



## REGION 9

SAN FRANCISCO, CA 94105

July 9, 2024

Elisabeth McElwee  
U.S. Forest Service, Inyo National Forest  
2510 Main Street  
Mammoth Lakes, California 93546

Subject: EPA Comments on the Final Environmental Assessment for the Eastern Sierra Climate and Communities Resilience Project, Mono and Madera Counties, California

Dear Elisabeth McElwee:

The U.S. Environmental Protection Agency has reviewed the Eastern Sierra Climate and Communities Resilience Project (ESCCRP) Final Environmental Assessment pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. The EPA provided scoping comments on November 14, 2022, Draft EA comments on December 14, 2023, and met with the Forest Service to discuss the project prior to the Draft EA on October 31, 2022, and August 25, 2023. The EPA also met with the Forest Service on January 22, 2024, to discuss our Draft EA comments and recommendations, and on June 25, 2024, to discuss how EPA's comments were addressed in the Final EA.

Following our review of the Final EA, we note that many of our comments have not been addressed, and several responses to comments in Appendix H inaccurately represent the conversation between EPA and Forest Service staff on January 22, 2024. In order to determine whether or not the project analysis supports a Finding of No Significant Impact, the EPA continues to recommend that the Forest Service commit to the following: 1) an adequate analysis of air quality cumulative impacts due to the reasonably foreseeable Eastern Sierra Fire Restoration and Maintenance Project (ESFRMP); 2) an environmental justice analysis that discloses disproportionate impacts to minority and low-income populations (including prescribed burning impacts from the ESFRMP), and demonstration that meaningful outreach was conducted; 3) additional measures to protect bi-state sage grouse and inclusion of U.S. Fish and Wildlife Service Biological Opinion or Assessment requirements; and 4) a design feature and BMP monitoring and inspection plan for site-specific project implementation. Please see our comments below for a description of recommendations to implement regarding these topics.

## **Air Quality**

### ***Cumulative Impacts***

During our January 22, 2024,<sup>1</sup> meeting regarding this project, the EPA explained the importance of addressing cumulative impacts from the Eastern Sierra Fire Restoration and Maintenance Project (ESFRMP), a reasonably foreseeable project that could treat the entire 58,000-acre project area with prescribed burning. Upon review of the response to comments (Appendix H), the Final EA and the Air Quality and Greenhouse Gas Specialist Report continue not to address cumulative impacts from the ESFRMP. For example, we recommended including ESFRMP-estimated prescribed burning emissions to analyze and disclose the cumulative impacts (40 CFR 1508 (i)(3)). Instead, the added information in the Air Quality and Greenhouse Gas Specialist Report (p. 5-6) simply states that 1) smoke would be created from ESFRMP, and 2) coordination with the Great Basin Unified Air Pollution Control District “would not be implemented in a way in which the impacts could combine to create cumulative considerable air quality impacts.” No impacts are disclosed.

We continue to recommend disclosing the estimated emissions and other cumulative impacts from prescribed burning smoke, with particular focus on human health. For example, the main inhalation hazards from smoke are typically carbon monoxide and respiratory irritants such as particulate matter and several key gases: acrolein, formaldehyde, and to a lesser extent, nitrogen dioxide and sulfur dioxide.<sup>2</sup> Smoke also includes low concentrations of many other potentially toxic, carcinogenic components such as polycyclic aromatic hydrocarbons. Inhalation of smoke can cause a range of health problems, from burning eyes and a runny nose to aggravated chronic heart and lung diseases. Because the Forest Service did not include the preceding information in the Final EA, the EPA recommends that the Forest Service describe how this information will be shared with the public, preferably identifying one or more specific forums to share the information with potentially affected communities, prior to signing a FONSI.

### ***Environmental Justice***

Section 3 (b)(i) of Executive Order 14096, *Revitalizing Our Nation’s Commitment to Environmental Justice for All* (April 21, 2023),<sup>3</sup> directs the EPA, in carrying out its Clean Air Act Section 309 responsibilities, to assess whether each agency analyzes and avoids or mitigates disproportionate human health and environmental effects on communities with environmental justice concerns. In our Draft EA letter, we recommended that the Final EA include an environmental justice section that addresses the presence of minority and low-income populations within the project area and its corresponding disproportionate and adverse impacts, disclose any opportunities the Forest Service provided for early and meaningful involvement, include a discussion of E.O. 14096, and disclose any opportunities the Forest Service provided for early and meaningful involvement. We also reiterated these comments in the January 22, 2024, meeting with the Forest Service. While Appendix G added that low-income and minority populations exist within the project and briefly mentions E.O. 14096, none of EPA’s other environmental justice comments were addressed in the Final EA.

---

<sup>1</sup> Please note that EPA and the Forest Service met on January 22, not January 2 (Appendix H p. 18, 20, 21).

<sup>2</sup> U.S. Environmental Protection Agency. (2021, May). *Comparative Assessment of the Impacts of Prescribed Fire Versus Wildlife (CAIF): A Case Stud in the Western U.S.* <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=352824>

<sup>3</sup> *Executive Order 14096, Revitalizing Our Nation’s Commitment to Environmental Justice for All.* (April 21, 2023). <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/>

Our comment letter expressed the need to disclose how ESRMP cumulative impacts may affect communities with environmental justice concerns. Although our agencies further discussed this on January 22, 2024, the response to comments inaccurately states in various ways that “[t]he EPA clarified that this concern was associated with broadcast burning, which is not included in the Project” (Appendix H, p. 18, 20, 21). This misrepresents EPA’s recommendations, and we request that the response to comments be updated to accurately reflect our January 22 discussion regarding cumulative impacts and the corresponding impacts (in the event a supplemental environmental document is prepared). If the next document to be prepared is a FONSI, the EPA requests that the FONSI include a corrected statement identifying EPA’s recommendation related to cumulative impacts, along with justification for why that analysis was not completed. As noted in both EPA’s Draft EA comment letter and the January 22, 2024, meeting, the EPA’s main concern was that cumulative impacts from prescribed burning, which could be authorized on the entire 58,000-acre project area under the ESRMP, were not evaluated in the Draft EA.

It is unclear why a discussion of ESRMP cumulative impacts was added to the air quality section, as discussed in our comment above, yet was not considered for environmental justice. Overall, the EPA remains concerned that the Forest Service did not analyze environmental justice, especially cumulative impacts, as required per CEQ NEPA implementing regulations. In addition, E.O. 14096 specifically directs that agencies analyze “cumulative effects of Federal actions on communities with environmental justice concerns” under NEPA. Unless the ESRMP is canceled, its impacts need to be fully considered and disclosed in the NEPA process.

The EPA continues to believe that information about environmental justice is important to disclose to adequately address these communities and concerns as well as appropriately consider mitigation measures, especially with 58,000-acres of potential prescribed burning under the ESRMP. Therefore, we continue to recommend that the Forest Service:

- Prepare an environmental justice analysis that addresses the presence of minority and low-income populations within the project area by identifying the block groups and discloses potential impacts to these populations.
- Ensure that the environmental justice analysis addresses E.O. 14096 in more detail and disclose any opportunities the Forest Service provided for early and meaningful involvement.
- Address disproportionate health risks in the new environmental justice section.
- Discuss how the project could affect cumulative health impacts, including disproportionate impacts to minority and low-income populations.
- Consider adopting protective measures, as recommended in our Draft EA comments, to address and mitigate for known disproportionate impacts to minority and low-income populations due to wildfire smoke exposure.
- Add burn notifications to the Inyo National Forest’s website and Facebook page.
- Translate notifications to Spanish and other languages as necessary to successfully notify linguistically isolated populations.

We also note that the Forest Service states that “in keeping with the new CEQ EA page-length recommendations, an environmental justice analysis is not included in the EA” (p. 20). The EPA highlights that this information can be included in the appendices or supporting documentation along with other Draft EA supplemental information. CEQ page-length recommendations were not intended to

exclude important information for decision-makers. We note that part 1501.3 (d) of the 2024 CEQ revisions for significance determination requires agencies to analyze the intensity of the effects as applicable to the proposed action and in relationship to each other, including assessing “the degree to which the action may adversely affect communities with environmental justice concerns” (40 CFR 1502.16).

### ***Connected Action***

The EPA highlights that not only is the ESRMP a cumulative impact but also a connected action, which provides another requirement to include ESRMP’s impacts to communities with environmental justice impacts in the NEPA analysis for this project (*prior CEQ regulations*: 40 CFR 1501.9(e)(1); *phase 2 revisions*: 40 CFR 1501.3(b)). We note that the Final EA removed language specifically connecting the ESCCRP to the prepare the landscape for prescribed burning under the ESRMP<sup>4</sup>; however, the Final EA continues to acknowledge that these actions remain connected. For example, the Final EA states that “the ESCCRP...would allow for the ESRMP to be implemented more easily, effectively, and across a larger portion of the landscape” (p. 3-7). The EPA notes that the ESCCRP comprises approximately 28% of the total land proposed in the ESRMP. We understand that the ESCCRP treatments would prepare the landscape for prescribed burning under the ESRMP, and that prescribed burning may not take place without the ESCCRP treatments.

### **Bi-State Sage Grouse**

The Final EA discloses that the bi-state sage-grouse lek occurs 100-feet outside of the project area (p. 3-28); however, the Draft EA included the lek within the project area (Draft EA, p. 3.5-3). We also note that Final EA Biological Assessment’s Figure 10 shows the lek location as occurring in the project area (ESCCRP BA, p. 41). It is unclear if the project boundary has been modified or if the lek was erroneously included as part of the project area in the Draft EA. The EPA recommends clarifying this information before the FONSI is signed.

In addition, we made specific recommendations to strengthen the bi-state grouse wildlife design features (WLF). The Forest Service included our comment but did not respond to it (Appendix, p. H 9-12). We continue to believe that stronger, more specific design features would best protect bi-state sage grouse occurring within the project area. Therefore, we continue to recommend that the Forest Service commit to the following before the FONSI is signed:

- WLF-11 (previously WLF-10) commit to *posting* speed limits in bi-state sage-grouse habitat during project activities to reduce vehicle/wildlife collisions.
- WLF-12 (previously WLF-11) commit to using traffic control devices such as signage, gates, and fencing to restrict access.

Further, the Final EA did not disclose information about the Forest Service’s consultation with the U.S. Fish and Wildlife Service. Adherence to the USFWS’s requirements for avoidance, minimization, and mitigation is critical to protect bi-state sage grouse occurring within and near the project area. Therefore, we recommend including all USFWS recommendations from the Biological Opinion (or Assessment into the FONSI as project commitments, along with a confirmation that compliance with all USFWS recommendations from the Biological Opinion do not alter the proposed project substantively enough to require publishing a supplemental EA or other environmental analysis.

---

<sup>4</sup> The Draft EA previously stated that the ESCCRP would be implemented “in conjunction” and “in tandem” with ESRMP (Draft EA p. 1-8).

**Inspection and Enforcement of Design Features**

The Final EA and Draft FONSI do not include information about inspection and enforcement of design features and best management practices. As discussed in our Draft EA letter, if the predicted impacts described in the EA are wholly dependent upon adhering to the design features and BMPs, there is a potential for significant impacts if these measures are not implemented or implemented properly. Therefore, we continue to recommend that a design feature and BMP monitoring and inspection plan for site-specific project implementation, including timeframes for corrective action, be included as a published commitment prior to signing a FONSI.

**Updating the Schedule of Proposed Actions**

The Inyo National Forest’s Schedule of Proposed Actions (SOPA) website did not update the “Planning Status” for this project, and it was not apparent that the project was open for public comment. In the future, the EPA recommends ensuring the SOPA is updated and provides accurate review timeframes so the public can be informed about possible commenting periods.

Thank you for the opportunity to review this Final EA. We would appreciate receiving an electronic copy of the FONSI that includes the incorporation of EPA recommendations provided above once it has been signed. If you have any questions, please contact me at (415) 947-4161, or contact Sarah Samples, the lead reviewer for this project, at 415-972-3961 or [samples.sarah@epa.gov](mailto:samples.sarah@epa.gov).

Sincerely,

Jean Prijatel  
Manager  
Policy and Operations Branch

cc: Steve Abele  
Bi-State Sage Grouse Lead, U.S. Fish and Wildlife Service