct or indirect scientific link between established standards and the long-term population trend of these species.”

[Carnivore – reintroduction.]

NOA #0074, volume 1, page 11; NOA #0201, chapter 1, pages 11-12: “The ESA does not specifically authorize reintroduction of species if the animals have healthy populations in other states. Establishing habitat reserves would appear to violate at least

one major provision of the MUSYA by establishing the reintroduction objective over existing multiple use objectives.”

NOA #0090, page 4: [The fisher and marten] “are not threatened or endangered species in the world, or even in the United States. We know of no legal mandate for such reintroduction into an area like the Sierra's where it will displace a very high level of existing human activity. In this case, by establishing the reintroduction of furbearers as an objective, both existing and future social and economic opportunities are precluded merely by that objective. It is difficult to believe that this is either scientifically justified or accidental.”

[Carnivore – viability.]

NOA #0168, pages 7, 33: “The Framework’s Record of Decision details treatments that could continue to degrade the habitat and negatively impact the viability of the . . . Pacific Fisher.”

NOA #0229, pages 31-33: “the Forest Service, by choosing Modified Alternative 8, and by failing to consider and choose an alternative that would have prohibited any further degradation or loss of suitable Pacific fisher habitat, violated NFMA’s requirement to maintain viable populations of all native vertebrate species, and ensure their viability. 36 CFR 219.19 (1982).”

NORTHERN GOSHAWK

[Northern Goshawk.]

NOA #0174, page 1: “We are also aware of extensive Northern Goshawk information specific to the Modoc Plateau that was not analyzed and considered prior to formulating the goshawk management strategy.”

NOA #0216, page 2; NOA #0218, page 1: “Protected Activity Centers (PAC) for . . . Northern goshawk breeding sites . . . are excessive, are not scientifically based, and provide no direct or indirect scientific link between established standards and the long-term population trend of these species.”

WILDLIFE

[Wildlife – emphasis on old growth adversely affects mule deer populations.]

NOA #0141, page 7: “The ROD/EIS has the admirable goal of maintaining old forest habitat. However, the emphasis on this particular type of habitat, without considering other factors is inappropriate. For example, Mule deer herds are the most important big game species in the Sierra Nevada Mountains. . . [and would] benefit by increasing younger seral stages of vegetation growth, increased acorn mast availability, and

providing a mix of cover and migration lanes. Modified Alternative 8 would further impact the decreasing deer herds by focusing on increasing old forest patches throughout the Forests. In focusing the management direction of the Forests so heavily toward only old-forest species, a great disservice will be done to many other Forest resident species and the public who benefit from a broader range of forest resources.”

[Wildlife – adverse effects to wildlife of limiting livestock grazing.]

NOA #0074, Section VI, page 4; NOA #201, page 83; NOA #0207, page 8: “The loss of farm and ranch land will adversely affect woodlands, savannas, and the habitats of several animal species because farms and ranches will be converted to residential and recreational uses. (FEIS, Vol. 2, Chap. 3, p. 407). These direct and cumulative impacts were not analyzed or explained in the DEIS or the FEIS.”

NOA #0161, page 5; NOA #0185, page 5: “Another analysis should have been included that speculates the overall effect of home ranches being sold and the “open” space of the foothill landscape turned into housing developments. This analysis should include, but not be limited to, effects on water, air, fish, and wildlife.”

NOA #0166, page 27; NOA #0203, page 29: “The FS also failed to adequately consider the environmental impacts of the elimination of grazing. The FS did note that elimination of ranches will have environmental impacts by increasing development and decreasing habitat. “Continuing ranch closures and conversion to other land uses, principally residential, means loss of habitat connectivity essential to the conservation of California oak, black tailed deer, foothill yellow legged frog populations, and other species. . . .As stated earlier, these ranch properties play an important role by providing open space in the Sierra Nevada Foothills.” EIS at 3-407. However, the FS failed to expand on this important impact or explain how it balanced alleged environmental benefits with the identified environmental harm.”

NOA #0204, page 9: “Because of the significant economic impacts to individuals and communities which the FS’s decision to restrict grazing will have, the elimination of ranches will have environmental impacts by increasing development and decreasing habitat. “Continuing ranch closures and conversion to other land uses, principally residential, means loss of habitat connectivity essential to the conservation of California oak, black tailed deer, foothill yellow legged frog populations, and other species. . . .As stated earlier, these ranch properties play an important role by providing open space in the Sierra Nevada Foothills.” EIS at 3-407.”

[General Wildlife – inadequate analysis of cumulative effects to wildlife.]

NOA #0168, pages 20, 25: “The Regional Foresters failed to analyze the cumulative negative impacts of allowing logging to continue for 2 years before knowing the habitat relationships and populations trends for these species, which violates the National Environmental Policy Act. ”

NOA #0168, page 41; “The Record of Decision for the Sierra Nevada Forest Plan Amendment, which approved the implementation of the Sierra Nevada Forest Plan Amendment, failed to discuss the controversy over the likelihood that it will have negative cumulative effects on the viability of the Pacific Fisher, the viability of the California Spotted Owl, and the quality of the human environment. . .”

NOA #0168, page 73: “The available evidence (including statements by Forest service fisheries biologists) clearly indicates that cumulative watershed effects have already occurred. However, the Forest Service denies this fact, pointing to the results of a confusing, scientifically unsound, and easily manipulated computer model. This so-called "analysis" has been rigged so it always indicates that more trees can be cut and more roads built in a given watershed. During the time spent creating this worthless paper trail, Forest Service staff have not collected scientifically defensible data from which the true cumulative effects of management could be evaluated.”

NOA #0168, page 124: “. . . The Forest Service will have prejudicially abused its discretion under NEPA in approving the Sierra Nevada Forest Plan Amendment, because the Sierra Nevada Forest Plan Amendment FEIS failed to adequately consider the environmental effects of the 191 mmbf of logging recommended by the FEIS, including, but not limited to, the cumulative effects, the effects on ground water, the effects on wildlife, and effects on riparian habitats and wetlands.

[General Wildlife – inadequate science.]

NOA #0168, pages 10-11: “Important issues raised by Appellants include but are not limited to: 1/ Failure to consider, by taking the “good hard look” at the latest scientific information (Sierra Nevada Science Review, SNEP, FIRE WEATHER and others); 2/ Logging to reduce canopy cover without adequately considering impacts on habitat for old growth dependent species; 3/ Failure to consider, by taking the "good hard look" at recent scientific information regarding needs of old-growth dependent species including pine martin, fisher and California spotted owl; . . . 5/ Failure to follow NEPA requirements to provide scientific data upon which to base forestwide decisions or rangewide decisions, to include specifically required information in EIS's;. . . 9/ Failure to consider the growing body of scientific research that shows logging to be harmful to the ecosystem and a major cause of increased fire danger, wildfire severity and wildfire intensity;”

NOA #0168, page 22: “Scientific research shows that the habitat for the Pacific fisher and California spotted owl is shrinking and their populations are in annual decline, making these forests fragile. Implementing potentially damaging experimentation on these fragile and sometimes arid forests should not be permitted by this plan. The Regional Foresters failed to make an informed decision based on the actual assessment of negative impacts. . .”

NOA #0168, page 33: “Failing to include the growing body of scientific research that shows logging to be harmful to the ecosystem is “selective science”, which is a violation of NEPA.”

NOA #0222, page 3: “There is no relevant science to substantiate the stringent conditions, habitat set-asides, and limited operating periods for recreation uses. The mitigation measures and requirements as specified in the management strategies and direction for the conservation strategy, land allocations, riparian conservation areas, critical aquatic refuges and the desired future conditions are not supported by scientific based information for recreation related uses, facilities and services. The ROD acknowledges the lack of understanding on the effects of recreation on wildlife.”

[Wildlife – failing to protect species by exempting timber sales from NEPA.]

NOA #0168, pages 20, 22, 25: “The Regional Foresters failed to make an informed decision based on the actual assessment of habitat relationships, population status and trends for the fisher, marten, and Sierra Nevada red fox but instead decided to permit logging to occur without this information. The Regional Foresters failed to analyze the cumulative negative impacts of allowing logging to continue for two years before knowing the habitat relationships and populations trends for these species which violates NEPA.”

NOA #0168, page 35: “Since the Framework plan amendment is not effective before it is completed, the Framework plan cannot approve the 220+ logging projects which were analyzed under the previously expired CASPO Interim Guidelines and the EA upon which it is based and which were approved prior to the completion of the Framework Plan Amendment. Even if the Regional Foresters wish to provide an uninterrupted supply of timber products to the timber industry, this is no justification for excusing these 220+ timber sales from following the required NEPA process which they have failed to do by relying on the expired CASPO EA plan amendment.”

NOA #0168, pages 37-38: “These HFQLG timber sales have failed to follow the required NEPA process because their analyses rely on the expired CASPO EA plan amendment and its Interim Guidelines. Excusing these timber sales from the Sierra Nevada Forest Plan Amendment as specified by the Framework FEIS would fail to provide the protection that the Regional Foresters purport to provide with this plan. . . Permitting these exemptions would violate NEPA.”

NOA #0168, pages 43-45: “The Framework FEIS and ROD Do Not Moot Appellant's Claims and Concern about the Sierra Nevada Forest Plan Amendment Approving Timber Sales Tiered to an Expired Plan” . . .

NOA #0229, page 34: “First and foremost these pre-existing sales are illegal sales with regard to the National Environmental Policy Act and the National Forest Management Act. The Interim Guidelines pursuant to which each of these sales was approved expired

(i.e. the circumstances and reasoning supporting the FONSI upon which the Guidelines were based ceased to be valid) before the decision notices for these approximately 220 sales were signed. During this time period no programmatic NEPA review existed which supported continuing to manage 11 national forests under the treatments prescribed/allowed by the Guidelines. Although NFMA permits the Regional Forester the discretion to grandfather in sales, it does not permit the Regional Forester to grandfather in sales which are not in and of themselves legally valid. The decision to grandfather in these sales was arbitrary, capricious an abuse of discretion and not in accordance with the law. Thus, this "decision" should be reversed.”

[Wildlife – inadequate consideration of songbirds.]

NOA #0168, page 11: “Important issues raised by Appellants include but are not limited to: . . . 4/ Failure to consider or to even mention the songbirds, some of which have already been extirpated from their home ranges in old-growth forests by past management activities;

NOA #0168, page 63: “Appellants are concerned about the Sierra Nevada Forest Plan Amendment FEIS because it fails to mention the decline in populations of certain old forest ecosystem dependent songbirds due to logging.”

NOA #0168, page 101: “The Sierra Nevada Forest Plan Amendment FEIS failed to analyze the negative impacts of the massive reduction in the multi-layered crown volume that will occur, due to the logging proposed by this amendment, which could cause a decrease in the songbird population in the logged area. . .”

[Wildlife – failure to address effects of logging on species.]

NOA #0168, page 10: “Important issues raised by Appellants include but are not limited to:. . . 2/ Logging to reduce canopy cover without adequately considering impacts on habitat for old growth dependent species,. . .”

NOA #0168, page 12: “Appellants are concerned about the statements in the Framework Decision, page 3 of 57, *“The primary objective is to conserve rare and likely important components of the landscape such as stands of mid and late seral forests with large trees, structural diversity and complexity, and moderate to high canopy cover. Thinning from below is the principal silvicultural prescription to achieve immediate objectives, but if continued indefinitely, could result in forest regeneration challenges”*. The Framework Plan clearly failed by its own analysis to provide long term protection of the forest resources.”

[Wildlife – effects of diameter retention standards on species.]

NOA #0168, page 30: The Framework plan failed to justify with any scientific research the diameter limit numbers selected for tree retention which it arbitrarily and capriciously selected.

NOA #0168, page 163: The FEIS failed to provide evidence to prove that the new standards and guidelines that would allow removing up to 20 inch diameter trees would prevent the further loss of habitat for these sensitive species.

[Wildlife – failure to disclose impacts of roads on species decline and habitat.]

NOA #0168, page 99: “Appellants are concerned that the Forest Service does not heed the growing body of evidence of species decline and habitat loss, caused largely by management actions (including roadbuilding. . .)”

GREAT GRAY OWL

[Great gray owl.]

NOA #0026, page 6; NOA #0079, page 6; NOA #0202, page 23; NOA #0234, page 1: Appellants assert that the 12” herbaceous vegetation height for great gray owl protected activity centers is not achievable in some areas.

NOA #0078, page 3; NOA #0089, page 2; NOA #0098, page 2; NOA #0124, page 2; NOA #0140, page 2; NOA #0194, page 2; NOA #0210, page 9; NOA #0213, page 2: “There is no direct or indirect scientific link between 12” grass and the long term population trend of great gray owls, yet grazing permittees will be negatively affected.”

NOA #0165, page 2: “The Standards and Guidelines set for the . . . Great Grey Owl, . . . is extremely detrimental to livestock industry. We feel that these standards are not based on sound science or judgement. In establishing these standards the Forest Service ignores the scientific literature and knowledge gained from many years of monitoring-and adaptive management.”

NOA #0192, page 2: “Where is the scientific data showing the scientific link between 12” grass and the long-term population trend of great gray owls? Activity Related Standard and Guidelines, Appendix A - page 38 states, " In meadow areas of great gray owl PACs, maintain herbaceous meadow vegetation at least 12 inches in height and covering at least 90 percent of the meadow". Some high elevation meadows, the grass species do not attain a 12" in height so no grazing would be allowed throughout the nesting season, (March 1- August 15).”

NOA #166, page 11; NOA #0203, page 8; NOA #0204, page 12 : “Regarding other species, such as the great grey owl, the FS not only provides no citation, it admits that the impacts of grazing are unknown. “It is uncertain how grazing in meadows may affect

small mammal populations and foraging habitat quality for great gray owls." EIS at 3-4.3-41. Despite this admission, the FS curtails grazing in areas occupied by the species. The FS was directly challenged by public comments that minimum stubble heights imposed for the sake of great gray owls had no scientific basis. The FS did not respond to this charge. EIS at Vol. 5; 3-245."

NOA #0212, page 2: The appellant asserts that "Great Grey Owl PACs (Appendix A, page 38). The standards and guides requiring a minimum of 12" of vegetation covering 90% of the meadow throughout the nesting season (March I to August 15) will negatively affect grazing permittees without establishing a scientific link between 12" grass and Great Grey Owl long-term population trends. Some of these meadows do not achieve 12" vegetation if left ungrazed!"

NOA #0216, page 2; NOA #0218, page 1: "Protected Activity Centers (PAC) for . . . Great gray owl nest sites. . . are excessive, are not scientifically based, and provide no direct or indirect scientific link between established standards and the long-term population trend of these species."

NOA #0220, page 2: "In regard to the Great Gray Owl, Appen. A, where is it documented that (1) the Great Gray Owl is dependent, as a species, on vegetation 12" in height and (2) that Sierra meadow habitats at elevation sustain vegetation 12" in height."

Forest Management Issues

#0074 Don Amador, et al – Sierra Nevada Resource Coalition

"This ROD and FEIS clearly change the role of the national forests in direct conflict with the MUSYA to providing for ecological sustainability." (NOA #0074, Section I. C, p. 4)

"The Organic Act mandate for a continuous supply of timber was broadened with the MUSYA. This Act broadened the multiple uses for which national forests may be managed and has directed that timber harvesting be carried out in an environmentally-responsible manner . . ." (NOA #0074, Section I. C, #2. p. 4)

The appellants contend that no mention is made of the association between insect and disease related disturbances in creating 90 percent of the fuel component. They also contend that bark beetles are the primary cause of mortality of old trees in the Sierra Nevada. They further contend that opening the forests by logging will increase edge effects and the possibility of insect epidemics and that scientific evidence was ignored. They also contend that the Forest Service has ignored its legal charge to protect the national forests from fire and depredation, (#0074 NOA, Section II-H, page 8), (#0074 NOA, Section VIII-F, page 7), (#0146 NOA, Section V-G, page 84), (#0168 NOA, pages 50, 75, 86, 87-88), (#0210 NOA, par. 2, p.2)

Appellants allege that the amendment violates NFMA by its failure to disclose ASQ; no alternative meets the non-declining yield (NDY) requirements; suitable forest lands have been changed to unsuitable forest lands based on restrictive standards without disclosing change; and it fails to calculate and disclose the long-term sustained yield capacity (#0074 NOA Section III-E-3 p. 18, Section I-G-11 p. 32, Section III-E-7 pp. 18-19, Section VIII-A p. 1, Section VIII-C pp. 1-2, Section VIII-D p. 3; #0146 NOA Section V-B pp. 80-81, Section VI pp. 86-88; #0158 NOA, section 2, p. 1; #201 NOA para. 1, p. 4, para. 4, p. 5-introduction, para. 4, p. 5, pp. 17-19, para. 6, p. 47, section 4, p. 73, para. 2, p. 74, ; #202 NOA para. 2, p. 1; #0206 NOA para. 8, p. 12, para. 2-3, p. 13, para. 4, p. 43, para. 1, p. 44; #0209 NOA para. 2, p. 1, para. 3, p. 4; #0210 NOA para 3, p. 3)

“The adoption of Modified Alternative 8 in the Record of Decision failed to utilize U.S. Forest Service information prepared for the FEIS and failed to give reasons for its omission. These data clearly indicate that preferred alternative does not provide the best short- or long-term solution for the major issues identified in the Notice of Intent, Draft EIS, and FEIS. The responsible official knew these sets or “decision elements” were available and trivialized use of this information in developing the decision. Following are the decision element data sets and analysis of each in terms of developing a preferred alternative which emphasize the “arbitrary and capricious” nature of the decision which when considering their totality constitute a clear “abuse of discretion.” (#0074 NOA, Section I-G, pp. 20-21).

“A major issue and focus of this Final Environmental Impact Statement is old growth forests and old forest conditions.” (#0074 NOA, Section III, pp. 21-22).

#0090 William Rugg

“In other words, the pressures for preparation of the SNFPA came entirely from the ‘preservationist’ community and they were exclusively focused on matters that were an interest to that community.” “The narrow focus on habitat preservation by those pressing for the study led to the high priority accorded by SNFPA to preserving old growth forests.” “The Framework has a stated objective to increase old growth forests.” (#0090 NOA, p. 5)

#0141 Jeff McPheeters – Southern California Edison Company

“While riparian zones do need protection, strict rules prohibiting tree cutting in any perennial or intermittent stream riparian areas across the whole Sierra could lead to serious safety problems with operations and maintenance associated with road crossings, hydroelectric flow lines, transmission line right-of-ways, and other essential activities.” (#0141 NOA, Section IV-B-2, p. 8)

#0119 Bob Roberts – California Ski Industry Association

“In the standard and guideline for Incidental Removal of Vegetation and Down Woody

Material, the term “incidental” is not defined. There is concern for differing interpretations of the requirement when associated with expansion under approved development plans and impacts to those plans. ” (#0119 NOA, Section II-1, p. 10)

#0146 Thomas C. Barile – Sierra Nevada Access, Multiple-Use, and Stewards Coalition, Incorporated

“The Multiple-Use Sustained yield Act also directs the Forest Service to develop and administer the renewable surface resources for sustained yield of products and services. Sustained yield is defined as “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land”. The Forest Service has acknowledged that the ROD if enacted for the long-term, would cause regeneration challenges. Further, FEIS models indicate the ROD will impair the productivity of the land in the long-term. Large trees, canopy closure, late-successional forests, and timber production will all decrease by 12 to 75 percent below Alternative 4. FEIS models indicate similar productivity among all alternatives in the first few decades followed by vast differences indicating what is done in the next few years will have tremendous influence on the productivity in future years. ” (#0146 NOA, Section I-c, p. 4), (#0209 NOA, Para.7, p. 2 and Para.1, p. 3) and (#0210 NOA, Para.7, p. 2). Other related appeals: #0201 NOA pp. 17-19, 74-76; #0202 NOA p. 2.

“The target of 40 percent of the forested acres in a late seral stage condition is never achieved under the Record of Decision, while other alternatives would exceed 50 percent late seral condition. The Forest Service must modify the ROD to accomplish the objective or select another alternative.” (#0146 NOA, Section III, p. 59)

The appellants contend that diameter limit prohibitions across the Sierra range are inconsistent with NFMA at U.S.C. 1604 Section 6(m). Appeals are #0146 NOA, Section VI, p. 87, #0202 NOA, Para 7, pp. 2-3, #0209 NOA, Para.3, p. 3 and #0210 NOA, Para.9, p. 2

#0151 Susan Christensen – Lassen County Chamber of Commerce

“The Multiple-Use, Sustained-Yield Act of 1960 declares the purposes of the national forests includes timber and directs the Secretary of Agriculture to administer national forests as a renewable surface resource for multiple-use and sustained-yield. Multiple-use does not exclude timber production. In contradiction, the Record of Decision and Final Environmental Impact Statement describe the role of the national forests is now to provide for ecological sustainability. ” (NOA #0151, p. 1)

#0158 Robert E. Grey
#0159 Ken and Jessica Waters
#0160 Susan Waters
#0163 Ralph T. Gold

“The elimination of timber harvesting from the majority of national forest land acreage constitutes a major action that was not adequately addressed in the Draft Environmental Impact Statement or Final Environmental Impact Statement.” (#0158 et al. NOA, Section 2, p. 1)

“The issue of cutting trees was not addressed in the entire process.” (#0158 et al NOA, Section 2, p. 1)

#0168 Ara Marderosian – Sequoia Forest Alliance, Tule River Conservancy, Kerncrest Audubon Society, Carla Cloer, and Ronald and Carol Wermuth

“Even though the Framework arbitrarily selects 20 inch diameter as the size of trees in spotted owl and Pacific fisher habitats below which can be logged, the Framework denies responsibility for any site-specific damage caused by the logging method by which the objectives should be carried out.” (#0168 NOA, p. 3)

“The Record of Decision will supposedly protect the forest by removing any tree of any diameter, including those larger than 30 inches, without concern for habitat needs because of so-called health and safety reasons, regardless of the negative cumulative impact on the habitat and species viability. Removing tree trunks from the ecosystem would remove potential habitat for the species and nutrients for the soil.” (#0168 NOA, pp. 8-9)

“Failure to adequately evaluate the plan for compliance with the Region 5, May 1, 1998 Memo to Supervisors regarding the clarification of guidelines to improve conservation options for key resources including Old Forests and Old Forest associated species, Riparian and Aquatic Ecosystems.” (#0168 NOA, p. 10)

“The Framework arbitrarily selected distances from structures in which to apply logging. The growing body of scientific research shows logging to be harmful to the environment and a poor choice of treatments for use for managing the forest fuels and forest fire protection problem. Logging of any kind is a major cause of the loss of habitat, decline of species, and the increase in wildfire intensity and severity. A non-removal treatment method that would not damage the habitat should be considered.” (#0168 NOA, p. 16)

“The Framework fails to consider the impacts of logging the volumes of trees specified in the Final Environmental Impact Statement in the watersheds where it permits logging to occur throughout the forests. Instead, the plan leaves this analysis up to the site-specific logging projects and the 5-year monitoring plan to determine the negative impacts on the habitats and species. The Forest Service fails to consider the cumulative impacts on the environment the plan could cause in the 5-year period while a monitoring system is developed.” (#0168 NOA, p. 19)

“Failure to include the growing body of scientific research that shows logging to be harmful to the ecosystem is selective science, which is a violation of the National

Environmental Policy Act. ” (#0168 NOA, p. 33)

“Appellants believe that the agency claims that trees are called “hazard trees, “ especially when they exceed 30-inches in diameter, as an excuse to log large trees out of the forest. Such trees provide a valuable habitat resource. They could be artfully topped or have the dead branches and tops removed and left in the forest rather than be logged. Removing hazard trees from roads and trails could create 300-foot wide trails and unattractive 300-foot wide roadways. ” (#0168 NOA, p. 49)

“Opening the forest by logging will increase the edge effects, which will increase the possibility of an insect epidemic by making more trees susceptible to insect attack. ” (#0168 NOA, p. 50)

“Logging will increase the risk of a bark beetle epidemic. ” (#0168 NOA, p. 50)

“The Final Environmental Impact Statement ignored the growing body of scientific research that shows that logging and heavy equipment use are the major cause of loss of habitat, decline of wildlife species populations, and increases in wildfire intensity and severity in forest ecosystems. Appellants proposed an alternative to logging that would use cutting (limbing) and chipping of the brush and lower branches of ladder fuel trees, followed by scattering of the chips, which included no logging. This alternative was not even mentioned in the Final Environmental Impact Statement. Every alternative proposed in the Final Environmental Impact Statement is a logging alternative. ” (#0168 NOA, p. 56)

“Because a logging alternative was selected, preserving and protecting the forest ecosystem cannot be achieved and no amount of mitigation can prevent further losses of habitat, decline of species, and the increase in wildfire intensity and severity that will be caused by logging.” (#0168 NOA, p. 74)

“Logging increases the risk of habitat losses due to wildfire and increases the actual habitat losses due to logging. The agency should learn from the history of documented evidence that shows logging caused losses of forest characteristics and forest habitat, and the loss of viability of species that inhabit the forest. ” (#0168 NOA, p. 74)

“The Final Environmental Impact Statement specifies logging even though logging has been shown to be harmful to the forest health by removing habitat and nutrients from the forest and does not reduce the risk of catastrophic fires. ” (#0168 NOA, p. 74)

“The Final Environmental Impact Statement should specify that logging, either before or after natural disturbances, is prohibited except in the most extreme circumstances. ” (#0168 NOA, p. 74)

“Timber harvest may increase greatly the activity of insects in an area. Stand structure, composition, canopy cover, amount of opening, and amount of edge can directly affect (increase) insect populations. ” (#0168 NOA, p. 75)

“Removal of understory would harm characteristics of the old forest structure and the essential habitat for many forest species. Logging understory trees would degrade late successional conditions with soil compaction and a reduced multi-layered canopy structure that are required by the songbirds, spotted owls, Pacific fishers, and American martens. Logging will fail to enhance the late successional conditions.” (#0168 NOA, p. 78)

“Removal of hazard trees from the habitat, rather than downing the trees and leaving them as down logs in the forest, would decrease wildlife nesting sources and soil nutrient sources. Removing these trees from the forest will constitute the opposite of the ecological restoration criteria of immediately stopping activities that have the greatest likelihood of degrading desirable characteristics and restoring an area to historic ecological conditions. Public safety issue trees could be felled, branches removed, and the trunk left on the ground to further the transition to a natural forest with benefits of habitat, carbon sequestration, oxygen production, soil retention, visual quality, and beauty.” (#0168 NOA, pp. 78-79)

“The Final Environmental Impact Statement and Record of Decision failed to provide statistical evidence of the occurrences of injuries or deaths to the visiting public from trees, and failed to provide comparative statistical evidence of the occurrences of injuries or deaths to loggers who would remove these trees to prove that loggers do not statistically sustain more injuries by removing these trees than would the visiting public if the trees remained in the forest, in violation of the National Environmental Policy Act. Freedom of Information Act requests for such information have produced no evidence to date, which leads appellants to believe that these claims by the agency are unsupported.” (#0168 NOA, p. 80)

“Logging in the riparian and aquatic habitat increases erosion and sedimentation effects on streams and rivers and causes harm to the aquatic insects and therefore to the health of the stream.” (#0168 NOA, p. 81)

“The conclusions drawn in the Final Environmental Impact Statement and Record of Decision about the benefits of logging ignore the scientific evidence of J. Roland in *“End of the Road: The Adverse Ecological Impacts of Roads and Logging – A Compilation of Independently Reviewed Research, Chapter 3 – Promotion of Insect Infestation,”* in which Roland determined and concluded that forest fragmentation from human activity exacerbates insect pest outbreaks. His major findings are:

- Logging will have the effect of reducing canopy cover in the stands, reducing canopy layering and vertical diversity, and reducing the potential for snag and down log recruitment in all size and age classes.
- Logging will have the effect of serving as a mechanism to promote insect outbreak
- Logging will reduce resilience to insect outbreak” (#0168 NOA, p. 86)

“The agency should make new species surveys prior to any action taken to prevent any

species from becoming extinct and to evaluate the effects and impacts of any logging on each specific species of wildlife, birds, small mammals, fur-bearers, herpetofauna, amphibians, aquatic invertebrates, and all varieties of vegetation in the forest that could be impacted by logging proposals ” (#0168 NOA, p. 96)

“The agency must evaluate the inventories of the project-specific sites, monitor for soil richness, watershed sedimentation, wildlife species concentrations and quality, and specify current biodiversity before any logging ” (#0168 NOA, p. 96)

“The Final Environmental Impact Statement recommends logging for fuel reduction, forest health, or hazard tree removal, which ignores the fact that timber harvest causes erosion and silting which are direct causes of the loss of watershed habitat and decline in aquatic invertebrates, which are in the food chain of frogs and toads. Logging causes these watershed losses. The Forest Service would have to regularly monitor the habitats for aquatic invertebrates in order to document the damage done to these indicator species by logging in the national forests. ” (#0168 NOA, p. 112)

“In the case of specific, unique species, such as the *Sequoiadendron* (big tree or giant sequoia) and *Sequoiadendron* groves in the Sequoia National Forest, there should be species-specific planning through the National Environmental Policy Act process. ” (#0168 NOA, para. 3, p. 116)

“Approval of the decision violates 40 CFR 1502.25(a) because it permits more logging to occur in the national forests. The amendment approves 191 million board feet of logging to take place while claiming it did not have to analyze the cumulative effects of these separate, site-specific logging proposals, which is in effect breaking the logging down into small component parts. The Forest Service has prejudicially abused its discretion under the National Environmental Policy Act in approving the Framework amendment because it failed to adequately consider the environmental effects of the 191 million board feet of logging, including but not limited to, cumulative effects, effects on ground water, effects on wildlife, and effects on riparian habitats and wetlands. ” (#0168 NOA, p. 124)

The appellant contends that the lawsuit pending before the United States District Court for the District of Vermont regarding enjoining timber sales is a controversy related to the proposed action that must be included in the environmental impact statement. (#0168 NOA, pp. 128-129)

“The negative socioeconomic impacts of logging specified by the decision must be considered and analyzed. These include:

- Logging removes trees and their canopy cover causing sunlight to reach the forest floor, brush to grow, increases in fire hazard.
- Logging and prescribed burns reduce the carbon sequestration value of the forest, cause an increase carbon dioxide in the atmosphere, and increase global warming impacts.

- If the low-priced fiber from Treasury-subsidized logging in the national forests did not suppress competition, alternative fibers from agricultural crops such as rice and sugar could be recycled to make paper.
- Logging reduces the economic values of the unlogged forest.
- Logging increases the loss of forest acres that can be used by society for recreation, aesthetic pleasures, natural beauty experiences, wilderness experience, solitude, and serenity.
- Logging causes the temperature of the forest to increase, which removes the cooling forest event from the human experience
- Logging to increase growth of the residual trees causes the remaining trees to produce softer wood because growth rings are farther apart which gives products made from this wood less strength and durability.
- Logging trucks and tractors compact soils and reduce opportunities for society to experience a natural forest because natural growth is unlikely to take place in the forest in the future.
- Logging increases external costs to society when the Federal Treasury pays for the costs of developing timber sales that do not pay for themselves causes sediment to fill reservoirs and dams, and cause increased wildfire intensity and severity.
- Logging increases highway safety hazards for the traveling public, increases public safety and environmental hazards, and increases the need for use of herbicides, pesticides, and poisons to assist seedling survival.
- Logging trucks, tractors, and bulldozers introduce non-native grasses into the forests, thereby ruining the forest experience for the visiting public.” (#0168 NOA, pp. 133-134)

“There is a growing body of scientific evidence that confirms the negative impacts from logging and refutes the science used by the agency as justification for logging. The agency must develop an environmental impact statement to analyze this controversy. ” (#0168 NOA, p. 134)

“The canopy cover removed by logging is required by some songbirds, spotted owls, goshawks, American martens, and Pacific fishers whose populations are in annual decline and whose habitat is shrinking because of a century of logging. ” (#0168 NOA, pp. 139-140)

“The decision to specify logging as the solution to excess fuels in the forest would further damage an already damaged ecosystem, would further stress declining species populations, and would be harmful to the environment. ” (#0168 NOA, p. 143)

“The Final Environmental Impact Statement and Record of Decision failed to assign adequate habitat values to retaining the tree trunks and tree canopy so they remain in the forest with benefits of habitat, carbon sequestration, oxygen production, soil retention, visual quality, and beauty. ” (#0168 NOA, p. 145)

“The Final Environmental Impact Statement justified limiting its analysis to alternatives

using only logging or logging and prescribed burning without mentioning or considering the growing body of scientific research that shows logging to be harmful to the ecosystem. This action could be considered “selective science” in violation of the National Environmental Policy Act and the National Forest Management Act.” (#0168 NOA, p. 147)

“The Final Environmental Impact Statement failed to provide scientific evidence or used selective science by ignoring scientific research that contradicted the conclusions that the Regional Foresters wanted to draw and decision that the Regional Foresters wanted to make to prove the need for continued logging in the face of the growing body of scientific research that shows logging to be harmful to the ecosystem and that logging is a major cause of increased fire danger, wildfire severity, and wildfire intensity, and that shows that there are irreversible and irretrievable commitments of resources caused by logging.” (#0168 NOA, p. 162)

“The Final Environmental Impact Statement failed to consider in the cost benefits analysis for the logging proposed by the Record of Decision, including the value of standing timber, the loss of carbon sequestration value, the increased global warming impacts, the loss of recreation value, or other aesthetic or socioeconomic impacts or losses, and the value of the loss of forest acres that can be used by society for recreation.” (#0168 NOA, #13, p. 165)

“The Final Environmental Impact Statement failed to consider, by taking the good hard look at the latest scientific information, the growing body of scientific research that shows logging to be harmful to the ecosystem and that logging is a major cause of increased fire danger, wildfire severity, and wildfire intensity.” (#0168 NOA, #10, p. 165)

#0170 Brian Rueger – Southern San Joaquin Chapter of the Northern California Society of American Foresters

“A major focus of the FEIS is “old forest emphasis areas”. The idea of large forest reserves where little or no management is allowed appears to be based more on politics than science. A healthy, natural forest ecosystem consists of a mosaic of various forest types and individual trees sizes and age classes that change over time. If old forest conditions are truly desired, they can be produced and maintained through careful, scientific forest management practices much more effectively than by eliminating management or limiting it to thinning from below and using prescribed fire. The extensive application of thinning from below to diameter limits as the primary silvicultural prescription is a flawed strategy that will create long term problems with overstocking in co-dominant and dominant trees, will skew forest succession to shade tolerant species, will not materially improve stand vigor, and will not accelerate the development of old forest characteristics. This stopgap approach will require more stand disturbing reentries over time. The long term effects of this management approach on old forests was not adequately addressed in the FEIS.” (#170 NOA, p. 4)

#0201 Rose Comstock – The Northern Sierra Natural Resource Coalition

“The Forest Service does not have the discretion to change law – the Forest Service lacks administrative discretion to adopt ecological sustainability as a new management standard. This is a major premise of this FEIS. Historic uses, especially timber production, are wrongly subordinated to the mantra of ecological sustainability.” (NOA #0201, Chap. 1, #4., p. 4)

“The preamble to the proposed regulations used to develop this FEIS cites the NFMA as one source for the alleged statutory direction to provide for ecological sustainability in the management of the national forests. Yet, the NFMA does not purport to alter the MUSYA’s directive that timber production is one of the two primary multiple-uses. While the preamble also cites the MUSYA and the Organic Administration Act of 1897, it fails to come to grips with the clear objective in these laws that the productivity of the land be maintained for the utilitarian purpose of providing a continuous supply of forest products, not for the FEIS’ primary purpose of creating ecological preserves” (NOA #0201, Chap. 1. #7., p. 19)

“Defining sustainability in terms of pre-European variability in the Final Environmental Impact Statement for the Sierra Nevada ecosystems is not supported by the text of the 1897 Organic Act, the Multiple-Use, Sustained-Yield Act, or the National Forest Management Act. These statutes contemplate timber and other economic uses up to a point of substantial and permanent impairment of the productivity of the land.” (#0201 NOA, Chapter 1 Section 10, p. 20)

“The adoption of Modified Alternative 8 in the Record of Decision failed to utilize U.S. Forest Service information prepared for the FEIS and failed to give reasons for its omission. These data clearly indicate that preferred alternative does not provide the best short- or long-term solution for the major issues identified in the Notice of Intent, Draft EIS, and FEIS. The responsible official knew these sets or “decision elements” were available and trivialized use of this information in developing the decision. Following are the decision element data sets and analysis of each in terms of developing a preferred alternative which emphasize the “arbitrary and capricious” nature of the decision which when considering their totality constitute a clear “abuse of discretion.” (#0201 NOA, Chapter 2, p. 23).

“One of the five issues [analyzed in the Final Environmental Impact Statement] centered on the need to emphasize old forest and late successional old growth conditions across the Sierra Nevada range. There is debate about the amount and distribution of old forest conditions. Bonnicksen contains strong rationale for substantially less old forest conditions than those espoused by the Forest Service. The preferred alternative does not provide the best solution to old forest conditions across the Sierra Nevada. The preferred alternative will sustain a level of around 2.8 million acres of late successional old growth conditions. This level does not reach the Forest Service desired level of 3.5 million acres.

Alternatives 3 and 4 produce around 3.6 million acres. According to this criterion, four alternatives produce a better solution than the preferred alternative.” (#0201 NOA, Chapter 1, Section 1, p. 23-24)

“A major issue and focus of this Final Environmental Impact Statement is old growth forests and old forest conditions. The Final Environmental Impact Statement has a narrow focus on old growth and completely omits concepts from noted authors such as Dr. Tom Bonnicksen. ” (#0201 NOA, Chapter 2, Section 6, p. 50)

“One of the five major problem areas covered in the Final Environmental Impact Statement is the protection of old growth forests. Protection translates into substantial expansion for the purposes of providing more habitats for the spotted owl, furbearers, and other old growth dependent species. Yet, old growth forests are among the highest risks of catastrophic fires and attack by various insects and disease. The preeminence given old growth over multiple-use values under the ambit of ecological sustainability is improper. Old growth viability is a goal within the overall multiple-use objective and should not be a constraint that rules out or seriously compromises other multiple-uses.” (#0201 NOA, Chapter 2, p. 50-51)

Appellants allege that the SNF decision does not allow full implementation of management activities, such as group selection and individual tree selection, as required by the HFQLG Forest Recovery Act and QLG ROD and FEIS; 2) the SNF does not allow for continuation of QLG pilot project after 5 years; and 3) effectiveness of QLG pilot cannot be evaluated without full implementation of the pilot during the 5 year period (#0201 NOA, Chapter 2, Section 6-7, p. 52; #0202 NOA, Para.4, p. 6; #0209 NOA, Para.5, p. 7 and Para.1, p. 8; #0210 NOA, Para.7, p. 5)

“Defining sustainability in terms of the “pre-European” variability in this FEIS for the Sierra Nevada ecosystems is not supported by the text of the 1897 Organic Act, MUSYA, or the NFMA, and was not a part of the initial NFMA regulations . . .” (NOA #0201, Chapter 4, #10, p. 76)

“The FS’s decision to shift its fundamental paradigm from multiple use and sustained yield to ecological sustainability is especially apparent when juxtaposed with the abandoned “no-action” alternative . . .” (NOA #0203, Section 6, #6, p. 4)

#0206 Quincy Library Group et al.

“Protecting and increasing Old Growth forests. Violations: NFMA 219.1(a) and 219.4(a)(2) Maximize net public benefits; 19.1(b)(13) Sensitive to economic efficiency; 219.27(a)(12) Maintain air quality; NEPA 1500.1(b) Information must be of high quality; 1500.2(f) Quality of human environment; 1502.24 Insure professional integrity; APA Section 706(2)(A) Arbitrary and capricious. In direct contradiction to its statements of purpose and desired future condition, the Decision would result in significantly less density of old trees and continuity and distribution of old forests across the landscape

than would be provided by one or more of the alternatives rejected. The FEIS and the planning record themselves include three graphs that provide evidence that other alternatives would be significantly better in protecting old trees and sustaining late-successional characteristics: “Projected number of large trees” [Appeal Appendix B, pg 61; “Projected number of very large trees greater than 50 inches in diameter” Figure 3. lh, FEIS Vo12, Ch 3, pg 89, and Appeal Appendix B, pg 71; and “Projected late seral stage forest acres” figure 3.1 i, FEIS Vol2, Ch 3, pg 90, and Appeal Appendix B, pg 41.” (#0206 NOA, pp. 21-22)

“In four pages of Chapter 2’s “Alternative Development, Including Key Strategies Used in the Alternatives,” there are 48 citations in the discussion entitled “Old Forest Ecosystems and Associated Species Strategies.” Of the 48, 32 were either not listed in the References section (FEIS Vol.1), or were ambiguous as to which of two or more entries, were intended to be cited... Of the 48 citations, only 13 were clearly and correctly cited according to professional publication standards.” (#0206 NOA, Para 4, p. 29)

“Achieving safe crown bulk densities in treated stands must be an important consideration in any viable fuel reduction strategy; however the FEIS attempt to deal with CBD is insufficient and misleading for at least two reasons: (1) There is no reliable method for determining CBD with reasonable accuracy in the field. It cannot even be "estimated," as required by Tables 1.C.1 and 1.C.2 of the ROD, by any method described or referenced in the FEIS or ROD. The only method that might give a reasonable approximation would be to employ tables that have been developed on the basis of limited experiments. Unfortunately such tables have not been refined or verified to the point where they could be employed in the field, even for "estimates" of crown bulk density. (2) In any case, the methods of thinning and the limits imposed on them by the Standards and Guidelines would not usually permit thinning to the degree required to meet the specified CBDs.” (#0206 NOA, Para. 6 & 7, p. 41 and Para. 1, p. 42). Other appellants made the same contention (#0074 NOA, p. 9), (#0047 NOA, p. 1), (#0090 NOA, pp. 2-3), (#0168 NOA, p. 41) and (#0172 NOA, p. 4).

#0209 John B. Hofmann – Regional Council of Rural Counties

“By Forest Service analyses, the Record of Decision fails to achieve the target of one very large tree per acre on the Lassen, Sequoia, Modoc and the Humboldt-Toiyabe National Forests. On a regional basis, an average of two trees per acre is achieved two decades later than would be obtained under other alternatives. The target of 40% of the forested acres in a late seral stage condition is never achieved under the Record of Decision while other alternatives would exceed 50% late seral condition (Vol. 2 Chapter 3, pg. 85-90).” (#0209 NOA, Para.7, p. 10) (#0210 NOA, Para.5, p. 6)

#0210 Terry Easley – Tuolumne County Alliance for Resources and Environment

“NFMA calls for site-specific environmental documentation to be completed for any forest management activity. This includes local participation throughout the scoping process, alternative development and Finding of No Significant Impact (FONSI). If SNFPA is implemented as written, it would ignore the requirement of the local involvement in the NEPA process. This is in direct violation of NEPA.” (#0210 NOA, Para.7, p. 3)

#0229 John Talberth – Forest Conservation Council, Chad Hanson & Rachel Fazio- John Muir Project, Bryan Bird – National Forest Protection Alliance

“Setting aside for the moment the ludicrous assumption that proposing diameter limits on tree harvest is all that is necessary for maintaining complex old growth ecosystems, this conclusion fails to be supported by any comprehensive analysis of the status and trends of old growth forests on all ownerships throughout the Sierra region. Instead, it is merely asserted as fact.” (#0229 NOA, Para. 2, p. 28)

“In preparing plan amendments affecting timber production, and the timber sale program as a whole, the Forest Service must also be conscious of its role as a "catalyst" for promoting conservation of forests and use of recycled materials, and not plan individual timber sales, plan amendments or the timber sale program as a whole in a manner that promotes use of virgin materials over recycled products.” (#0229 NOA, Para. 4, p. 36)

“The RPA states clearly that: "recycled timber product materials are as much a part of our renewable forest resources as are the trees from which they originally came, and in order to extend our timber and timber fiber resources and reduce pressures for timber production from Federal lands, the Forest Service should expand its research in the use of recycled and waste timber product materials, develop techniques for the substitution of these secondary materials for primary materials, and promote and encourage the use of recycled timber product materials" [16 U.S.C. 1600 (7)].” (#0229 NOA, Para. 5, p. 36)

“By Contributing to a Vast Global Waste of Wood Products, the Forest Service has Failed to Meet Substantive Obligations to Conserve Forests and Promote Use of Recycled Materials.” (#0229 NOA, Para. 3, p. 36)

#0255 Bill Pauli, California Farm Bureau Federation

“NEPA requires a mitigation plan when a project’s direct and cumulative effects will have significant impacts on grazing and timber production. In the case of the Framework, none of the mitigation measures were adopted in any sort of mitigation plan to address grazing and timber production. The USFS did not properly consider the direct and indirect consequences of their actions.” (#0255 NOA, Para. 3 & 5, p. 4 and Para. 1. p. 5)

Planning and Procedural Issues

#s 0026, 0078, 0079, 0089, 0098, 0124, 0140, 0192, 0194, 0213

“The USFS and USFWS negotiated mod 8 without proper public notice and public input thereby violating NEPA.” (#0078 NOA, page4)

“National Environmental Policy Act - This act calls for site-specific environmental documentation to be completed for any Forest Management activity. This includes local participation throughout the scoping process, alternative development and Finding of No Significant Impact (FONSI). If the Sierra Nevada Forest Plan Amendment is implemented as written, it would ignore the requirement of the local NEPA process. This is in direct violation of NEPA.” (#0026 NOA, page7), (#0078 NOA, page3), (#0089 NOA, page3), (#0098 NOA, page3), (#0124 NOA, page2), (#0140 NOA, page3), (#0192 NOA, page3), (#0194 NOA, page3), (#0213 NOA, page3)

“The Sierra Nevada Forest Plan Amendment does not direct sustainable use of the forest resources. Instead, it takes a preservationist approach in a non-use system of forest resources. This does not provide goods and services for the American people and specifically to local economies of the Sierra Nevada. This is in direct violation of the Multiple Use and Sustained Yield Act which directs us to use our natural resources.” (#0026 NOA, page7), (#0078 NOA, page3), (#0089 NOA, page3), (#0098 NOA, page3), (#0124 NOA, page3), (#0140 NOA, page3), (#0192 NOA, page3), (#0194 NOA, page3), (#0213 NOA, page3)

#0014

“This plan is focused mainly *on preservation* and places the Endangered Species Act above other congressionally mandated acts such as the National Historic Preservation Act; the National Environmental Policy Act; the Multiple Use Act and the Organic Act. Some of the proposed guidelines are in direct conflict with these other acts.” (#0014 NOA, page1)

#0028

“It has been publicly reported that the Regional Forester Brad Powell was informed after the public comment period had ended that all alternatives presented in the Draft EIS would have provoked the Fish and Wildlife Service to render a jeopardy opinion for currently listed species and cause a trend toward listing of proposed species. Thus, as structured the Draft EIS was faulty and not in compliance with law. The public did not have the benefit of legally adequate alternatives to analyze and comment on. Furthermore, the Forest Service and the Fish and Wildlife Service negotiated the final decision with standards and guidelines that became legally sufficient. Contrary to law, the Regional Forester was limited to only one choice for the Record of Decision. This is not

valid by law or reason. The Forest Service, the Fish and Wildlife Service, or the Department of Agriculture as a whole did not follow NEPA. The public did not get the opportunity to review and comment on valid alternatives. This was not right.” (#0028 NOA, page1)

“The ROD is contrary to the National Policy Considerations as stipulated in the 1990 RPA program, specifically three of the four major themes that were adopted for Forest Service multiple-use management. . .” (#0028 NOA, page2)

#0030

“The Forest Service abdicated its National Environmental Policy Act (NEPA) authority by relying on the Fish and Wildlife Service to certify that specific environmental needs were met. In his decision to choose Modified Alternative 8, the Regional Forester did not balance economic and technical benefits against the environmental cost.” (#0030 NOA, page1)

“The Calaveras County Board of Supervisors believes the preferred alternative, Modified Alternative 8, fails to accomplish the *purpose and need* established in the Environmental Impact Statement.” (#0030 NOA, page1)

“The alternative selected in the Record of Decision was not included in the Draft Environmental Impact Statement and, therefore, was not subject to public review or comment prior to the Regional Forester’s decision.” (#0030 NOA, page1)

#0064, 0076, 0137, 0138, 0171

“Since this process started in early 1999, our members have clearly stated that the FEIS should have included the topic of "recreation" as one of the five issues areas.” (#0064 NOA, page1), (#0076 NOA, page1), (#0137 NOA, page2), (#0138 NOA, page2), (#0171 NOA, page2),

“The willful omission of the recreation issue is reason alone for the recreational public to ask the agency to withdraw the current document and start a process that includes the topic of recreation.” (#0076 NOA, page2), (#0137 NOA, page3), (#0138 NOA, page2) (#0171 NOA, page2)

“The FEIS certainly represents a substantial effort by the Forest Service and other stakeholders including CORVA. However, I must agree with other California government agencies (e.g. Mariposa County Board of Supervisors, Calaveras County Board of Supervisors, the Town of Mammoth Lakes, etc.) that the "fast-tracking" of the FEIS process was far too compressed and unclear to allow for meaningful public participation.” (#0064 NOA, PAGE2), (#0076 NOA, page1), (#0138 NOA, page1),

#0074

“The Record of Decision (ROD) and Final Environmental Impact Statement (FEIS) fails to clearly describe the dramatic changes in how the national forests management under their new and erroneous interpretation of appropriate legal authorities governing the management of the national forests.” (#0074 NOA, I., page1)

“The FEIS dramatically moves management of the National Forest System from the congressionally mandated requirements of multiple use-sustained yield to a concept of no management, no use and consequently no sustainability. . . the FEIS reflect a style of national forest management that Congress and the courts have repeatedly rejected.” (#0074 NOA, I., page1)

Appellant claims that the response to many laws cited during the process (PL 88-657, Architectural Barriers Act of 1965, Section 504 of the Rehabilitation Act of 1973, California Desert Protection Act of 1994, Endangered American Wilderness Act, National Historic Preservation Act, California Wilderness Act of 1984, USDA Department Regulations 5600-2, Environmental Justice, Forest and Rangeland Renewable Resource Planning Act, Taylor Grazing Act, Global Climate Change Prevention Act, Federal Land Policy and Management Act, Regulatory Flexibility Act, Outdoor Recreation Act plus other specific laws) were given “superfluous” responses rather than taking a “hard look”. (#0074 NOA, I., page2)

“The Forest Service fails to adequately address as required by the Supreme Court’s interpretation of NEPA requirements to take a “hard look” in this case, the fundamental “protection and maintenance” requirements established by the Organic Act.” (#0074 NOA, I., page3)

Appellant concerned about the “superfluous” responses to comments about the Organic Act. (#0074 NOA, I., page3)

Regarding the Multiple Use sustained Yield Act; “This ROD and FEIS clearly change the role of the national forests in direct conflict with the MUSYA to providing for ecological and ecosystem sustainability. . . the Forest Service lacks administrative discretion to adopt ecological sustainability as a new management standard. This is a major premise of this FEIS. Historic uses, especially timber production, recreation, mining and grazing, are subordinated to the mantra of ecological sustainability.” (#0074 NOA, I., page4)

Appellant contends that “The FEIS focuses on vague concepts of “ecological sustainability” and “restore and maintain” which do not have a specific scientific or legal basis for their use. . .” (#0074 NOA, I., page5)

“The FEIS, by subordinating timber production to wildlife habitat and other ecosystem purposes that are not even mentioned in MUSYA, unlawfully attempt to reverse the legislative priorities set in 16 U.S.C. 475 and 528. (#0074 NOA, I., page5)

Appellant claims that “the FEIS, Standards and Guidelines (S&Gs) and ROD all point to the fact they are based upon concepts developed for the new planning regulations which

largely ignore multiple use and sustained yield principles.” They go on to further state that the ROD and FEIS are unlawful and they should state that “multiple use” and “sustained yield” should be the guiding principles as per 36 C.F.R. 219.3. (#0074 NOA, I., pp 5-6)

Appellant contends that the FEIS and ROD violate NEPA (40 CFR parts 1500-1508). Specifically quotes 1500.1(b) and claims “This FEIS does not contain an “accurate scientific analysis”. . .” (#0074 NOA, I., page12)

“The test of “concentrating” on significant “issues” for the Sierra Nevada FEIS also fails. Public comments addressing the Notice of Intent (NOI) clearly indicate that social, economic, recreation, water, and other resource use issues were much more significant than the Forest Service’s issues of noxious weeds and hardwood forest conditions. Failure to address these issues violate the spirit of § 1500.2(b):” Appellant claims that since these other resources were “ignored” the range of alternatives is meaningless. (#0074 NOA, I., page12)

“The FEIS fails to develop issues based on § 1500.4 (c) (g), 5 1500.5 (d) and 5 1501.7 (a) (2&3). These sections of the CEQ Guidelines clearly require careful selection of the issues. Further, they require public collaboration on developing real issues during the scoping process, not before (see 1501.7)! The five issues in this FEIS were developed before issuing the NOI and before the scoping process was completed.” (#0074 NOA, I., page13)

Sec 1500.1 (b) “In violation of these provisions, important information was not made available before the decision was made, and an attempt was made to implement NEPA without sufficient assurance of accurate scientific analysis, appropriate attention to expert intra-agency and inter-agency comments, and the disclosure of these analyses and comments to the public.” (#0074 NOA, I., page13)

Sec 1500.2(b). “This FEIS is anything but concise, it is very often unclear and badly written, it often evades the point, and it does not provide evidence that all necessary analyses were actually made.” (#0074 NOA, I., ppage13-14)

Sec 1502.7. “This FEIS is several times longer than the intended limit for unusual scope and complexity. This is one effect of violating the NFMA requirement that Forest Plan amendments must be handled at the Forest level by Forest Supervisors, not at the Regional level by Regional Foresters.” (#0074 NOA, I., page14)

Sec 1502.8. “This FEIS and ROD very often fail to present relevant information in any clear format, and too often provide text and one or more graphic presentations of the same or related information that are in apparent conflict, without providing any information by which the reader can resolve the conflict.” (#0074 NOA, I., page14)

“Sec 219.1(b)(10). “Use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management...”

“The ROD is not supported by systematic and interdisciplinary coordination and integration, and it would result in “few issue” management, not multiple use management.” (#0074 NOA, I., page18)

“Public comments to the DEIS were very specific about violations of the NFMA. They were offered as part of the public’s concern over misguided management of the national forests without full consideration of this important legal requirement.” Appellant gives an example and concludes: “Rather than taking a “hard look” at these and other specific comments, the U.S. Forest Service choose to answer with a superficial response. This is another example of the lack of taking a serious hard look at the public comments concerning the insufficient discussions on the legal basis for this decision.” (#0074 NOA, I., pp. 19-20)

“The Administrative Procedures Act (APA) requires that an agency action be set aside if it is “arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706 (2) (A). The adoption of Modified Alternative 8 in the Record of Decision failed to utilize significant U.S. Forest Service information prepared for the FEIS and failed to give reasons for its omission. These data clearly indicate that preferred alternative does not provide the best short- or long-term solution for the major issues identified in the Notice of Intent, Draft EIS, and FEB. The responsible official knew these sets or “decision elements” were available and trivialized use of this information in developing his decision.” Appellant submits information on the following issues to demonstrate the assertion:

1. Old forest or Late Succession Old Growth (LSOG) forest conditions.
 2. Companion to producing LSOG conditions is production of “lame trees.”
 3. If you concentrate on only the very largest of trees (>50”), will that change the answer or solution as to which alternative provides the best solution?
 4. Old growth wildlife habitat.
 5. California Spotted Owl nesting habitat.
 6. Snags.
 7. Canopy cover.
 8. Wildfires.
 9. Large trees killed or removed.
 10. Cumulative Watershed Impacts.
 11. Timber Harvest.
 11. Biomass. (Number 11 used twice by appellant.)
 12. Westside Hardwoods.
 13. Economic Factors.
 14. Comparing All Decision Criteria.
 15. Conclusion. “. . . These data provide a case study to help define the true meaning of “arbitrary and capricious” in the Administrative Procedures Act.”
- (#0074 NOA, I.G, pp. 21-41)

“Alternatives Focused on Conservation Strategies. The FEIS has the narrow focus of conservation strategies - without properly balancing social and economic considerations

on an equal footing to develop a reasonable range of alternatives as suggested in public comments to the Notice of Intent and Draft EIS.” (#0074 NOA, III., page III-3)

“Narrow range of desired conditions. That is exactly what the FEIS presented to meet their bias of a narrow range of “desired conditions” based on some romantic notion of what old forest ecosystems should be. Narrowing alternatives is further constrained in the FEIS, since all alternatives must be developed “so that desired conditions of ecosystems are ‘restored and maintained” as required in the next portion of the sentence referenced in Chapter 1. Conversely, if the “desired conditions of ecosystems” were based on integrating biological, physical, social, and economic considerations, a vastly different set of alternatives would have been developed.” (#0074 NOA, III., page III-4)

Appellant contends that the public expressed concerns over the “poor” range of alternatives and that the only comments that mattered were those by the U.S. Fish and Wildlife Service. Other comments were ignored and appellant lists other comments that were “ignored” (#0074 NOA, III., page III-5-7)

Appellant contends that the No Action Alternative should reflect the pre-CASPO Forest Plans and not use the California Spotted Owl Interim Guidelines. (#0074 NOA, III., page III-9-11)

“The ROD and FEIS miss use the Herger Feinstein Quincy Library Group Concepts. The FEIS is an utter failure in displaying an alternative designed to embrace the Quincy Library Group management style within the pilot forest area and, more importantly, across the Sierra Nevada.” (#0074 NOA, III., page III-23)

#0090

“In this case, the Purpose and Need was impossibly narrow and exclusive of related problems that should have been considered.” (#0090 NOA, page10)

“We have submitted our concerns to the SNFPA team repeatedly during the past several years. Yet, none of those concerns seem to have made a bit of difference in the outcome.” . . . “What is important is that the laws and regulations that are supposed to prevent political abuse have not been followed. In the case of public participation they certainly have not.” (#0090 NOA, page10)

#0108

“. . .the preferred alternative modified 8 was never disclosed to the public in the DEIS and appears to produce the least amount of social and economic benefits to the public.” (#0108 NOA, page3)

“[FSM]970.3 - Policy. 4.1 In making decisions, consider economic and social impacts that affect local, regional, or national conditions. The FEIS admits this decision will bring ‘major cuts in the timber and agriculture industries’ in the Sierra Cascade Axis but never

allowed the public to review, evaluate or respond to the analysis used to determine these effects through the comment period for the DEIS, failing to fully disclose critical information to those most affected by the decision.” (#0108 NOA, page3)

“The Forest Service did not provide the public or national forest users with a quantified descriptive measure of impacts during scoping.” (#0108 NOA, page6)

“The Decision maker neglected to disclose the preferred alternative modified 8 and estimate the effects that would result during the DEIS process.” (#0108 NOA, page7)

“The FEIS mentions the Principle Laws Relating to Forest Service in [Table 2.2a FEIS Vol. 2, Chapter. 3, Part 2, page 40]. However, the FEIS, ROD, and the preferred alternative did not comply with laws specifically addressing affects on civil rights, women and minorities.” (#0108 NOA, page9)

“. . . women as a minority group were not part of the discussion or analysis for the DEIS or FEIS and ROD in violation of Civil Rights and Forest Service policy [FSH 1909.17, Ch. 30] but was raised as a significant issue during scoping and comment to the DEIS.” (#0108 NOA, page10)

#0119

“ The Forest Service did not comply with the MUSYA and NFMA requirements for balancing recreation with other uses in adopting the SNFP Amendment.” (#0119 NOA, page4)

“It is well known that the Forest Service was instructed by the previous administration to complete the decision adopting the SNFP Amendment prior to January 20, 2001. As you know, the ROD was approved on January 12, 2001. The rush to complete the documents precluded the Forest Service’s ability to comply with NEPA by preparing and circulating for public comment, a supplemental DEIS including information that did not appear in the original DEIS (e.g., impacts to recreation, socioeconomic impacts, clear and accurate maps demonstrating allocations, among other things).” (#0119 NOA, page4)

“A summary of the violations of NEPA, MUSYA, NFMA and factual inaccuracies, is as follows;

The environmental document should have been revised and recirculated for public review.

The land allocations and standards and guidelines adopted in the ROD would adversely impact ski area operations and Master Development Plans already approved by the Forest Service.

The FEIS and ROD did not adequately consider impacts to recreation from adoption of the SNFP Amendment.

The FEIS and ROD did not adequately consider socio-economic impacts to the public and the local communities from adoption of the SNFP Amendment.

The FEIS did not adequately respond to comments.

The FEIS lacked all essential components required by NEPA.

The Forest Service did not comply with the MUSYA and NFMA requirements for balancing recreation with other uses in adopting the SNFP Amendment.

The ROD implies that existing projects (e.g., those approved before the effective date of the SNFP Amendments) are not subject to the land allocations or standards & guidelines. However, the ROD then gives unfettered discretion to Forest officers to apply the requirements to existing projects “where appropriate,” or when permits are reissued or when site specific/further analyses are completed.” (#0119 NOA, PAGE5)

#0135

“Modified Alternative 8 does not even seem to be the best of alternatives to address the five problem areas the Framework is supposed to address. Modified Alternative 8 costs jobs, over restricts timber harvests that could help control the fires and fuels buildup. Wildfire endangers the forest, wildlife and the public. It also effectively bans the use of herbicides to control the spread of noxious weeds, possibly the only way they can be controlled. Many of the guidelines on aquatic and riparian ecosystems seem to be based on speculation instead of science since it is uncertain what the results of these rules will be.” (#0135 NOA, page2)

#0137

“If the Sierra National Forests Land and Resource Management Plans and subsequent Amendments are considered by the USFS to be in legal conformance, then what is the legal basis for claiming a legal necessity to issue a blanket change to all the Sierra National Forest Land Management Plans and subsequent Amendments under the umbrella of this huge Amendment? The ROD has not shown a clear legal path to this decision.” (#0137 NOA, page3)

#0138

“. . .the “fast-tracking” of the FEIS process was far too compressed and unclear to allow for meaningful public participation.” (#0138 NOA, page1)

#0139

“As a programmatic Final EIS, the document does not contain adequate data and analysis required by the National Environmental Policy Act (NEPA) to disclose the adverse environmental effects of management directions and associated standards and guidelines for specific locations.” (#0139 NOA, page1)

“The SNFP/AFEIS/ROD is based on Modified Alternative 8 absent meaningful public review and comment ‘as this alternative was identified after circulation of the Draft EIS and the deadline for receipt of public comments.’” (#0139 NOA, page2)

#0141

“Much of the ROD is based on “scientific” data contained in the SNEPAGE. But, the SNEP report has never been adequately and completely scrutinized and SCE believes it contains significant errors.” . . . “ The “science” in the SNEP related to grazing does not hold up under peer review. This type of unbiased review, if performed on other portions of the SNEP cited, as support for the five critical problem areas would undoubtedly yield similar results. This casts serious doubts on much of the science contained in SNEP, and the conclusions derived from it in the EIS and ROD.” (#0141 NOA, page4-5)

“The documents ignore one of the basic tenants of management planning by failing to include an analysis of the potential impacts to other beneficial forest uses. Such a failure is unacceptable and has led to many flaws within the ROD/EIS.” (#0141 NOA, page11)

#0145

“ The FEIS Does Not Provide Adequate Analysis Of The Cumulative Effects Of Roads.” (#0145 NOA, page7)

#0146

“The Framework fails to address recreation, grazing, timber production and other uses on their own merits. The five areas of the Framework focus reduce or eliminate multiple uses wherever conflicts occur. Because multiple use was not identified as an issue, the relative importance of multiple use was not evaluated, public comment to the contrary notwithstanding. No consideration was made to manage the resources of the national forests “in the combination that will best meet the needs of the American people.”” (#0146 NOA, page4)

“This FEIS fails on "accurate scientific analysis" as discussed in subsequent comments. The test of "concentrating" on significant "issues" for the Sierra Nevada also fails. Public comments with the Notice of Intent (NOI) clearly indicate that social, economic, recreation, water, and other resource use issues were much more significant than the Forest Service's issues of noxious weeds and hardwood forest conditions.” (#0146 NOA, page53)

“Without reasonable consideration of public and agency comments to help develop real issues, it is impossible to formulate reasonable alternatives and the subsequent projected environmental consequences associated with unreasonable alternatives will be meaningless. Such is the case in this FEIS.” (#0146 NOA, page53)

“NEPA8. Sec 1502.7. "The text of final environmental impact statements ... shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages." This FEIS is several times longer than the intended limit for unusual scope and complexity. This is one effect of violating the NFMA requirement that Forest Plan amendments must be handled at the Forest level by Forest Supervisors, not at the Regional level by Regional Foresters.” (#0146 NOA, page55)

“It is very clear that the Record of Decision fails to accomplish the purpose and need established in the EIS. . .” (#0146 NOA, page59)

#0151

“This act [NEPA] calls for site specific environmental documentation to be completed for any forest management activity. This includes local participation throughout the scoping process, alternative development, and Finding of No Significant Impact (FONSI). If the Sierra Nevada Forest Plan Amendment is implemented as written, it would ignore the requirement of the local NEPA process. This is a violation of NEPA.” (#0151 NOA, page2)

#0158

“The Fish and Wildlife Service subsequently declared the Draft alternatives offered to public comment to be invalid, except for the one alternative that was selected by the Regional Forester. This process does not comply with NEPA and ignores the premise that NEPA was adhered to. The process was hurried along to meet a political deadline that threatens the National Forests of the Sierra Nevada. The decision should be withdrawn and remanded back for further study before implementation. Valid alternatives should be displayed to the public. Congressional oversight into revisions to the Endangered Species Act has begun and should be completed in association with this amendment process. These long-sought after revisions will have major impacts upon the Sierra Nevada National Forests.” (#0158 NOA, page1)

“The selected alternative fails to accomplish the purpose and need published in the initial Draft EIS. The alternative fails to increase old forest conditions, lower Westside hardwoods, and reduce the risk of catastrophic wildfires. Matter-of-fact, the stated action of eliminating timber harvesting from the majority of the national forest lands is counter to reducing catastrophic wildfires. The elimination of timber harvesting from acceptable management practice was reported in the ROD to address Global Climate Issues. The elimination of timber harvesting from the majority of national forest land acreage constitutes a major action that was not adequately addressed in the draft or final EIS. There are major consequences to our natural resources, our people, our communities, our future from this action. The ISSUE of cutting trees was not addressed in the entire process.” (#0158 NOA, page1)

#0159

“The Fish and Wildlife Service subsequently declared the Draft alternatives offered to public comment to be invalid, except for the one alternative that was selected by the Regional Forester. This process does not comply with NEPA and ignores the premise that NEPA was adhered to. The process was hurried along to meet a political deadline that threatens the National Forests of the Sierra Nevada. The decision should be withdrawn and remanded back for further study before implementation. Valid alternatives should be displayed to the public. Congressional oversight into revisions to the Endangered Species Act has begun and should be completed in association with this amendment process. These long-sought after revisions will have major impacts upon the Sierra Nevada National Forests.” (#0159 NOA page1)

#0161

“The National Environmental Policy Act of 1969 requires that all environmental analyses "consider a full range of reasonable alternatives to the proposed action that address the significant issues and meet the purpose and need for the proposed action." To rectify this portion of our appeal, the Regional Forester must modify all of the developed alternatives based on specific alternative by alternative input from the Fish and Wildlife Service.” (#0161 NOA page2)

“Rather than suggest reasonable and prudent measures for each of the developed alternatives as intended by the Endangered Species Act, the Forest Service and the Fish and Wildlife Service negotiated only one legally sufficient alternative. Contrary to law, the Regional Forester was thereby limited to only one choice for the Record of Decision. Moreover, the alternatives presented to the public for comment in the draft EIS were not valid choices. The only valid choice was negotiated between the Forest Service and the Fish and Wildlife Service after the close of the comment period. Following negotiation, the Regional Forester issued the ROD without presentation to the public for review or comment. Therefore the only alternatives upon which the public was permitted to comment were not valid and the only alternative that was valid prohibited public comment.” (#0161 NOA, page2)

“In public meeting after public meeting, the Forest Service was unable to disclose the effects the Plan would have on recreation, special uses, and grazing. From the first public meeting through the entire planning effort, the Forest Service was challenged to include recreation, special uses and grazing as emphasis items. The final FEIS includes these three issues almost as an after thought...by the way, the Plan will eliminate many recreation opportunities; those of you who own special use permits can "kiss them good bye" if they are within riparian areas; and many grazing permits will become "a thing of the past." Despite pleas from many individuals and groups, the Regional Forester did not respond to requests that these three important issues be made emphasis topics. Instead, they became the casualty. By not displaying the effects to recreation, special uses, and grazing in a forth fight manner during the planning process, the Regional Forester did an inadequate job informing the public of the possible effects. The public still does not know

because even at this stage of the process, the Forest Service is not telling the public and the press that the decision will affect recreation, special use permits, and grazing. To remedy this appeal, the Plan must be changed to data gathering to see what effect, both positive and negative, recreation, special uses, and grazing have on ecosystem sustainability.” (#0161 NOA, page 6)

#0164

“While the FEIS was produced after many hearings and meetings, it was (and is) obvious and evidential that the end result was predetermined from the very beginning. I believe the FEIS violates NEPA in that the end result was determined prior to any hearings. The process is missing meaningful dialogue.” (#0164 NOA, page1)

#0165

“The FEIS violates National Environmental Policy Act (NEPA) as it is based on inadequate alternatives, does not-fully disclose the economic and social impacts of the reductions in multiple use. It did not provide adequate notice to the public or allow meaningful public input.” (#0165 NOA, page2)

“The Organic Administration Act of 1897 directed that forests were not to be managed as parks. The Final Environmental impact Statement (FEIS) for the Sierra Forest Plan Amendment unlawfully treats Sierra Nevada forests and the Modoc Plateau as a park and reduces, restricts and eliminates lawful uses.” (#0165 NOA, page2)

“Forest and Rangeland Renewable Resources Planning Act of 1974 is compromised by the FEIS by inhibiting multiple-use and sustained yield.” (#0165 NOA, page2)

“The Endangered Species Act was compromised. Typically, the land management agency submits a proposal to the FWS for review and comment. This process was reversed. In addition, permittees were denied applicant status and many species subject to regulation in the FEIS are not even listed. In addition, adequate alternatives were not developed, no alternatives increased grazing, socioeconomic factors were not-addressed, census data is 9 to 10 years old and, cumulative impacts were not considered.” (#0165 NOA, page2)

#0166, 0203, 0204

“The FS's fundamental shift in management direction is not consistent with applicable law. The FS should consider wildlife and ecosystem issues in its planning, and may even choose to make these considerations paramount for some areas in some forests in some circumstances. However, in this case, the FS has eliminated or curtailed every legitimate multiple use on 11 national forests which it deems to be a potential negative factor with respect to ecological or wildlife concerns. Grazing and timber harvest are not given equal consideration as legitimate uses of the forests, but are instead considered secondary uses which are permitted only in the event they fail to contribute any known or speculative risk to any ecological concern. The FS has blatantly abandoned its current management direction, which required that timber and livestock management be integrated and coordinated with other resource values to achieve multiple use goals and objectives, in favor of management where ecological and wildlife issues are the chief forest use, to

which every other legitimate use must give deference.” (#0166 NOA, page16) (#0203 NOA, page17), (#0204 NOA, page18)

“In its DEIS, the FS selected two preferred alternatives. In its final decision, the FS did not select either of these alternatives, or any of the 6 alternatives articulated in the DEIS. Instead, the FS selected a "modified alternative 8." ROD at 2, 21; EIS at 1-24 to 1-26. Neither Appellants nor the public at large ever had an opportunity to examine and comment regarding "modified alternative 8.” (#0166 NOA, page22), (#0203 NOA, page23), (#0204 NOA, page3)

#0167

“The congressional laws that give the USFS its mandate (National Forest Management Act of 1976, Organic Administration Act of 1879, Multiple -Use Sustained Yield Act of 1960, Forest and Rangeland Renewable Resources Planning Act of 1974, Public Rangelands Improvement Act and the Federal Land Policy and Management Act) were grossly ignored and expressly violated. They were replaced with a one item agenda - removal of human resource activities within unlisted species habitat under the guise of “habitat preservation” - this was not the original intent of Congress and the President when these bills were signed.” (#0167 NOA, page3)

#0168

“The Framework Plan eliminated analysis of non-logging alternatives, which could have permitted greater protection and less of a reliance on logging with its negative impacts.” Specifically, “The Sierra Nevada Forest Plan Amendment FEIS and ROD failed to discuss and consider an adequate range of alternatives. The Sierra Nevada Forest Plan Amendment FEIS should have consider and analyzed a full range of alternatives, The Sierra Nevada Forest Plan Amendment FEIS failed to analyze a full range of alternatives like the Cutting, Chipping, and Scattering method, the "Chunking" and scattering method, and the use of goatherds to remove brush and the lower branches of ladder fuel trees, in addition to logging followed by burning, burning followed by logging, and the no action alternative.” (#0168 NOA, ppage 12,13,28,145,167[2nd claim for relief])

“The Framework Plan failed to consider or to even discuss the objects to be protected in the Giant Sequoia National Monument, but proposes to protect the GSNM by logging these areas.” Also, “. . . to sell these removed trees is contrary to the language of the GSNM Proclamation of protecting the objects identified.” (#0168 NOA, page23)

“The complete failure of the Sierra Nevada Forest Plan Amendment FEIS to even mention this scientific literature which calls into serious question or disagrees with the conclusions which underlie and are used to justify the project EA, violates NEPA and its implementing regulations 40 CFR. 5 1500.1(b)” (#0168 NOA, page88)

“The Forest Service approval of the Sierra Nevada Forest Plan Amendment is in violation of NEPA (40 CE'R 51502.25 (a)), since the decision, which would permit more logging to take place in the National Forest. While the plan amendment approves 191 mmbf of logging to take place it claims that it does not have to analyze the cumulative effects of

these separate site-specific logging proposals that make up the 191 mmbf of logging, which is in effect breaking the logging down into small component parts.” (#0168 NOA, page124)

“In addition, this practice [appellant is referring to the previous timber sales which are being allowed to proceed] violates NEPA because, while tiering to an EIS is allowed, tiering to an EA is not, since a lesser review cannot provide the comprehensive, programmatic analysis demanded of a tiering document. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F. 3d 800, 811 (9th Cir. 1999); 40 C.F.R. § 1502.20; 40 C.F.R. § 1508.28.” (#0168 NOA, page154)

Appellant contends that there is a violation of the requirement to display cumulative effects because the FEIS authorizes the previously approved timber sales to proceed. The previously approved timber sales cumulative effects analyses are tiered to a 1993 EA that they contend expired in 1995. (#0168 NOA, page154,156)

“Failure to conduct additional NEPA review of continued use of the expired CASPO Interim Guidelines as part of a Forest Plan amendment which violates the NFMA requirements that Forest Plan amendments be subject to NEPA review.” Appellant also claims that approval of 220 timber sales is not legal since they are based on the “expired” CASPO EA. They also make the claim that CASPO guidelines are a major federal action and require an EIS. (#0168 NOA, ppage11, 43, 167[1st and 4th claim for relief])

#0169

“The Decision fails to satisfy the minimum procedural and substantive requirements for implementation. Legal analysis will largely focus on whether the agency’s decision was “arbitrary and capricious” in the context of the Administrative Procedure Act.” (#0169 NOA, page1)

“The Decision Lacks Required Site-Specific Analysis. The Decision’s standards and management direction have not been considered within the site-specific context as required by NEPA and NFMA. The Decision’s standards might make sense for some sites, while they will be inapplicable on others. While this distinction is noted above regarding road and trail disclosure, the Decision is flawed on a broader scale through its failure to perform site-specific analysis for any of its management proposals. This flaw may stem from the broad changes in the “mission” of this planning process. NEPA analyses can evaluate broad, program-level proposals which are not necessarily intended to be applied, at least through the programmatic decision, to any particular site. Conversely, project-level decisions determine actual on-the-ground management actions on particular Forest sites. All NEPA analyses must analyze and disclose impacts associated with their proposals, but the detail and complexity of the analysis can differ depending on whether program-level direction is being provided, which will not be applied to any site until further NEPA analysis is performed, or project-level direction is intended which is capable of being immediately implemented. This process changed from the former scenario to the latter relatively late in the planning process, The increased

volume and specificity of the analysis required by this change was apparently not possible within the inflexible deadline for release of the ROD.” (#0169 NOA, page4)

Appellants cite several court cases (see #0169 NOA ppage5-6) and in general are saying that the Purpose and Need was too narrow. “The Decision Fails to Consider a Reasonable Range of Alternatives.” . . . “In defining the project limits the agency must evaluate “alternative means to accomplish the general goal of an action” and cannot “rig” the purpose and need section of a NEPA process to limit the range of alternatives.” (#0169 NOA, ppage5-6)

“The Decision Inadequately Addresses Cumulative Impacts by Ignoring the Impacts of the Roadless Rule and Related Management and Policy Changes.” . . . “NEPA requires a supplemental EIS when there is significant new information or new circumstances relevant to environmental concerns bearing on the proposed action or its impacts. 40 C.F.R. 1502.9. NEPA also requires the agency to analyze “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions...”” (#0169 NOA, page7)

“The Decision Erroneously Applies the Concept of Adaptive Management to Excuse NEPA Compliance.” . . . “the Decision attempts to camouflage its fundamental NEPA design flaws through the technique of “adaptive management.” While the Decision avoids the detailed project-level analysis mandated by NEPA, the ROD promises that “variances from the standards and guidelines in Appendix A...will be permitted if they are part of a formal adaptive management research project or administrative study done in conjunction with... [a] recognized scientific research institution.” In other words, the Forest Service has not performed and will not commit to the research necessary to justify the site-specific findings of the Decision but will provide affected publics with the opportunity to obtain apply new findings that might demonstrate the Decision’s standard are not necessary on discrete sites.” (#0169 NOA, page7)

#0170

“None of the alternatives presented meet the intent of the Organic Act, the Multiple-Use Sustained-Yield Act, or the National Forest Management Act of 1976. The range of alternatives presented were too narrow for consideration by the Decision Maker and review by the general public. The FEIS is based upon a limited range of “desired conditions”.” (#0170 NOA, page3)

“The chosen alternative, “Modified Alternative 8, was not adequately presented for public review and comment, which is a violation of the National Environmental Policy Act .” (#0170 NOA, page3)

“The cumulative impacts of “holding” such enormous surplus forest growth region-wide will be significant. We foresee increased tree mortality, vegetation fuel loading, increased forest insect activity, and declining forest health as likely outcomes. Timber and biomass harvesting are valuable and necessary tools to address this problem and were not given

adequate consideration in the range of alternatives to help solve the five identified “problem areas”.” (#0170 NOA, page4)

#0172

“The Regional Forester "modified" Alternative 8 and selected it without knowledge of the detailed effects that his decision would have upon the identified issues. After the decision, the Framework Team was still requesting information from the forests and district's as to what the effect of the revised standards and guidelines would have upon certain resources. Major land allocation corrections (i.e. threat and defense zones) affecting tens of thousands of acres were still being made as recently as early April, more than two months after the Record of Decision was signed. None of this key information was available to the Responsible Officials or the public at the time of the decision. There was such a rush to signature on the Framework that there was little time to truly assess all of the standards and guidelines, many of which are at odds with the intended Purpose and Need.” (#0172 NOA, page2)

#0173

“MCCA believes that the Sierra Nevada Forest Plan Amendment FEIS and the Record of Decision illegally changes the management philosophy of our nation's forests from multiple-use management to habitat preservation without congressional approval. The Multiple Use Sustained Yield Act of 1960 - Section 4 (a) of this law states, 'Multiple use means, the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services...' The Sierra Nevada Forest Plan Amendment does not utilize the concepts of multiple use.” (#0173 NOA, page2)

#0175

“Failure to Comply with Planning Regulations.” . . . “36 C.F.R. 219.7” . . . “(a) Under this section the Forest Service is obligated to coordinate with equivalent and related planning efforts of local government. There was no coordination of the Framework planning effort with the County’s existing plan despite many attempts by the County to initiate such action, The planners showed little knowledge of any Forest Service obligation other than to provide local government with briefings.” (#0175 NOA, page1)

“Failure to Comply with Planning Regulations.” . . . “36 C.F.R. 219.7” . . . “(c) This section requires the Forest Service, after review of the County plan, to display the results of its review in an environmental impact statement. The County believes this review never took place. There is no display of the results in either the draft or final environmental impact statement.” (#0175 NOA, page1)

“Failure to Comply with Planning Regulations.” . . . “36 C.F.R. 219.7” . . . “(c)(4) This subsection of section (c) obligates the Forest Service to consider alternatives to their proposed alternative if there are any conflicts with County land use plans. For this consideration to have taken place, some discussion on the conflicts would have had to

take place with Modoc County. These discussions did not take place despite many attempts by the County to point out major areas of disagreement.” (#0175 NOA, page2)

“40 C.F.R. 1502.16(c) This section requires that each NEPA document includes a discussion of possible conflicts between the proposed federal action and local land use plans. Neither the DEIS or the FEIS contain any reference to the conflicts between the proposed action and the Modoc Land Use Plan despite the county comments referencing the problems.” (#0175 NOA, page2)

“Failure to Comply with Planning Regulations.” . . . “36 C.F.R. 219.7”. . . “(d) This section obligates the Forest Service to meet with local government to establish a process for coordination. At a minimum, coordination participation with local governments shall occur prior to the Forest Service selection of the preferred management alternative, There was no meeting with Modoc County to establish such a process. A few months before the FEIS was published a meeting was held which discouraged Modoc County from applying for “cooperating agency status” but in no way could this be considered a meeting to establish a coordination process.” (#0175 NOA, page2)

“Failure to Comply with Planning Regulations.” . . . “36 C.F.R. 219.7”. . . “(f) This is a requirement to implement monitoring programs to determine how the agency’s plans affect communities adjacent to or near the national forest being planned. There was no discussion with Modoc County on such a monitoring program and nothing in the Record of Decision OF FEIS addressing the unique monitoring needs of the communities near the Modoc National Forest.” (#0175 NOA, page2)

#0201

“The US Forest Service, through this decision document, has made a serious shift away from federal mandates long standing since 1897 when the Organic Act was first ratified in the United States Congress to provide a continuous flow of timber. Since the inception of the US Forest Service numerous other laws have been passed to ensure our national forests would indeed provide for all American’s into perpetuity. However what we find in the SNFP Amendment FEIS is a dramatic change of interpretation by the US Forest Service of well-established law directing the agency to manage our national forests for multiple use and net public benefit. Under what authority the agency has made these interpretations is unfounded in law and regulation and not described in the either the FEIS or ROD.” (#0201 NOA, Intro page2)

“Local interests, knowledge, cultures and serious social economic concerns and analysis were simply left out or ignored from the very beginning. Pre-determining or setting the agenda for what issues the planning process would address before hearing from the public flies in the face of all planning regulations specifically calling for public comments to help shape the decision document and alternatives.” (#0201 NOA, Intro page3)

“The Record of Decision and preferred alternative modified 8 were never disclosed to the public throughout the planning process during the public comment period for the Draft EIS instantaneously triggering controversy and probable litigation.” (#0201 NOA, Intro page3)

“The range of alternatives was inadequate to begin with as published in the DEIS. The Herger Feinstein Quincy Library Group Pilot Project was intentionally left out as a viable alternative and the preferred alternative modified 8 was never presented for comparison or analysis to the public previous to the Record of Decision.” (#0201 NOA, Intro page5)

“Public comments to the Notice of Intent and DEIS clearly indicated the need to thoroughly address social, economic, recreation, water, and other resource use issues before the decision was made. The public raised these as significant issues for a period of two years citing legal mandate to consider the ‘quality of human environment’ within the decision and development of alternatives but were ignored in this FEIS.” (#0201 NOA, Intro page5)

“The Administrative Procedures Act (APA) requires that an agency action be set aside if it is “arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. 5 706 (2) (A). The adoption of Modified Alternative 8 in the Record of Decision failed to utilize U.S. Forest Service information prepared for the FEIS and failed to give reasons for its omission” (#0201 NOA, page1)

“During the initial public comments to the Notice of Intent, Northern Sierra Natural Resource Coalition members specifically asked the Forest Service to develop an alternative focused on emphasizing timber production and more to the point the Herger Feinstein Quincy Library Group Pilot Project. This, like many public comments was ignored.” (#0201 NOA, page47)

#0202

“Organic Act Violation”. . . “The Framework ROD eliminates timber production as a purpose for management. Timber harvest is permitted solely as a consequence of fuels reduction or human safety.”. . . “The Forest Service lacks the authority to eliminate timber production as a valid purpose of national forest management.” (#0202 NOA, page1)

“Multiple-use Sustained Yield Act Violation - The Framework fails to address recreation, grazing, timber production and other uses on their own merits. The five areas of the Framework focus reduce or eliminate multiple uses wherever conflicts occur. Because multiple use was not identified as an issue, the relative importance of multiple use was not evaluated, public comment to the contrary notwithstanding. No consideration was made to manage the resources of the national forests “in the combination that will best meet the needs of the American people.” ” (#0202 NOA, page2)

“The Forest Service limited the issues to the exclusion of socio-economic, recreation, forest products, mining, and grazing to prevent the triggering of a revision process. However, the ROD results in significant changes in all forest uses. It replaces everything in the former land management plans outside of wilderness designations. As an amendment significant changes should have been restricted to the designated issues. Affects to non-designated issues should have been minimal. The ROD is an illegal revision of each of the eleven national forest plans.” (#0202 NOA, page4)

“Recission Bill of 1989”. . . “The Sierra Nevada Forest Plan Amendment is a programmatic document and cannot serve as a site-specific NEPA document. Requirements to complete grazing assessments prior to issuance of grazing permits repeals the Recission Bill of 1989 for the Sierra forests, an authority not delegated to the Forest Service.” (#0202 NOA, page6)

“Quincy Library Group Act Violation”. . . “The number of acres required to be treated is prohibited, the fuels treatment strategy is prohibited and community stability will not be tested.” (#0202 NOA, page6)

“. . . the Forest Service made a finding of no significant impact in 1993 on adoption of the CASPO strategy in part due to a short expected implementation period (two years). It also found that if the G&PO strategy were to be adopted for a longer period, a significant impact was likely and therefore required an EIS. The Forest Service immediately commenced an EIS to evaluate the impacts that would result From adoption of CASPO and other owl strategies as long-term strategies. The Framework EIS is the much-delayed EIS but fails to evaluate the long-term impacts of adopting CASPO. Alternative 1 does not disclose to the public or the decision-maker the long-term consequences.” (#0202 NOA, page8)

“The FEIS states “The responsible officials will decide whether or not to amend the Land and Resource management Plans” (Vol. 1 pg. 6). As has been stated, continuation of the interim guidelines as a long-term strategy with known significant long-term impacts requires adoption by amendment. Continuation without an EIS is not an option. Selection of any of the alternatives including Alternative 1 would amend the forest plans. A decision to not amend the forest plans would re-establish the pre-CASPO amended plans the consequences of which are not known through this EIS. Alternative 1 as proposed cannot be evaluated as a no-action alternative.” (#0202 NOA, page8)

“Moreover, the alternatives presented to the public for comment in the draft EIS were not valid choices. The only valid choice was negotiated between the Forest Service and the Fish and Wildlife Service after the close of the comment period. Following negotiation, the Regional Forester issued the ROD without presentation to the public for review or comment. Therefore, the only alternatives upon which the public was permitted to comment were not valid and the only alternative that was valid prohibited public comment.” (#0202 NOA, page9)

“Finally, selection of Alternative 8 Modified was arbitrary and capricious.” Appellant describes differences between alternatives. “Alternative 4 exceeds all alternatives when ranking values collectively. Alternative 8 Modified ranks last.” (#0202 NOA, page12)

CEQ regulations require a discussion of any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented." Resources include institutional resources. Judge Shubb concluded, "Finally, intervenor timber companies have offered persuasive evidence in support of their position that enjoining defendants from proceeding with these timber sales will cause irreparable harm to several businesses and numerous families. (#0202 NOA, page15)

#0204

“In its final decision, the FS did not select any of the 8 alternatives articulated in the DEIS. Instead, the FS selected a “modified alternative 8.” ROD at 2, 21; EIS at 1-24 to 1-26. Neither Appellants nor the public at large ever had an opportunity to examine and comment regarding “modified alternative 8.”” (#0204 NOA, page3)

“The FS is required to consider all multiple uses on an equal basis, and failure to do so is arbitrary and capricious.” Appellant cites various court cases. Nowhere does MUSYA reference ecological sustainability or authorize it as a dominant use.” (#0204 NOA, page15-16)

“In this case, the FS’s words and deeds are extreme in favor of ecological and wildlife concerns to the degree that they constitute a fundamental paradigm shift which makes other legitimate uses secondary. In doing so, the FS has violated the Organic Act, the MUSYA, the NFMA, and its own implementing regulations.” (#0204 NOA, page19)

“Appellants and the public at large are entitled to review all alternatives prior to publication of the final rule, and should have been afforded the opportunity to review and comment on the new provisions within modified alternative 8.” (#0204 NOA, page31)

“The FS’s adoption of a no action alternative which doesn’t follow current management direction but instead articulates unofficial FS policy to cut grazing based on Endangered Species Act speculations violates NEPA guidelines and is, thus, is arbitrary and capricious and in violation of the APA.” (#0204 NOA, page34)

#0205 and 0271

Appellant alleged a violation of § 558 (b) APA. “. . . there is no evidence in the record indicating that the Secretary of Agriculture has delegated his statutory authority to revise LRMPs and to revise guidelines, for Region 4, unto POWELL or, that FOREST SERVICE has re-delegated said statutory authority to revise LRMPs and to revise guidelines, for Region 4, unto POWELL; POWELL did not and does not have the statutory authority to sign the ROD for the REGION 4 GUIDE, to sign the ROD for any of the AMENDMENTS to the LRMPs within Region 4 or, to sign the ROD for the FEIS for these said projects.” (#0205 NOA, page6), (#0271 NOA, page6)

“Modified Alternative 8 could not have been anticipated from the alternatives considered in the draft EIS. As such, FOREST SERVICE, by failing to circulate a supplemental draft EIS of Modified Alternative 8 has failed to allow the public to participate in the formulation of that alternative and, has thereby violated NEPA and, its implementing regulation,” (#0205 NOA, page12), (#0271 NOA, page12)

“FOREST SERVICE, by these failures, has not permitted ARBOGAST, an interested person, to scope the draft EIS, after the decision to prepare it was made; a violation of 40 CFR § 1501.7(a)(1).” (#0205 NOA, page12), (#0271 NOA, page13)

“FOREST SERVICE by these failures, has failed to provide full and fair discussion of significant environmental impacts; a violation of 40 CFR § 1502.1.” (#0205 NOA, page12), (#0271 NOA, page13)

“At no time before the ROD was signed, did FOREST SERVICE inform the public or ARBOGAST that they were amending the subject LRMPs. Only an EIS was noticed.” (#0205 NOA, page14), (#0271 NOA, page14)

“As the public was not permitted to review Modified Alternative 8 before the AMENDMENTS were finally adopted and, were not notified that AMENDMENTS were being processed, FOREST SERVICE violated the procedure specified at 16 USCA § 1604(d); and, as such, the AMENDMENTS are therefore not in observance of procedure required by law.” (#0205 NOA, page14), (#0271 NOA, page14)

“As the public was not permitted to review Modified Alternative 8 before the REGION 5 GUIDE and the REGION 4 GUIDE were approved, the FOREST SERVICE violated the procedure specified at 5 USCA § 553(c), and, as such, the REGION 5 GUIDE and the REGION 4 GUIDE are therefore not in observance of procedure required by law.” (#0205 NOA, page15), (#0271 NOA, page15)

“It is inappropriate to incorporate, by reference, a final EIS which is 5 or more years old, without updating it. (See 24 CFR § 58.53(b) for analogous regulation)” (#0205 NOA, page16), (#0271 NOA, page16)

“The 1996 SNEP Report and SNEP EIS were prepared by the "Sierra Nevada research panel" which consists of private entities.” . . . “Private entities are not exempt from the registration requirements of the Professional Engineers Act, as are Federal officers and employees.” . . . “The exemption from registration does not permit FOREST SERVICE employees to use the title, "hydrologist", which they did when preparing the FEIS.” (#0205 NOA, ppage17-19), (#0271 NOA, ppage18-19)

“The 1996 SNEP Report and SNEP EIS were prepared by the "Sierra Nevada research panel" which consists of private entities.” . . . “Private entities are not exempt from the registration requirements of the Professional Engineers Act, as are Federal officers and employees.” . . . “The exemption from registration does not exempt FOREST SERVICE employees from submitting evidence of their qualifications to practice, which they have

not, when they prepared the FEIS.” (#0205 NOA, ppage17-19), (#0271 NOA, ppage18-19)

“The 1996 SNEP Report and SNEP EIS were prepared by the "Sierra Nevada research panel" which consists of private entities.” . . . “Private entities are not exempt from the registration requirements of the Professional Engineers Act, as are Federal officers and employees.” . . . “No civil engineer's signature or stamp appears on any of the 1996 SNEP Report or SNEP Final EIS documents, as is required.” (#0205 NOA, ppage17-19), (#0271 NOA, ppage18-19)

“As the AMENDMENTS significantly impact a substantial number of small miners and a substantial number of other small entities and, FOREST SERVICE failed to provide and publish the required initial regulatory flexibility analysis and a final regulatory flexibility analysis in accordance with the procedures specified at 5 USCA 88 603 and 604; the AMENDMENTS are therefore not in observance of procedure required by law.” (#0205 NOA, page28), (#0271 NOA, page29)

“FOREST SERVICE, by and through the AMENDMENTS, have effected, initiated, a regulatory taking of numerous private properties, including those of ARBOGAST'.” . . . “has not disclosed any of the regulatory takings which they have initiated by said projects.” . . . “has not notified any of the property owners, including unpatented mining claimants, that their properties have been taken, through and by the rulemaking of said projects.” . . . “has not provided a declaration of taking for any of the properties they have taken, through and by regulation of said projects.” . . . “As FOREST SERVICE failed to disclose their proposed taking, regulatory or otherwise, of private property in their approval of the AMENDMENTS; they therefore violated Executive Order No. 12630.” (#0205 NOA, page29), (#0271 NOA, page29)

#00206

“The FEIS and ROD violate NEPA in that significant environmental effects were not revealed to public officials and citizens before the decision was made and the information provided was not of high quality and based on accurate scientific analysis and expert agency comments. The FEIS is often not concise, clear, and to the point, and it is not supported by evidence that necessary environmental analyses were made. The actions proposed would be detrimental to the quality of the human environment, not restore and enhance it. Professional and scientific integrity were not insured, but were instead sacrificed to other agendas and motives.” (#0206 NOA, page8)

“The FEIS and ROD violate provisions of the Organic Act, MUSY, RPA, and NFMA by failing to consider as significant goals the production of a continuous supply of timber or favorable conditions of water flows. They do not maximize long term net public benefit in an environmentally sound manner. They do not form one integrated plan. They do not reflect the use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management. The Decision instead would result in "few issue" or even "single issue" management, not multiple use

management. Implementation of the Decision would not be in a manner that is sensitive to economic efficiency. The FEIS and Decision repeatedly sacrifice the economic efficiency that could be attained with multi-product sales and timber production that are fully justified under the FEIS analysis, and instead impose management options that employ more costly service contracting and increase the risk and hazard of wildfires, thus assuring the continued escalation of suppression costs and loss of high value resources. The Decision is not consistent with maintaining air quality at a level that is adequate for the protection and use of National Forest System resources. In this process the Regional Forester usurped decision making authority assigned by law to Forest Supervisors.” (#0206 NOA, page8)

“The FEIS and ROD violate the Administrative Procedures Act in that key intermediate decisions and the cumulative final Decision were arbitrary and capricious, were in excess of the deciding official's statutory authority, and did not observe procedure required by law. Analyses provided to the Regional Forester by the Forest Service Inter-Disciplinary Team (ID Team) regarding projected environmental, economic, and social effects of the alternatives do not support a logical choice of alternative 8-modified (8-rood) as the alternative to be implemented. Numerous procedural violations of NFMA and NEPA regulations in the SNFPA process also constitute violations of the APA.” (#0206 NOA, page8)

“The FEIS and ROD violate the Herger-Feinstein QLG Forest Recovery Act in that the Decision places arbitrary, capricious, and unreasonable restrictions on management activities, and these restrictions make it impossible for the Pilot Project to be implemented in the manner and at the scale and pace specified in the Act.” (#0206 NOA, page8)

“The FEIS and ROD violate the National Forest Management Act (NFMA) as represented by at least the following provisions of the Act and its implementing regulations at 36 CFR Part 219:”

Improper Narrowing of the Issues. The Quincy Library Group's members, both together and individually, have on numerous occasions commented to Regional Forester Powell and the Sierra Nevada Framework and Forest Plan Amendment ID Team about the importance of observing the forest planning requirements of the National Forest Management Act of 1976 and its implementing regulations. Our concerns were twofold: (1) that the range of issues of the SNFPA were illegally narrow and (2) that the planning procedures required by law and regulation needed to be observed. (#0206 NOA, page13)

“More than two years after first bringing it up, we must continue to complain that the resource issues driving the Sierra Nevada Framework and Forest Plan Amendment Decision are improperly and illegally narrowed, and do not meet either the purpose or the procedural requirements of NFMA. Rather than being an integrated, multiple-use, and sustained yield plan, the SNFPA illegally elevates viability objectives for a few wildlife species above all other statutorily authorized uses of the national forests. In doing so, the

SNFPA illegally eliminates statutorily required uses of the national forests from the planning objectives.” (#0206 NOA, page14)

“The above five provisions clearly establish that the Regional Forester is limited to preparing, implementing, and revising the Regional Guide, while the Forest Supervisor is given the only authority to prepare, implement, and amend an individual Forest Plan. This view is strongly reinforced by the provision assigning responsibility for Forest Plan review and approval or disapproval to the Regional Forester, since it would be highly unusual and improper government structure to have one official authorized to propose and adopt a Forest Plan amendment, then that same official also have authority to review and approve or disapprove the same amendment. In this FEIS and ROD the Regional Forester has exerted unlawful power beyond the legitimate role assigned to him by NFMA.” (#0206 NOA, page16)

“Sec 219.1 I(f)(I). "Alternatives shall be distributed between the minimum resource potential and the maximum resource potential to reflect to the extent practicable the full range of major commodity and environmental resource uses and values that could be produced from the forest. The alternatives in the Draft and Final EIS are not so distributed and do not represent the full range of uses and values that could be produced.” (#0206 NOA, page16)

“Sec. 1500.2(b-). "...Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses..." This FEIS is anything but concise, it is very often unclear and badly written, it often evades the point, and it does not provide evidence that all necessary analyses were actually made.” (#0206 NOA, page18)

“Sec 1502.14. "... This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment... and the Environmental Consequences... k should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public. In this section agencies shall: (a) Rigorously explore and objectively evaluate all reasonable alternatives..." The FEIS and ROD violate this section repeatedly and with vigor, not rigor. They fail to present all necessary information and analyses necessary to provide a clear basis for decision by the decision maker or for evaluation of that decision by the public. Instead of rigorous exploration and objective evaluation of all reasonable alternatives, they arbitrarily narrow the range of issues, make evaluations that are more subjective than objective -- in fact reach conclusions that are not consistent with such objective evaluations as were made -- and consider only an unreasonably restricted range of alternatives.” (#0206 NOA, page19)

“Sec 1502.24. "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." Such integrity was not insured. Conclusions were adopted that were not supported by valid science, and options were discounted and discarded that were better supported by science.

Lack of professional and scientific integrity extends even to such routine requirements as identifying references and authorities by proper citation of sources. In this FEIS there are many citations for which no entry actually appears in the referenced sections.” (#0206 NOA, page19)

#00208

“The SNFP Amendment was adopted under the 1982 NFMA forest planning regulations. These regulations require that forest planning be based on the establishment of goal and objectives for multiple-use and sustained yield management of renewable resources. (36 CFR 219.1(b)(1)). "Multiple use" includes, among other things, the management of all the various resource of national forest lands "so that they are utilized in the combination that will best meet the needs of the American people;" “that some land will be used for less than all of the resources; ...” (36 CFR 219.3). “#0208 NOA, page7)

#00209, 00210

“The Organic Act establishes timber production as a main purpose for national forest designation. The Framework ROD eliminates timber production as a purpose for management. Timber harvest is permitted solely as a consequence of fuels reduction or human safety. The ROD states “but the purpose of timber management funds will be to implement the fuel treatment program” (ROD pg. 28). None of the alternatives present timber production as a management objective. The elimination of timber production was not proposed as an issue. It was a decision made unilaterally by the Forest Service. The Forest Service lacks the authority to eliminate timber production as a valid purpose of national forest management.” (# 0209 NOA, page1), (# 0210 NOA, page1)

“Multiple-use Sustained Yield Act Violation - The Framework fails to address recreation, grazing, timber production and other uses on there own merits. The five areas of the Framework focus reduce or eliminate multiple uses wherever conflicts occur. Because multiple use was not identified as an issue, the relative importance of multiple use was not evaluated, public comment to the contrary notwithstanding. No consideration was made to manage the resources of the national forests "in the combination that will best meet the needs of the American people.” (#0209 NOA, page2), (# 0210 NOA, page2)

“The Forest Service limited the issues to the exclusion of socio-economic, recreation, forest products, mining, and grazing to prevent the triggering of a revision process. However, the ROD results in significant changes in all forest uses. It replaces everything in the former land management plans outside of wilderness designations. As an amendment significant changes should have been restricted to the designated issues. Affects to non-designated issues should have been minimal. The ROD is an illegal revision of each of the eleven national forest plans.” (#209 NOA, page5)

“FY1999 Interior Appropriations Violation - The FY 1999 Interior Appropriations Bill authorized the Sierra Nevada Conservation Framework. The legislative intent was that the Forest Service provide a narrowly focused EIS that finalized a long-term management strategy for the California spotted owl. Congress expected the Revised Draft EIS to

provide the bases for the EIS, correcting for the deficiencies expressed by the 1997 FACA team. The expectations were set in part based upon conversations with the Forest Service. The Conference committee, in consultation with the Forest Service, appropriated \$2,000,000 for the EIS and, to ensure a narrow focus, set a deadline date of July 31, 1999. The Committee further cautioned the Forest Service not to “expand the scope of the EIS as it has been defined by the Forest Service.” The Forest Service agreed to both the funding level and time constraints. Without seeking reauthorization, the Forest Service expanded the scope and internally re-directed millions of dollars to accomplish what Congress cautioned against.” (# 0209 NOA, page5)

“Recission Bill of 1989 - The Recission Bill was meant to assist the Forest Service in its overburdened workload of reissuing grazing permits. The bill allowed permits to be issued with the same terms and conditions as the preceding permit until NEPA could be completed. Site-specific NEPA analysis still has not been completed for many of the active grazing permits. The Sierra Nevada Forest Plan Amendment is a programmatic document and cannot serve as a site-specific NEPA document. Requirements to complete grazing assessments prior to issuance of grazing permits repeals the Recission Bill of 1989 for the Sierra forests, an authority not delegated to the Forest Service.” (#0209 NOA, page7) (#0210 NOA, page5)

Quincy Library. Group Act Violation - Quincy Library Group Act authorizes a pilot project encompassing the Lassen and Plumas National Forests and the Sierraville Ranger District of the Tahoe National Forest for the purpose of testing certain forest management practices in relation to wildlife habitat, wildfire risk reduction and community stability. The ROD prohibits the management practices from being tested. The number of acres required to be treated is prohibited, the fuels treatment strategy is prohibited and community stability will not be tested. Judge Shubb of the US Eastern District Court 6f California, based upon effective arguments from the Forest Service ruled the Forest Service may continue to sell timber sales consistent with Alternative 1 without significant environmental impacts different from those created under the ROD (*Earth Island Institute v. United States*) . (#0209 NOA, page7) (#0210 NOA, page5)

“National Environmental Policy Act violation - The National Environmental Policy Act requires the agency to avoid or minimize any possible adverse effects of their actions upon the quality of the human environment. It also requires the Forest Service to identify all significant issues and minimize the insignificant issues. From the beginning, the public requested the Forest Service to consider social and economics as a significant issue. It refused. Regardless, the Forest Service is required to minimize the social and economic impacts. The FEIS evaluates the impacts as a consequence of the proposed action without consideration of mitigation measures to minimize the impacts. As the Forest Service effectively argued in the recent lawsuit *Earth Island Institute v. United States Forest Service*, the ecological difference between all of the alternatives in the first few decades is minimal, but the economical differences are significant.” (#0209 NOA, page8) (#0210 NOA, page5)

“Alternative 1 is not a “no action” alternative. Alternative 1 accepts the California spotted owl (CASPO) strategy as a long-term solution. The interim CASPO report specifically warned the Forest Service that CASPO was a short-term interim strategy pending further studies of habitat elements. Further, the Forest Service made a finding of no significant impact in 1993 on adoption of the CASPO strategy in part due to a short expected implementation period (two years). It also found that if the CASPO strategy were to be adopted for a longer period, a significant impact was likely and therefore required an EIS. The Forest Service immediately commenced an EIS to evaluate the impacts that would result from adoption of CASPO and other owl strategies as long-term strategies. The Framework EIS is the much-delayed CASPO EIS, but it fails to evaluate the long-term impacts of adopting CASPO.” (# 0209 NOA, page9)

“The FEIS states “The responsible officials will decide whether or not to amend the Land and Resource management Plans” (Vol. 1 pg. 6). As has been stated, continuation of the interim guidelines as a long-term strategy with known significant long-term impacts requires adoption by amendment. Continuation without an EIS is not an option. Selection of any of the alternatives including Alternative 1 would amend the forest plans. A decision to not amend the forest plans would re-establish the pre-CASPO amended plans the consequences of which are not known through this EIS. Alternative 1 as proposed cannot be evaluated as a no-action alternative.” (# 0209 NOA, page9)

“The Record of Decision also fails to accomplish the purpose and need established in the EIS, which is in part to: “[1] increase the density of large trees, increase structural diversity of vegetation, and improve the continuity and distribution of old forests..., while meeting people's needs for commodities and outdoor recreation opportunities... [2] bring greater consistency in fire and fuels management across the national forests..., and to balance the need to restore fire as a key ecosystem process while minimizing the threat fire poses to structures, lives, and resources, ...land 3] to provide a strategy and management standards and guidelines that will sustain desired conditions of hardwood forest ecosystem in the lower westside of the Sierra Nevada” (Vol. 1 pg. 4 & 5 Summary). (#209 NOA, p9) (#210 NOA, p5)

“The FEIS lacked a reasonable range of alternatives. Just a month before the Record of Decision was issued, three county supervisors met with Regional Forester Brad Powell and Fish and Wildlife Director Mike Spear who told us candidly all of the alternatives presented in the Draft EIS would cause the Fish and Wildlife Service to render a jeopardy opinion for currently listed species and cause a trend toward listing of proposed species. Therefore, none of the alternatives were legally adequate. Rather than suggest reasonable and prudent measures for each of the developed alternatives as intended by the ESA, the Forest Service and Fish and Wildlife Service negotiated only one legally sufficient alternative. Contrary to law, the Regional Forester was thereby limited to only one choice for the Record of Decision.” (#209 NOA, page9) (#210 NOA, page5)

“Moreover, the alternatives presented to the public for comment in the draft EIS were not valid choices. The only valid choice was negotiated between the Forest Service and the Fish and Wildlife Service after the close of the comment period. Following negotiation,

the Regional Forester issued the ROD without presentation to the public for review or comment. Therefore, the only alternatives upon which the public was permitted to comment were not valid and the only alternative that was valid prohibited public comment.” (#209 NOA, page9) (#210 NOA, page5)

“Finally, selection of Alternative 8 Modified was arbitrary and capricious. The Forest Service analysis found Alternative 4 produces 12% more large trees (over 30") than Alternative 8 Mod. (Figure 3.11 a & b, FEIS Vol. 2 Ch 3, pg. 97 & 98). Alternative 4 produces 15% more very large trees (over .50") than Alternative 8 Mod. (Figure 3.1h, FEIS Vol. 2, Ch 3, pg. 89). Alternative 4 produces 22% more late successional old growth (LSOG) class 4 and 5 than Alternative 8 Mod. Alternative 4 produces 45% more late seral stage forests than Alternative 8 Mod. Alternative 4 achieves the desired forest condition of 50% late seral stage forests but Alternative 8 Mod never achieves even 40% (Figure 3.1I, FEIS Vol. 2, Ch 3, pg. 90). Alternative 4 creates 24% more canopy closure than does Alternative 8 Mod. (Figure 3.11(a) and (b)). Alternative 4 produces 41% more owl nesting habitat than Alternative 8 Mod. Alternative 4 produces 12% more large (over 15") hardwoods after 10 decades than Alternative 8 Mod. (Figure 3.1k, FEIS Vol. 2, Ch 3, pg. 93). Alternative 4 burns 30% less acres by wildfire than Alternative 8 Mod. (Figure 3.5s, FEIS Vol. 2, Ch 3, Pg. 85). Alternative 4 produces 18% less lethal damage to all vegetation than Alternative 8 Mod. (Figure 3.5u FEIS Vol. 2, Ch 3 pg. 293). Alternative 4 produces 30% less mixed lethal damage to all vegetation than Alternative 8 Mod. (Figure 3.5t FEIS Vol. 2, Ch 3 pg. 294). Alternative 4 produces 67% less lethal stand replacement fires in forestlands than Alternative 8 Mod. Alternative 4 produces 8 times as much green and salvage timber compared to Alternative 8 Mod. Alternative 4 produces 2/3rds more biomass compared to Alternative 8 Mod. Alternative 4 generates \$105 million annually in net benefits more than Alternative 8 Mod. (FEIS Summary Vol. 1 Summary pg. 42). Alternative 4 exceeds all alternatives when ranking values collectively. Alternative 8 Modified ranks last.” (#0209 NOA, page14), (# 0210 NOA, ppage7-8))

From Conclusion at the end of the NOA, “the ROD fails to make contributions in all five areas of focus that would warrant a significant amendment.” (# 0209 NOA, page20)

“CEQ regulations require a discussion of “any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.” . . . “Finally, intervenor timber companies have offered persuasive evidence in support of their position that enjoining defendants from preceding with these timber sales will cause irreparable harm to several businesses and numerous families.” (# 0209 NOA, page17)

#0212

“The FEIS violates several laws which govern the National Forests--the Organic Administration Act of 1897, the Multiple Use/Sustained Yield Act, and the National Forest Management Act are three that are violated.” (#0212 NOA, page1)

“Calaveras County Farm Bureau submits that Modified Alternative 8, chosen by the Regional Forester in the Record of Decision, was developed after the close of the comment period on the Draft Environmental Impact Statement. The Final Environmental Impact Statement and Record of Decision were released to the public simultaneously, therefore Modified Alternative 8 was never subject to public review and comment.” (#0212 NOA, page1)

“Modified Alternative 8 was negotiated by the USFS and the USFWS under the threat of listing additional species unless extensive habitat mitigation plans were adopted by the Forest Service. USFS violated its NEPA responsibility by only considering the environmental certifications of another agency and not balancing the environmental costs against economic and social benefits. Modified 8 even violates the Endangered Species Act by applying restrictive mitigation measures to listed and unlisted species alike.” (#0212 NOA, page2)

#0216, 0218

Specifically: See. 102 [42 USC - 4332], (E) "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."

In the Forest Service Staged Decision making process, "the Forest Plan establishes multiple-use goals and objectives for the planning unit... The Forest Plan provides direction for all resource management programs, practices, uses, and protection measures. The second level of planning involves the analysis and implementation of management practices designed to achieve the goals and objectives of the Forest Plan. This level involves site-specific analysis to meet NEPA requirements for decision making. FSM 1922, 53 Fed. Reg. 26807, 26809, (July 15, 1988), (Forest Plan and Project Level Decision making, page 2).

Implementation of the numerous, excessive and restrictive standards and guidelines as described in the programmatic Record of Decision, Appendix A, must be considered only after completing the "site specific analysis to meet NEPA requirements for decision making" as required and cited above.

- c. The decision to "implement modified Alternative 8 with some further modifications" is a clear violation of the NEPA process.
- d. The US Forest Service (USFS) and US Fish and Wildlife Service (USFWS) negotiated modified alternative 8 without proper public notice and public input thereby violating NEPA.
- e. The Final Environmental Impact Statement (FEIS) violates NEPA as it is based on inadequate alternatives, and does not fully disclose the economic and social impacts of the reductions in multiple use.
- f. The FEIS did not provide adequate notice to the public or allow meaningful public input.
- g. Copies of the DEIS were not available in a timely manner, and the comment period was insufficient for an action which affects the management of the National Forests within the entire state of California.

h. Modified alternative 8 further reduces animal unit months (AUM's) and rangeland acres available for grazing, however no alternative was included which considered increasing grazing levels.

i. Cattle and sheep numbers on Forest Service lands have declined from 163,000 head in 1981 to 97,000 head in 1998. Modified alternative 8 will further reduce grazing by an estimated 83,000 AUM's. No alternatives considered increased livestock grazing although increases could assist in fire suppression, improved habitat for some species and increased community stability.

j. Modified alternative 8 severely reduced the value of cows and calves in the economic analysis. This not only is inaccurate, but again, no alternative considered the economic impacts of increased value of cows and calves.

k. The Sierra Nevada Ecosystem Project (SNEP) did not originally encompass grazing science, but was later expanded to include grazing without full scientific and grazing community involvement as was stated by the SNEP scientists.

The SNEP review process was improperly used as a source of best available science. When reviewed by the Rangeland Science Team, it was determined that the Forest Service was proposing grazing regulations with insufficient scientific documentation. (#216NOA, page1) (#0218NOA, page2)

#0220

“Throughout the SNFPA – FEIS process the purposeful mission of the scientific method by scientists under contract to the USFS serving a personal bias against sustained resource use of the public domain has resulted in erroneous scientific conclusions based on misconstrued or non-existent data. The Tendency to cite previously published papers and reports suffering a similar bias tends to snowball the accumulated evidence into an overwhelming prejudice against the economic use of the public domain contrary to established federal policy.” (#0220 NOA, page1)

#0221

“The record of decision and FEIS are flawed in that they fail to comply with laws and statutes. I have constantly provided input, information and support for the development of a comprehensive and balanced alternative that meets the social, economic and environmental concerns of the citizens, families, businesses and local governments in the eight county area of the Quincy Library Group Pilot Project. As such, I can not accept or support the alternative designated in the Record of Decision because it is in violation of the Organic Act, Multiple Use Sustained-Yield Act, National Environmental Policy Act, Resource Planning Act, National Forest Management Act, Administrative Procedure Act and Herger-Feinstein Quincy Library Act, and fails to address the hazardous fuel conditions that exist on national forest lands at the appropriate and safe scale and pace.” (#0221 NOA, PAGE1)

a “ . . . I can not accept or support the alternative designated in the Record of Decision because it is in violation of the Organic Act, Multiple Use Sustained-Yield Act, National Environmental Policy Act, Resource Planning Act, National Forest Management Act, Administrative Procedure Act and Herger-Feinstein Quincy Library Act, and fails to

address the hazardous fuel conditions that exist on national forest lands at the appropriate and safe scale and pace.” (#0221 NOA, page1)

“Though the agency selected Modified Alternative 8 - with a theme: Manage sensitive wildlife habitat cautiously and provide for species conservation while addressing need to reduce the threat of fire to human communities, a summary comparison of the key evaluation elements between alternative modified 8 and alternative 4 demonstrate that the wrong alternative was selected for all the wrong reasons:” Appellant summarizes specific reasons why he feels that Alternative 4 responds better to many of the issues than Modified Alternative 8. (#0221 NOA, page1)

#0222

“The ROD and FEIS violate. . .” “Public Law 88-657 (Act of October 13, 1964. Forest Roads and Trails), as amended 1996” . . . “. . . the ROD establishes standards and guidelines that will reduce and eliminate existing roads and trails, and their associated uses, thereby reducing the Secretary of Agriculture’s ability to provide for intensive use, protection, development and management of the affected national forest lands.” (#0222 NOA, page18)

“The ROD and FEIS violate. . .” “Public Law 88-657 (Act of October 13, 1964. Forest Roads and Trails), as amended 1996” . . . “The Sierra Nevada Forest Plan Amendment ROD will negatively affect the system of trails, facilities, grazing, and camping aspects that are associated with using pack and saddle stock on the national forests. The use of pack and saddle stock is an historical foundation of the nation and in particular, the exploration, foundation and settlement of the west. Modern day use of pack and saddle stock provides a link with the past and maintains its legacy for future generations of Americans.” (#0222 NOA, page18-19)

“The ROD and FEIS violate. . .” . . . “Section 504 of the Rehabilitation Act of 1973, as amended in 1978.” . . . “The Sierra Nevada Forest Plan Amendment ROD proposes to reduce opportunities for persons with disabilities to access the national forests by reducing and eliminating opportunities for motorized vehicle access, reducing and eliminating pack and saddle stock operations, and reducing and eliminating areas of the forest where stock and vehicles may travel. For many persons with disabilities, the only methods they have to access the national forests are by saddle stock, and/or motorized vehicles. By reducing and eliminating these opportunities, access to persons with disabilities is thereby denied.” (#0222 NOA, page19-20)

“The Sierra Nevada Forest Plan Amendment FEIS provides a very narrow range of alternatives, none of which fully address the effects to outdoor recreation facilities, services and activities. The alternatives do not address the full range of uses on the national forests.” (#0222 NOA, page 20)

“The ROD and FEIS violate. . .” . . . “USDA Departmental Regulation 5600-2 Environmental Justice” . . . “The Sierra Nevada Forest Plan Amendment ROD does not clearly identify to minority and low-income populations the economic impacts that will

be directly and indirectly associated with the specific loss of job opportunities, recreation opportunities proposed by the FEIS.” (#0222 NOA, page 21)

“The FEIS and ROD are vague and unspecific with inadequate information to determine what the effects of the decision will be on permitted operations.” (#0222 NOA, page23)

#0229

“The Forest Service has failed to analyze an adequate range of alternatives.” . . . “the agency has no excuse for not analyzing a no-harvest, restoration only alternative.” . . . “The no-action alternative is not in essence a no-harvest, restoration only alternative.” (#0229 NOA, page 7)

“By failing to incorporate important natural resource benefits and externalized costs into the proposed SNFP Amendment and FEIS, the Forest Service has violated the Multiple Use and Sustained Yield Act.” (#0229 NOA, page13)

“By failing to utilize appropriate professional expertise capable of disclosing all natural resource benefits and externalized costs, the Forest Service is in violation of NEPA’s mandate to rely upon a systematic and interdisciplinary approach to decision making. 42 U.S.C. 9 4332 (A).” (#0229 NOA, page15)

“Violations of the Global Climate Change Prevention Act.” . . . “The adverse ecological and economic effects of increases in atmospheric carbon caused by National Forest commodity production activities has not been disclosed nor incorporated into decision-making by the Forest Service when it prepared the proposed SNFP Amendment and FEIS.” (#0229 NOA, page15-16)

“By failing to incorporate important natural resource benefits and externalized costs into the proposed SNFP Amendment and FEIS Forest Service has violated the Administrative Procedures Act.” (#0229 NOA, page16)

“By failing to incorporate important natural resource benefits and externalized costs into the proposed SNFP Amendment and FEIS the Forest Service has violated numerous provisions of the Forest Service Manual.” (#0229 NOA, page17)

“The proposed SNFP Amendment and FEIS fail to properly account for and mitigate cumulative impacts.” . . . “While the FEIS contains sections entitled “cumulative effects,” these sections amount to little more than cursory acknowledgments of their existence and unsubstantiated speculations about their past, present, and future magnitude. In addition, mitigation measures proposed for cumulative impacts are either entirely missing or wholly inadequate for many aspects of the affected environment.” (#0229 NOA, page26)

“While it is well known that old growth forest ecosystems will continue to be lost in the future as a result of the combined actions of private, state, and federal land managers as well as natural disturbance, the FEIS makes no attempt to specifically identify these actions, estimate the past and future magnitude of such actions, relate these changes to

any critical thresholds of environmental concern, or propose specific mitigation measures above and beyond mitigation measures developed for direct and indirect effects.” (#0229 NOA, page27)

“The SNFP Amendment ROD is not compliant with the Presidential Proclamation. The SNFP Amendment ROD is in violation of the Presidential Proclamation which established the Giant Sequoia National Monument due to the fact that the ROD states that its provisions (including timber sales) will apply to the Monument (see ROD, page 18) while the Proclamation clearly states that the Monument lands are off- limits to timber sales.” (#0229 NOA, page36)

#0234

“. . .This document is Unconstitutional. There is no place that I found differentiation between the blanket approach that addresses the “taking” of private property, if that private land is to be run by Forest Service rules in the same watershed as the government land in this document.” . . . “Watersheds are a par of State Water law and state law supercedes Federal Water Law, and this NEPA document is Unconstitutional on that basis.” (#0234 NOA, page2)

#0255

“The USFS ignored the myriad direct and indirect cumulative impacts that will result from their decision regarding the Framework, as they have changed the entire purpose of the National Forests from a multiple-use sustained-yield mandate to a new ecosystem sustainability concept that essentially precludes grazing and timber harvesting in the Sierra Nevada National forests.” (#0255 NOA, page2)

“The USFS’ ultimate preferred alternative was not vetted in the public arena, thus the public was never given a meaningful opportunity to comment. The public did not know anything about what ultimately became the preferred alternative until the ROD was released and then signed. Clearly, the USFS did not “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.” ” (#0255 NOA, page5)

“. . . the USFS did not provide notice to all those who had requested it. When public meetings were held, many interested individuals were often unaware of them because they had not received any sort of notification, either by direct mail, in the local newspaper, or in the Federal Register. In fact, there was an obvious practice of deliberate preclusion of public input and a noted failure to solicit appropriate information from the public. The public was not permitted to submit written comments at the public meetings, which was especially difficult for those who were unable to attend in person.” (#0255 NOA, page5)

“The alternatives provided within the Framework’s FEIS are substantially the same, so there was no meaningful choice among options” (#0255 NOA, page6)

“The FEIS and ROD violate this act [NFMA] because they are based on a narrow range of alternatives that reduce or eliminate grazing and timber production. Furthermore, this

act is violated because the FEIS and ROD do not undertake an analysis of the economic impacts resulting from Mod. 8.” (#0255 NOA. PAGE8)

“The FEIS violates this act [Organic] because it reduces, restricts and eliminates many lawful, established and permitted uses of the national forests, including livestock grazing and timber harvesting.” (#0255 NOA, page8)

“The FEIS violates this act [MUSYA] because it reduces, restricts, and eliminates many lawful, established and permitted uses of the national forests, including livestock grazing and timber harvesting.” (#0255 NOA, page8)

“The FEIS violates this act [RPA] by severely reducing, and in some cases eliminating, multiple use and sustained yield with respect to grazing and timber production.” (#0255 NOA, page8)

“The FEIS violates this act [FLMPA] by severely limiting and in some instances, removing grazing and timber production from the Sierra Nevada national forests.” (#0255 NOA, page9)

#0272

“ . . . the Council must appeal the Forest Plan Amendment for the following reasons: lack of range of alternatives, unattainable fuel reduction standards in pine and mixed conifer forests above 4500’. And inadequate public notification of the drastic effects of this Plan.” (#0272 NOA, page1)

Range Management Issues

#0026

The appellant contends that, “There is clearly no evidence that any grazing effects on willow flycatcher are a driving factor in their population. What evidence does exist indicates that grazing is not a significant factor. Yet, the management standard FW-wifl-1 is to completely exclude livestock from any meadow where a willow flycatcher is detected, whether the meadow be one acre or several hundred, and even if the loss of that meadow results in the termination of a livestock operation. This is not a reasonable management strategy.” (#0026 NOA, Para. 7, p.2)

The appellant contends that, “Standard FW-wifl-1 states that where surveys are not completed of known sites, livestock will not be allowed to graze beginning in 2003. The FS is always behind schedule and this plan amendment adds much more to their plan of work. It is highly likely that these surveys will not be completed in only 2 years (2001 or 2002), and as a result, livestock permittees will be forced off their allotments because of lack of FS performance.” (#0026 NOA, Para. 5, p.3)

The appellant contends that, “There is a complete lack of data that supports standard RCA-18, bank disturbance standard, in attaining long-term riparian habitat condition. While no doubt severe, prolonged trampling would have negative impacts to riparian systems, nothing in the scientific literature clearly establishes 10-20 percent as an appropriate standard. Grazing system, season of use, existing plant community, Rosgen channel type, and other factors impact any potential affect from livestock trampling; yet the standard in this plan amendment considers none of these factors and simply imposes an arbitrary number of 10 or 20 percent.” (#0026 NOA, Para. 6, p.3)

The appellant contends that, “Nothing in standard RCA 18, bank disturbance standard, clarifies when the 10 to 20 percent disturbance standard will be measured. Monitoring data show that under short duration, early season grazing management, most disturbances from trampling disappears over the summer due to regrowth of riparian vegetation. What looks like 35 percent bank disturbance in July, may only be 12 percent in October.” (#0026 NOA, Para. 3, p.4)

The appellant contends that, “How can the FS begin to accomplish the requirement to determine ecological status on all key areas monitored for grazing utilization prior to establishing utilization levels, when they are already falling short on existing monitoring requirements? The result of lack of this monitoring will likely be reduction or suspension of livestock grazing.” (#0026 NOA, Para. 1, p.5)

The appellant contends that, “RCO 5, riparian conservation objective, limits browsing to no more than 20 percent of the annual leader growth of mature riparian shrubs and no more than 20 percent of individual seedlings, removal of livestock from any area of an allotment when browsing indicates a change in livestock preference from grazing herbaceous vegetation to browsing woody riparian vegetation. How can the FS be expected to accomplish another layer of monitoring when they are understaffed and budgeted to monitor riparian shrubs and assess whether a 20 percent utilization level has been obtained?” (#0026 NOA, Para. 2, p.5)

The appellant contends that, “RCO 1 requires monitoring of stream temperatures. Most grazing allotments have at least one location where water temperatures, at some time during the grazing season, are above optimum for trout and other aquatic species. The temperature increases may have nothing to do with livestock activities, but livestock may be asked to vacate allotments to correct the problem. Who will determine where water temperatures are taken? When will FS staff have time to complete this monitoring?” (#0026 NOA, Para. 4, p.5)

The appellant contends that, “The standards and guidelines for the willow flycatcher, great gray owl, riparian conservation areas, riparian conservation objectives, and the peer review process creates an overwhelming cumulative impact on the livestock grazing industry in the Sierras. Taken together, there is created a depth and breadth of regulations and interpretations thereof that livestock permittees could not possibly abide by. No professional rangeland management specialist could design a grazing season or

system that could mitigate all real and perceived impacts from grazing covered in these regulations.” (#0026 NOA, Para. 3, p.6-7

#0029

The appellant contends that, “The grazing standards for grass are not supported by the science cited. The FEIS shows that grazing of up to 50 percent has been adopted by the FS in the last 5 years, puts maximum utilization in late seral status meadow at 45 percent, admits that field studies show 30 to 45 percent is adequate to improve ecological condition or maintain desired condition, but the Record of Decision incorporates 30 percent utilization for meadows in early seral status and 40 percent for those in late seral status. The Record of Decision also may limit use in all meadows to 4 inches minimum stubble height coupled with residual dry matter standards ranging between 400 and 1,000 pounds per acre.” (#0029 NOA, Para. 1 & 2, p.2)

The appellant contends that, “The FEIS shows there have been few studies on willows, and those completed show willows respond with increased growth to 50 percent utilization and that moderate browsing had no effect on seedling growth. Yet, the Record of Decision adopts an unsupported standard for willows of no more than 20 percent of annual leader growth and not more than 20 percent of seedlings browsed.” (#0029 NOA, Para. 3, p.2)

The appellant contends that, “The Record of Decision says bogs and fens have to be protected from livestock. Depending on how one classifies bogs and fens, this could result in totally unworkable demands for fencing wet places all over the mountains because bogs and fens may exist all over the mountains, often miles from any stream.” (#0029 NOA, Para. 5, p.2)

The appellant contends that, “For Yosemite toads, where toads or essential habitat exist, the Record of Decision excludes livestock from areas of standing water and saturated soils in wet meadows, limited to 2 weeks following snowmelt. It may also exclude grazing in wet meadows even later. The Record of Decision is vague.” (#0029 NOA, Para. 7, p.2)

The appellant contends that, “The frog and toad standards find no support in science or common sense. Blaming cattle for declines in toads and frogs makes no sense. Cattle have been grazing in the forests since the mid-1800’s, yet the amphibian decline is recent, worldwide, and in both grazed and ungrazed areas. Cattle as causal factor in amphibian decline fits neither in time or space. The Record of Decision relies on implications from a personal communication from D.L. (David) Martin who has been quoted as stating he was “building a case against the cows.” A source that appears to be biased and whose opinions stand alone with corroboration.” (#0029 NOA, Para. 3 & 5, p.3)

The appellant contends that, “The FS is coming down on grazing when it does not fit as a cause of decline of a population. The Record of Decision requires that if willow flycatchers are found, no grazing is allowed in the entire meadow. Even for historically

occupied sites, where birds are not present, it prohibits all but late season grazing. Beginning in 2003, livestock cannot graze in unsurveyed known sites. Willow flycatchers were common until 1910, and locally abundant through 1940, with noticeable declines after 1950. Cattle, which grazed most heavily from the late 1800's through the 1930's, did not cause the decline. The FEIS identified the problem that does fit, development both in the Valley and the Sierras." (#0029 NOA, Para. 7 & 8, p.3; Para. 6, p.4)

#0030

The appellant contends that, "Standards developed to protect sensitive and threatened species are not backed by statistically valid scientific studies." (#0030 NOA, Para. 4, p.1)

The appellant contends that, "The FEIS estimate of 83,000 livestock AUMs lost under the selected alternative is grossly underestimated because the standards will render entire allotments unusable, not just portions of the allotments." (#0030 NOA, Para. 4, p.1)

#0074

The appellant contends that, "The grazing portions of the FEIS, standards and guidelines, and ROD remove the potential for sound, economically viable range management and grazing from the Sierra Nevada." (#0074 NOA, Section VI, p 2)

The appellant contends that, "Economic and social analyses are integral parts of Forest Service planning and decision making (FSM 1970.3). The Final Environmental Impact Statement admits that Modified Alternative 8 will have major adverse effects on grazing but fails to develop or provide to the public the data used to arrive at the decision in the preferred alternative. Social and cultural issues were not analyzed to the extent necessary to develop reasonable understanding of the full extent of effects from the range of alternatives." (#0074 NOA, Section IV-B-1, p 1)

The appellant contends that, "The grazing restrictions imposed by the preferred alternative (Modified Alternative 8) are based on flawed scientific assumptions and analyses. The science that allegedly supports many of the Modified Alternative 8 standards and guidelines are suspect. We could not find any scientific support for any of the statements implicating cattle grazing as the key threat to willow flycatcher in the Sierra Nevada contained in the Draft Environmental Impact Statement." (#0074 NOA, Section V-A-B, p 25-26)

The appellant contends that, "The scientific basis for many of the grazing restrictions in the Final Environmental Impact Statement is incomplete, inadequate, or non-existent. There is currently no sound scientific knowledge basis that justifies the assertion that livestock grazing is a primary factor driving willow flycatcher abundance in the Sierra Nevada. A few observation instances suggest that certain livestock grazing practices may lead to alterations of willow flycatcher habitat, which could be detrimental. However, the

premise that such management practices are currently widespread on lands managed by the Forest Service is highly questionable.” (#0074 NOA, Section V-B., p 25-26)

The appellant contends that, “The California Cattleman’s Association asked two scientists, Professors Wolfgang Pittroff and Fed Dahm to assessment the ten research reports cited in the Draft Environmental Impact Statement for scientific credibility. The report by Professors Pittroff and Dahm was provided to the Forest Service during the comment period on the Draft Environmental Impact Statement. The Forest Service failed to adequately respond to this report according to Professor Pittroff. Despite the fact that the Dahm and Pittroff review calls into question many of the scientific premises used to fashion grazing restrictions in various alternatives in the Draft Environmental Impact Statement, Modified Alternative 8 implements many grazing restrictions based on the same questionable scientific reports.” (#0074 NOA, Section V, p 25-27)

The appellant contends that, “Standard FW-wifl-1 is vague and overbroad and places significant discretion in the Forest Service to limit future grazing as it pleases. The default for lack of surveys in 2003 is to eliminate all grazing in the meadows not surveyed. This demonstrates a clear bias against the ranching industry in the Sierra Nevada regions. If the Forest Service takes no action to survey because of lack of funding, staffing, time, or intent, the ranchers in the Sierra Nevada areas will suffer. If any course of action is called for as a default, it should be just the opposite – no surveys should mean no restrictions on grazing.” (#0074 NOA, Section V-D-1, p 28)

The appellant contends that, “The timing of the stated willow flycatcher decline and statement of likely causes do not support a finding or even an inference that grazing is the primary cause of any willow flycatcher decline. The Final Environmental Impact Statement concludes there is a potential management risk to willow flycatcher after admitting a significant lack of knowledge, research, and gaps in the science thereby indicating a bias against the grazing industry. The possibility that further studies could show grazing to be of no impact or very minor impact to willow flycatcher is given no voice.” (#0074 NOA, Section V-D-1, p 29.)

The appellant contends that, “Standard RCA-41 for Yosemite toads is vague and impractical. The definition of a wet meadow is very vague and can be subjectively applied by the Forest Service. The survey restriction presumes occupancy and restricts grazing without proof. The scientific supports for the restriction is based on a single cite to a personal communication and is not an acceptable scientific study that has been published or peer-reviewed. There is no scientific study to support the decisions of livestock grazing restrictions in this standard.” (#0074 NOA, Section V-E-F, p 33)

The appellant contends that, “Please provide citations for “factors associated with declining populations [of California red-legged frogs] from degradation and loss of its habitat (all four habitat elements – aquatic, riparian, upland, and dispersal) associated with agriculture, urbanization, mining, overgrazing or proper grazing, recreation, timber harvest, and degraded water quality.” (#0074 NOA, Section V-B, p 37)

The appellant contends that, “The Final Environmental Impact Statement admits that it does not have the data to estimate the impacts to individual ranches. Accordingly, Modified Alternative 8 has been adopted without really knowing how many ranches will be shut down or seriously damaged by its grazing restrictions.” (#0074 NOA, Section VI-III-E, p 4)

The appellant contends that, “The Federal Land Policy and Management Act did not make multiple-uses completely subservient to environmental considerations; however, this is exactly the effect of the Final Environmental Impact Statement and why it is illegal under this Act.” (#0074 NOA, Section VI-IV-F, p 7)

The appellant contends that, “The Final Environmental Impact Statement focuses on five selected problem areas and ignores public input and NEPA requirements that issues such as grazing cannot be treated as incidental to the process.” (#0074 NOA, Section VI-IV-B, p 8)

#0078 #0079 #0089 #0098 #0124 #0140

The appellant contends that, “The collective set of standards (FW-wifl-1-6) for willow flycatchers is detrimental to the livestock industry. We feel these standards are not based on sound science or judgment. In establishing these standards, the Forest Service ignores the scientific literature and knowledge gained from many years of monitoring and adaptive management. There is no reasonable basis for the extreme adverse action, which is targeted towards grazing permits.” (#0078 et al NOA, Para. 4 & 5, p.1)

The appellant contends that, “Considering the discussion in the Final Environmental Impact Statement regarding the various impacts to willow flycatcher nests, there is clearly no evidence that any grazing effects on willow flycatcher are a driving factor in their population. What evidence does exist indicates that grazing is not a significant factor, yet the management standard if FW-wifl-1 is to completely exclude livestock from any meadow where a willow flycatcher is detected, regardless of the meadow’s size. This is not a reasonable management strategy. The reward for good riparian management appears to be complete loss of a grazing permit if willow flycatchers should take up residence on a grazing allotment.” (#0078 et al NOA, Para. 2, p.2)

The appellant contends that, “Standard RCA 18 – bank disturbance – lacks data that supports its use in attaining long-term riparian habitat condition. Nothing in the scientific literature clearly establishes 10 to 20 percent as an appropriate standard. The standard fails to consider grazing system, season of use, existing plant community, Rosgen channel type, and other factors that impact potential affects from livestock grazing.” (#0078 NOA, Para. 3, p.2)

The appellant contends that, “The standards and guidelines for willow flycatcher, great gray owl, riparian conservation areas, riparian conservation objectives, and peer review creates an overwhelming cumulative impact on the livestock grazing industry in the Sierras.” (#0078 et al NOA, Para. 1, p.3)

The appellant contends that, “The standards and guidelines will be interpreted and applied by Forest Service specialists, many of who have a bias against any sustainable natural resource use by man on public lands. Each of the standards and guidelines could preclude grazing in large geographic areas. Taken together these standards create a depth and breadth of regulations and interpretations that livestock permittees could not possibly abide by. No professional rangeland specialist could design a grazing season or system that could mitigate all real land perceived impacts from livestock grazing covered in these regulations.” (#0078 et al NOA, Para. 1, p.3)

The appellant contends that, “The Record of Decision violates the Rescission Bill of 1989 regarding reissuance of grazing permits based on site-specific NEPA. If the programmatic standards and guidelines were implemented as written, grazing would be terminated on many allotments without the benefit of site-specific review.” (#0078 et al NOA, Para. 2, p.3)

#0146

The appellant contends that, “The California Cattleman’s Association asked two scientists, Professors Wolfgang Pittroff and Fed Dahm to assess the ten research reports cited in the Draft Environmental Impact Statement for scientific credibility. The report by Professors Pittroff and Dahm was provided to the Forest Service during the comment period on the Draft Environmental Impact Statement. The Forest Service failed to adequately respond to this report according to Professor Pittroff. Despite the fact that the Dahm and Pittroff review calls into question many of the scientific premises used to fashion grazing restrictions in various alternatives in the Draft Environmental Impact Statement, Modified Alternative 8 implements many grazing restrictions based on the same questionable scientific reports.” (#0146 NOA, Section II (B), p.28)

The appellant contends that, “Standard FW-wifl-1 is vague and overbroad and places significant discretion in the Forest Service to limit future grazing as it pleases. The default for lack of surveys in 2003 is to eliminate all grazing in the meadows not surveyed. This demonstrates a clear bias against the ranching industry in the Sierra Nevada regions. If the Forest Service takes no action to survey because of lack of funding, staffing, time, or intent, the ranchers in the Sierra Nevada areas will suffer. If any course of action is called for as a default, it should be just the opposite – no surveys should mean no restrictions on grazing.” (#0146 NOA, Section II (D) (1), p.30)

The appellant contends that, “The timing of the stated willow flycatcher decline and statement of likely causes do not support a finding or even an inference that grazing is the primary cause of any willow flycatcher decline. The Final Environmental Impact Statement concludes there is a potential management risk to willow flycatcher after admitting a significant lack of knowledge, research, and gaps in the science thereby indicating a bias against the grazing industry. The possibility that further studies could

show grazing to be of no impact or very minor impact to willow flycatcher is given no voice.” (#0146 NOA, Section II (D) Para. 1 & 6, p.31)

The appellant contends that, “Standard RCA-41 for Yosemite toads is vague and impractical. The definition of a wet meadow is very vague and can be subjectively applied by the Forest Service. The survey restriction presumes occupancy and restricts grazing without proof. The scientific supports for the restriction is based on a single cite to a personal communication and is not an acceptable scientific study that has been published or peer-reviewed. There is no scientific study to support the decisions of livestock grazing restrictions in this standard.” (#0146 NOA, Section II, Para. 4-5, p.34, Para 1, p 35)

The appellant contends that, “Economic risks are great. Employment and income from grazing are conservatively estimated to decline by about 20 percent. The Final Environmental Impact Statement states that in many cases, the conservation standards would make it uneconomical for permittees to graze their allotments while waiting for analyses to be completed. Modified Alternative 8, with respect to willow flycatcher alone, mandates over 200 willow flycatcher surveys to be accomplished in a relatively short period of time, by an unknown number of people, with funds that may not be available, over a land area encompassing at least 18,788 acres, based primarily on the sound of a singing bird heard by a minimally trained employee, college student, or contractor to determine whether some ranchers in the Sierra Nevada are put out of business. This is an unworkable plan.” (#0146 NOA, Para 4, p 64)

The appellant contends that, “Deer browsing could cause cattle to be removed if deer browse more than 20 percent of willows. Increased monitoring is required by the Forest Service, which if not accomplished will prohibit grazing.” (#0146 NOA, Section II, Para 2, p 65)

#0151

The appellant contends that, “The Record of Decision violates the Rescission Bill of 1989. If the standards and guidelines are implemented as written, grazing permits would be terminated on many allotments.” (#0151 NOA, Para. 6, p.2)

#0161

The appellant contends that, “We appeal this plan for lack of a cumulative effects analysis for reduction in grazing permitting. Based on the Forest Service’s own analysis, the selected alternative will remove historic grazing operations one at a time without viewing them collectively.” (#0161 NOA, Para. 5, p.1 & Para. 12, p.7)

#0165

The appellant contends that, “The Public Rangelands Improvement Act expressly preserved grazing and has been protected by Congress. The Final Environmental Impact

Statement severely restricts grazing contrary to Congressional intent.” (#0165 NOA, Para. 4, p.2)

The appellant contends that, “The standards and guidelines set for willow flycatcher, great gray owl, Riparian Conservation Areas, and Riparian Conservation Objectives are extremely detrimental to the livestock industry. These standards are not based on sound science or judgment. In establishing these standards, the Forest Service ignores the scientific literature and knowledge gained from many years of monitoring and adaptive management.” (#0165 NOA, Para. 7, p.2)

The appellant contends that, “There is no reasonable basis for the extreme adverse action targeted towards grazing permits. Cattle and sheep number on Forest Service lands between 1981 and 1985 declined by 66,000 animal unit months. Modified Alternative 8 will reduce the number by another 83,000 animal unit months. This represents a combined reduction of 91 percent of animal unit months since 1981. Modified Alternative 8 does not consider the number of ranches that will be forced out of production.” (#0165 NOA, Para. 8, p.2)

The appellant contends that, “Each of the standards and guidelines could preclude grazing in large geographic areas. Taken together, the standards and guidelines create a depth and breadth of regulations and interpretations that rangeland permittees could not possibly abide by. No professional rangeland management specialist could design a grazing season or system that could mitigate all real and perceived impacts from livestock grazing covered in these regulations.” (#0165 NOA, Para. 1, p.3)

#0166

The appellant contends that, “The Record of Decision will virtually eliminate the Sierra Nevada livestock industry. Across-the-board cuts coupled with a host of special allocations will, in all cases, severely curtail grazing and in most cases, will eliminate it altogether. The Forest Service estimates that, at a minimum, the decision will cut from over 80,000 to 160,000 animal unit months of grazing. Collectively, the Sierra Nevada livestock industry will be put out of business.” (#0166 NOA, Para. 4, p.6 & Para. 2 & 4, p.8)

The appellant contends that, “With respect to willow flycatchers, all grazing is eliminated within entire meadows where the species is known to nest, and severely curtailed in suspected nesting sites and pastures within 5 miles of known sites. Grazing will be eliminated in meadows the Forest Service fails to survey for the species by 2003, regardless of whether or not the species actually occupies the site. Despite inconclusive and mixed reviews of willow flycatcher research, the Forest Service eliminates grazing in all known willow flycatcher sites, restricts grazing in potential sites with respect to use, utilization, and season of use.” (#0166 NOA, Para. 5, p.6 & Para. 1, p.12)

The appellant contends that, “The Forest Service provide little conclusive scientific documentation regarding the impacts of grazing on Sierra Nevada aquatic and meadow

habitats. For example, the Final Environmental Impact Statement cites a study that degraded riparian habitats have been linked to overgrazing, but fails to define “overgrazing” and provides no citation that grazing properly conducted has been linked to riparian degradations.” (#0166 NOA, Para. 3 & 4, p.10)

The appellant contends that, “With respect to the California red-legged frog and the Yosemite toad, the Forest Service provides no citation whatsoever to support its assumption that grazing is harmful to the species. Despite this lack of evidence, the Forest Service eliminates grazing in areas occupied by the species.” (#0166 NOA, Para. 6, p.10 & Para 1, p. 11)

The appellant contends that, “With respect to grazing utilization standards, the Final Environmental Impact Statement indicates that establishment of uniform standards is not recommended. Despite this admonition, the Forest Service prescribes uniform, regionwide utilization standards.” (#0166 NOA, Para. 2, p.12)

The appellant contends that, “With respect to every substantive management decision made by the amendments, legitimate multiple-uses such as grazing become subservient to ecological and wildlife concerns. The decision will result in the near or complete elimination of grazing on national forests in the entire Sierra Nevada region, without scientific justification.” (#0166 NOA, Para. 2, p.16)

The appellant contends that, “The decision to eliminate or curtail grazing in areas in admittedly good to excellent ecological condition, pending lengthy studies, based on hypothetical speculation that grazing may in the future harm a particular species or ecosystem are without scientific justification.” (#0166 NOA, Para. 2, p.16)

The appellant contends that, “Universal grazing cuts are not warranted. Severe cuts in grazing are not rationally supported by the science cited in the Final Environmental Impact Statement. Because the Forest Service has failed to provide substantive evidence that rationally supports the cuts prescribed, its decision to cut grazing is arbitrary and capricious. It is irrational for the Forest Service to make universal cuts on all allotment meadows when by its own admission, nearly all meadows are currently in fair to good condition and almost half are already in the seral state classified in the Final Environmental Impact Statement as the desired condition. The Forest Service’s wholesale elimination of grazing for the sake of a species, based on a smattering of mixed and inconclusive science, which suggests that grazing may be one of many factors that could harm the species in some circumstances, almost defines arbitrary and capricious.” (#0166 NOA, Para. 3, p.18)

The appellant contends that, “With respect to the Yosemite toad, California red-legged frog, and great gray owl, the Final Environmental Impact Statement cites absolutely no scientific evidence demonstrating that grazing harms these species. Instead, the Forest Service assumes that because grazing occurs within the habitat of these animals, it must harm them. Based on this unsupported assumption, the Forest Service eliminates or curtails grazing wherever these species are found. The decision to eliminate grazing

where these species exist, based on an unsupported assumption of harm, is wholly arbitrary and capricious and has no rational basis whatsoever.” (#0166 NOA, Para. 2, p.20)

The appellant contends that, “With respect to the economic and environmental impacts of eliminating grazing, the Final Environmental Impact Statement is inadequate. Appellants and other parties were concerned about the failure to adequately predict and consider the economic impacts on grazing or elimination and commented extensively on this problem. They received assures the deficiencies would be cured. The Final Environmental Impact Statement failed to cure the deficiencies with respect to grazing.” (#0166 NOA, Para. 3 & 4, p.26)

The appellant contends that, “The economic analysis estimated loss of animal unit months of grazing and directly translates this to the lost value of cattle and jobs derived there from. This type of analysis fails to predict the real and cumulative impacts of the decision. The Final Environmental Impact Statement states several times that the decision will likely result in forcing most ranchers out of business. Prediction of economic impacts based on an estimated loss of animal unit months of grazing, when the true result of the decision will be elimination of the entire ranch, results in a gross underestimation of the impacts and fails to consider the much larger direct economic impacts to families, jobs, and local communities. The analysis is silent regarding cumulative economic impacts to communities that rely in large part on ranching operations that will no longer exist.” (#0166 NOA, Para. 5, p.26 and Para.1 & 2, p.27)

#0167

The appellant contends that, “The Record of Decision would eliminate our grazing on Forest Service lands. This would jeopardize our family’s living, heritage, and way of life, as well as the open space actively managed on our home ranch. The cumulative impact of many other ranchers, as well as ourselves, being unable to continue operations would seriously impact our entire local community’s economic base.” (#0167 NOA, Para. 1, p.3)

The appellant contends that, “The cumulative impacts of layering this multitude of rules and regulations over existing requirements would end livestock grazing in the Sierras and Modoc Plateau. It would be impossible for any livestock grazing operation to comply with the multitude of standards and guidelines. To attempt to mitigate every perceived issue by every specialist for every standard and guideline and to do the necessary monitoring would be cost prohibitive to the permittee.” (#0167 NOA, Para. 2, 3 & 4, p.3)

The appellant contends that, “The Final Environmental Impact Statement and Record of Decision cannot be implemented as written. The agency cannot possibly do the tasks they have obligated themselves to do resulting in: (1) the agency will be sued because they have not done what they said they would do, subsequently halting any resource activity; and (2) the money and personnel requirements will become so burdensome the agency

will not be able to economically justify any resource activity.” (#0167 NOA, Para. 1, 2 & 3, p.4)

The appellant contends that, “The science used in the Final Environmental Impact Statement was based on speculation and supposition rather than known facts, so subsequently the standards and guidelines put forth in the Final Environmental Impact Statement are equally flawed.” (#0167 NOA, Para. 4, p.4)

The appellant contends that, “All alternatives were created to pacify the USDI Fish and Wildlife Service on perceived unlisted species issues, thus prioritizing habitat preservation over resource activities. Willow flycatcher habitat prescriptions carry this to an extreme. If there are willow flycatchers there – livestock are removed. If the willow flycatchers are not there – the livestock is removed. If the Forest service does not know if the willow flycatchers are there or not – the livestock are removed. All of this is based on no credible science.” (#0167 NOA, Para. 7, p.4 and Para. 1, p.5)

The appellant contends that, “There is a complete lack of data that supports standard RCA-18, bank disturbance standard, in attaining long-term riparian habitat condition. While no doubt severe, prolonged trampling would have negative impacts to riparian systems, nothing in the scientific literature clearly establishes 10-20 percent as an appropriate standard. Grazing system, season of use, existing plant community, Rosgen channel type, and other factors impact any potential affect from livestock trampling; yet the standard in this plan amendment considers none of these factors and simply imposes an arbitrary number of 10 or 20 percent.” (#0167 NOA, Para. 5, p.7)

The appellant contends that, “The standards and guidelines when coupled with the willow flycatcher, great gray owl, Yosemite toad, and peer review process create an overwhelming cumulative impact on the livestock grazing industry in the Sierras. Each of these standards and guidelines could preclude grazing in large geographic areas. Taken together they combine to form a depth and breadth of regulations and interpretations that no permittee could possibly abide by. No professional rangeland management specialist could design a grazing season or system that could mitigate all real and perceived impacts from grazing covered in these regulations.” (#0167 NOA, Para. 5, p.11 and Para. 1, p.12)

The appellant contends that, “The proposed willow flycatcher standard, FW-wifl-1, provides a significant disincentive for livestock permittees to manage for good willow and riparian habitat since their “reward” will be total exclusion from the meadow if willow flycatchers show up. This is extremely disturbing since we have many examples of successful projects on the Modoc, Lassen, and Plumas where great improvement in riparian habitat has been made as a result of cooperation between grazing permittees, the FS, other agencies and stakeholder groups. Why, in light of these standards, would permittees or local citizens and county governments, which support the livestock industry, participate with the FS on cooperative projects?” (#0167 NOA, Para. 5, p.13)

The appellant contends that, “Standard FW-wif-1 states that where surveys are not completed of known sites, livestock will not be allowed to graze beginning in 2003. The FS is always behind schedule and this plan amendment adds much more to their plan of work. It is highly likely that these surveys will not be completed in only 2 years (2001 or 2002), and as a result, livestock permittees will be forced off their allotments because of lack of FS performance.” (#0167 NOA, Para. 2, p.14)

#0168

The appellant contends that, “The Final Environmental Impact Statement lacks statements about restricting grazing for 3 years following prescribed fire so that native wildflower species have sufficient time to germinate following fire.” (#0168 NOA, Para. 3, p.64)

The appellant contends that, “The Final Environmental Impact Statement and Record of Decision fail to state that following the prescribed burn, the grazing allotment in the burn area would be closed for 3 years to permit sufficient time for native plants to germinate. Specifying no grazing following fire is part of the requirement of the cohesive forest plan to define the terms of fuels management, which must include resting the allotment following fire.” (#0168 NOA, Para. 2, p.117 and Para. 2, p.119)

The appellant contends that, “The Regional Forester failed to consider the California Native Plant Society and the Sequoia National Forest multi-agency BEAR Team recommendations to not permit grazing for a minimum of 2 years following fire to protect resource values.” (#0168 NOA, Para. 4, p.119 and Para. 1, p.120)

The appellant contends that, “The Final Environmental Impact Statement failed to consider the growing body of scientific research that shows grazing to be harmful to the ecosystem and especially harmful to the watersheds.” (#0168 NOA, Para. 3, p.158)

The appellant contends that, “The Final Environmental Impact Statement failed to state that grazing allotments in burn areas would be closed for 3 years following prescribed burns to permit sufficient time for native plants to germinate.” (#0168 NOA, Para. 6, p.165)

#0173

The appellant contends that, “The science used to develop the willow flycatcher conservation strategy is flawed science. The California Cattleman’s Association submitted a study conducted by Texas A&M University that refutes most of your findings regarding the interaction grazing cattle and the willow flycatcher.” (#0173 NOA, Para. 3, p.1 and Para. 1, p.2)

#0174

The appellant contends that, “The Final Environmental Impact Statement failed to consider and respond to the study entitled, “*Assessment of the Scientific Basis of Management Recommendations Regarding Willow Flycatcher Conservation in the Sierra Nevada Framework Draft Environmental Impact Statement*,” which points out the data used to formulate the willow flycatcher standards and guidelines are severely flawed.” (#0174 NOA, Para. 2, p.1)

#0175

The appellant contends that, “The Final Environmental Impact Statement fails to respond to points raised in the study entitled, “*Assessment of the Scientific Basis of Management Recommendations Regarding Willow Flycatcher Conservation in the Sierra Nevada Framework Draft Environmental Impact Statement*,” which points out the data used to formulate the willow flycatcher standards and guidelines are severely flawed. This has resulted in a collective set of standards (FW-wifl-1-6) that would severely harm the livelihood of grazers on the Modoc National Forest. These standards were developed as if there was no scientific disagreement over the findings used to produce the rules.” (#0175 NOA, Para. 6 & 7, p.2)

#0192

The appellant contends that, “Standards FW-wifl-1 through 6 for willow flycatchers are collectively detrimental to the livestock industry. The Forest Service ignored the scientific literature and knowledge gained from many years of monitoring and adaptive management. The standards are not based on sound science or judgment. New information (*Assessment of the Scientific Basis of Management Recommendations Regarding Willow Flycatcher Conservation in the Sierra Nevada Framework*, by Dahm and Pittroff) concludes there is no reasonable basis for the extreme adverse action targeted towards grazing because they could find no scientific support for any of the [Draft Environmental Impact Statement] statements implicating cattle grazing as the key threat to willow flycatcher in the Sierra Nevada.” (#0192, 0194 NOA, Para 4, p 1)

The appellant contends that, “The Final Environmental Impact Statement indicates there is no data available on the effects of light, moderate, or heavy levels [of grazing] on willow flycatcher fitness and long-term population persistence. There is no evidence that grazing effects on willow flycatcher are a driving factor in their population. Evidence exists that grazing is not a significant factor, yet standard FW-wifl-1 is to completely exclude livestock from any meadow where a willow flycatcher is detected, no matter the size of the meadow, even if the loss of the meadow results in termination of a livestock operation. The reward for good management on a permit will be complete loss of the grazing permit.” (#0192 NOA, Para 5-6, p 1, #0194 NOA, Para 7-8, p 1-2)

The appellant contends that, “Standard RCA 18 is an arbitrary number of 10 or 20 percent and there is no data that supports the use of this standard in attaining long-term riparian habitat condition.” (#0192 NOA, Para 2, p 2, #0194 NOA, Para 2, p 2)

The appellant contends that, “There will be overwhelming cumulative impacts on the livestock grazing industry in the Sierras if the standards and guidelines for willow flycatcher, great gray owl, riparian conservation areas, riparian conservation objectives, and the peer-review process are implemented.” (#0192, NOA, Para 5, p 2, #0194 NOA, Para 1, p 3)

The appellant contends that, “The decision violates the 1989 Rescission Bill that allowed permits to be issued with the same terms and conditions as the preceding permit until the National Environmental Policy Act could be completed. Site-specific National Environmental Policy Act analysis has still not been completed for many active grazing permits. This decision is programmatic and cannot serve as a site-specific analysis. If the decision were implemented as written, grazing would be terminated on many allotments. This would violate the Rescission Bill.” (#0192 NOA, Para 1, p3, #0194 NOA, Para 2, p 3)

#0204

The Standards and Guidelines, with regard to the willow flycatcher, are arbitrary and capricious. Beginning in 2001, a WF survey will be conducted in all 82 known WF sites. If WF is detected, grazing will be eliminated in the entire meadow beginning on calendar after detection. If WF are not detected, only late season grazing will be allowed at utilization levels according to habitat condition. Beginning in 2003, no grazing will be allowed in meadows where surveys have not been completed. (#0204 NOA, page 22, 23)

#0207

The appellant contends that, “An indirect effect of increasing constraints on grazing in national forests is the greater likelihood that small-scale ranchers will have to cease ranching all together. (FEIS, Vol. 2, Chap. 3, p. 407.) Yet, surprisingly, the FEIS admits that it does not have the data to estimate the impacts to individual ranches. (/Sid.) Accordingly, Mod 8 has been adopted without really knowing how many ranches will be shut down or seriously damaged by its grazing restrictions.” (#0207 NOA, Section V-E, p 8)

The appellant contends that, “Forest and Rangeland Renewable Resources Planning Act of 1974 - The FEIS violates this Act by inhibiting multiple-use and sustained yield, especially in the area of grazing. Further, the FEIS does not clearly explain the economic effects for reduced grazing opportunities.” (#0207 NOA, Section VI-D, p 12)

The appellant contends that, “Public Rangelands Improvement Act of 1978). This Act expressly preserved grazing on our nation's rangelands. Congress has been vigilant in protecting the authorized multiple use represented by grazing. The protection given to grazing by this USFS statute has been disregarded or rendered wholly subservient to preservation by the adoption of the extreme and unbalanced provisions of Mod 8.” (#0207 NOA, Section VI-G, p 13)

The appellant contends that, “The FEIS chooses to focus on only five selected problem areas and ignores public input and NEPA requirements that issues such as grazing cannot be treated as "incidental" to the process. Designating only five select areas of inquiry precluded effective response and participation by the affected parties. The Plumas County Board of Supervisors wrote, "Grazing and Recreation must be analyzed as separate important issues the same as the 'Big Five' Alternatives, not as incidental to the process." The Regional Council of Rural Counties expressed the same concept, "Grazing practices is a separate issue that cannot be treated as incidental....NEPA requires the separate identification of issues that are significantly affected...to balance the economic and environmental benefits to the greatest degree possible." (#0207 NOA, Para.2, p.15)

The appellant contends that, “The FEIS admits that Mod 8 will have major adverse impacts on grazing, but fails to develop or provide to the public the data used to arrive at the decision to adopt Mod 8.” (#0207 NOA, Para.3, p.16)

The appellant contends that, “Beginning in 2003, no livestock grazing will be allowed in meadows where surveys have not been completed. During approximately the same time, the USFS must also survey "emphasis habitats" in active grazing allotments within five miles of the 82 known WF sites. That translates into surveying all meadows which lie within five miles of the 82 known sites. If the surveys are not completed within these hundreds of meadows within three years, only late season grazing will be allowed.” (#0207 NOA, Para.2, p.22)

The appellant contends that, “The science does not support the grazing restrictions contained in Mod 8, two WF standards, one Yosemite Toad standard, and several standards dealing with the Yellow-legged Frog.” (#0207 NOA, Para.3, p.25)

The appellant contends that, “The scientific bases for many of the grazing restrictions in the FEIS are incomplete, inadequate, or non-existent. The CCA asked two eminent scientists to review ten of the research reports cited in the DEIS for scientific credibility. Many of these same reports are cited in the FEIS. The two leading scientists are Wolfgang Pittroff, Assistant Professor of Range Animal Science, Department of Animal Science, University of California at Davis, and Fred Dahm, Professor of Statistics, Biostatistics and Biomodeling Laboratory, Department of Statistics, Texas A&M University, College Station, Texas.” (#0207 NOA, Para.4, p.25)

The appellant contends that, “There is currently no sound scientific knowledge basis which justifies the assertion that livestock grazing is a primary factor driving Willow Flycatcher abundance in the Sierra Nevada. A few observation instances suggest that certain livestock grazing practices *may* lead to alterations of WF habitat which could be detrimental. However, the premise that such management practices ... are currently widespread on lands managed by USFS is highly questionable.” (#0207 NOA, Para.5, p.25 and Para.1, p.26)

The appellant contends that, “The consideration of any proposed management alternatives in the DEIS would lend undue credibility to the available scientific basis.

Currently available work cannot serve as a guidance for management. If anything, it points out needs for specific research. We could not find any scientific support for any of the statements implicating cattle grazing as the key threat to WF in the Sierra Nevada contained in the DEIS. (#0207 NOA, Para.4, p.26)

The appellant contends that, “This S&G and its drastic restrictions on grazing are not supported by the findings and conclusions based on these reports. Livestock grazing is simply not the cause of any WF decline in California.” (#0207 NOA, Para.2, p.28)

The appellant contends that, “The FEIS states, “The primary management activity currently occurring within meadows and riparian areas on national forest lands used by willow flycatchers is livestock grazing. Livestock grazing is a risk factor that...can affect willow flycatchers in several ways.” Then surprisingly the FEIS states, “Specific research on livestock grazing practices in known willow flycatcher sites in the Sierra Nevada is *lacking*. This admits that there is a scientific gap on the very point on which these grazing restrictions are based.” (#0207 NOA, Para.4, p.28 and Para.1, p.29)

The appellant contends that, “It then concludes, “Direct research on livestock grazing effects on willow flycatchers appears to be limited to the work above [referring to the Colorado and Oregon studies]. These statements highlight further gaps in the science.” (#0207 NOA, Para.2, p.29)

The appellant contends that, “These statements and disclaimers lend strong support to the findings of Professors Dahm and Pittroff in Exhibit A that there are very serious knowledge gaps and no sound scientific evidence that justify the assertion that livestock grazing is the primary factor driving WF abundance in the Sierra Nevada.” (#0207 NOA, Para.2, p.30)

The appellant contends that, “Three scientific premises underlie the severe grazing restrictions imposed on emphasis habitats. They are: 1) there is solid scientific evidence that brown-headed cowbirds are detrimental to the WF in the Sierra Nevada regions; 2) there is solid scientific evidence that brown-headed cowbirds in the Sierra Nevada regions will fly 5 miles to lay its eggs in WF nests; and 3) there is solid scientific evidence that grazing is the primary cause of brown-headed cowbirds being located near WF habitats. The science underlying all three of these premises is totally nonexistent.” (#0207 NOA, Para.2, p.31)

The appellant contends that, “Is there solid scientific evidence that cowbirds are detrimental to the WF in the Sierra Nevada areas? The answer is no. As stated above, the FEIS itself admits that “little is known” and there is a “high degree of scientific uncertainty” about the actual effects of grazing-related factors, such as cowbirds, on willow flycatcher productivity and long-term population persistence in the Sierra Nevada bioregion.” (FEIS, Vol. 3, Chap. 3, Part 4.4, p. 156.) (#0207 NOA, Para.3, p.31)

The appellant contends that, “S&G RCA-41: This standard is vague and impractical. What are the locations of the wet meadows and streams where Yosemite toads may be

located? The definition of a wet meadow is very vague and can be subjectively applied by the USFS. How will the USFS make decisions on all wet meadows on June 1 of each year? How much staffing will this require? In addition, surveys are to be completed of "suitable habitat" for the Yosemite toad within 3 years. What is the definition of "suitable habitat"? What if we have one or two drought or very wet years within the next three years? Once again, if the surveys are not completed by the USFS, occupancy is presumed and grazing restrictions apply." (#0207 NOA, Para.2, p.35)

#209

The appellant contends that, "The Recission Bill was meant to assist the Forest Service in its overburdened workload of reissuing grazing permits. The bill allowed permits to be issued with the same terms and conditions as the preceding permit until NEPA could be completed. Site-specific NEPA analysis still has not been completed for many of the active grazing permits. The Sierra Nevada Forest Plan Amendment is a programmatic document and cannot serve as a site-specific NEPA document. Requirements to complete grazing assessments prior to issuance of grazing permits repeals the Recission Bill of 1989 for the Sierra forests, an authority not delegated to the Forest Service." (#0209 NOA, Para.3, p.7)

The appellant contends that, "Economic risks are great. Closure of sawmills, biomass facilities and ranches could preclude future options to manage the forest. The FEIS reports nearly 10,000 jobs will be lost compared to management under Alternative 4. One hundred million dollars will be lost annually in forest receipts to the treasury. The impact will be compounded by lost taxes to local, state and federal governments. Recreation visitor days will be down 15 to 20 percent compared to Alternative 4. Employment and income from grazing are conservatively estimated to decline by about 20 percent. "In many cases, these conservation standards would make it uneconomical for permittees to graze their allotments while waiting for an analysis to be completed." (#0209 NOA, Para.2, p.18)

#0210

The appellant contends that, "Years of monitoring, adaptive management and published literature conclude willow growth can be best promoted by early and mid-season grazing of meadows and that late in the season, browsing use of willows is often more pronounced. Cattle prefer grazing, while deer prefer browsing. Restricting cattle grazing to reduce browsing is not justified. Further, there are no documented studies on the effect of light, moderate or heavy grazing levels on willow flycatcher fitness and long-term population persistence. The cause of nest mortality is generally caused from depredation and losses from inclement weather, rather than anything related to livestock. Documented studies in Arizona found heavy metals may be related to non-viable eggs." (#0210 NOA, Para.8, p.4 and Para.1, p.5)

The appellant contends that, "The Recission Bill was meant to assist the Forest Service in its overburdened workload of reissuing grazing permits. The bill allowed permits to be

issued with the same terms and conditions as the preceding permit until site-specific NEPA could be completed. Site-specific NEPA has still not been completed for many of the active grazing permits. The SNFPA is a programmatic document and cannot serve as a site-specific NEPA document.” (#0210 NOA, Para.5, p.5)

The appellant contends that, “There is a complete lack of data support for the use of this standard in attaining long term riparian habitat condition. While no doubt that severe prolonged trampling would have negative impacts to riparian systems, nothing in the scientific literature clearly establishes 10% or 20% as an appropriate standard. Grazing system, season of use, existing plant community, Rosgen channel type, and other factors impact potential affect from livestock trampling. Yet the standard in this plan amendment considers none of these factors and simply imposes an arbitrary number of 10 or 20% (Standard and Guideline RCA 18, Vol. 4, Appendix D 1-5).” (#0210 NOA, Para.2, p.9)

The appellant contends that, “The risk from grazing is low to willow flycatcher. For example, "there are no data available on the effects of light, moderate or heavy grazing levels on willow flycatcher fitness and long-term population persistence" (Vol. 3, Chapter 3, part 4.4, pg. 151-152). Surveys in the Sierra Nevada show the greatest cause of willow flycatcher nest mortality was from depredation and losses from inclement weather, rather than anything related to livestock (Vol. 3, Chapter 3, part 4.4, pg. 151). Surveys in the southern Sierra Nevada have reported that 15% of Willow flycatcher eggs are non-viable which is far higher than the 3-4% reported elsewhere in the literature and far higher than those parasitized by cowbirds. Non-viable eggs have nothing to do with cattle but may be related to concentrations of heavy metals, which has been documented in flycatcher eggs in Arizona (Vol. 3, Chapter 3, part 4.4, pg. 151-152).” (#0210 NOA, Para.4, p.9)

#0212

The appellant contends that, “There are significant gaps in the science used to develop standards and guides regarding livestock grazing. One of the most notorious examples being standards for Willow flycatcher. The FEIS (Volume 3, Chapter 3, part 4.4, page 154) states, ". . . there are no data available on the effects of light, moderate, or heavy grazing levels on Willow flycatcher fitness and long-term population persistence." There is no clear evidence that grazing effects on Willow flycatchers are a significant factor in their population, yet the management standard adopted is to completely exclude" livestock from any meadow where Willow flycatchers are detected, regardless of the size of the meadow! This unreasonable standard will make entire allotments unusable. The fact that Willow flycatchers are found within active grazing allotments points to the fact that livestock grazing is compatible with the flycatcher.” (#0212 NOA, Para.4, p.1)

The appellant contends that, “The Bank Disturbance Standard (Standard RCA 18, Appendix DI-5) is arbitrarily set at 10 or 20% and does not take into account any other factors that have an impact on potential effects from livestock trampling. There is nothing in the scientific literature to indicate that this is an appropriate standard.” (#0212 NOA, Para.1, p.2)

#0213

The appellant contends that, “Considering the discussion in the FEIS, regarding the various impacts to Willow Fly Catcher nests, there is clearly no evidence that any grazing effects on Willow flycatcher are a driving factor in their population. What evidence does exist, indicates that grazing is not a significant factor. Yet, the management standard FW-wifl-1 is to completely exclude livestock and - horses Tom any meadow where a Willow flycatcher is detected, whether that meadow be one acre or several hundred, and even if the loss of that meadow results in the termination of a livestock operation or special use recreation permit. This is not a reasonable management _ strategy. The “reward” for good riparian management appears to be complete loss of the grazing permit should Willow Fly Catchers take up residence on our grazing allotment.” (#0213 NOA, Para 1, p 2)

The appellant contends that, “There is a complete lack of data which supports the use of Standard RCA 18, Appendix DI-5 (Bank Disturbance Standard) attaining long term riparian habitat condition. While no doubt that severe prolonged trampling would have negative impacts to riparian systems, nothing in the scientific literature clearly establishes 10% or 20% as an appropriate standard Grazing system, season of use, existing plant community, Rosgen channel type, and other factors impact any potential affect from livestock trampling. Yet the standard in this plan amendment considers none of these factors and simply imposes an arbitrary number of 10 or 20%.” (#0213 NOA, Para 2, p 2)

The appellant contends that, “RCO #5 requires that at last 90% ground cover exist in meadows in early seral status or grazing will be eliminated until the meadows are in mid or late seral stage. This statement assumes that only rest from grazing will cause a shift in seral stage, however It is documented in many case studies that seral stage can be improved with proper grazing management. There are also many cases where grazing has been excluded and active erosion continues. At any location on a meadow in the Sierras, one could find an area with less than 90% ground cover. What percentage of the total area will be measured to determine if livestock will be removed?” (#0213 NOA, Para 3, p 2)

The Standards and Guidelines above for the Willow Flycatcher, Great Gray Owl, Riparian Conservation Areas and Riparian Conservation Objectives as well as the Peer Review Process create an overwhelming cumulative impact on the livestock grazing industry in the Sierras. These standards and guidelines will be interpreted and applied on the ground by Forest Service specialist, botanists, wildlife biologists, fisheries biologists, hydrologists, etc. Many of these specialist have a bias against any sustainable natural resource use by man on public lauds. Each one of these standards or guidelines could preclude grazing in large geographic areas. Taken together theses standards create a depth and breadth of regulations and interpretations thereof that livestock permittees could not possibly abide by. No professional rangeland management specialist could design a grazing season or system that could mitigate all real and perceived impacts from livestock grazing covered in these regulations.” (#0213 NOA, Para 5, p 2-3)

The appellant contends that, “Recission Bill of 1989 - The Sierra Nevada Forest Plan Amendment, Record of Decision, clearly violates the Recission Bill This bill, signed in 1989 was meant to assist the Forest Service in their over-burdened workload of reissuing grazing permits. The bill allowed permits to be issued with the same terms and conditions as the preceding permit until NEPA could be completed Site-specific NEPA has still not been completed for many of the active grazing permits. The Sierra Nevada Forest Plan Amendment is a programmatic document and cannot serve as a site-specific NEPA document. If the standards and guidelines in the Sierra Nevada Forest Plan Amendment are implemented as written, grazing would be terminated on many allotments. This would violate the Recission Bill.” (#0213 NOA, Para 2, p 3)

The appellant contends that, “The Sierra Nevada Ecosystem Project (SNEP) did not originally encompass grazing science, but was later expanded to include grazing without full scientific and grazing community involvement as was stated by the SNEP scientists.” (#0216 NOA, Para 1-k, p 2)

The appellant contends that, “The SNEP review process was improperly used as a source of best available science. When reviewed by the Rangeland Science Team, it was determined that the Forest Service was proposing grazing regulations with insufficient scientific documentation.” (#0216 NOA, Para 1-1, p 2)

The appellant contends that, “Modified alternative 8 does not consider the number of ranchers that will be forced to cease all operations as a result of this unbalanced alternative.” (#0216 NOA, Para 2-a, p 2)

The appellant contends that, “The FEIS and ROD disregard findings based on California Cattlemen sponsored literature review of information relevant to the willow flycatcher. This literature review has revealed that there has been much incorrect citation of information regarding the species that very little scientific information exists, which supports the restrictions recommended for activities in the vicinity of the species. The FEIS/ROD makes no reference to the fact that the declining willow flycatcher is not the subspecies located in the central Sierra Nevada, however the excessively restrictive activity related standards and guidelines are recommended regardless.” (#0216 NOA, Para 3-b, p 2-3)

#0218

The appellant contends that, “The FEIS and ROD disregard findings based on California Cattlemen sponsored literature review of information relevant to the willow flycatcher. This literature review has revealed that there has been much incorrect citation of information regarding the species that very little scientific information exists, which supports the restrictions recommended for activities in the vicinity of the species. The FEIS/ROD makes no reference to the fact that the declining willow flycatcher is not the subspecies -z-g& located in the central Sierra Nevada, however the excessively restrictive

activity related standards and guidelines are recommended regardless.” (#0218 NOA, Para 1-b, p 1)

The appellant contends that, “The SNEP review process was improperly used as a source of best available science. When reviewed by the Rangeland Science Team, it was determined that the Forest Service was proposing grazing regulations with insufficient scientific documentation.” (#0218 NOA, Para 1-c, p 1)

The appellant contends that, “Modified alternative 8 does not consider the number of ranchers that will be forced to cease all operations as a result of this unbalanced alternative.” (#0218 NOA, Para 3-a, p 2)

#0220

The appellant contends that, “ For instance would the USDA –USFS please present for peer review the data referenced to determine the Willow Flycatcher standards (FW – wifl-1-6, Appen. D1-12) please note “overall effect of grazing page 154-” there are no data available on the effects of light, moderate, or heavy grazing levels on Willow Flycatcher fitness and long-term population persistence.” (#0220 NOA, Para 1, p 2)

#0231

The appellant contends that, “The ROD fails to adequately allow for completion of meadow studies related to wildlife species in a timely manner, nor through co-operative agreements with the livestock industry and Allotment Permittees. The surveys required for toads, frogs, and plants should have greater flexibility for accomplishment. The ROD states that failure to survey within 5 years will then result in meadows being classified as off-limits to use, irregardless of the presence of a sensitive species or not. This is unacceptable. The procedure for surveying meadows for species must be reviewed and changed.” (#0231 NOA, Section 3, p 2)

The appellant contends that, “The EIS fails to thoroughly display the harm in which livestock grazing adversely impacts wildlife species, riparian habitats, and meadow areas.” (#0231 NOA, Section 5, p 2)

Lands Issues

Effects on Recreation Residences

#0006, #0010, #0011, #0012, #0013, #0017, #0018, #0019, #0020, #0021

The appellants contend that “...use of the cabin would be restricted until after June 30th of each year”.

(#0006 NOA page 1, #0010 NOA page 1, #0011 NOA page 1, #0012 NOA page 1, #0013 NOA page 1, #0017 NOA page 1, #0018 NOA page 1, #0019 NOA page 1, #0020 NOA page 1, #0021 NOA page 1).

The appellants contend that the giant sequoia “has not indicated any stress from the presence of the McIntyre tract cabins over these years.” (#0006 NOA page 2, #0010 NOA page 2, #0011 NOA page 1, #0012 NOA page 1, #0013 NOA page 1, #0017 NOA page 1, #0018 NOA page 2, #0019 NOA page 1, #0020 NOA page 1, #0021 NOA page 1).

#0014

The appellants contend that they have held a special use permit for their camp at this sight for over 50 years, and implementation of the 300 foot riparian buffer zone would force the camp “to move our buildings...(and)...be forced to close down.” (#0014 NOA page 2)

Effects on Special Uses

#0161, #0162, #0185, #0227

The appellants contend that the “The Forest Service has insufficient data to make decisions about special use permits”. (#0161 NOA p 4, #0162 NOA page 4, #0185 NOA page 5, #0227 NOA page 4)

#0222

The appellants contend that the Forest Service has not provided “...relevant science to substantiate the management actions and restrictions, and adequate information on the direct and indirect effects of the selected alternative on recreation supply and activities to proceed with implementation of the ROD for recreation uses, facilities and/or services”. (#0222 NOA page 2)

#0222, #0228

The appellants contend that the “ROD...does not adequately or accurately identify the effects of the management direction and goals on existing and future recreation uses, facilities and services, particularly those affecting recreation operations authorized under special use permits.” (#0222 NOA page 3, #0228 NOA page 2)

Effects on Hydropower Operations and CA Energy Crisis

#0141

The appellants contend that the “The ROD results in standards and guidelines that will adversely impact hydroelectric facility and power line operations”. (#0141 NOA page 2)

The appellants contend that the “The ROD must consider the impacts to power generation in light of the energy crisis in California and the western United States.” (#0141 NOA page 11)

#0206

The appellants contend that the ROD and FEIS “...fails to address the overwhelming role that dams and diversions have in altering the riparian areas, much less how to ameliorate their more negative affects...” (#0206 NOA page 46)

The appellants contend that the “The FEIS ignores most of these SNEP findings.... it fails to note the California energy crisis and the key role that hydroelectric plays in that issue. (#0206 NOA page 10)

#0225

The appellants contend that “... the FEIS fails to analyze reasonably foreseeable impacts on hydropower generation, particularly in light of the energy crisis that has plagued the western United States, especially California. (#0225 NOA page 1). The FEIS and ROD acknowledge that implementation of the management directives proposed will likely require changes in operation of dams but fails to analyze the impacts of such changes as required by law. (#0225 NOA p 1, 2 & 5)

#0146, #0158, #0159, #0160, #0209, #0210

The appellants contend that “Several changed conditions have occurred since release of the draft EIS that should have been examined in the Final EIS. California is experiencing an energy crises...” (#0146 NOA p 90, #0158 NOA page 2, #0159 NOA page 2, #0160 NOA page 2, #0209, NOA page 13, #0210 NOA page 10)

Social and Economic Issues

Economic Effects

#0030

The appellant contends that, certain negative economic impacts expected from reduced timber harvest, reduced grazing allotments, and increased wildfires in the proposed amendment were not adequately considered. (#0030, NOA, pp.1-2)

#0090

The appellant contends that, the economic impacts to various types of recreation were not adequately displayed in the alternatives of the DEIS. (#0090, NOA, p. 7)

#0146

The appellant contends that, “The selection of Alternative 8 Modified was arbitrary and capricious based on the FEIS” [because among other reasons] “Alternative 4 generates \$105 million annually in net benefits more than Alternative 8 Mod. (FEIS Summary Vol 1 Summary pg. 42).”[and] “. . .the ROD(s) failure to properly display losses in jobs and payrolls using a comparison of ROD modified 8 relative to.alternative 4 in the FEIS. “ (#0146, NOA pp.57-58)

#0151

The appellant contends that, “Local economic impacts need to be taken into account before implementing destructive new forest policies,” especially as related to grazing and recreation. (#0151, NOA pp.2-3)

#0161

The appellant contends that, there was a “. . . failure of the ROD to properly display losses in jobs and payrolls using a comparison of the selected alternative to Alternative 4.” Also, “The Regional Forester could not make an informed decision without benefit of an accurate economic analysis as required in the NEPA”, especially as related to grazing. (#0161, NOA p.5)

#0162

The appellant contends that there was a “. . . failure of the ROD to properly display losses in jobs and payrolls using a comparison of the selected alternative to Alternative 4.” Also, “The Regional Forester could not make an informed decision without benefit of an accurate economic analysis as required in the NEPA”, especially as related to grazing. (#0162, NOA p.5)

#0166

The appellant contends that, “The Forest Service’s EIS does not adequately discuss the economic and environmental impacts which will flow from the elimination of grazing”, especially cumulative impacts of the decision (#0166, NOA, p. 26)

#0168

“Appellants are also concerned about the illusion presented by the Forest Service that timber harvest provides funds to the general treasury.” “. . . (I)t is very unlikely that timber sales proposed by the Sierra Nevada Forest Plan Amendment would provide funds to the general treasury.” (#0168, NOA, pp. 48-49)

The appellant contends that, “The Sierra Nevada Forest Plan Amendment FEIS failed to adequately provide analysis of the economic impacts of this decision. Statistics were not analyzed regarding the loss of tourism.” (#0168, NOA, p. 129)

The appellant contends that, “The Sierra Nevada Forest Plan Amendment FEIS fails to adequately provide the negative financial impacts of this plan amendment. The Sierra Nevada Forest Plan Amendment FEIS failed to adequately provide analysis of the areas of the forest that will be closed to tourism and recreation during active logging for this massive logging decision.” (#0168, NOA, p. 129)

The appellant contends that, “Logging increases external costs to society when it causes the Federal Treasury to pay for the costs of developing timber sales that do not pay for themselves, causes sediment to fill reservoirs and dams, and causes increased wildfire intensity and severity that is ultimately paid for with annual expenditures to fight wildfires.” (#0168, NOA, p. 133)

#0185

The appellant contends that, “The Regional Forester could not make an informed decision without benefit of an accurate economic analysis as required in the NEPA”, especially as related to grazing. (#0185, NOA p.6)

#0201

The appellant contends that, “A more complete analysis of the cost-effectiveness of the fire fuels programs (should be) presented in the alternatives.” (#0201, NOA p.43)

#0203

The appellant contends that, “The Forest Service’s EIS does not adequately discuss the economic and environmental impacts which will flow from the elimination of grazing” , especially cumulative impacts of the decision (#0203, NOA, p. 28)

#0204

The appellant contends that, “The Forest Service’s EIS does not adequately discuss the economic and environmental impacts which will flow from the elimination of grazing” , especially cumulative impacts of the decision (#0204, NOA, pp. 34-35)

#0206

The appellant contends that, “FEIS discussion on energy related issues (Vol. 2, Ch.3, Part 5.9) neglects the prospective economic values and current environmental detriments of hydroelectric power to the ecosystem. . .” (#0206, NOA, p. 46)

The appellant contends that, “The Forest Service changed the categories of recreation usage from one table to another.” (#0206, NOA, p. 50)

#0216

The appellant contends that, “The Final Environmental Impact Statement Does Not Contain Sufficient Economic Analysis of the Alternatives”, especially as it pertains to grazing and other multiple uses. (#0216, NOA p.2)

#0218

The appellant contends that, “The Final Environmental Impact Statement Does Not Contain Sufficient Economic Analysis of the Alternatives”, especially as it pertains to grazing and other multiple uses. (#0218, NOA p.2)

#0222

The appellant contends that, “There is a serious lack of valid information on the economics pertaining to recreation activities. It is not possible to understand the total scope of the situation and the effects that the selected alternative (Modified 8) will have on the recreation industry.” These data include: no information on the numbers of outfitter and guides; no information on the numbers of resorts; no information on the numbers of organization or private camps; and no information on the numbers of other recreation developed and permitted operations, such as caverns, target ranges, golf courses, OHV areas, etc. (#0222, NOA, pp. 6,7)

The appellant contends that, “The total economic picture is not displayed for recreation activities, nor are the cumulative impacts of the selected alternative provided.” “The

FEIS does not provide the economic effects or consequences of the decision as it relates to recreation and tourism. (#0222, NOA, pp. 8, 25)

#0228

The appellant contends that, “Without accurate use figures, the Forest Service cannot accurately determine the effects of the management direction on recreation use, nor can it predict the economic impacts. There are expenditure amounts given for various activities.” (#0228, NOA, p. 11)

#0228

The appellant contends that the economic analysis is flawed because ski resorts was not properly analyzed and other recreation activities such as outfitter and guides, private camps, and developed and permitted operations were not considered. (#0228, NOA, p. 12)

#0229

The appellant contends that, “The proposed SNFP Amendment and FEIS ignore important ecosystem service values and externalities of commodity production.” (#0229, NOA, p. 8)

The appellant contends that, “. . . the Forest Service failed to incorporate information about important economic benefits of healthy ecosystems”, such as marketed and non-marketed forms of recreation and tourism; commercial and recreational fisheries within the boundaries of the Sierra Nevada National Forests and downstream; habitat for important game species and hunting both within and outside of the Sierra Nevada National Forests; water for cities, industries, businesses, and individual households downstream from the Sierra Nevada National Forests; the regulation of water flowing through rivers and streams, including flood control; non-timber forest products such as wild mushrooms, herbs, and medicinal plants; mitigation of global climate change through absorption and storage of vast amounts of carbon; enhancing the quality of life of neighboring communities; harboring biological resources that either have value now or have as yet unknown but potentially large economic and social value; harboring biological and genetic resources that can improve the long-term productivity of all forest land; pest-control services provided by species that prey on agriculture and forest pests, and pollination services provided by species that pollinate important forest and agricultural crops.” (#0229, NOA, pp. 10-11)

The appellant contends that, “In preparing the proposed SNFP Amendment and FEIS, the Forest Service failed to incorporate information about externalized costs passed on to communities, businesses, and individuals when National Forests are logged, grazed, mined, leased for oil and gas production, or otherwise developed. These include the direct, indirect, and cumulative economic costs associated with: lost recreational opportunities and decreased tourism; degraded commercial and recreational fisheries within the boundaries of the Sierra Nevada National Forests and downstream; degraded habitat for important game species and loss of hunting opportunities both within and outside of the Sierra Nevada National Forests; increased pollution of water for cities,

industries, businesses, and individual households downstream from the Sierra Nevada National Forests and increased costs of water filtration; increased flooding and disruption of the normal flows in rivers and streams. loss of non-timber forest products such as wild mushrooms, herbs, and medicinal plants; exacerbation of global warming through release of greenhouse gasses; diminished quality of life of neighboring communities; loss of biological resources that either have value now or have as yet unknown but potentially large economic and social value; loss of biological and genetic resources that can improve the long-term productivity of all forest land; diminished pest-control services provided by species that prey on agriculture and forest pests; diminished pollination services provided by species that pollinate important forest and agricultural crops; lost jobs and income associated with commodity production on private lands that is displaced by Forest Service commodity programs; lost jobs and income associated with the production of alternative and recycled wood and metal products or renewable energy that is displaced by subsidized logging, mining, and oil and gas development on the Sierra Nevada National Forests; death, injury, and property damage associated with commodity production on the Sierra Nevada National Forests, and; increased risk of wildfires caused by adverse changes in microclimate, increased human access, and slash generated by timber sales, grazing, mining, oil and gas leasing, roadbuilding, and other forms of development. (#0229, NOA, pp. 11-12)

The appellant contends that, “By failing to incorporate natural resource benefits and externalized costs into the proposed SNFP Amendment and FEIS, the Forest Service has violated the Forest and Rangeland Renewable Resources Planning Act and the National Forest Management Act.” (#0229, NOA, p.14)

Social and Economic Effects

#0028

The appellant contends that, “The EIS failed to adequately display the social and economic impacts of the amendments outlined for the public and specifically, for the modified amendment that was selected.” (#0028, NOA, p. 6)

#0139

The appellant contends that, “The socio-economic impact analysis required by NEPA does not incorporate the degree of specificity necessary to adequately assess the impacts attendant with implementation of the SNFP/AFEIS/ROD on individual communities within the region and specific communities of interest that utilize Forest Service lands.” (#0139, NOA, pp.1-2)

#0141 The appellant contends that, “The ROD results in standards and guidelines that will adversely impact hydroelectric facility and power line operations.” “the ROD/EIS should be revised to consider the impacts to hydropower and power line facilities and operations.” (#0141, NOA, pp.2-3)

#0146

The appellant contends that, “The FEIS fails on the Human Environment from CEQ 1500.2 (d) (e) and (f). These sections of the CEQ Guide emphasize the quality of the human environment and the FEIS clearly fails to incorporate the human environment components to the issues, alternatives and disclosures in the documents.” (#0146, NOA, p. 54)

#0158

The appellant contends that, “There should have been greater Social-Economic studies associated with this document. The process and the implementation of the ROD by the Forest Service have changed whole communities Companies have gone out of business. Lifestyles have been changed.” (#0158, NOA, p. 2)

#0161

The appellant contends that, “. . . the FEIS should have had a detailed accumulative effects analysis of what this means in loss of an important part of our American heritage,” especially as the FEIS pertains to grazing. (#0161, NOA, p. 5)

#0162

The appellant contends that, “. . . the FEIS should have had a detailed accumulative effects analysis of what this means in loss of an important part of our American heritage,” especially as the FEIS pertains to grazing. (#0162, NOA, p. 5)

#0168

“Appellants are concerned about the Sierra Nevada Forest Plan Amendment FEIS because it failed to consider in the cost benefits analysis the value of standing timber, the loss of carbon sequestration value, the increased global warming impacts caused by logging proposed by this decision, the loss of recreation value or any other aesthetic or socio-economic impacts or losses, and the value of the loss of forest acres that can be used by society for recreation.” (#0168, NOA, p. 42-43)

The appellant contends that, “The Sierra Nevada Forest Plan Amendment FEIS fails to adequately provide analysis of the large number of logging trucks which would be put onto the roads because of the logging proposed by the plan amendment and which would create public safety risks, dust, noise and other objectionable conditions. The public road systems that feed into the National Forests will incur significant additional road maintenance costs that must be factored into the economic analysis.” (#0168, NOA, p. 129)

Appellants are concerned that, “Prescribed burns will also contribute to a decrease in the atmospheric oxygen available for breathing and will increase atmospheric particulates, which could contribute to increased normal heart rate and lung disease. Logging and prescribed burns will reduce the carbon sequestration value of the forest, cause an increase in carbon dioxide in the atmosphere, and increase the global warming impacts to the world environment.” (#0168, NOA, p. 132)

Appellants are concerned about Inadequate methods for Archeological and

Historic Site Identification. “. . . (R)ather than relying only on the isolated sample observations of the Forest Archeologist, . . . the Forest Service should rely on a commercial resource analysis computer program and a high resolution MRS satellite IR scan of the forest and the forest floor.” (#0168, NOA, pp. 137-138)

#0169

The appellant contends that, “The Decision Fails to Adequately Analyze Socioeconomic Issues and Impacts.” “The Decision fails to accurately account for the total economic contribution of numerous industries, including the economic contribution derived from federal land-based recreation. (#0169, NOA, pp. 6-7)

#0170

The appellant contends that, “The alternatives failed to adequately consider social and economic factors as an issue.” “The sustainability of affected rural communities was not adequately evaluated in the FEIS.” “The FEIS economic analysis did not analyze the effects of implementing Modified Alternative 8, on support businesses to the timber and agriculture community that will be adversely impacted. The economic and social impacts of catastrophic wildfire and greatly increased levels of prescribed fire need to be evaluated as they relate to property loss, business disruptions, health care costs, transportation interruptions, etc.” (#0170, NOA, p. 3)

#0185

The appellant contends that, “. . . the FEIS should have had a detailed accumulative effects analysis of what this means in loss of an important part of our American heritage,” especially as the FEIS pertains to grazing. (#0185, NOA, p. 5)

#0201

The appellant contends that, “FEIS . . . neglects to produce any specific analysis of the effects to economies, social life and the well being of those most adversely effected.” (#201, NOA, P. 6)

The appellant contend that, “In spite of tremendous public concerns and requests to elevate social and economic concerns in the DEIS through the scoping process, the DEIS arbitrarily dismissed this as a legitimate basis for alternative development.” There is a “failure to identify Social and Economics as an issue and to fully integrate social and economic considerations into the development of alternatives.” (#0201,NOA, p. 33, 40)

#0206

The appellant contends that, “There is no real analysis of the economic and social impacts of catastrophic fire, aside from some of the direct costs and losses to the Forest Service.” (#0206, NOA, p. A-5)

#0222

The appellant contends that, “The Sierra Nevada Forest Plan Amendment ROD does not clearly identify to minority and low-income populations the economic impacts that will

be directly and indirectly associated with the specific loss of job opportunities, recreation opportunities proposed by the FEIS.” (#0222, NOA, p. 21)

#0228

The appellant contends that, the proposed amendment violates “USDA Departmental Regulation 5600-2 Environmental Justice” because “The Sierra Nevada Forest Plan Amendment ROD does not clearly identify to minority and low-income populations the economic impacts that will be directly and indirectly associated with the specific loss of business and other requirements proposed by the FEIS. (#0228, NOA, p. 7)

#0228

The appellant contends that, the ROD “. . . does not clearly or adequately identify the social, economic or environmental effects of the loss of present and future recreation activities, services and facilities that will occur due to the restrictions, limitations and closures required by the selected alternative.” (#0228, NOA, p. 9)

The appellant contend that, “. . . the Sierra Nevada ForestPlan Amendment FEIS and ROD on recreation activities, facilities and services are completely inadequate. The recreation related economic and social effects of the proposed actions are not disclosed due to the admitted lack of information about the uses, and the economics.” (#0228, NOA, p. 5)

#0231

The appellant contends that, “The EIS fails to adequately analyze the economic and social impacts of excluding livestock grazing from the National Forest Lands.” (#0231, NOA, p. 2)

#0231

The appellant contends that, “The EIS fails to adequately analyze the economic and social impacts of excluding livestock grazing from the National Forest Lands.” (#0231, NOA, p. 2)

Forest Service Manual Violations

#0074

The appellant contends that, “this FEIS fails to adequate explore, disclose or evaluate the effects of the alternatives as required by Forest Service Manual and other regulations for social and economic considerations”:

FSM 1970.3). “Social and Cultural issues were not analyzed to the extent necessary to develop reasonable understanding of the full extent of effects from the range of alternatives. (#0074, NOA, Section IV p. 2)

FSM 1909.17,30.6,Ex. 01 Selecting Preferred. . . .” (W)e question how the analysis was developed, evaluated and compared given that the preferred alternative modified 8 was never disclosed to the public in the DEIS and appears to produce the least amount of social and economic benefits to the public. (#0074, NOA, Section IV p. 2)

3. FSM 1970.3 - Policy. 4. In making decisions, consider economic and social impacts that affect local, regional, or national conditions. The Forest Service . . .”never allowed the public to review, evaluate or respond to the analysis used to determine these effects through the comment period for the DEIS, failing to fully disclose critical information to those most affected by the decision.” (#0074, NOA, Section IV p. 2)

FSM 1970.42; FSM 1973.03 Regional Foresters shall: Designate Regional Social Science Coordinator to provide leadership in social science analysis. “Social Science experts were in minimal numbers - 1 - compared to other disciplines- 17 Wildlife Biologist - and did not adequately develop a social analysis of the effects from the preferred alternative to over 3 million people.” (#0074, NOA, Section IV p. 3)

FSM 1970.6 Scope of Analyses. “The scope of potential effects from the preferred alternative were never modeled, analyzed, assessed, evaluated or reviewed by the public.” “The Forest Service did not appropriately determine the complexity of economic and social analysis needed to make an informed decision.” (#0074, NOA, Section IV p. 3)

FSM 1970.8 Analysis Standards. “The preferred alternative modified 8 was never compared to the base alternative because it was not disclosed in the DEIS for review or analysis.” “The FEIS should have displayed in the analysis each community at risk, proximity to recent fire locations for the last decade or longer, and factors contributing to the local risk and hazard features. Then they should have analyzed the effects of each alternative in reducing the factors that place the community, people and resources at risk..” (#0074, NOA, Section IV pp. 3-4)

7. FSM 1972.02 Objectives. Used in conjunction with other information, analyses of economic impacts assist decision-making by: 1. Describing potential impacts of alternatives identified in planning processes. 2. Identifying economic impacts and changes that alternatives should address. 3. Providing the public and decision makers with quantified estimates of economic impacts so they can evaluate each alternative. “The ROD does not address those significant economic changes and this information was not provided to the public during the planning process until after the decision was signed.” “The FEIS identified the Sierra Cascade Axis [QLG area] as an area where there is social concern for locally high poverty and jobs in agriculture and forestry in 2/3s of the communities but did not describe the projected social impacts by alternative.” (#0074, NOA, Section IV pp. 4-5)

8. FSM 1973.03 Policy: Initiate social impact analysis if the potential social effects of Forest Service policies or actions are important to the decision. “The Forest Service did not provide the public or national forest users with a quantified descriptive measure of impacts during scoping.” (#0074, NOA, Section IV p. 5)

9. FSM 1973.5 Estimation of Effects. The Decision maker neglected to disclose the preferred alternative modified 8 and estimate the effects that would result during the DEIS process. (#0074, NOA, Section IV p. 6)

10. The appellant contends that, “The Forest Service violated many of the Forest Service Manual (FSM) requirements concerning social analysis effects on civil rights, women and minorities including:

FSM 1973.2 - Selection of Variables. “the FEIS fails to address Lifestyles, Social organization, and Civil rights to include opportunities for women and minorities. Social organizations such as religious groups, hunters, the retired, advocacy groups and others of differing beliefs and values were not discussed or included in the analysis.” (#0074, NOA, Section IV p. 6)

“Decision maker did not wait for vital new social and economic data to be completed (sic) gathered from the 2000 Census.” “Did the FEIS wrongly and unfairly conclude that a possible population increase in these groups hasn’t occurred over the last decade and wrongly discriminated against possibly thousands of minorities, including children in poverty, in the Sierra Nevada Region? It appears there is a strong possibility.” “ The FEIS wrongly set the threshold of 10% of the total population by community cluster in a sub region as the magic number to determine whether a community is at greatest socioeconomic risk.” (#0074, NOA, Section IV p. 7)

c) “Nothing is mentioned in the FEIS or ROD in regards to opportunities for women specifically being affected by the range of alternatives presented or the chosen preferred alternative.” (#0074, NOA, Section IV p. 7)

History and social characteristics of the analysis area as a point of departure for estimating social effects of management alternatives. “. . . the 1993 Interim Guidelines were not the appropriate point of departure in order to describe the history and social characteristics of the analysis area to adequately estimate the cumulative social effects experienced by community clusters at risk by the preferred alternative. (#0074, NOA, Section IV p. 9)

#0108

The appellant contends that, “this FEIS fails to adequately explore, disclose or evaluate the effects of the alternatives as required by Forest Service Manual and other regulations for social and economic considerations”:

FSM 1970.3). “Social and Cultural issues were not analyzed to the extent necessary to develop reasonable understanding of the full extent of effects from the range of alternatives. (#0108, NOA, p. 3)

FSM 1909.17,30.6,Ex. 01 Selecting Preferred. . . .” (W)e question how the analysis was developed, evaluated and compared given that the preferred alternative modified 8 was never disclosed to the public in the DEIS and appears to produce the least amount of social and economic benefits to the public. (#0108, NOA, p. 3)

3. FSM 1970.3 - Policy. 4. In making decisions, consider economic and social impacts that affect local, regional, or national conditions. The Forest Service . . .”never allowed the public to review, evaluate or respond to the analysis used to determine these effects through the comment period for the DEIS, failing to fully disclose critical information to those most affected by the decision.” (#0108, NOA, p. 3)

4.FSM 1970.42; FSM 1973.03 Regional Foresters shall: Designate Regional Social Science Coordinator to provide leadership in social science analysis. “Social Science experts were in minimal numbers - 1 - compared to other disciplines- 17 Wildlife

Biologist - and did not adequately develop a social analysis of the effects from the preferred alternative to over 3 million people.” (#0108, NOA, pp. 3-4)

5.FSM 1970.6 Scope of Analyses. “The scope of potential effects from the preferred alternative were never modeled, analyzed, assessed, evaluated or reviewed by the public.” “The Forest Service did not appropriately determine the complexity of economic and social analysis needed to make an informed decision.” (#0108, NOA, p. 4)

6.FSM 1970.8 Analysis Standards. “The preferred alternative modified 8 was never compared to the base alternative because it was not disclosed in the DEIS for review or analysis.” “The FEIS should have displayed in the analysis each community at risk, proximity to recent fire locations for the last decade or longer, and factors contributing to the local risk and hazard features. Then they should have analyzed the effects of each alternative in reducing the factors that place the community, people and resources at risk..” (#0108, NOA, p. 4)

7. FSM 1972.02 Objectives. Used in conjunction with other information, analyses of economic impacts assist decision-making by: 1. Describing potential impacts of alternatives identified in planning processes. 2. Identifying economic impacts and changes that alternatives should address. 3. Providing the public and decision makers with quantified estimates of economic impacts so they can evaluate each alternative. “The ROD does not address those significant economic changes and this information was not provided to the public during the planning process until after the decision was signed.” “The FEIS identified the Sierra Cascade Axis [QLG area] as an area where there is social concern for locally high poverty and jobs in agriculture and forestry in 2/3s of the communities but did not describe the projected social impacts by alternative.” (#0108, NOA, p. 5)

8. FSM 1973.03 Policy: Initiate social impact analysis if the potential social effects of Forest Service policies or actions are important to the decision. “The Forest Service did not provide the public or national forest users with a quantified descriptive measure of impacts during scoping.” (#0108, NOA, p. 6)

9. FSM 1973.5 Estimation of Effects. The Decision maker neglected to disclose the preferred alternative modified 8 and estimate the effects that would result during the DEIS process. (#0108, NOA, p. 7)

The appellant contends that, “The Forest Service violated many of the Forest Service Manual (FSM) requirements concerning social analysis effects on civil rights, women and minorities including:

1. FSM 1973.2 - Selection of Variables. “the FEIS fails to address Lifestyles, Social organization, and Civil rights to include opportunities for women and minorities. Social organizations such as religious groups, hunters, the retired, advocacy groups and others of differing beliefs and values were not discussed or included in the analysis.” (#0108, NOA, p. 8)

2.“Decision maker did not wait for vital new social and economic data to be completed (sic) gathered from the 2000 Census.” “Did the FEIS wrongly and unfairly conclude that a possible population increase in these groups hasn’t occurred over the last decade and wrongly discriminated against possibly thousands of minorities, including children in poverty, in the Sierra Nevada Region? It appears there is a strong possibility.” “The

FEIS wrongly set the threshold of 10% of the total population by community cluster in a sub region as the magic number to determine whether a community is at greatest socioeconomic risk.” (#0108, NOA, p. 8)

3. “Nothing is mentioned in the FEIS or ROD in regards to opportunities for women specifically being affected by the range of alternatives presented or the chosen preferred alternative.” (#0108, NOA, p. 9)

The Forest Service failed to adequately address considerations of the historical contributions, traditional life styles and human systems as required by FSM 1950 USFS - Forest Service Manual - Environmental Policy & Procedures: FSM 1973.4 Analysis of the Current Situation. Describe the history and social characteristics of the analysis area as a point of departure for estimating social effects of management alternatives. “. . . the 1993 Interim Guidelines were not the appropriate point of departure in order to describe the history and social characteristics of the analysis area to adequately estimate the cumulative social effects experienced by community clusters at risk by the preferred alternative. (#0108, NOA, p. 1

#0146

The appellant contends that, “this FEIS fails to adequately explore, disclose or evaluate the effects of the alternatives as required by Forest Service Manual and other regulations for social and economic institutions”:

1. FSM 1970.3). “Social and Cultural issues were not analyzed to the extent necessary to develop reasonable understanding of the full extent of effects from the range of alternatives. (#0146, NOA, p. 66)

2. FSM 1909.17,30.6,Ex. 01 Selecting Preferred. . . .” (W)e question how the analysis was developed, evaluated and compared given that the preferred alternative modified 8 was never disclosed to the public in the DEIS and appears to produce the least amount of social and economic benefits to the public. (#0146, NOA, p. 66)

3.FSM 1970.3 - Policy. 4. In making decisions, consider economic and social impacts that affect local, regional, or national conditions. The Forest Service . . .”never allowed the public to review, evaluate or respond to the analysis used to determine these effects through the comment period for the DEIS, failing to fully disclose critical information to those most affected by the decision. (#0146, NOA, p. 66)

4. FSM 1970.42; FSM 1973.03 Regional Foresters shall: Designate Regional Social Science Coordinator to provide leadership in social science analysis. “Social Science experts were in minimal numbers - 1 - compared to other disciplines- 17 Wildlife Biologist - and did not adequately develop a social analysis of the effects from the preferred alternative to over 3 million people. (#0146, NOA, p. 67)

5. FSM 1970.6 Scope of Analyses. “The scope of potential effects from the preferred alternative were never modeled, analyzed, assessed, evaluated or reviewed.” “The Forest

Service did not appropriately determine the complexity of economic and social analysis needed to make an informed decision.” (#0146, NOA, p. 67)

6. FSM 1970.8 Analysis Standards. “The preferred alternative modified 8 was never compared to the base alternative because it was not disclosed in the DEIS for review or analysis.” “The FEIS should have displayed in the analysis each community at risk based on recent fire location [at least last decade] and frequency, existing and future fuel levels in relationship to each community identified at risk then analyzed the effects of each alternative to display to the public the level of risk to people, property and resources as well as the costs associated with those losses.” (#0146, NOA, pp. 67-68)

7. FSM 1972 Economic Impact Analysis. “. . . the economic impact analysis did not identify, analyze or measure the effects to the indirect support businesses that will be adversely affected by the decision of the Regional Forester to choose the preferred alternative modified 8.” (#0146, NOA, p. 68)

8. FSM 1972.02 Objectives. Used in conjunction with other information, analyses of economic impacts assist decision-making by: 1. Describing potential impacts of alternatives identified in planning processes. 2. Identifying economic impacts and changes that alternatives should address. 3. Providing the public and decision makers with quantified estimates of economic impacts so they can evaluate each alternative. “The ROD does not address those significant economic changes and this information was not provided to the public during the planning process until after the decision was signed.” “The FEIS identified the Sierra Cascade Axis [QLG area] as an area where there is social concern for locally high poverty and jobs in agriculture and forestry in 2/3s of the communities but did not describe the projected social impacts by alternative.” (#0146, NOA, pp. 68-69)

9. FSM 1973 Social Impact Analysis. “There are tables showing job and wage losses listing the numbers for each alternative through 2010 which display a 50% decline in jobs for the timber and agriculture industries but with the exception of a few statements there are no actual analysis describing the effects to the quality of peoples lives or well being.” (#0146, NOA, p. 69)

10. FSM 1973.03 Policy: Initiate social impact analysis if the potential social effects of Forest Service policies or actions are important to the decision. “The Forest Service did not provide the public or national forest users with a quantified descriptive measure of impacts during scoping.” (#0146, NOA, pp. 69-70)

11.. FSM 1973.5 Estimation of Effects. The Decision maker neglected to disclose the preferred alternative modified 8 and estimate the effects that would result during the DEIS process. In general, the ROD fails to give specific numbers or show how its estimations were derived. (#0146, NOA, p. 70)

The appellant contends that, “The Forest Service violated many of the Forest Service Manual (FSM) requirements concerning social analysis effects on civil rights, women and minorities including:

FSM 1973.2 - Selection of Variables. “the FEIS fails to address Lifestyles, Social organization, and Civil rights to include opportunities for women and minorities. Social organizations such as religious groups, hunters, the retired, advocacy groups and others of differing beliefs and values were not discussed or included in the analysis.” (#0146, NOA, p. 70)

“Decision maker did not wait for vital new social and economic data to be completed (sic) gathered from the 2000 Census.” “Did the FEIS wrongly and unfairly conclude that a possible population increase in these groups hasn’t occurred over the last decade and wrongly discriminated against possibly thousands of minorities, including children in poverty, in the Sierra Nevada Region? It appears there is a strong possibility.” “ The FEIS wrongly set the threshold of 10% of the total population by community cluster in a sub region as the magic number to determine whether a community is at greatest socioeconomic risk.” (#0146, NOA, p. 71)

c) “Nothing is mentioned in the FEIS or ROD in regards to opportunities for women specifically being affected by the range of alternatives presented or the chosen preferred alternative.” (#0146, NOA, p. 72)

13. The Forest Service failed to adequately address considerations of the historical contributions, traditional life styles and human systems as required by FSM 1950 USFS - Forest Service Manual - Environmental Policy & Procedures:

FSM 1973.4 Analysis of the Current Situation. Describe the history and social characteristics of the analysis area as a point of departure for estimating social effects of management alternatives. “. . . the 1993 Interim Guidelines were not the appropriate point of departure in order to describe the history and social characteristics of the analysis area to adequately estimate the cumulative social effects experienced by community clusters at risk by the preferred alternative.” (#146, NOA, pp. 73-74)

#0201

The appellant contends that, “this FEIS fails to adequate explore, disclose or evaluate the effects of the alternatives as required by Forest Service Manual and other regulations for social and economic institutions”:

1. FSM 1973.5 Estimation of Effects. The Decision maker neglected to disclose the preferred alternative modified 8 and estimate the effects that would result during the DEIS process. In general, the ROD fails to give specific numbers or show how its estimations were derived. (#0201, NOA, p. 62)

2. FSM 1970.3). “Social and Cultural issues were not analyzed to the extent necessary to develop reasonable understanding of the full extent of effects from the range of alternatives. (#0201, NOA, p. 63)

3. FSM 1909.17,30.6,Ex. 01 Selecting Preferred. . . .” (W)e question how the analysis was developed, evaluated and compared given that the preferred alternative modified 8 was never disclosed to the public in the DEIS and appears to produce the least amount of social and economic benefits to the public. (#0201, NOA, p. 63)

4. FSM 1970.3 - Policy. 4. In making decisions, consider economic and social impacts that affect local, regional, or national conditions. The Forest Service . . .”never allowed the public to review, evaluate or respond to the analysis used to determine these effects through the comment period for the DEIS, failing to fully disclose critical information to those most affected by the decision. (#0201, NOA, p. 63)

5. FSM 1970.42; FSM 1973.03 Regional Foresters shall: Designate Regional Social Science Coordinator to provide leadership in social science analysis. “Social Science experts were in minimal numbers - 1 - compared to other disciplines- 17 Wildlife Biologist - and did not adequately develop a social analysis of the effects from the preferred alternative to over 3 million people. (#0201, NOA, p. 63)

6. FSM 1970.6 Scope of Analyses. “The scope of potential effects from the preferred alternative were never modeled, analyzed, assessed, evaluated or reviewed.” “The Forest Service did not appropriately determine the complexity of economic and social analysis needed to make an informed decision.” (#0201, NOA, p. 64)

7. FSM 1970.8 Analysis Standards. “The preferred alternative modified 8 was never compared to the base alternative because it was not disclosed in the DEIS for review or analysis.” “The FEIS should have displayed in the analysis each community at risk based on recent fire location [at least last decade] and frequency, existing and future fuel levels in relationship to each community identified at risk then analyzed the effects of each alternative to display to the public the level of risk to people, property and resources as well as the costs associated with those losses.” (#0201, NOA, p. 64)

8. FSM 1972 Economic Impact Analysis. “. . . the economic impact analysis did not identify, analyze or measure the effects to the indirect support businesses that will be adversely affected by the decision of the Regional Forester to choose the preferred alternative modified 8.” (#0201, NOA, pp. 64-65)

9. FSM 1972.02 Objectives. Used in conjunction with other information, analyses of economic impacts assist decision-making by: 1. Describing potential impacts of alternatives identified in planning processes. 2. Identifying economic impacts and changes that alternatives should address. 3. Providing the public and decision makers with quantified estimates of economic impacts so they can evaluate each alternative. “The ROD does not address those significant economic

changes and this information was not provided to the public during the planning process until after the decision was signed.” “The FEIS identified the Sierra Cascade Axis [QLG area] as an area where there is social concern for locally high poverty and jobs in agriculture and forestry in 2/3s of the communities but did not describe the projected social impacts by alternative.” (#0201, NOA, pp. 65-66)

10. FSM 1973 Social Impact Analysis. “There are tables showing job and wage losses listing the numbers for each alternative through 2010 which display a 50% decline in jobs for the timber and agriculture industries but with the exception of a few statements there are no actual analysis describing the effects to the quality of peoples lives or well being.” (#0201, NOA, p. 65)

11. FSM 1973.03 Policy: Initiate social impact analysis if the potential social effects of Forest Service policies or actions are important to the decision. “The Forest Service did not provide the public or national forest users with a quantified descriptive measure of impacts during scoping.” (#0201, NOA, p. 66)

12. The Forest Service failed to adequately address considerations of the historical contributions, traditional life styles and human systems as required by FSM 1950 USFS - Forest Service Manual - Environmental Policy & Procedures:
FSM 1973.4 Analysis of the Current Situation. Describe the history and social characteristics of the analysis area as a point of departure for estimating social effects of management alternatives. “. . . the 1993 Interim Guidelines were not the appropriate point of departure in order to describe the history and social characteristics of the analysis area to adequately estimate the cumulative social effects experienced by community clusters at risk by the preferred alternative.” (#0201, NOA, p. 67)

13. The appellant contends that, “The Forest Service violated many of the Forest Service Manual (FSM) requirements concerning social analysis effects on civil rights, women and minorities including:

FSM 1973.2 - Selection of Variables. “the FEIS fails to address Lifestyles, Social organization, and Civil rights to include opportunities for women and minorities. Social organizations such as religious groups, hunters, the retired, advocacy groups and others of differing beliefs and values were not discussed or included in the analysis.” (#0201, NOA, p. 69)

“Decision maker did not wait for vital new social and economic data to be completed (sic) gathered from the 2000 Census.” “Did the FEIS wrongly and unfairly conclude that a possible population increase in these groups hasn’t occurred over the last decade and wrongly discriminated against possibly thousands of minorities, including children in poverty, in the Sierra Nevada Region? It appears there is a strong possibility.” “The FEIS wrongly set the threshold of 10% of the total population by community cluster in a sub region as the magic number to determine whether a community is at greatest socioeconomic risk.” (#0201, NOA, pp. 69-70)

c) “Nothing is mentioned in the FEIS or ROD in regards to opportunities for women specifically being affected by the range of alternatives presented or the chosen preferred alternative.” (#0201, NOA, p. 70)

#0229

The appellant contends that, “.By failing to incorporate important natural resource benefits and externalized costs into the proposed SNFP Amendment and FEIS the Forest Service has violated numerous provisions of the Forest Service Manual. These include provisions FSM 2403.4; 2403.5; 1971.5; 1970.1(1), (2), (3); 1970.2; 1970.3(1), (5). (#0229, NOA, p. 17)

NEPA Violation

#0074

The appellant contends that, “The FEIS fails on the Human Environment from 40 CFR § 1500.2 (d) (e) and (f). These sections of the CEQ Guidelines emphasize the quality of the human environment and the FEIS clearly fails to incorporate the human environment components to the issues, alternatives and disclosures in the documents. These guidelines state,

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment (emphasis added).

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment (emphasis added).

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment (emphasis added) and avoid or minimize any possible adverse effects on their actions upon quality of the human environment.’ (#0074, NOA, p. 12)

#0074

The appellant contends that, “the FEIS and ROD consistently sacrifice the quality of human environment - even human health and safety -in pursuit of ill-defined and speculative fears of uncertainty regarding marginal effects on habitat that might or might not be more or less essential to a few species of wildlife (Sec. 1500.2(f)).” (#0074, NOA, p. 14)

#0119

The appellant contends that, “. . . the FEIS overlooked serious environmental consequences [especially socioeconomic impacts] of the SNEP Amendment in violation of NEPA. The Regional Forester did not take the requisite ‘hard look’ at all impacts of the SNFP Amendment upon the ski industry, the recreating public and the local communities nor did he consider potential conflicts with local plans (NEPA section 102(2) and implementing regulations 40 CFR 1.2.d)”; also NEPA 40 CFR 1508.14; NFMA (16 U.S.C. 1604(b)) and planning regulations 36 CFR 219 (g) & (h) (#0119, NOA, pp. 15-19)

#0165

The FEIS violates National Environmental Policy Act (NEPA) as it is based on inadequate alternatives, does not fully disclose the economic and social impacts of the reductions in multiple use. It did not provide adequate notice to the public or allow meaningful public input. (#0165, NOA, p. 2)

#0202

The appellant contends that, “The FEIS evaluates the impacts as a consequence of the proposed action without consideration of mitigation measures to minimize the impacts”, as required by NEPA. (#0202, NOA, p.7)

#0206

The appellants contend that, “NEPA requires EISs to be “... concise, clear, and to the point...” [Sec 1500.2(b)], and that “Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses...” [Sec 1500.241. Without doubt the recreation section of the FEIS lacks clarity in failing to give proper references for many of the sources cited and quoted, in the numerical analyses, and in the obscurity of the methods used to assign effects to alternatives.” (#0206, NOA, p. 52)

#0207

The appellant contends that, “The FEIS violates NEPA. It is based on inadequate alternatives and does not fully disclose the economic and social impacts of the reductions and restrictions on grazing, recreation, and other uses.” (#0207, NOA, p.15)

#0209

The appellant contends that, “The FEIS evaluates the impacts as a consequence of the proposed action without consideration of mitigation measures to minimize the impacts”, as required by NEPA. (#0209, NOA, p.8)

#0210

The appellants contends that, “. . . the Forest Service is required to minimize the social and economic impacts. The FEIS evaluates the impacts as a consequence of the proposed action without consideration of mitigation measures. Without question, the ROD will have a significant effect on the human environment. The Forest Service failed to even attempt to minimize the impact.” (#0210, NOA, p.5)

#0216

The appellant contends that, “The Final Environmental Impact Statement (FEIS) violates NEPA [Sec. 102 [42 USC - 4332, (E)]] as it is based on inadequate alternatives, and does not fully disclose the economic and social impacts of the reductions in multiple use”, especially grazing. (#0216, NOA, p. 1)

#0218

The appellant contends that, “The Final Environmental Impact Statement (FEIS) violates NEPA [Sec. 102 [42 USC - 4332, (E)]] as it is based on inadequate alternatives, and does

not fully disclose the economic and social impacts of the reductions in multiple use”, especially grazing. (#0218, NOA, p. 2)

#0229

The appellant contends that, “By failing to incorporate important natural resource benefits and externalized costs into the proposed SNFP Amendment and FEIS, the Forest Service has violated the National Environmental Policy Act.” .” (#0229, NOA, p. 14)

The appellant contends that, “The Forest Service is also in violation of its Environmental Policy and Procedures Handbook, which reiterates requirements set forth in NEPA and the CEQ Regulations implementing NEPA. FSH 1909.15. These requirements also appear in the Forest Service Manual. FSM 1950.” (#0229, NOA, p. 15)

#0255

The appellant contends that, “The USFW violated NEPA by failing to do a legally sufficient cumulative impacts analysis.” “Cumulative impacts must be sufficiently considered. (40CFR 1508.7) (#0255, NOA, p. 3)

NFMA Violations

#0074

The appellant contends that, “The FEIS and ROD violate the National Forest Management Act (NFMA) as represented by at least these specific provisions of 36 CFR Part 219:

1. “Sec. 219.1 (a). The resulting plans shall provide for multiple use and sustained yield of goods and services from the National Forest System in a way that maximizes long term net public benefits in an environmentally sound manner. The FEIS and ROD turn this on its head by managing for other goals in a way that minimizes or eliminates net public benefits rather than maximizing them.” (#0074, NOA p. 18)

2. Set 219. I (b)(13). “Management of National Forest System lands in a manner that is sensitive to economic efficiency...” The FEIS and ROD repeatedly sacrifice the economic efficiency that could be attained with multi- product sales and timber production that are fully justified under the FEIS analysis, and instead impose management options that employ more costly service contracting and increase the risk and hazard of wildfires, thus assuring the continued escalation of suppression costs and loss of high value resources.” (#0074, NOA p. 18)

3. Sec. 219.1 (b)(14). The FEIS and ROD do not give appropriate weight to these social and economic demands” of “. . . (1) the need to make greater use of domestic timber and energy production from forest biomass, not increased importation of forest products and oil; and (2) projections of huge population increases in the Sierra Nevada, with the certainty that such populations will not tolerate the safety and health problems represented by wildfire, escaped prescribed fire, or the smoke produced by burning excess fuel instead of processing it into forest products and clean renewable energy. (#0074, NOA pp. 18-19)

4.”Sec. 219.4(a)(1). [Management direction shall] ‘... Include requirements for analysis to determine programs that maximize net public benefits, consistent with locally derived information about production capabilities...’ The FEIS and ROD fail to provide an analysis that is based on maximizing net public benefits and fail to include locally derived information about production capabilities.” (#0074, NOA p. 19)

#0090

The appellant contends that, “It is amazing that a document this large and detailed would not include critical common types of scientific analysis. These are cost-benefit, cost revenue analyses. Without these analyses, the consequences of proposed management actions cannot be evaluated. (#0090, NOA p. 3)

#0201

The appellant contends that, “Sec. 219.1(b)(13). “Management of National Forest System lands in a manner that is sensitive to economic efficiency...“The FEIS and Decision repeatedly sacrifice the economic efficiency that could be attained with multi-product sales and timber production that are fully justified under the FEIS analysis, and instead impose management options that employ more costly service contracting and increase the risk and hazard of wildfires, thus assuring the continued escalation Of suppression costs and loss of high value resources. (#0201, NOA p. 20)

The appellant contends that, “Sec. 219.4(a)(1). Management direction shall include requirements for analysis to determine programs that maximize net public benefits, consistent with locally derived information about production capabilities...“The FEIS and ROD fail to provide an analysis that is based on maximizing net public benefits and fail to include locally derived information about production capabilities. As an example, the FEIS failed to fully take into account the recently completed HFQLG Pilot Project EIS [1999] that maximized net public benefits within the Sierra Cascade Axis sub-region. (#0201, NOA p. 21)

The appellant contends that, Sec. 219.1(b)(14). requires “Responsiveness to changing conditions of land and other resources and to changing social and economic demands of the American people. . .” “The FEIS and ROD do not give appropriate weight to these social and economic demands but instead assumes the potential future demands of recreation justifies shifting away from meeting the needs of changing conditions of the land.” (#0201, NOA p. 21)

#0206

The appellant contends that, ” The FEIS and ROD fail to provide an analysis that is based on maximizing net public benefits and fail to include locally derived information about production capabilities. Sec 219.4(a)(1). (#0206, NOA, p. 16)

The appellant contends that, “The FEIS and Decision repeatedly sacrifice the economic efficiency that could be attained with multi-product sales and timber production that are

fully justified under the FEIS analysis, and instead impose management options that employ more costly service contracting and increase the risk and hazard of wildfires, thus assuring the continued escalation of suppression costs and loss of high value resources. “ Sec. 219.1 (b)(13). (#0206, NOA, p. 15)

The appellant contends that, “The Forest Service violated 219.12(e) by not preparing a legally sufficient analysis of the management situation [supply and demand of resources]. The purpose of this section is to determine the ability of the planning area covered by a plan to supply goods and services. The planning process leading up to the ROD did not conduct this analysis, so it could not “provide a basis for formulating a broad range of reasonable alternatives.” (#0206, NOA, p. 17)

The appellant contends that, “The Forest Service violated Sec. 219.4(a)(2), . . . changing social and economic demands”, primarily less logging in California requires more importation of Canadian logs and increased hazards to society from smoke of wildfires. (#0206, NOA, p. 43)

#0229

The appellant contends that, “The proposed SNFP Amendment fails to maximize net public benefits.” 36 C.F.R. 5 219.1 (a); 36 C.F.R. §219.3; 36 C.F.R. 6 219.12 (g-h),FSM 1920.2. (#0229, NOA, p. 7)

#0255

The appellant contends that, “. . . this act [NFMA] is violated because the FEIS and ROD do not undertake an analysis of the economic impacts resulting from Mod. 8.” (#0255, NOA, p. 9)

Administrative Procedures and Other Misc. Acts Violation

#202

The appellant contents that, there is a “RPA Statement of Policy B.L. 96-514, 96 Stat. 2957) violation - The RPA Statement of Policy directs the Forest Service to manage most of its commercial timber lands in a state of ‘90 percent of their potential level of growth’ in order to achieve its goal of minimizing ‘the inflationary impacts of wood product prices on the domestic economy and permit a net export of forest products by the year 2030’”. “The Forest Service must disclose the percent of the potential level of growth the Record of Decision will achieve, the likely impact on inflation of wood products and the effect on the ability to become a net exporter of forest products by the year 2030”. (#0206, NOA, p. 4)

#0206

The appellant contents that, “. . . projected environmental, economic, and social effects of the alternatives do not support a logical choice of alternative 8-modified (8-mod) as the alternative to be implemented.” “The FEIS and ROD, [therefore], violate the Administrative Procedures Act in that key intermediate decisions and the cumulative

final Decision were arbitrary and capricious, were in excess of the deciding official's statutory authority, and did not observe procedure required by law." (#0206, NOA, p. 5)

#0229

The appellant contends that, the Forest Service is in violation of "the Global Climate Change Prevention Act. 7 U.S.C. 5 6701(b). (#0229, NOA, p. 15)

The appellant contends that, the Forest Service is in violation of "the Administrative Procedures Act." U.S.C. 706. (#0229, NOA, p. 16)

Recreation Issues

Campgrounds (Added to General Recreation (Multiple) for Responses)

#0161

The appellant contends that, "The Forest Service has insufficient data to make such a decision. The goal of the Plan is to close one campground at a time and eliminate one use at a time when they find problems." (#0161 NOA, Lack of Data to Support Reductions in Recreation Opportunities and Unfairness to the Public, page 4)

Special Uses (Also Includes Ski Resorts and Winter Sports in Responses)

#0222

The appellants contend that, "A. The ROD acknowledges the lack of information on recreation use on the Sierra Nevada national forests and does not adequately or accurately identify the effects of the management direction and goals on existing and future recreation uses, facilities and services, particularly those affecting authorized recreation special use operations. There is inadequate information presented on the Affected Environment and Environmental Consequences on recreation activities, facilities and services. It does not clearly or adequately identify the social, economic, or environmental effects of the loss of present and future recreation activities, services and facilities that will occur due to the restrictions, limitations and closures required by the selected alternative." (#0222 NOA, Section- Deals and Evidence to Support Our Position A. page 3, #0228 NOA, 6 B page 2, #0119 NOA, page 5, #0119 NOA Section II page 6, #0208 NOA, page 2)

#0222

The appellants contend, "The FEIS and ROD are vague and unspecific with inadequate information to determine what the effects of the decision will be on permitted operations. Forest Service permittees offering recreation services and facilities to the public need to know specifically what changes and restrictions will be imposed on access; what special use sites such as resorts, ski areas, organization camps, pack stations, campgrounds and other permitted sites, as well as outfitter-guide operations, will be affected; and, what

uses and services will be allowed or restricted.” (#0222 NOA, Section- Key Points of Appeal page 23)

#0137

The appellants contend that, “Amend the Frame Work to allow special use permitted OHV recreation events through SOHA’s, Spotted Owl core habitat and activity centers unless the USFS can demonstrate the special use event will create or has created a disturbance that can be determined as a significant adverse effect. The USFS officials have not provided scientific information or facts to demonstrate any compelling reason why this restriction is warranted.” (#0137 NOA, Numbers 1-3 California Spotted Owl page 6-7)

#0171

The appellants contend that, “Amend the Frame Work to allow special use permitted OHV recreation events through SOHA’s, Spotted Owl core habitat and activity centers unless the USFS can demonstrate the special use event will create or has created a disturbance that can be determined as a significant adverse effect. The USFS officials have not provided scientific information or facts in the FEIS/ROD to demonstrate any compelling reason why this further restriction on recreation activities is warranted.” (#0171 NOA, Numbers 1-3 California Spotted Owl page 3-4)

#0222

The appellants contend that, “The ROD will reduce, restrict, and eliminate many lawful, established and permitted recreation uses of the national forests,” Which violates the Organic Administration Act of 1897 (#0222 NOA, Section E page 17)

#0208

The appellants contend that, “Forest Carnivores -Pine Marten Den Sites.” (Title)
The statement in the standard and guidelines regarding existing uses is vague and leaves an unacceptable level of uncertainty regarding management requirements on activities and operations that have already been approved by the Forest Service. (#0208 NOA, page 4)

OHV/OSV (Combined with Roads/Trails/Motorized uses for Responses)

#0169

The appellants contend that, “The Decision Violates NEPA by Failing to Provide Adequate References or Hard Data Supporting Restrictions on Motorized Access.”

“The Decision may effectively restrict OHV access to millions of acres based on its varied conclusions on technical issues. The Decision offers virtually no specific references or hard data to support these substantive conclusions.” (#0169 NOA Section IV page 4)

#0205

The appellant contends that, “Ninth Violation (a violation of Executive Orders Nos. 11644 and 11989 - failure to comply with designation procedures for designating off-road vehicle trails and areas as closed) (#0205 NOA, Ninth Violation page 24)

The exact quote applies to: #0271 NOA, Ninth Violation page 24)

#0090

The appellant contends that, “I appreciate that SNFPA is considered by its authors to be programmatic rather than site specific, but that creates major problems in trying to understand what SNFPA means at the Forest level. The Standards and Guidelines are in fact, precise Standards from which no National Forest may deviate. Let me illustrate with the stated impacts on my personal recreational activities, namely, snowmobiling and off highway driving. Nowhere, to my knowledge, is there a map of the areas in the Stanislaus National Forest in which I ride that can show me what changes in permitted riding areas result from the SNFPA. The Forest Supervisor is presently preparing such a map, but he will have little if any flexibility as to where to draw the lines. In other words, SNFPA has a site-specific impact that should have been reported on in the EIS. Multiply this small area and narrow example by the entire Sierra range and the combined impacts are huge...and unknown. In this respect, the EIS is gravely flawed. In other words, SNFPA has a site-specific impact that should have been reported on in the EIS. Multiply this small area and narrow example by the entire Sierra range and the combined impacts are huge...and unknown. In this respect the EIS is gravely flawed.”

“Further, it is clear that the concept of SNFPA is that every use other than habitat preservation, must give way to habitat preservation. Thus we find statements like the one on page 3-567 regarding OHV use.”

“...SNFPA has a site specific impact that should have been reported on in the EIS.”

“Implementation of these restrictions would require closing many existing OHV and OSV roads and trails. Education and enforcement to inform users of the restrictions and gain their cooperation would be key to successful implementation. Unroaded area restrictions would result in a loss of recreation experience and user satisfaction to the OHV and OSV communities.” “Those are impacts, but where are they? No one can comment knowledgeably if they don’t know how the impacts will affect their values and they can’t know if they don’t know where the impacts are. And what mitigation should be provided? None is offered, and that is a major flaw in the EIS. (#0090 NOA, page 6)

#0137

The appellants contend that, “New OHV and OSV trail systems and related infrastructures (e.g. campgrounds, vault toilets, etc.) could be adversely impacted based on their “potential” to disturb nest sites.” (#0137 NOA, page 3)

This quote applies to: #0171 NOA, California Spotted Owl page 3, #0064 NOA, California Spotted Owl page 2, #0076 NOA, California Spotted Owl page 3

#0137

The appellants contend that, “Require the deciding officer to establish a scientifically based management criteria for not allowing the construction of trails through SOHA’s Spotted Owl core habitat and activity centers based on quantifiable site specific threshold of concern and to provide adequate public involvement pursuant to EO 11644 as amended by EO 11989. To prohibit trail construction there must first be sufficient scientific evidence that demonstrates the potential of significant disruption or adverse modification to owl habitat. This procedure has never occurred.” (#0137 NOA, Numbers 1-3 California Spotted Owl page 6-7)

This exact quote applies to: #0138 NOA, California Spotted Owl page 3.

#0064

The appellants contend that, “Implementation of the ROD could cause immediate and long-term impacts to OHV programs, cabin owners, forest permit fees including horse packers, developed ski areas, etc. (#0064 NOA, Forest Carnivores- Marten and Fisher Section page 4)

This exact quote also applies to: #0076 NOA, Carnivore Section page 4, #0137 NOA, 7. Forest Carnivores page 9 (except it’s OHV/OSV), #0138 NOA, Forest Carnivores page 5 (except it’s OHV/OSV)

#0171

The appellants contend that, “Implementation of the ROD will cause significant and immediate and long-term impacts to recreational OHV/OSV programs, cabin owners, forest permit holders including horse packers, developed ski areas, etc. (#0171 NOA, Forest Carnivore Section page 9)

#0201

The appellants contend that, “Existing OHV, OSV, cabin ingress and egress ARE NOT exempted from this LOP unless some yet to be performed study shows that said activities will not “disturb” the den site. (#0201 NOA, Chapter 5 Other Issues, Recreation Section, Constraints from the FEIS and ROD 5. Forest Carnivores page 94, #0074 NOA, Section VII, page 3-4, #0171 NOA, page 3-4)

Road/Trail Use (Combined with OHV/OSV for Responses)

#0201

The appellants contend that, “The FEIS and ROD substantially constrain recreational activities due to the effects of Standards and Guidelines, Protected Activity Centers (PAC), Home Range Core Areas (HRCA), and Limited Operating Periods (LOP) for Threatened and Endangered species and other wildlife or aquatic constraints. (#0201 NOA, Recreation Section, Constraints from the FEIS and ROD page 92)

#0201

The appellants contend that, “I. California Spotted Owl: California spotted owl PACs will consist of 300 acres of the best available habitat surrounding each site. LOPS will impact activities (March 1 through August 31) within approximately 1/4 mile of the nest site. Although the LOP states it does not apply to existing road and trail use including maintenance, it does allow for the closure of recreational activities if an ‘analysis’ finds that said activities are likely to result in nest disturbance. (#0201 NOA, Recreation Section, Constraints from the FEIS and ROD page 92)

#0169

The appellants contend that, “One cannot meaningfully understand and comment upon recreational access concerns when the Decision fails to identify how specific alternatives in the FEIS will affect roads and trails throughout Sierra Nevada National Forests.” (#0169 NOA, Section II- The Decision Fails to Properly Disclose or Describe Road and Trail Restrictions page 3)

#0205

The appellants contend that, “236. Public participation must be afforded to the public for each and every designation of an ORV trail and, such participation will have been effectively denied should the FOREST SERVICE fail to examine each ORV trail and area they propose to re-designate as closed, in accordance with procedure.” (#0205 NOA, Ninth Violation page 25) This exact quote applies to: #0271 NOA, Ninth Violation page 25

Multiple Recreation Issues (Changed to General Recreation for Responses)

#0135

The appellants contend that, “I am concerned with the connection between standard RCA-37 which could require assessment of diversified campgrounds with other guidelines in the framework. Campgrounds on 4x4 trails are not located in areas of aquatic vegetation because the areas are not good sites for camping. However many campgrounds are located between lakes or streams and steep terrain or other features which can make relocating campgrounds impossible. Standard RCA-000 could require a 300 ft. buffer around aquatic or riparian areas. Added to this is the possibility of nesting/denning sites in the vicinity of the camps. Existing uses need to be protected.” (#0135 NOA, page 1)

#0119

The appellants contend that, “The FEIS and the ROD do not accurately characterize or disclose the likely adverse impacts from implementation of the SNFP Amendment to the ski area operators, the public or to local economies. (#0119 NOA, Section III number 2. page 16-17)

#0119

The appellant contends that, “In the discussion above, we have demonstrated that the implementation of the land allocations and Standards and Guidelines adopted in the

SNFP Amendment will have significant adverse effects on the operations and activities of ski areas. Had these impacts been adequately addressed in the DEIS, we could have commented. Had they been addressed in a revised DEIS, as we requested, we could have commented. Instead, we are left to raise these issues in an appeal of the ROD and Final EIS. While the Forest Service emphasized collaboration and cooperation with its stakeholders, it did not act this way regarding the SNFP Amendments. The goal of an administrative deadline does not override the requirement for the government to comply with NEPA.” (#0119 NOA, Section III. THE FEIS AND THE ROD DO NOT ADEQUATELY DISCLOSE THE ADVERSE IMPACTS FROM IMPLEMENTATION OF THE SNFP AMENDMENT TO RECREATION, TO THE SKI AREAS, TO THE PUBLIC OR TO THE LOCAL ECONOMIES page 12)

#0119

The appellant contends that, “Although the Final EIS expanded the discussion on recreation to over 40 pages, as we have demonstrated above, it still has not properly addressed the impacts to recreation. It still leaves the reader with the impression that there will not be any significant impacts to winter recreation, to ski areas, to the public or to the local communities. While the appropriate focus was identified by three questions (See FEIS, Vol.2, Chapt.3, part 5.6 pg. 475), the section did not adequately answer the questions.” Furthermore, the appellants are concerned that statements in the FEIS which indicate that, “the effects of the alternative standards and guidelines on recreational use were based on professional judgment of likely outcomes. (Id. Pg. 478, #0119 NOA, page 14)

#0222

The appellant contends that, “C. The total effects of changes that will occur due to the application of the selected alternative, Modified 8, in existing plans and in future planning documents do not appear to be consistent with findings in the ROD, which predicts a loss of 10-15% of recreation visitor days. The number of identified restrictions, relocations, and closure of facilities, roads, and forest areas appear to have the potential to reduce recreation activities far greater than indicated in the FEIS and ROD. (#0222 NOA, Section 6 C, page 3, #0228 NOA Section 6 D, page 2 and Section D, page 15-expanded version)

#0169

The appellants contend that, “The Decision fails to provide appropriate consideration to outdoor recreation.” (#0169 NOA, Section I page 2)

#0201

The appellants contend that, “The FEIS and ROD reduces the opportunity for recreational activities in the Sierra Nevada region and avoids public response expressed throughout the process of actively dealing with the recreation issues. (#0201 NOA, 6. Recreation page 91)

#0161

The appellants contend that, “While the public was busy replying to all the land uses the government was planning to eliminate, the Forest Service snuck in this major shift in policy that has the potential to greatly change recreational use of our National Forests. We think that basing such a change on updating an obscure document no one reads is a terrible way to treat the public that relies on openness and truth.”

“The Forest Service has insufficient data to make such a decision.” (#0161 NOA Section-LACK OF DATA TO SUPPORT REDUCTION IN RECREATION OPPORTUNITIES AND UNFAIRNESS TO THE PUBLIC page 4)

#0228

The appellants contend that, “The FEIS and ROD only address habitat issues and do not fully disclose the effects the decision will have on recreation activities, facilities and services. There is not enough information on the effects of the proposed actions to substantiate or support the ROD.” (#0228 NOA, Summary of Federal Statutes page 8)

#0090

The appellants contend that, :If the study had included other than habitat issues, mitigation could have been worked out to provide in other places what was to be lost to preserve important habitat.”...”It takes a little math to calculate it because it is not stated in the DEIS, but it appears that all alternatives except 1,4 and 7 will result in a loss of between 12 and 19 million recreation visitor days. (Chapter 2, page 196) Considering that the Forest Service admits that recreation is its major responsibility, that reduction seems extremely serious. All types of recreation would not be affected equally, and the heaviest losses will apparently be to motorized recreation of all sorts. The DEIS fails to follow through on the analysis of what impacts of this sort mean.” (#0090 NOA, page 6-7)

#0090

The appellants contend that, “The SNFPA also provides for recreational area closures based on analysis of potential disturbance by recreational activities or simply detection of certain species. These terms are open-ended and undefined and could easily be used to close large and important recreational areas with little scientific justification or public involvement. The point here is again if human activities have no priority and closure is required if it could conceivably protect a species from “disturbance,” there is no possibility for finding that the human activity is actually more important than the disturbance of the species. Piling open endedness upon open endedness, these provisions are potentially disastrous to recreation activity and are totally unpredictable in their impact. Because these potential impacts cannot be predicted at this time, the charts and tables in the EIS do not show the impact even for the Sierra range as a whole. In this respect also the EIS is gravely flawed.” (#0090 NOA, page 8)

#0222

The appellants contend that, “The ROD and FEIS violate...” “Multiple-Use Sustained-Yield Act of 1960”...”The Rod and FEIS do not adequately address the effects that the

proposed actions will have on all of the recreation activities, facilities, and services provided and available to the American people.” (#0222 NOA, page 17)

#0222

The appellants contend that, “The Sierra Nevada Forest Plan Amendment FEIS and ROD do not meet the regulations requiring that land and resource management plans provide for multiple use and sustained yield of the products and services obtained in accordance with the Multiple-Use Sustained-Yield Act of 1960, including outdoor recreation. By reducing or eliminating recreation permitted facilities, services, and activities, these uses clearly will not be sustained for the future. Additionally, the ROD does not clearly display the economic effects that will be suffered by all recreation service providers, local economies, and associated businesses.” (#0222 NOA, page 20)

Recreation Data Needs

#0222

The appellants contend that, Page 476 -“... data collected from the national forests have inherent limitations, which raise questions about its integrity. The most significant limitation of RVD accounting practices, however, is that the information generated is not detailed enough to guide recreational site planning and resource management activities.”

Page 484 - “As discussed previously . . . the Forest Service has not invested heavily in monitoring and documenting the types and amounts of recreation uses in Sierra Nevada Region national forests... (#0222 NOA, Section 6 B., page 3 and 9- expanded version)

#0138

The appellants contend that, “...the FEIS/ROD failed to present detailed maps or descriptions of specific roads, trails or areas that might be affected. One cannot meaningfully understand and comment upon recreational access concerns when the ROD fails to identify how specific alternatives in the FEIS will affect roads and trails throughout Sierra Nevada National Forests.” (#0138 NOA, page 1)

#0222

The appellants contend that, “After reviewing the Draft EIS, the Final EIS, and the Record Of Decision, NFRA believes the Forest Service has not provided: reliable use data, accurate economic data, relevant science to substantiate the management actions and restrictions, and adequate information on direct and indirect effects of the selected alternative on recreation supply and activities to proceed with implementation of the ROD for recreation uses, facilities and/or services.” (#0222 NOA, page 2)

#0206

The appellants contend that, “The FEIS analysis of public demands for outdoor recreational uses is not adequately documented or easy to follow in the FEIS. There are conflicts in the information presented and in its interpretation.” (#0206 NOA, Executive Summary, Recreation Section page 10)

The appellants contend that, “Table 5.6-p and Table 5.6.q. along with the associated discussions on page 471 and 473 contradict Table 5.6.r. and the accompanying discussion on page 474. (#0206 NOA, Specific Violations of Law, By Major Issue, Recreation Section page 49)

#0208

III. The map provided by the Tahoe National Forest specifically and incorrectly places Old Forest

Emphasis Areas and Lands Unavailable for Timber Harvest (Experimental Forest) within the existing Special Use Permit boundary and, in fact, directly over existing and recently developed resort facilities.

The appellants contend that, “The Truckee Ranger District provided a SNFF Amendment map to SBC that clearly shows Old Forest Emphasis Area and Lands Unavailable For Timber Harvest overlaid directly over four chairlifts, parking facilities, a 20,000 sq’ lodge and ski terrain developed and being developed pursuant to our 1993 Master Development Plan FEIR-ROD. These improvements represent a direct cost to Sugar Bowl Corporation of over \$22 million generating 1.4 million recreation visits and nearly \$500,000 in Forest Service Use Permit fees over seven years. The mapped designations are erroneous at best and fail to take into account existing land resource management.” (#0208 NOA, page 5-6)

#0119

The appellant contends that, “The selected alternative designates 40 percent of the total area covered by the Framework amendments for management of old forest emphasis. An overlay of the large amount of old forest emphasis area on the limited amount of land available to ski areas will have significant impacts on their ability to operate.” (#0119 NOA, Section II-1, page 7)

#0119

The appellant contends that, “The requirements for Vegetation Treatment – Tree Removal were discussed with Framework authors in October 2000. Ski industry representatives were told in these discussions that the prohibition on large tree removal at existing ski areas would not be applied because the Old Forest Emphasis Areas were not intended to include existing winter sports areas. However, when two industry members received preliminary maps from their respective local Forest Service offices, the maps showed nearly half of their ski areas under the Old Forest Emphasis Area overlay. Confusion and lack of a clear exemption raises uncertainty for providers of recreational opportunities.” (#0119 NOA, Section II-1, page 7-8)

#0206

The appellant contends that, “The Forest Service changed the categories of recreation usage from one table to another. The FEIS current totals and projections are stated in terms of ‘Individual Visitor Day’ (IVD, a term not normally used outside this FEIS), not the standard term RVD; and (2) The FEIS reports the projected numbers only for the decade 2001 to 2010 [Tables 5.6.gg. and 5.6.hh., page 497], not for the year 2050.” (#0206 NOA, page 50)

#0208

The appellant contends that, “The map provided by the Tahoe National Forest specifically and incorrectly places Old Forest Emphasis Area and Lands Unavailable for Timber Harvest (Experimental Forest) within the existing Special Use Permit boundary and, in fact, directly over existing and recently developed resort facilities.” (#0208 NOA, Para.6, page 5)

#0208

The appellant contends that, “The mapped land use allocations for Sugar Bowl Ski Resort should accurately reflect existing resort management activities conducted within the Special Use Permit boundaries. Old Forest Emphasis Area and Lands Unavailable For Timber Harvest (Experimental Forest) designations should be removed from within the existing Special Use Permit boundary, as they are inaccurate and erroneous. (#0208 NOA, Para.4, page 7)

#0228

The appellant contends that, “Without accurate use figures, the Forest Service cannot accurately determine the effects of the management direction on recreation use, nor can it predict the economic impacts. There are expenditure amounts given for various activities.” (#0228 NOA, page 11)

#0228

The appellant contends that, “The economic analysis is flawed because ski resorts was not properly analyzed and other recreation activities such as outfitter and guides, private camps, and developed and permitted operations were not considered.” (#0228 NOA, page 12)

Miscellaneous

#0119

The appellants contend that, “The Forest Service violated NEPA, NFMA and implementing regulations by failing to fully disclose and take a ‘hard look’ at the impacts of those Standards and Guidelines in the SNFP Amendments on recreation.” (#0119 NOA, Section III 1. page 14)

#0119

The appellant contends that, “Our members have reviewed the ROD and FEIS and have found many areas where the land allocations and Standards & Guidelines adopted by the Regional Forester would affect operations, maintenance, equipment replacement and expansion at ski areas. These issues were not addressed in the FEIS and, as a result, the Regional Forester overlooked serious environmental consequences of his action in violation of the requirements of NEPA that he take a “hard look” at direct, indirect and cumulative impacts of the SNFP Amendment upon the ski industry, the recreating public, and the local communities and consider potential conflicts with local plans.” (NEPA,

section 102(2) and the implementing regulations 40 CFR 1502.16).” (#0119 NOA, Section II page 6)

#0205

The appellant contends that, “210. The purpose of the United States Outdoor Recreation Programs Act of 1963 is to provide a sufficient quantity of quality outdoor recreation facilities to the citizens of the United States.

"The purposes of this part are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations of land visitors... such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States..." (16 USC § 460 1-4) 211. The President, by Executive Order No. 11200, (Feb. 26, 1965, 30 F.R. 2645), emphasized the need for outdoor recreation areas. (#0205 NOA, Section Eighth Violation page 21- 22)

#0206

The appellants contend that, “NEPA requires EISs to be “...concise, clear, and to the point...” [Sec 1500.2(b)], and that Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analysis...” [Sec 1500.24] Without doubt the recreation section lacks clarity in failing to give proper references for many of the sources cited and quoted, in the numerical analyses, and in the obscurity of the methods used to assign effects to alternatives. By questioning professional and scientific “integrity,” we don’t mean to impugn anybody’s good faith, we mean the word in the classic sense – the coherence of the section literally dis-integrates when, on close examination, it’s internal inconsistencies and it’s lack of scientific rigor become apparent.” (#206 NOA page 52)

#0271

The appellant contends that, “(a violation of 16 USC 460) - failure to assure adequate and quality outdoor recreation facilities.”

0209. On May 28, 1963 the United States Outdoor Recreation Programs Act of 1963 was signed into law. (16 USC 460 et seq.; May 28, 1963, Pub. L. 88- 29, 77 Stat. 49).

0221. FOREST SERVICE did not propose to compensate or plan for their devastation of the Outdoor Recreation System.

0222. As the FEIS and, the AMENDMENTS, devastates the Outdoor Recreation System, State and Federal, and no alternative outdoor recreation system was or is being proposed, said projects violate the purpose and intent of the United States Outdoor Recreation Programs Act of 1963.

223. Agency action shall be held unlawful that is not in accordance with law. (5 USCA § 706 (2) (A))

224. As the FEIS and, the AMENDMENTS, devastate the Outdoor Recreation System, without offering a replacement, they are therefore not in accordance with law.

(#0271 NOA, Section Eight Violation numbers 209, 221-224 page 21,22,24 for all of the above)

#0222

The appellants contend that, “The FEIS does not present an overall view of the cumulative effects that all of the mitigating factors could and will have on access and recreation use.” (#0222 NOA, page 6)

Socio-Economic Impacts on Recreation

#0064

The appellants contend that, “Developed and dispersed recreation is at risk under the current FEIS/ROD. Agenda driven advocates in the agency, the administration or Congress could put dispersed recreation at risk by simply not funding certain studies or research required by the FEIS/ROD.” (#0064 NOA, Section- In Conclusion page 5)

“Because of these oversights, the FEIS/ROD is fatally flawed and should be remanded back to the Forest Service. Many families and rural communities depend on developed and dispersed recreation in the Sierra Nevada. Here again, this is one of many reasons that the dependence on recreation is why the FEIS/ROD should be redone with the topic of “recreation” included as an issue area.” (#0064 NOA, Section- In Conclusion page 5)

This exact quote applies to: #0076 NOA, Section- In Conclusion page 6; quote is very close to that in that #0137 NOA, page 10; #0138 NOA Section- Conclusion page 6; #0171 NOA, Section- In Conclusion page 7

#0090

The appellant contends that, “Identification of economic impacts is...missing from the FEIR. “All types of recreation would not be affected equally, and the heaviest losses will apparently e motorized recreation...” (#0090 NOA, page 7)

#0222

The appellant contends that, “There is a serious lack of valid information on the economics pertaining to recreation activities. It is not possible to understand the total scope of the situation and the effects that the selected alternative (Modified 8) will have on the recreation industry. These data include: no information on the numbers of outfitter and guides; no information on the numbers of resorts; no information on the numbers of organization or private camps; and no information on the numbers of other recreation developed and permitted operations, such as caverns, target ranges, golf courses, OHV areas, etc.” (#0222 NOA, page 6-7)

Failure to Address Recreation as an Issue

#0164

The appellant contends that, “As a outdoor recreationalist, I find that this important activity is completely overlooked and omitted from the FEIS.” (#0164 NOA page 1)

#0064

The appellants contend that, “The willful omission of the recreation issue is reason alone for our organization to ask the agency to withdraw the current document and start a process that includes the topic of recreation. (#0064 NOA, page 2)

This exact quote also applies to: #0032 thru #0077 NOA, *mostly* one or two page form letters; #0080, #0081, #0083 thru #0088, #0090 thru #0097, #0099 thru #0102, #0105 thru #0107, #0110, #0112 thru #0117, #0119 thru #0123, #0125 thru #0127, #0129, #0131, #0136 thru #0138, #0142 thru #0144, #0147 thru #0150, #0152 thru #017, #0161, #0162, #0171, #0176, #0178 thru #0191, #0193, #0195 thru #0200, #0208, #0214, #0217, #0219, #0222 thru #0224, #0226, #0228, #0230, #0273 thru #0281.

Ski Resorts and Winter Sports Issues

#0119

The appellants contend that, “The impacts of adherence to the Standards and Guidelines would have immediate detrimental effects on the authorized operations of the CSIA members.” (#0119 NOA, page 4)

#0119

“(a) The FEIS incorrectly assumes that application of the Standards and Guidelines will not decrease winter sports activities.” (#0119 NOA, Section III 2. (a) page 17

“(b) The FEIS does not disclose the potential of the Standards and Guidelines to prevent previously approved expansions and modifications. (#0119 NOA, Section III 2. (b) page 18

#0119

The appellant contends that, “Winter sports areas generally do not engage in routine vegetation management; tree removal is normally done for the specific purpose of adding or modifying facilities to serve the public. As written, the standard and guideline for tree removal requires the removal of non-hazard trees during vegetation treatment activities and retention of all live conifer trees over 30 inches diameter at breast height in westside forest types and 24 inches diameter at breast height in eastside forest types. It is not clear how this standard and guideline would be applied. Within a permitted ski area, these requirements could: (1) prohibit clearing a widened ski lift line or run; (2) upgrading ski lift technology, buildings, or facilities; (3) cancel or cause major redesign or re-engineering of projects; or (4) pose an unnecessary safety hazard to the public. ” (#0119 NOA, Section II-1, page 8)

#0119

The appellants contend that, “In the event that a fisher den is detected and verified within or near a ski area, prohibition of activity within the 700- acre buffer during the limited operating period would essentially preclude winter activities (skiing, snowboarding, snowmaking, etc.), as well as limit an already short summer season for maintenance and recreational activities. (#0119 NOA, Section II 4.b. page 10)

#0119

The appellant contends that, “The vegetation treatment requirements to leave wildlife structures such as large diameter snags and coarse woody debris within the elevation band of 4,500 to 8,000 feet for Southern Sierra Fisher Conservation Areas conflict with present ski area operating guidelines to remove hazard trees along roads, lifts, buildings, and ski trails for health and safety reasons.” (#0119 NOA, Section II-4-b, page 10)

#0119

The appellants contend that, “As written, the Standards and Guidelines do not adequately take into account existing facilities and operations previously approved under special use permits and Master Development Plans. The Standards and Guidelines are either unclear or are silent regarding how they will be applied to existing winter sports areas.” (#0119 NOA, Section II page 6)

#0208

The appellant contends that, “The Regional Forester’s overlay of old forest emphasis area within Sugar Bowl’s Special Use Permit boundary will have significant impacts on Sugar Bowl’s ability to operate. For example, consider the requirements on Vegetation Treatment - Tree Removal (see ROD, pg. A-28). Winter sports areas generally do not engage in routine vegetation management activities similar to those that occur throughout the general forest. Tree removal is normally done for the specific purpose of adding or modifying facilities to serve the public. As written, the standard and guideline requires that the removal of non-hazard trees during “vegetation treatment” activities retain all live conifer trees 30” dbh or greater in westside forest types. It is unclear exactly how this S&G will be applied. However, it could prohibit clearing a widened ski lift line (particularly where an existing lift is being upgraded from an old model fixed grip to a larger detachable lift) or a ski run, activity building or facility site.” (#0208 NOA, page 3)

#0208

The appellant contends that, “As written, the Standards and Guidelines do not adequately take into account existing facilities and operations previously approved under Special Use Permits and Master Development Plans. The Standards and Guidelines are either unclear or are silent regarding how they will be applied to existing winter sports areas. SBC operations, maintenance, equipment, replacement, and expansion will be affected by the land allocations and standards & guidelines adopted by the Regional Forester. These issues were not addressed in the FEIS.” The National Forest Ski Area Permit Act of 1986 established the ski area term Special Use Permit. The Forest Service Handbook for special uses (FSH 2709.11) sets forth directions for administration of permits authorized under the ski area permit act. Among other things, those handbook directions set forth a procedure for conversion of organic act permits to the ski area permits. It is instructive to note that in handbook provisions currently effective, the Forest Service states that in deciding where to put the permit boundary in permits, the Forest Service shall: (#0208 NOA, Summary of Appeal I. page 8)

#0118

The appellants contend that, “Both the land allocations and the Standards and Guidelines adopted by the Regional Forester ROD for the SNFP Amendments would adversely affect our ability to provide needed winter recreational services to the general public at a time when both the FEIS and ROD acknowledge that this demand is growing.

“The EIS and the record of decision should have recognized and incorporated the approved heavenly ski resort master plan. Including the mitigation and monitoring program contained therein, as an equal or superior method to achieve the goals and objectives of the SNFP amendments, while meeting the current and future needs of the public by providing high-quality outdoor recreation opportunities consistent with the mission of the forest service.” (#0118 NOA page 2)

#0118

The appellants contend that, “The document still does not adequately address the impacts to Heavenly, which has long been a partner with the Forest Service in providing four-season recreational opportunities to the public. Neither does the document clearly respond to Heavenly’s request that the existing Master Plan and Mitigation and Monitoring components be allowed to proceed.” (#0118 NOA, page 1)

#0118

The appellants contend that, “We still do not have accurate maps delineating which allocations and designated special areas will be applied to Heavenly.” (#0118 NOA, page 2, Request for Stay)

Wilderness

#0222 (Wilderness Act of 1964)

The appellants contend that, “The Sierra Nevada Forest Plan Amendment ROD will reduce, restrict and eliminate areas where pack and saddle stock may travel and graze within the affected wildernesses. It will remove and eliminate corrals and other support facilities at or near trailheads adjacent to wilderness areas, it will prohibit camping and grazing, it will restrict times of year when use may occur, and it will close roads that provide access to trailheads thereby reducing and eliminating opportunities for trips into the wildernesses. (#0222 NOA, page 18)

#0205 (Wilderness Act of 1964)

The appellants contend that, “As Congress has not expressly authorized the FEIS and, the AMENDMENTS; and, they add new areas to the NWPS against the express prohibitions against doing so; they were therefore approved in excess of statutory authority. (#0205 NOA, page 9 #0271 NOA, page 9)

#0205 (State Wilderness Acts)

The appellants contend that, “As Congress has not expressly authorized approval the FEIS or, the AMENDMENTS; and, they add new areas to the of National Wilderness Preservation System; they therefore violate each of the subject STATE WILDERNESS

ACTS and 16 USCA § 1132(b), in that they violate the prohibitions against doing so. (*Idaho Conservation Leasue v. Mumma* (C-A.9 1992) 956 F.2d 1508 at 1511) (#0205 NOA, page 9, #0271 NOA, page 9)

#0205 (State Wilderness Acts)

The appellants contend that, "As FOREST SERVICE has not provided for multiple use of any of said areas; areas previously categorized as "Wilderness", "Nonwilderness" or, "Further Planning", that were not included in the NWPS by Congress; FOREST SERVICE approval of the FEIS and, the AMENDMENTS, are therefore in violation of each of the subject STATE WILDERNESS ACTS in that they violate the prohibitions against designating such areas for other than multiple use. (#0205 NOA, page 11, #0271 NOA, page 11)

#0222 (Endangered American Wilderness Act of 1978)

The appellants contend that, "The Sierra Nevada Forest Plan Amendment ROD will reduce and restrict recreation opportunities, which are historic uses and primitive recreation activities in the areas included in this Act. (#0222 NOA, page 21)