



Sierra Forest Legacy
Protecting Sierra Nevada Forests and Communities



Forest Issues
Group



December 17, 2018

Objection Reviewing Officer
Randy Moore, Regional Forester
Attn: ENF OSV Project
1323 Club Drive
Vallejo, CA 94592
Submitted via email to: objections-pacificsouthwest-regional-office@fs.fed.us

Re: OBJECTION – Eldorado National Forest Over-Snow Vehicle Project

To Regional Forester Moore:

WildEarth Guardians, The Wilderness Society, California Wilderness Coalition, Center for Biological Diversity, Sierra Forest Legacy, Forest Issues Group, Foothill Conservancy, and Sierra Club submit the following objection to the U.S. Forest Service's decision to select Alternative 5 as analyzed in the Final Environmental Impact Statement (FEIS) assessing the Eldorado National Forest (ENF) Over-Snow Vehicle (OSV) Use Designation Project. The Forest Service's November 2018 Draft Record of Decision (DROD) includes, *inter alia*, designating 337,100 acres (approximately 55 percent of the Eldorado) as open for OSV use and 58 miles of groomed OSV trails on the existing Silver Bear Trail System. The responsible official is Forest Supervisor Laurence Crabtree.

As required by 36 C.F.R. § 218.8(d), the lead objector's name, address, telephone number and email:

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A. Interests and participation of objecting parties.

WildEarth Guardians is a nonprofit conservation organization with offices in Oregon and five other states. WildEarth Guardians has more than 220,000 members and supporters across the United States and the world. Guardians protects and restores wildlife, wild places, wild rivers, and the health of the American West. For many years, WildEarth Guardians has advocated for protection of wild places and wildlife from the disruption of snowmobiles. We have organizational interests in the proper and lawful management of winter motorized travel and its associated impacts on the Eldorado National Forest's wildlife and wild places.

The Wilderness Society is the leading conservation organization working to protect wilderness and inspire Americans to care for our wild places. Founded in 1935, and now with more than one million members and supporters, The Wilderness Society has led the effort to permanently protect 109 million acres of wilderness and ensure sound management of our shared national lands. We provide scientific, economic, legal, and policy guidance to land managers, communities, local conservation groups, and state and federal decisionmakers. In doing so, we hope to ensure the best management of our public lands for recreation, wildlife conservation, water quality, and the ability to enjoy public lands for inspiration and spiritual renewal. The Wilderness Society's members in California, and members from elsewhere who visit California, enjoy the Eldorado National Forest for activities such as hiking, backpacking, skiing, wildlife viewing, and camping, and for the aesthetic, spiritual, and wildlife values and opportunities it provides.

The **California Wilderness Coalition** (CalWild) protects and restores the state's wildest natural landscapes and watersheds on public lands. These important wild places provide clean air and water, refuges for wildlife, mitigation against the effects of climate change, and outstanding opportunities for recreation and spiritual renewal for people. CalWild is the only statewide organization dedicated solely to protecting and restoring the wild places and native biodiversity of California's public lands.

The Center for Biological Diversity is a non-profit, public interest corporation, with more than 61,000 members and offices in Los Angeles and San Francisco, California; Arizona; New Mexico; Oregon; Alaska; and Washington, D.C. The Center uses science, law, and creative media to secure a future for all species, great and small, hovering on the brink of extinction, with a focus on protecting the lands, waters and climate that species need to survive. Center members and staff have interests in the species and habitats that will be affected by the Eldorado National Forest's OSV Program and use the Eldorado National Forest for recreational, scientific, educational, aesthetic, and other purposes.

Sierra Forest Legacy (SFL) is a regional environmental coalition with over 50 partner groups. SFL is focused on the conservation, enhancement and protection of old growth forests, wildlands, at-risk species, protection of the region's rivers and streams, and the ecological processes that shape the forest ecosystem of the Sierra Nevada. SFL is a leader in bringing together scientists and diverse interests on a wide range of forest issues including fire ecology, fuels management, protection of at-risk wildlife species, and socio-economic values associated with public forest management. SFL has been involved and project and land management planning on the Eldorado National Forest since 1996.

Forest Issues Group (FIG) is a 501(c)3 non-profit that focuses its activities on the public lands of the sierra forests and the impact of U.S. Forest Service management and private timber sales on these forests. FIG is an organization made up of local citizens committed to healthy national forests. FIG provides community education and public review of U.S. Forest Service management of the National Forests.

The **Foothill Conservancy** is a community-based nonprofit conservation organization based in Jackson, California. Its mission is "To restore, protect and sustain the natural and human environments in Amador and Calaveras counties for the benefit of current and future generations." Since 1990, the organization and its members have advocated for sustainable management of our national forest lands, quiet recreation, watershed restoration and protection, and permanent protection of the Mokelumne River. Many of its members live near and recreate in the Eldorado National Forest, where they participate in snowshoeing, cross-country and backcountry skiing, hiking, fishing, backpacking, and other activities. The Conservancy is a party to the hydroelectric settlement agreement for PG&E's Mokelumne River Project, a member of the Amador-Calaveras Consensus Group, and participates in national forest planning.

Sierra Club is the nation's largest and most influential grassroots environmental organization – with three million members and supporters. Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

Our groups submitted timely scoping comments (April 20, 2015), and comments on the Forest Service's draft EIS.¹ We also submitted a comment letter on the draft EIS on behalf of 4,610 concerned citizens.² And, Wilderness Society submitted supplemental scoping comments (March 13, 2018). These comments are incorporated herein, especially as they apply to Alternatives 1-4 of the DEIS, which are effectively the same as in the FEIS, our concerns over the designation of Inventoried Roadless Areas and areas suitable for inclusion in the National Wilderness Preservation System as open to OSV use, and concerns over impacts to wildlife and other resources.

B. Issues and parts of decision to which the objection applies.

¹ August 6, 2018, Comment Letter submitted by WildEarth Guardians, The Wilderness Society, Center for Biological Diversity, Center for Sierra Nevada Conservation, Foothill Conservancy, Forest Issues Group, California Wilderness Coalition, Sierra Club, Trout Unlimited, and Sierra Forest Legacy on Eldorado Over-Snow Vehicle Project DEIS, submitted to Forest Supervisor Laurence Crabtree (hereafter, "DEIS Comment").

² August 6, 2018, Comment Letter from WildEarth Guardians on behalf of 4,610 concerned citizens on Eldorado National Forest Over Snow Vehicle Use Designation #46034, submitted to Forest Supervisor Laurence Crabtree (hereafter, "Citizen Comment").

We appreciate the improvements that the Forest Service made in the analysis and the new action alternative (Alternative 5). The development and selection of Alternative 5 is a welcome improvement from the proposed action at scoping and in the DEIS. We appreciate Alternative 5's reduction in the amount of acreage open to OSV use, consideration of the non-motorized alternative (Alternative 3) proposed by Winter Wildlands Alliance and Snowlands Network, as was required by the settlement agreement, and application of a minimum 12-inch snow depth for OSV use. However, as presented in Part C, below, we believe the Forest Service's analysis in the FEIS and its proposed decision in the DROD still suffer significant violations of law, regulation and policy in numerous ways, including that they:

- a. Lack a reasonable range of alternatives;
- b. Fail to demonstrate compliance with the Travel Management Rule;
- c. Do not ensure adequate snowpack for OSV use;
- d. Do not avoid designating for OSV use lands that are suitable for inclusion in the National Wilderness Preservation System;
- e. Fail to demonstrate compliance with the minimization criteria;
- f. Improperly rely on uncertain mitigation measures and fail to assess their effectiveness;
- g. Fail to take a hard look at the direct, indirect, and cumulative impacts of the OSV designations;
- h. Fail to ensure compliance with the National Forest Management Act and the Endangered Species Act; and
- i. Do not disclose sufficient information and best available science, precluding meaningful public comment.

C. Objections and Suggested Remedies.

1. The Forest Service ailed to analyze a reasonable range of alternatives

The “heart” of an EIS is the analysis of reasonable alternatives. 40 C.F.R. § 1502.14. To comply with NEPA's implementing regulations, an agency must “rigorously explore and objectively evaluate all reasonable alternatives.” *Id.* § 1502.14(a). An EIS “shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” *Id.* § 1502.1. “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Nw. Env'tl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997); *see also* 40 C.F.R. § 1508.25(b) (scope of an EIS dictated by its range of alternatives, including no action, “[o]ther reasonable courses of actions,” and mitigation measures). The “touchstone” of an inquiry about an adequate range of alternatives is “whether an EIS's selection and discussion of alternatives fosters informed decision-making and informed public participation.” *Mont. Wilderness Ass'n v. Connell*, 725 F.3d 988, 1004 (9th Cir. 2013) (quotations and citation omitted).

Our scoping comments (April 20, 2015, p. 8) stated that the analysis must include an alternative under which no areas or routes would be designated as open to OSV use. This alternative is necessary to provide an accurate comparison for analysis of the impacts associated with all the area and route designations made in the winter travel plan – including those that allow continued OSV

travel in existing areas or on existing routes. Unlike in a typical NEPA analysis where the no action alternative provides the baseline for comparison, here the “no action alternative” allows cross-country OSV travel by default across the vast majority of the forest. But in 2015, the Forest Service’s subpart C rulemaking made clear the agency would be working from a “closed unless designated open” management regime and required the application of the minimization criteria to all open areas and trails. Because the TMR requirements were never applied, the “no action alternative” is not, in fact, a legally viable alternative and does not represent a legally accurate baseline.³ An alternative that designates no areas or trails open to OSV use is necessary to facilitate a fully informed analysis and decision about the impacts of the action alternatives.

In addition, the Forest Service failed to use the “closed unless designated open” and/or minimization criteria requirements of Subpart C to develop the action alternatives, rendering them legally insufficient. For instance, Alternative 4 would designate portions of Caples Creek Recommended Wilderness Area, Round Top Botanical/Geological Special Interest Area, and certain Semi-Primitive non-motorized high-country areas as open to OSVs, requiring a Forest Plan Amendment. This is not acceptable and evidences a failure to apply the minimization criteria to delineate open areas under this alternative. Similarly, our DEIS comments discuss in detail why Alternative 2 is not a legally viable alternative because the Forest Service failed to use either the “closed unless designated open” or minimization criteria requirements of Subpart C. See e.g., DEIS Comments, pp. 29-30. Indeed, those comments explain how the Forest Service failed to apply the requirements of Subpart C when developing all of the alternatives therein – our comments on the DEIS are incorporated herein as they apply to alternatives 1-4 in the FEIS, which are effectively the same as in the DEIS. The FEIS does not redress this problem. Accordingly, the Forest Service’s failure to apply the minimization criteria and/or “closed unless designated open” requirements of Subpart C when developing the action alternatives renders them legally flawed, and thus the FEIS’s alternatives do not meet NEPA’s requirements to analyze a reasonable range of alternatives. In addition, by failing to apply the requirements of Subpart C to the action alternatives, they fail to meet the stated purpose of the project, which is, in part, to “minimize impacts to natural and cultural resources, and minimize conflicts among the various uses.” FEIS, p. 12.

In our DEIS comments (August 6, 2018) we explained that:

In anticipation of a forest plan revision, TWS conducted an intensive inventory and evaluation of lands on the Eldorado National Forest that are suitable for inclusion in the National Wilderness Preservation System (NWPS), and presented the methodology and results to the Eldorado National Forest in a January 24, 2018 meeting and in a supplemental scoping letter submitted, March 13, 2018. See Attachment A. See also The Wilderness Society, Narrative Reports (detailed narrative reports for each of the inventory units on the Eldorado describing its wilderness characteristics) (Attachment D).

DEIS Comments, pp. 8-9. We further urged the Forest Service

³ See *Western Watersheds Project v. Abbey*, 719 F.3d 1050-53 (9th Cir. 2013) (overturning a NEPA analysis by the BLM that failed to analyze an alternative that would eliminate grazing in the Missouri Breaks National Monument because without a true baseline, the agency was “operating with limited information on grazing impacts” in violation of NEPA).

to consider our methodology and results in this winter travel planning process, including by analyzing at least one alternative that would not designate any areas in TWS's inventory as open to OSV use, and modifying Alternative 2 to not designate most or all existing Inventoried Roadless Areas (IRAs) (which generally will constitute the core of the Forest Service's upcoming Chapter 70 inventory) as open to OSV use. Such alternatives are necessary to ensure that the Forest Service minimizes impacts to wilderness-quality lands and does not short-circuit or prejudice the mandatory wilderness recommendation process that will occur during the Eldorado's upcoming forest plan revision.

Id., at 9.

While the Forest Service generally discusses its reasons for not analyzing Alternative A – The Wilderness Society's Wilderness Inventory, the agency should have analyzed this alternative in detail to provide a meaningful comparison of the tradeoffs associated with designating wilderness quality lands as open for OSV use and thereby degrading their wilderness characteristics and potential for inclusion in the National Wilderness Preservation System in the future.

Further, the Forest Service still has not sufficiently analyzed (as required by NEPA) or minimized (as required by Subpart C) the impacts of its OSV designations on designated and recommended wilderness areas, wilderness-eligible lands as identified in TWSs inventory and evaluation, areas identified in Appendix 1 of our scoping comments that should be closed to OSV use, and/or IRAs. Even Alternative 5, while an improvement over Alternative 2 (proposed action), opens 60% of existing IRAs to OSV use.

Nor has the Forest Service analyzed an alternative that sufficiently minimizes impacts to other significant issues such as wildlife, riparian areas, wetlands and water quality. We are concerned that all alternatives designate as open to OSV use areas below 5,000 feet in elevation, areas that receive little snow, areas that receive incidental or low use, and areas of important – even critical - wildlife habitat, and during important times for wildlife such as breeding. Proper application of the requirements of Subpart C would remove most, if not all, of these areas from OSV use due to the likelihood of impacting the significant issues listed here. Unfortunately, the Forest Service does not consider impacts to these resources as a significant issue. As we explained in our DEIS comments, and which was not redressed in the FEIS,

the Forest Service identifies only two significant issues: motorized recreation opportunities and non-motorized recreation opportunities. DEIS at 13-14, 48, FEIS, p. 15. This approach ignores critical issues like wilderness preservation and the need to conserve and recover imperiled species in the project area – as required by the agency's multiple use mandate.

...

The agency's limited view of what constitutes a significant issue also fails to recognize how the proposed action will significantly impact forest resources, roadless and wilderness values, and imperiled wildlife, all major concerns that we highlighted in scoping comments and again re-iterate here. As explained below, the Forest Service improperly relies on its very limited identification of two significant issues to develop its range of alternatives considered in detail, resulting in an extremely limited consideration of alternatives that does not reflect a reasonable range as required by

NEPA. The fact that Alternative 4 proposes to open Caples Creek Recommended Wilderness area to OSV use under a Forest Plan amendment highlights the significance of wilderness values as a key issue that should be considered in detail. Even with respect to the identified significant issues, the range of alternatives is wholly inadequate (see discussion of failure to minimize conflicts, above). To demonstrate that it took the required hard look, the Forest Service must revise its analysis to identify significant issues including how the proposed OSV designations will significantly impact forest resources, roadless and wilderness values, and imperiled species.

DEIS Comments, p. 17.

The Forest Service failed to address this problem in the FEIS. Once again, the agency identified the same two significant issues: motorized and non-motorized recreation opportunities. FEIS, p. 15. The Forest Service failed to develop legally viable alternatives that address other significant issues as raised in our comments, including how the proposed OSV designations will significantly impact forest resources, roadless and wilderness values, and imperiled species. Indeed, even Alternative 5, the preferred alternative, “was developed to in response to comments on the DEIS that identified high-value OSV opportunities, important non-motorized opportunities in areas that have been historically closed to OSV use. In addition, Alternative 5 was developed in response to public comments regarding several other factors related to size and configuration of the designated “Areas” and designating areas where adequate snowfall occurs that would provide OSV opportunities.” DROD, pp. 8-9. Thus, none of the alternatives in the FEIS were developed to address or minimize the impacts to the other significant issues raised in our comments, and indeed, they do not.

Suggested Resolution:

As explained in detail above, the Forest Service must analyze a reasonable range of alternatives, including a true no action alternative that would designate no trails or areas as open to OSV use on the Forest to establish the environmental baseline. All action alternatives must be developed using the minimization criteria and “closed unless designated open” requirements of Subpart C. Alternatives should include, but are not limited to, the alternative proposed in our scoping comments (Attachment 1), an alternative that does not designate as open to OSV use areas below 5,000 feet, areas with incidental or low use and areas that receive little snow, alternatives that would not designate IRAs and TWS-inventoried roadless lands suitable for inclusion in the NWPS, and a conservation alternative aimed at minimizing impacts to wildlife, wilderness values, or other resources. An alternative that combines Alternative 3 with a conservation approach aimed at minimizing impacts to wildlife, wilderness values, or other resources would best minimize impacts to the significant issues identified in our scoping and DEIS comments.

2. The Forest Service failed to demonstrate compliance with the Travel Management Rule.

a. Closed unless designated open and discrete area designations

While we appreciate the Forest Service’s reduction in the total area open to OSVs in Alternative 5, as the Forest Service recognized in the FEIS,

“[T]he TMR requires the Forest Service to apply the minimization criteria to each area it designated for snowmobile use.... [T]he Forest Service must apply the data it has compiled to show how it designed the areas open to snowmobile use ‘with the objective of minimizing’ [the impacts set forth in 36 CFR 212.55(b) (1)-(4)... [T]he Forest Service cannot rely upon a forestwide reduction in the total area open to snowmobiles as a basis for demonstrating compliance with the minimization criteria. The TMR is concerned with the effects of each particularized area and trail designation. The minimization criteria must be applied accordingly.” *WildEarth Guardians v. USFS*, No. 12-35434, D.C. No. 9:10-cv-00104-DWM, 9th Circuit Court of Appeals, 6/22/15, pp. 23 and 27 (emphasis in original).

FEIS, p. 4. Here, it appears that the Forest Service largely relies on its forest-wide reduction in total area open to OSV use, and, again, fails to explain how it delineated open areas, why OSV use throughout those areas is appropriate, and whether the terrain is accessible to or regularly used by OSVs, as required by Subpart C. As explained above, the Forest Service failed to apply the minimization criteria and/or the “closed unless designated open” requirements of Subpart C to alternatives 1-4. Alternative 5’s reduction in acreage open to OSV use was intended to somehow balance the two identified significant issues of motorized and non-motorized recreational opportunities. It was not developed by applying the Subpart C requirements to other significant issues such as impacts to wildlife, IRAs, and other wilderness-suitable lands. Indeed, it appears that many areas designated as open under Alternative 5 are not appropriate for OSV use, especially those areas with minimal snow accumulation, considerable impact on important non-motorized recreation areas (including the Pacific Crest Trail), impacts to wilderness-suitable lands identified by TWS, and impacts to wildlife and their habitats. While we appreciate the Forest Service closing some areas to protect resources or wildlife and lessen motorized and non-motorized recreation conflicts, merely doing so does not satisfy proper application of the minimization criteria.

Subpart C also requires the Forest Service to designate “discrete, specifically delineated” open areas—in compliance with the minimization criteria—where OSV use is permitted. 36 C.F.R. §§ 212.1, 212.81(a). Our comments urged the Forest Service to refine its designated areas to ensure they are discrete and specifically delineated. We appreciate that the forest has made progress on this front by defining and naming separate OSV areas, and reducing the total acreage open to OSV use in Alternative 5. This is an important first step in realizing the Travel Management Rule’s “closed unless designated open” paradigm, but it still requires the Forest Service to go a step further and ensure those open areas are specifically delineated, with the boundaries based on application of the minimization criteria. Alternative 5 still designates 50,000 acres in IRAs, constituting 61% of the IRAs on the Forest, as open to cross-country OSV use, many areas of sensitive and even critical habitat for Threatened and Endangered amphibian species, areas and times of use overlapping with breeding periods for Threatened or Endangered bird species, areas in deer critical habitat and important winter habitat for fisher and marten, and areas identified as having wilderness characteristics, despite many of these areas identified as not suitable for such use, as explained herein. Thus, the Forest still failed to identify discrete, specifically delineated open areas by actually applying the minimization criteria.

Suggested Resolution: Issue a Supplemental EIS with an adequate range of alternatives as discussed above, and provide a thorough analysis of how the Forest Service used the minimization criteria to develop each alternative and identify the discrete, specifically delineated open areas and trails in each one.

b. The FEIS and ROD do not ensure areas open to OSV use receive adequate snowfall or require sufficient minimum snow depths

The Travel Management Rule requires the Forest Service to designate OSV use on trails and areas “where snowfall is adequate for that use to occur.” 36 C.F.R. § 212.81(a). Our previous comments urged the Forest Service to ensure that all areas identified as “not conducive to OSV use” were eliminated from open areas. We strongly urged the Forest Service not to designate any areas for OSV use below 5,000 feet elevation or areas with insufficient snowfall and low to no OSV use. DEIS Comments, pp. 7-8. We further explained the importance of ensuring a consistent 12-inch minimum snow depth for cross-country OSV use and on groomed trails. *Id.*, at 8. Unfortunately, only Alternative 3 provides for sufficient minimum snow depths (12-18 inches), and is the only alternative that comes close to ensuring open areas receive adequate snowfall. All of the other alternatives, including Alternative 5, designate areas as open to OSV use below 5,000 feet, where snow cover is highly variable, and where OSV use is low to none.

As we explained in our DEIS Comments:

Recognizing it is managing winter motorized use pursuant to a multiple-use mandate, it makes sense for the Forest Service to not designate areas for OSV use where there is currently little or no OSV use. The National Visitor Use Monitoring (NVUM) data shows there is very little OSV use on the Eldorado National Forest. DEIS at 52. In 2012, less than a half of a percent of the visitors to the Eldorado participated in snowmobiling, as compared to over two percent who participated in cross-country skiing. DEIS at 52, Table 14. What’s more, OSV registrations for counties in the Eldorado National Forest have declined from 2009 to 2014, as have OSV registrations in California statewide. DEIS at 52, Tables 15 and 16. But the Forest Service ignores these trends in declining snowmobile use as compared to higher levels of non-motorized use when it proposes to designate more than 70% of the forest as open to OSV use.

DEIS Comments, p. 8.

While we appreciate that in creating Alternative 5 the Forest Service removed just over 98,000 acres currently designated for OSV use “where there is inconsistent snow for winter recreation” (FEIS, p. 79), this alternative still authorizes OSV use across 55% of Forest Service lands within the ENF, much of which do not receive adequate snowfall for OSV use, and/or have historically had little to no OSV use. As explained above, this alternative was created to address motorized and non-motorized recreation conflicts, but was not designed based on application of the minimization criteria for all resources. For example, in the Caldor area, “OSV opportunities are irregular as there be [sic] sufficient snow for only a few days at a time throughout the winter season”. FEIS, Appendix B, p. B-33. Despite this, Alternative 5 designates 62,000 acres as the Caldor OSV Area. FEIS, p. 23. In the other alternatives, portions of the Caldor area are incorporated into other OSV areas. Similarly, for the Georgetown OSV Area, the FEIS admits:

This area is within a zone of historically minimal snowfall and low to no OSV use. Although designated for OSV use, OSV opportunities are irregular throughout this area as there may not be sufficient snow in most of this area for much of the year. In

addition, the checkerboard ownership pattern limits the amount of OSV opportunities within this area and likely contributes to the low to no OSV use.

Id., at B-43, *see also*, DEIS Comments, p. 8. Despite this area's unsuitability for OSV use, Alternative 5 designates 40,000 acres as the Georgetown OSV Area. FEIS, p. 23. As to the Pacific OSV Area, the FEIS admits that "OSV opportunities within the lower elevation portions of this OSV Area are irregular as there may not be sufficient snow for much of the year. Although there is sufficient snow in the upper elevations of this OSV Area, this area currently receives low OSV use." FEIS, p. B-53, *see also*, DEIS Comments, p. 8. Alternative 5 designates 92,000 acres as the Pacific OSV Area. FEIS, p. 23. As to the Placerville OSV Area, the FEIS admits "[s]imilar to the Pacific OSV Area, opportunities within the lower elevation portions of this area are irregular as there may not be sufficient snow for much of the year." FEIS, p. B-68, *see also*, DEIS Comments, p. 8. Alternative 5 designates 54,700 acres as the Placerville OSV Area. FEIS, p. 23.

We repeat the concerns raised in our DEIS Comments, which have not been sufficiently addressed in the FEIS: "Consistent with its duty to manage for multiple uses and recognizing that all areas on the forest do not and need not support all uses, the Forest Service should focus on designating OSV use only where OSV use is occurring." DEIS Comments, p. 8. By designating areas with low OSV use and those with often insufficient snowfall as open to OSV use, the Forest Service fails to comply with the TMR's requirement to designate OSV use on trails and areas "where snowfall is adequate for that use to occur." 36 C.F.R. § 212.81(a).

This is also counter to the Forest Service's stated purpose of the project, which is, in part, to "ensure that OSV use occurs when and where there is adequate snow." FEIS, p. 12, *see also*, DEIS, p. iv. Yet, as demonstrated above and as we explained in our DEIS Comments, the majority of the Eldorado National Forest does not usually get sufficient snow for OSV use. DEIS Comments, p. 7. The Forest Service recognizes that "higher elevations receive more snow than the rest of the Forest." FEIS, p. 67, DEIS at 53. Particularly with climate change leading to reduced and less reliable snowpack, low-elevation and other areas that lack regular and consistent snowfall should not be designated for OSV use. Plus, many of these low elevation areas also correspond with important ungulate winter range, and we proposed these areas for closure in our scoping comments. These lower elevation areas also contain important habitat for Threatened and Endangered Species such as foothill yellow-legged frog, western pond turtle, *See e.g.*, FEIS, Appendix B, pp. B-38-B-39, B-49, B-61.

As we did in our DEIS Comments, we continue to strongly urge the Forest Service not to designate OSV use below 5,000 feet in elevation, given that these areas tend to receive less snowfall. *See, e.g.*, 2018 Draft Environmental Impact Statement analyzing the Tahoe National Forest's Over-snow Vehicle Designations (hereafter, 2018 Tahoe DEIS). At the very least, the Forest Service must analyze one or more alternatives that closes low elevation areas. By not considering low-elevation areas for closure, the Forest Service fails to ensure that areas designated for OSV use are likely to have adequate snowpack, fails to minimize impacts to wildlife, and fails to analyze a reasonable alternative. *See* DEIS Comments, p. 7.

Our DEIS Comments also addressed the issue of a consistent and sufficient minimum snowpack. DEIS Comments, pp. 7-8. This is an important issue because having a minimum snow depth is cited as the key (and often the only) mitigation measure used to minimize impacts to most resources. *See*

FEIS Appendix B. It is repeatedly cited as the justification for “not likely to adversely affect” determinations for Threatened and Endangered plants and amphibians, other wildlife species such as deer, and for the Forest Service’s determinations that minimal to no impacts would occur to soils, riparian areas, wetlands, streams and water quality, and cultural resources. *See e.g.*, FEIS Appendix B, pp. B1 - B-5, B-8 – B-9, B-21 – B-27, B-33 – 38, B-43 – B-46, B-53 – B-60, B-68 – B-76.

Similar to Alternative 2, Alternative 5 proposes different standards for cross-country OSV use as compared to OSV use on groomed trails. Both alternatives apply a minimum depth 12 inches for cross-country OSV use, and 6 inches for OSV use on groomed trails. FEIS, pp. 19, 23. The Forest Service makes the assumptions that these snow depths provide adequate cover to reduce the impacts of OSV use and mitigate impacts to resources such as wetlands, riparian areas and Threatened and Endangered species, without justifying that assumption or providing a scientific basis for that conclusion.

As we explained in our DEIS Comments:

A consistent 12-inch minimum snow depth for both designated areas and routes would largely provide an adequate buffer against soil compaction, crushing of vegetation and subnivean spaces, and other adverse impacts, and help account for variable snowpack in different seasons as well as different impacts among vehicle classes. See May 2017 Report by Dr. Benjamin Hatchett on Observed and Stimulated Snow Depths for Commencing Over Snow Vehicle Operation in the Sierra Nevada (Attachment C). The same is not true for a six-inch minimum snow depth. See, e.g., DEIS at 83-84 (“During times of the year when snowpacks are potentially more variable, there could be incidental indirect effects including some minor ground disturbance in low-snow areas.”).

DEIS Comments, p. 8. The six-inch depth also fails to account for impacts from climate change that are likely to result in reduced, and even less persistent, snowpack. As the Forest Service admits, “the season of use for OSVs use may change as the snowpack becomes more variable from year to year.” FEIS, p. 115.

The Forest Service failed to analyze in the FEIS the sufficiency of a six-inch minimum snow depth on important resources. *See* Tahoe National Forest OSV Designation DEIS at xvii, explaining a 6-inch minimum snow depth “[m]ay potentially create conditions in which the road surface is exposed to OSVs” and “[m]ay lead to some soil erosion or rutting of the trail surface.” The Forest Service’s response to comments on this issue does not suffice and does not provide any actual analysis, as required by NEPA, of the impacts that this might have. See FEIS, Appendix E, p. E-42. There is no evidence that “[a] minimum snow depth of 6 inches to ride on groomed trails...would prevent changes to soils, vegetation or hydrology of aquatic habitats” or “result in minimal to no impact on soil resources and mitigate the potential for erosion of these sites” as the Forest Service claims. *See* FEIS, Appendix C, pp. C-4, C-7.

Setting a single minimum snow depth would also provide consistency to ease enforcement and ensure that users do not leave designated routes in low-snow conditions to travel cross-country. Proposed monitoring to ensure users operate only in areas having the minimum snow depth appears conditional, as it depends on the “availability of staff.” FEIS at 26. To protect resources and ensure enforceability, we urge the Forest Service to implement and enforce a consistent 12-inch minimum

snow depth requirement using a combination of weather station data, Forest Service staff judgment, and trailhead observations, with restrictions clearly posted on information kiosks at trailheads and on the forest website.

Nonetheless, the Forest Service cannot substitute a minimum snow depth requirement for locating areas and trails to minimize resource impacts and recreation conflicts in the first instance. While we appreciate that Alternative 5 reduces the amount acreage open to OSV use and thus protects some resources from OSV impacts, this alternative was not developed using a thorough and considered application of the minimization criteria to all resources and, instead, uses the 12-inch minimum snow depth as the key, and often the only, mitigation measure to reduce impacts to resources such as Threatened and Endangered species and their habitats, wetlands, soils, deer habitat, riparian areas and other resources. *See* DEIS Comments, pp. 11, 18. This does not suffice and cannot supplant application of the minimization criteria to protect these resources.

As we explained in our DEIS Comments, which the FEIS does not redress:

The Forest Service may not rely on potential future mitigation measures, hypothetical future monitoring, and other generalized statements to demonstrate compliance with the minimization criteria. While establishing potential effect indicators for future adaptive management actions and mitigation measures is an important part of the overall effort to designate a motorized system that minimizes impacts, it does not satisfy the obligation to apply relevant data to locate areas and trails to minimize impacts in the first instance. Plus, the agency also fails to assess the effectiveness of these mitigation measures, in violation of NEPA. *See* 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.25(b).

DEIS Comments, p. 11.

Suggested Resolution: Issue a Supplemental EIS with alternatives developed using the minimization criteria and that includes at least one alternative that that complies with the TMRs requirement that OSV use on trails and areas is designated only “where snowfall is adequate for that use to occur.” 36 C.F.R. § 212.81(a). Ensure that all areas identified as “not conducive to OSV use” are eliminated from open areas, including areas below 5,000 feet elevation and areas with insufficient snowfall and low to no OSV use. Also, apply a consistent 12-inch minimum snow depth requirement on open areas and groomed trails.

c. The FEIS and DROD fail to demonstrate compliance with the minimization criteria.

The Forest Service has a substantive legal obligation to meaningfully apply and implement the minimization criteria when designating each area and trail, and to show in the administrative record how it did so. Our comments urged the Forest Service to demonstrate in the record how it located areas and trails designated for OSV use with the objective of minimizing impacts to natural resources, harassment of wildlife, and conflicts with other recreational uses, consistent with the minimization criteria set forth in Executive Orders 11644 and 11989 and the Travel Management Rule, 36 C.F.R. § 212.55 & 212.81(d). The Forest Service’s latest efforts to consider and apply the minimization criteria, found largely in Appendices B and C, are improved from the DEIS but still do not apply the Executive Order and Travel Management Rule minimization criteria on an area-by-

area or route-by-route basis. The Forest Service fails to show how each area and trail designated for OSV use is located to minimize impacts. Further, as explained previously and in our DEIS Comments, the Forest Service did not apply the minimization criteria when designing the DEIS action alternatives or apply the criteria to all resources when designing Alternative 5.

While we appreciate the reduction in acreage offered by Alternative 5, an overarching reduction does not suffice for conducting route-by-route and area-by-area minimization. Similar to the DEIS, the FEIS lacks necessary information about how and why the agency located the boundaries of open areas or specific OSV trails where it did to minimize impacts. While Appendix B contains a nice list of minimization criteria, there's no indication of how the agency actually applied those criteria to minimize impacts to each resource. Instead, as discussed above, the agency uses mitigation measures – largely the 12-inch snow depth – to mitigate impacts. This does not suffice. While Appendix B does seem to include information on where and to what extent OSV use of a trail or area would overlap with sensitive resources, this is not the same as an actual application of the minimization criteria to minimize impacts. Merely identifying where overlap and impacts may occur does not equate to minimizing impacts to begin with.

1. The Forest Service failed to minimize impacts to wildlife

Our DEIS Comments identified many instances where the Forest Service fails to demonstrate how it located OSV area boundaries and trails to minimize disruption of wildlife habitat, harassment of wildlife, and wildlife connectivity corridors. *See* DEIS Comments, pp. 13-14. This includes OSV impacts to Pacific marten, California spotted owl, wolverine, Northern goshawk, mule deer winter range, Bald eagle, and several amphibian species. Further, our DEIS Comments detailed the impacts that OSV use has on these species. *See*, DEIS Comments at 19-27. These comments are incorporated herein.

As explained in our DEIS Comments, and not redressed in the FEIS, the Forest Service requires a demonstration of adverse impacts to a species before it re-locates OSV areas and trails with the objective of minimizing harassment of wildlife or significant disruption of wildlife habitat. The express language of the Travel Management Rule, however, applies a precautionary approach to minimize harm in the first instance. Again, the Forest Service relies on mitigation measures instead of delineating OSV designations with the objective of minimizing impacts. And it improperly requires a showing of harm before applying those mitigation measures. Requiring harm before complying with the minimization criteria is contrary to the Travel Management Rule.

Wolverine: Our DEIS Comments, pp. 24-26, discuss the impacts of alternatives 1-4, which are largely unchanged in the FEIS, on wolverine, and the failure to apply the minimization criteria to minimize impacts to this species. Alternative 5 would allow OSV use in 123,509 acres of suitable habitat, with 60,281 acres of this in areas with moderate to high OSV use. FEIS, p. 140. OSV use could displace wolverines from suitable habitat, as they tend to avoid areas with significant human use. *Id.*, at 139. The designation of more than 60,000 acres of moderate-high use OSV areas in suitable habitat does not minimize impacts to wolverine.

Marten: Marten is a species known to be sensitive to disturbance caused by human recreation, especially activities on snow. FEIS, pp. 143, 146; *see also*, DEIS Comments, pp. 13, 22-23. However, 55,838 acres of suitable habitat could be disturbed under Alternative 5. *Id.*, at 145. This would all be winter habitat in moderate to high OSV use areas. *Id.*, at 148. The potential for loss of connectivity

of marten habitat would occur on 6,038 acres, or 25 percent of the acreage in corridors on the ENF. *Id.*, at 143. The FEIS does not explain how the Forest Service applied the minimization criteria to minimize harassment of marten, disruption of their habitat, impacts to prey species, increased access for species that prey on marten, or impacts to habitat connectivity corridors.

California Spotted Owl (CSO): *See* DEIS Comments, p. 26. OSV use would be allowed in CSO protected activity centers (PACs), which are areas of 300 acres surrounding nests. FEIS, p. 150. In each alternative except Alternative 3, six PACs would be in high OSV use areas, and three in moderate use areas. *Id.*, at 154. This encompasses 717 acres of breeding habitat for high use areas and 377 for moderate use areas. *Id.*, at 156. This likely understates the impact to CSO breeding habitat, because this habitat is said to encompass a 1.4-mile area around each PAC. *Id.*, at 155. OSV use overlaps the beginning of breeding season, as nest initiation occurs in February and early March. *Id.*, at 150. Though direct disturbance to CSO might be lower beyond a quarter mile from the nest, prey would be adversely affected throughout the breeding habitat because of snow compacted from OSV use. *Id.*, at 153. Prey could be killed or made more difficult for CSO to capture. *Id.*, at 154. CSO could be directly affected by noise from OSV use, which is known to disturb owls, especially during the early part of the breeding season. *Id.*, at 152, 154.

The FEIS fails to explain how the Forest Service applied the minimization criteria to minimize harassment of CSO, particularly during breeding season. For example, there was no effort by the Forest Service to minimize impacts by limiting accessibility of OSVs to CSO breeding areas during the breeding season, or any indication of how the agency delineated particular OSV areas and trail designations with the objective of minimizing harassment or disruption of breeding of CSO.

Northern goshawk: *See* DEIS Comments, pp. 26-27. Northern goshawk would be disturbed by OSV activity, as such use would be allowed in seven PACs in high-OSV use areas and in two PACs in moderate use areas in the Amador OSV Area under Alternative 5. FEIS, p. 162. The amount of goshawk breeding habitat said to be affected is likely understated, for the same reasons as it is for CSO. *Id.*, at 163. Goshawks are very territorial, and defend nests vigorously during the nesting season, which runs from mid-February to late September. *Id.*, at 157. Activity such as OSV use during this season has the potential to cause nest abandonment. *Id.*, at 159. The FEIS fails to explain how the Forest Service applied the minimization criteria to minimize harassment of Northern goshawk, particularly during breeding season. Again, there was no effort by the Forest Service to minimize impacts by limiting accessibility of OSVs to breeding areas during the breeding season, or any indication of how the agency delineated particular OSV areas and trail designations with the objective of minimizing harassment or disruption of breeding.

Sierra Nevada yellow-legged frog: *See* DEIS Comments, pp. 14, 20-21. The Forest Service too easily discounts the potential impacts on Sierra Nevada yellow-legged frog, an endangered species. The Silver Bear Trail System, a high use area, is said to be as close as 25 feet to occupied habitat. FEIS, p. 211. In alternative 5, 15,419 acres of critical habitat would be in areas open to OSV use in high use areas, and 10,029 acres in moderate use areas, and overall, 52,979 acres of critical habitat could be affected. FEIS, p. 214. This species' critical habitat is occupied in numerous places. *Id.*, at 213. Yet the determination is that the proposed project is "not likely to adversely affect" critical habitat, even though overall, the determination for the species is that the project is "likely to adversely affect". *Id.*, at 220. In low snow conditions, frogs could be crushed by OSV use during the spring thaw, when they become active. *Id.*, at 211. They could be stressed by the noise of OSVs in

close proximity. *Id.*, at 212. In general, such stress can immobilize amphibians, making them vulnerable to further harm, such as being crushed by OSVs. *Id.*, at 201.

The agency relies on minimum snow depth to mitigate impacts to this species. Also, during the first few years of implementation of the project, the Forest Service intends to monitor a subset of this species' occupied habitat for resource damage near the Silver Bear Trail System. *Id.* at 212, 213. This is a good measure that could provide valuable information, but neither a minimum snow depth nor post-implementation monitoring are a substitute for avoiding impacts through proper location of areas and trails open to OSV use. Instead of relying on these measures, the Forest Service was required to apply the minimization criteria to minimize the impacts of areas and trails on the species and its critical habitat.

California red-legged frog: *See* DEIS Comments, pp. 13-14, 19-20. OSV use would affect the California red-legged frog, a species listed as threatened under the Endangered Species Act. Up to 13,229 acres of suitable habitat could be affected under Alternative 5, with a few hundred of those acres in high and moderate use areas. FEIS, p. 209. Some of this would be in the Consumnes core recovery area. *Id.*, at 208. Potential impacts are similar as for Sierra Nevada yellow-legged frog, described above. Similarly, the Forest Service also fails to demonstrate how it minimizes harassment of California red-legged frog and disruption of its critical habitat. Again, the agency relies on minimum snow depth and post-implementation monitoring instead of minimizing impacts in the first instance.

Yosemite toad: *See* DEIS Comments, pp. 14, 21-22. The Yosemite Toad is listed as threatened under the ESA. 79 Fed. Reg. 24,256 (April 29, 2014). Threats to the Yosemite toad's continued existence include habitat loss associated with degradation of meadow hydrology and the anticipated hydrologic effects on its habitat from climate change. *Id.* Suitable habitat for the Yosemite toad occurs in the higher elevation portions of the Placerville, Blue Lakes, and Amador OSV areas. FEIS, p. 198. Under Alternative 5, 22,682 acres of suitable habitat would be in areas open to OSV use, with 2,951 acres of habitat in areas with moderate OSV use. *Id.*, at 216. Under Alternative 5, 4,558 acres of critical habitat are open to OSV use. *Id.*, at 217. High and moderate use areas, especially near the Silver Bear Trail System, occur near occupied toad habitat. *Id.*, at 215. Toads may emerge from hibernation during spring thaw, exposing them to being crushed by OSVs. Toads in proximity to OSV use could become stressed, "resulting in the direct harassment or harm of individuals". *Id.*

Again, the Forest Service also fails to demonstrate how it designated open areas and trails to minimize harassment and disruption of the species and its habitat, including critical habitat, and instead relies on minimum snow depth and post-implementation monitoring instead of minimizing impacts in the first instance.

2. Minimize impacts to important quiet use areas and the Pacific Crest Trail

The Forest Service has a duty to minimize conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands. The Forest Service must "consider the effects . . . with the objective of minimizing . . . [c]onflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands." 36 C.F.R. § 212.55(b). *See* DEIS Comments, pp. 14-15. While we appreciate the Forest Service's efforts in Alternative 5 to avoid some important quiet recreation areas, it still does not adequately minimize

conflicts between OSV users and other recreational users. We support and incorporate the objection of Winter Wildlands Alliance and Snowlands on this issue.

In our DEIS comments, we supported the Forest Service's efforts to minimize impacts to the Pacific Crest Trail (PCT) by locating open areas 500 feet away from the trail to preserve a quality non-motorized experience. DEIS Comments, p. 15. However, this provision has been removed for Alternative 5. OSV crossing of the PCT would be allowed within two areas – one 0.5 miles in length, the other 4.5 miles long. DROD at 3, FEIS at 80-81. Allowing OSV use immediately adjacent to (“along”) the PCT does not follow the trail's enabling legislation or agency management policy and direction. A multi-mile “crossing” point is simply not acceptable. Designated crossing locations should only be wide enough to allow OSV riders to have safe crossings, but multiple miles wide crossing areas does not meet the direction or intention found in the PCT Comprehensive Plan. We support and incorporate the Pacific Crest Trail Association's objection on this issue.

3. The Forest Service did not sufficiently minimize impacts to Wilderness-suitable lands or Inventoried Roadless Areas.

We addressed these issues on pages 8-9 and 11-12 of our DEIS comments. As explained above, we request that the Forest Service fully analyze Alternative A – The Wilderness Society's Wilderness Inventory to provide a meaningful comparison of the tradeoffs associated with designating wilderness-quality lands for OSV use and thereby degrading their wilderness characteristics and potential for inclusion in the National Wilderness Preservation System. The Forest Service must not prejudice possible future recommendations of the areas identified in TWS's wilderness evaluation, IRAs or the additional areas identified as roadless in the FEIS, for wilderness designation.

Interestingly, the Forest Service identified an additional 21,594 acres as meeting the unroaded criteria. FEIS, p. 71. We appreciate the Forest Service responding to our comments on this issue and identifying these areas in the FEIS. However, there is no discussion of whether or how the agency applied the minimization criteria to these newly identified areas, or whether they considered the impacts of OSV use to their roadless and other wilderness characteristics. The FEIS does not analyze how any of the alternatives will impact these roadless areas and whether OSV use will impact their potential for inclusion in the NWPS.

Under preferred Alternative 5, 50,100 acres of inventoried roadless area (IRA) would be designated for OSV use. This is 61% of the IRA acreage on the ENF. FEIS, pp. 37, 80, 86. The agency claims that designating areas in IRAs as open to OSV use will not affect any future consideration of these areas for wilderness designation when a wilderness evaluation, per FSH 1909.12, Chapter 70, is undertaken:

Designation of these areas for OSV use will not exclude IRAs or other unroaded areas from being considered during a future wilderness recommendation process (consistent with FSH 1909.12, chapter 70) and will not preclude the future consideration of these areas as recommended wilderness.

FEIS, p. 32. While we appreciate that and agree that these areas will not be precluded from consideration as recommended wilderness, the Forest Service is ignoring the fact the presence of

OSVs degrades their primitive and semi-primitive character,⁴ as well as any documented wilderness-characteristics, including apparent naturalness and opportunities for solitude. It also ignores the degradation of undisturbed wildlife habitat.⁵ The agency considers any impacts of OSV use to roadless characteristics⁶ to be “limited in scope and short term.” FEIS at 73. This is inaccurate, as discussed in detail in our DEIS Comments and herein. *See* DEIS Comments, pp. 19-27 (these comments are incorporated herein). Impacts to roadless and wilderness characteristics – and the potential of those areas to be fairly considered for wilderness recommendation in the future – can be significant and long-term, especially when considered cumulatively with other impacts to these areas, as is required by NEPA.

Notably, every alternative considered in detail in the FEIS would designate IRA acreage as open to OSV use. Even Alternative 3 would open 29,700 acres of IRAs to OSV use. *See* FEIS, p. 86. At a bare minimum, the Forest Service must consider at least one alternative that would not open any IRAs to OSV use. Further, the Forest Service should apply the minimization criteria to all of the roadless characteristics and must analyze the direct, indirect and cumulative impacts of each alternative on all of the roadless characteristics. Neither the DEIS nor the FEIS did so. The Forest Service is required to analyze impacts under NEPA and minimize degradation to roadless and wilderness values under the minimization criteria when making OSV use designations. *See Mont. Wilderness Association v. McAllister*, 666 F.3d 549, 558 (9th Cir. 2011) (Forest Service failed to maintain wilderness character by ignoring impacts of increased motorized uses on opportunities for solitude); *Idaho Conservation League v. Guzman*, 776 F. Supp. 2d 1056, 1066-68, 1071-77 (D. Idaho 2011) (agency must analyze and minimize impacts of motorized uses on wilderness values and roadless characteristics).

A more defensible approach would be to not designate these areas as open to OSV use to ensure a robust forest planning process that fairly evaluates and determines the appropriate balance of sustainable winter recreation opportunities and protection of wilderness-quality lands. To the extent the Forest Service proceeds with designating wilderness-suitable lands for OSV use, the ROD should clarify that OSV designation decisions may be revisited in the future to ensure consistency with the revised Forest Plan. This will help set public expectations and ensure that implementation-level winter travel planning decisions being made now do not have the effect of constraining the agency’s decision-making in the upcoming comprehensive Forest Plan revision process.

4. The Forest Service failed to minimize impacts to soil and water resources

We addressed this issue on pp. 12-13 of our DEIS comments, where we explained how the Forest Service failed to demonstrate how it located OSV areas and trails to minimize damage to watersheds, soils and vegetation. This problem was not redressed in the FEIS. Again, the agency relies on the

⁴ One of the roadless area characteristics under the Roadless Area Conservation Rule is primitive and semi-primitive non-motorized recreation. 36 CFR 294.11.

⁵ Another roadless characteristic is: “[h]abitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land”. *Id.*

⁶ Roadless characteristics include, but are not limited to, primitive and semi-primitive non-motorized recreation, soil, water and air quality; plant and animal communities; habitat for threatened, endangered, proposed, candidate, and sensitive species; and traditional cultural properties.

proposed 6- and 12-inch minimum snow depths as the sole mitigation measure instead of applying the minimization criteria to delineate area boundaries and trails. Indeed, the Forest Service admits there could be some effects to these resources:

During times of the year when snow packs are potentially more variable, there could be incidental indirect effects including some minor ground disturbance in low-snow areas.

FEIS, p. 102. Given the extensive amount of acreage in variable and low-snow areas, such impacts are inevitable and damage to soils is likely to become more than incidental. Snowmobiles would “break through thinner snowpack and churn soil, litter or trail surfaces in to the snow, and create isolated ruts in the soil or trail surface.” *Id.*, at 121. Ground contact would be made by OSVs because of “variations in snow depths such as on high wind-exposed ridges, and southern-facing slopes.” *Id.*

Instead of applying our suggestion for a buffer of non-motorized use around important water bodies, wetlands, riparian areas, meadows, and alpine habitat, the Forest Service relies on untested and unsupported snow depths. The agency improperly assumes that a 12-inch minimum snow depth off of groomed trails and a 6-inch minimum snow depth on groomed trails will prevent all impacts despite the reality that snow cover will not be consistent across the landscape (including over water bodies that are more likely to melt sooner and faster), and that monitoring and enforcement are not guaranteed because they’re dependent on availability of staff. It also ignores the likelihood that some OSV users will not comply with the minimum snow depth requirements.

5. The Forest Service cannot rely on mitigation measures as a substitute for applying the minimization criteria

Our comments highlight how the Forest Service’s approach relies too heavily on potential future mitigation actions, many of which rely on uncertain future monitoring, lack specificity and clear triggers for implementation, are unenforceable, and lack demonstrated effectiveness in reducing impacts. Here again, the Forest Service relies heavily on potential future mitigation of impacts instead of locating OSV areas and trails with the objective of minimizing impacts. The Ninth Circuit has rejected precisely this type of reliance on “generalized statements in the EIS that it designed [ORV] allocations” to protect various resources to demonstrate compliance with the minimization criteria. *WildEarth Guardians*, 790 F.3d at 930.

Efforts to *mitigate* impacts are insufficient to fully satisfy the duty to *minimize* impacts, as expressly set forth in the ORV executive orders: “areas and trails shall be *located* to minimize” impacts and conflicts. Executive Order 11644 § 3(a) (emphasis added). Here, with a few exceptions, the Forest Service skips the initial step of locating OSV areas and trails to minimize impacts, and instead relies on post-implementation monitoring and unproven mitigation measures. We agree that site-specific management and mitigation measures are an important part of the overall effort to design a motorized system that minimizes impacts, but this does not satisfy the agency’s obligation to apply relevant data to locate areas and trails with the objective of minimizing impacts in the first instance.

In the very least, to the extent the Forest Service relies on mitigation measures to satisfy its duty to minimize impacts, it must ensure those measures will be implemented and effective in reducing impacts. Unfortunately, what few mitigation measures there are, are so generalized and non-specific that it is impossible to determine what effect, if any, they will have. And many are contingent only

upon a showing of harm to the given resource. As explained above, requiring harm before complying with the minimization criteria is contrary to the Travel Management Rule. Satisfying the minimization criteria is not about listing actions that may trigger at some point in the future; it is about ensuring the system being designated *now* minimizes impacts.

We previously commented that the Forest Service may not rely on uncertain mitigation measures and that the agency failed to assess their effectiveness. NEPA requires an EIS to discuss appropriate mitigation measures. *See* 40 C.F.R. §§ 1502.14(f), 1502.16(h), 1508.25(b). *See also Neighbors for Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998) (those measures “must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated”) (quotations and citation omitted). Simply identifying mitigation measures, without analyzing their effectiveness, violates NEPA. *Id.* (“A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA”). Rather, an “essential component of a reasonably complete mitigation discussion” must include “an assessment of whether the proposed mitigation measures can be effective.” *S. Fork Band Council of W. Shoshone of Nevada v. U.S. Dep’t of Interior*, 588 F.3d 718, 727 (9th Cir. 2009). Plus, CEQ has instructed the “possibility of mitigation” should not be relied on as a means to avoid further environmental analysis. *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*.

The FEIS purports to assess the effectiveness of mitigation measures. FEIS, Tables 13 and 14, Appendix E, p. E-74, response to comment 167.) Yet, the discussion in Table 13 is very general, with a rating given for mitigation effectiveness over broad categories of possible impact, and with no discussion of how such mitigation is expected to be effective. For the category of “harassment of wildlife and significant disruption of wildlife habitats” only aquatic species are mentioned.

Suggested Resolution: Issue a Supplemental EIS that reconsiders the OSV area, route, and trail designations, and demonstrates meaningful application of the minimization criteria. Show in the record how the Forest Service located each area, route, and trail (including OSV trails located within areas) with the objective of minimizing harassment of wildlife and disruption of wildlife habitat, conflicts between OSV use and quiet recreation, and damage to roadless and wilderness values and other resources. We do not believe the Forest Service is able to demonstrate compliance with the minimization criteria in support of the DROD’s selected Alternative 5.

d. The Forest Service fails to take a hard look at the direct, indirect, and cumulative impacts of the OSV designations.

Our DEIS Comments analyzed these issues in detail. *See* DEIS Comments, pp. 15-29. These comments are incorporated herein. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., is designed to facilitate informed decision-making and public transparency by requiring federal agencies to take a “hard look” at the direct, indirect, and cumulative impacts of their proposed actions and reasonable alternatives. The analysis in this DEIS and FEIS fail to adequately analyze certain impacts, including disclosing site-specific baseline information, best available science, impacts to future potential wilderness recommendations, impacts to wildlife and habitat connectivity corridors, impacts of authorizing OSV use on trails within OSV areas, and the cumulative impacts of climate change and the OSV designations.

1. Site-specific information

The FEIS does not redress our concerns about the lack of site-specific information regarding past monitoring efforts. *See* DEIS Comments, p. 16. While the agency claims that it does some monitoring, it fails to disclose the data showing when and where it has monitored, and what that monitoring shows, for use conflicts, disruption of wildlife, and impacts to wildlife and amphibian habitat and other resources such as wetlands, riparian areas, water quality, soils and vegetation. Thus, the FEIS lacks a basis for many of its conclusions and assumptions about impacts throughout the analysis.

2. Significant issues

As discussed above, the Forest Service identifies only two significant issues: motorized recreation opportunities and non-motorized recreation opportunities. This approach ignores critical issues like wilderness preservation and the need to conserve and recover imperiled species in the project area – as required by the agency’s multiple use mandate. The agency’s limited view of what constitutes a significant issue fails to recognize how the proposed action will significantly impact forest resources, roadless and wilderness values, and imperiled wildlife, all major concerns that we highlighted in our scoping and DEIS comments. The Forest Service improperly relied on its very limited identification of two significant issues to develop its range of alternatives considered in detail, resulting in an extremely limited consideration of alternatives that does not reflect a reasonable range as required by NEPA. Even with respect to the identified significant issues, the range of alternatives is wholly inadequate. To demonstrate that it took the required hard look, the Forest Service must revise its analysis to identify significant issues including how the proposed OSV designations impact forest resources, roadless and wilderness values, and imperiled species.

3. Forest resources

As explained above and in our DEIS Comments, the Forest Service improperly relies on minimum snow depth requirements to protect forest resources, including soil productivity and stability, water quality, and vegetation. DEIS Comments, p. 18. In so doing, the Forest Service fails to take a hard look at the OSV impacts to these resources. Consideration of OSV impacts to soil and water quality is even more important in light of the fact that the majority of water that flows off of the Eldorado contributes to hydropower and drinking water supplies for the surrounding counties. DEIS, p. 23. In assuming that the un-tested minimum snow-depths measures will mitigate all impacts, the Forest Service ignores potential significant direct, indirect and cumulative impacts. Significant impacts are even more likely in previously disturbed areas, such as the areas impacted by the King Fire. The Forest Service did not consider closing this area to OSV use, as we recommended, and did not analyze the cumulative impacts of OSV use in conjunction with the fire’s impacts. Nor did the Forest Service analyze this area as important mule deer winter range and the impacts that the fire, cumulatively with OSV use, will have on that winter range.

4. OSV impacts to wildlife

Our DEIS Comments address this issue in detail. DEIS Comments, pp. 19-27. Those comments are incorporated herein. They discuss the impacts that OSV use has on the bird, wildlife and amphibian species in the project area, and the failure of the DEIS to analyze the direct, indirect and cumulative impacts of the OSV use designations, especially in light of climate change. The FEIS fails to redress this problem. While we discussed some of these impacts above, the FEISs general statements about some risk do not suffice as a sufficient impacts analysis under NEPA. There is a considerable lack

of monitoring data and, again, the agency relies on snow-depth mitigation measure to relieve most, if not all, impacts. This does not suffice as an adequate, site-specific analysis using the best available science pursuant to NEPA. While Alternative 5 reduces the amount of acreage open to OSV use compared to the proposed action, many areas of important habitat are still open to OSV use, and the impacts to those species and their habitats are not adequately analyzed. Because the Forest Service has such limited site-specific data, it should err on the side of protecting these species and their habitats from OSV use instead of opening over 50% of the forest and assuming that there will be little or no impacts.

For example, the Forest Service claims that OSV use has been open in a number of areas “under current management over the last 30 years and the level of use is not anticipated to change. During this time, spotted owl and northern goshawk activity centers have continued to be established and many territories continue to be occupied indicating that disturbance from OSV use is unlikely to be causing adverse effects.” *See*, FEIS, Appendix B, p. B-7, Appendix C, p. C-6. This claim is unsupported by any actual data, as the Forest Service has not assessed the impacts that OSV use has on these species. Further, if the Forest Service chooses Alternative 5, there will be less acreage open to OSV use, thus what use there is will likely be more concentrated in these activity centers and thus impacts are likely to increase. The Forest Service failed to analyze this increased pressure.

The Forest Service also assumes that OSV use in many areas will be low, and thus impacts will be minimal or unlikely. *See, e.g., Id.*, Appendix B, pp. B- 36, 48-49, 57, 59, 61, 72-73. Again, this is an unsupported assumption, especially given that use under Alternative 5 will likely be more concentrated within these areas, many of which are important breeding areas for birds, winter habitat for deer, marten, fisher and wolverine, and some of the last remaining habitat for threatened and endangered amphibians. Many of these areas have variable snow levels, thus the likelihood of impacts will increase when OSV use occurs during low-snow levels or spring thaw.

The Forest Service cannot rely on current environmental conditions as a proxy for assessing the cumulative impacts. There is no analysis of past, present or future vegetation management activities, other travel management activities such as wheeled motorized use, and climate change stressors that may impact species during other times of the year.

Without analyzing the direct, indirect and cumulative impacts of the alternatives, the Forest Service has violated NEPA and prevented meaningful input by the public in its decision-making process. These impacts must be analyzed and disclosed, and the agency cannot rely on generalizations about some risk or rely on a purported lack of impacts over the past 30 years – impacts that are not supported by any monitoring data and have no relevance to the preferred alternative. Further, the Forest Service cannot rely on its minimal and unenforceable mitigation and monitoring requirements.

Suggested Resolution: The Forest Service should issue a supplemental EIS that provides sufficient site-specific information, identifies additional significant issues based on our comments, and takes a hard look at the direct, indirect and cumulative impacts of the OSV use on forest resources, IRAs, wilderness areas and wilderness quality lands, non-motorized recreation, and wildlife, bird, amphibian and other species.

e. Fails to ensure compliance with NFMA.

Under the National Forest Management Act (NFMA), projects like this must be consistent with the governing land and resource management plan. 16 U.S.C. § 1604(i). The Forest Service states, without providing an explanation or justification, that all project alternatives meet requirements for NFMA through compliance with the 1989 Eldorado Forest Plan, as amended by the 2004 Sierra Nevada Forest Plan Amendment. DEIS at 258, FEIS, p. 288.

Several aspects of the OSV designations appear to be inconsistent with the Eldorado Forest Plan, and therefore would constitute a violation of NFMA. For example, standard and guideline 89 directs the Forest Service to evaluate proposals for, *inter alia*, off-highway vehicle routes, and recreational and other developments for their potential to disturb marten den sites. DEIS, p. 112, FEIS, p. 132. To comply with these standards and guidelines, presumably the Forest Service would need to develop site-specific baseline data based on best available science to determine where marten den sites exist within the project area. But the Forest Service makes no attempt, explaining that there are no known marten denning sites in the project area but failing to provide monitoring data as a basis for this conclusion. DEIS, p. 129, FEIS, p. 147-148. Instead, the Forest Service relies on marten landscape-level habitat model to identify high predictability areas for martens. *Id.* Without identifying marten denning habitat, the Forest Service fails to demonstrate how this is consistent with Forest Plan standards for management in these areas.

Eldorado Forest Plan standard and guideline 27 directs the Forest Service to minimize old forest habitat fragmentation, and assess potential impacts of fragmentation on old forest associated with species (particularly fisher and marten) in biological evaluations. DEIS, p. 111, FEIS, p. 131. Standard and guideline 28 directs the agency to assess the potential impact of projects on the connectivity of habitat for old forest associated species. *Id.* The Eldorado Forest Plan general direction states that no motor vehicle use or mountain bicycles are allowed in MA 1 (Wilderness), which includes Caples Creek Recommended Wilderness. *See* Eldorado Forest Plan, page 4-123. Alternative 4 does not comply with this direction by proposing to allow OSV use in Caples Creek Recommended Wilderness. DEIS at 21, FEIS, p. 22. As explained in our DEIS Comments, a Forest Plan amendment to allow such use is not justified, and any forest plan amendment must comply with the procedural and substantive requirements of the 2012 Planning Rule. DEIS Comments, p. 32.

Further, as discussed above, Forest Plan direction applies a consistent 12-inch minimum snow depth, regardless of whether the OSV use is cross-country, on designated routes, or groomed routes. *See*, DEIS, p. 20, Table 5. Yet under Alternatives 2, 4 and 5, the Forest Service proposes to apply a 6-inch minimum snow depth for groomed routes, and does not propose a corresponding Forest Plan amendment. At bottom, the Forest Service fails to demonstrate how the proposed OSV designations comply with these Forest Plan standards.

Species Viability

As explained previously and in our DEIS Comments, the Eldorado's proposed OSV designations have the potential for substantial impacts on wildlife species, thereby threatening their viability. To comply with NFMA's viability and diversity protection requirements, 16 U.S.C. § 1604(g)(3)(B), the Forest Service must avoid any possibility of leading to a trend toward federal listing of species on the Eldorado. Given the broad ranging impacts to Pacific marten and its habitat, and its vulnerable populations size, the Forest Service should pay particular attention to avoid leading to a trend toward federal listing of the Pacific marten. It appears all alternatives are likely to harm Pacific marten and thus threaten its viability and distribution. The Forest Service relies on a forest-scale

analysis to support its finding that the designations are “not likely to lead to a loss of viability or a trend toward federal listing” for Pacific marten, California spotted owl, Northern goshawk, bald eagle, foothill yellow-legged frog, Western pond turtle. DEIS at 32-34, 129, 136-137, 143, 159, 193, 194, FEIS, pp. 149, 157, 164, 179. This is insufficient. Analysis at the population-scale, individual-scale, and OSV-open-area scale analysis also fails to consider all negative impacts to these species.

Suggested Resolution: The Forest Service should issue a supplemental EIS that ensures compliance with the Eldorado Forest Plan, as amended, by not designating any Recommended Wilderness or other areas designated for no motor vehicle use, and by ensuring a minimum 12-inch snow depth regardless of whether OSV use is cross-country, on designated routes, or groomed trails. Any amendments to the Forest Plan must comply with the procedural and substantive requirements of NFMA and the 2012 Planning Rule. The Forest Service must also ensure species viability by conducting a proper analysis of the impacts of OSV use at the population-scale, individual-scale, and OSV-open-area scale that analyzes all negative impacts to these species.

f. Fails to ensure compliance with the ESA.

We addressed this issue on pp. 34-35 of our DEIS comments. Those comments are incorporated herein. The Forest Service must ensure that its actions comply with the Endangered Species Act (ESA). The Eldorado National Forest provides habitat for California red-legged frog, Sierra Nevada yellow-legged frog, Yosemite Toad, and these species’ critical habitat. Section 7 of the ESA imposes a substantive obligation on federal agencies to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of” habitat that has been designated as critical for the species. 16 U.S.C. § 1536(a)(2); *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 924 (9th Cir. 2008). The Forest Service must ensure, based on best available science, that its proposal to designate OSV use on the Eldorado will not harm these species or degrade their critical habitat. As explained above and in our DEIS Comments, however, the proposal will, in fact, harm these species and degrade their critical habitat.

The Forest Service determined that the project may affect, and is likely to adversely affect Sierra Nevada yellow-legged frog and Yosemite toad. BA, p. 1, 40. The agency determined that the project is not likely to adversely affect critical habitat for either species. The BA also states that the project may affect, but is not likely to adversely affect California red-legged frog, Lahontan cutthroat trout and wolverine. Biological Assessment (BA), p. 1.

The BA fails to analyze cumulative effects to all species and their critical habitats. The cumulative effects sections are limited effects from OSV use and do not include any other activities happening across their habitat, or the impacts of climate change. *See*, BA, pp. 40, 42-45. Other activities include off-road vehicle use, logging, fires, mining and grazing. The BA also fails to include any analysis of the potential harassment of wolverines by OSVs and noise impacts.

The Forest Service relies on the 12- and 6- inch snow depths as the sole mitigation measures to prevent impacts to amphibian species. Yet, monitoring of snow depths is based on the availability of staff, thus will not be conducted in any systematic or reliable manner. BA, p. 12.

OSV use has been occurring on the Eldorado NF for at least 30 years, yet the Forest Service has made no effort to monitor or assess the impacts of OSV use on ESA-listed species. According to the BA,

The primary limitations associated with analyzing the effects of OSV use on aquatic species and their habitats are: (1) the effects are not well understood because very little research has been conducted on the topic, and (2) no research has been conducted on OSV impacts to the specific species being evaluated in this biological assessment... Furthermore, no field observations or site-specific aquatic surveys or monitoring related to OSV use and their potential effects to aquatic species was done to support this analysis ENF recreation staff monitor snowmobile and other winter recreation use on the forest, but no water quality sampling or assessments on effects of OSV use on aquatic species have been made.

BA p. 13. Thus, all of the agency's assumptions regarding lack of harm by OSVs are unsupported by any actual data. For example, the Forest Service assumes that amphibians whom currently over-winter in or near areas of current cross-country OSV use may already be exposed and possibly habituated to the OSV-related disturbances during winter. BA, p. 33. The agency has no evidence to support this statement. The Forest Service's assumptions regarding impacts to wolverine and its critical habitat are similarly unsupported.

The Forest Service also assumes that impacts to listed species will be the same as under the current management system because use will remain the same. "OSV use on the Eldorado is expected to be similar to current management. Use is anticipated to remain stable and is not expected to significantly increase and/or use patterns are not expected to change." BA, p. 14. But under Alternative 5, OSV use likely will be more concentrated in a smaller area. The agency fails to address this issue in either the BA or the FEIS.

Further the Forest Service is not meeting its mandate under the ESA to ensure that its management actions do not harm ESA-listed species. The BA admits that the potential for negative direct effects to Sierra Nevada Yellow Legged Frog and Yosemite Toad increases during spring thaw. BA, p. 40, 43. The agency made no effort to limit OSV use of SNYLF or Yosemite Toad habitat during this time to mitigate for these impacts.

According to the BA, "[f]or the first few years of implementation of the Eldorado National Forest Over-snow Vehicle Use Designation, a subset of Sierra Nevada yellow-legged frog Critical Habitat will be monitored for resource damage during low-snow conditions over wetlands, riparian areas, and streams. The details of monitoring developed with the USFWS during consultation, in accordance with section 7 of the Endangered Species Act of 1973, as amended." First, such monitoring should already have been occurring prior to preparation of the EIS. Second, by waiting until after consultation to develop monitoring protocols, the Forest Service leaves the public out of this process and they are unable to provide comments on these monitoring protocols.

Suggested Resolution: Complete a proper BA that sufficiently analyzes the impacts to all Threatened, Endangered and proposed species and proposes sufficient mitigation measures to reduce harm. Refrain from any final decision unless and until Section 7 consultation, including any informal consultation or conferencing, is complete, and provide this documentation to the public. We reserve the right to challenge the substance of any concurrence or final Biological Opinion(s) the

Forest Service relies on in its final decision, as this information has not been made available to the public during the objection period.

Conclusion

We appreciate your consideration of the information and concerns addressed in this objection. As explained herein, the FEIS and ROD, while improved over the DEIS, are still flawed. We request that the Forest Service prepare a Supplemental EIS to address these flaws. Pursuant to 36 C.F.R. § 218.11, we respectfully request to meet with the reviewing officer to discuss these concerns and suggested resolutions. Should you have any questions, please do not hesitate to contact us.

Sincerely,



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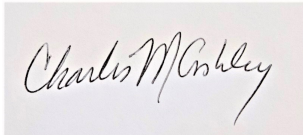
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From: [Brown, Nevia -FS](#)
To: [Marsolais, Jennifer - FS](#)
Subject: FW: Eldorado National Forest Over-Snow Vehicle Use Designation Project.
Date: Friday, December 21, 2018 8:06:17 AM
Attachments: [Eldorado Objection_Final.pdf](#)

From: Judi Brawer [mailto:jbrawer@wildearthguardians.org]
Sent: Monday, December 17, 2018 12:30 PM
To: FS-objections-pacificsouthwest-regional-office <objections-pacificsouthwest-regional-office@fs.fed.us>
Subject: Eldorado National Forest Over-Snow Vehicle Use Designation Project.

To Randy Moore,

Please find attached our Objection to the Eldorado National Forest Over-Snow Vehicle Use Designation Project, filed by WildEarth Guardians, The Wilderness Society and others.

Sincerely,

Judi Brawer

[Redacted]