



Central Sierra Environmental Resource Center
Box 396, Twain Harte, CA 95383 • (209) 586-7440 • fax (209) 586-4986
Visit our website at: www.cserc.org or contact us at: johnb@cserc.org

May 13, 2019

Reviewing Officer:

Randy Moore, Regional Forester, USDA Forest Service
Attn: Stanislaus National Forest Over-Snow Vehicle Use Designation
1323 Club Drive
Vallejo, CA 94592

Sent via the Internet to: objections-pacificsouthwest-regional-office@fs.fed.us

Responsible Official:

Jason Kuiken, Forest Supervisor, Stanislaus National Forest

Re: Statement of Objections for the Stanislaus National Forests Over-Snow Vehicle (OSV) Use Designation Project (44896) Draft Record of Decision

Standing Statement:

This objection letter is submitted on behalf of the Central Sierra Environmental Resource Center ("CSERC"), a 501(c)(3) non-profit organization with a mission to protect water, wildlife, and wild places of the Northern Yosemite region. **CSERC hereby files the following Objection to the U.S. Forest Service's March 2019 draft Record of Decision to select Alternative 5-Modified for the Stanislaus National Forest Over-Snow Vehicle (OSV) Use Designation Project.** CSERC participated in the administrative review for this project by submitting extensive detailed comments in writing throughout the years of the planning process. CSERC staff also met multiple times in person with past Forest Supervisor Jeanne Higgins and current Forest Supervisor Jason Kuiken, and with District Rangers and individual members of the interdisciplinary team. CSERC staff and members additionally attended each open house and each public meeting over the years of the planning process.

We respectfully emphasize at the beginning of this Objection that the outcome of this process will reveal to the concerned conservation community whether or not the Region truly believes in and enforces the clear management direction of a Forest Plan, or whether Forest Plan direction can be cast aside or replaced when preferred by the forest supervisor.

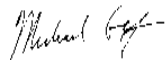
This Objection is brought pursuant to both 36 CFR 218 (Project) and 36 CFR 219 (Forest Plan Amendment).

As required, we provide the lead objector's name, address, telephone number, and email.

Respectfully,



John Buckley, **LEAD OBJECTOR**
Executive Director, CSERC
P.O. Box 396
Twain Harte, CA 95383
(209) 586-7440
johnb@cserc.org



Michael Graf
Law Offices
227 Behrens St.
El Cerrito, CA 94530
(510) 525-1208
Mwgraf@aol.com

I. INTRODUCTION

CSERC submits this objection to the U.S. Forest Service's March 2019 draft Record of Decision by Forest Supervisor Jason Kuiken to select Alternative 5-Modified for the Stanislaus National Forest Over-Snow Vehicle (OSV) Use Designation Project. With this Objection, CSERC will describe the aspects of the project being objected to, and how there is a violation of law, regulation, or policy. In addition, CSERC will provide remedies to resolve the Objection. For the portion of the Objection that focuses on the forest plan amendment, this Objection will spell out the parts of the forest plan amendment to which the Objection applies.

Due to the vast extent of Stanislaus Forest lands that are affected by this plan and due to the complexity of issues tied to the selected alternative, CSERC could submit an extremely lengthy Objection addressing a long list of significant defects in the EIS, flaws in the ROD, legal violations connected to the proposed plan, and other legal concerns. Instead, in an attempt to succinctly address CSERC's most critical concerns, this Objection will concentrate on a limited number of key (and interconnected) Objection points.

A. Background on CSERC

Founded in 1990, CSERC has interacted with seven USFS Regional Foresters, six Stanislaus Forest supervisors, and countless individual Regional and Forest staff over nearly three decades of engagement in projects and plans proposed for the central region of the Sierra Nevada. CSERC does that work on behalf of 780 members who actively recreate, work,

volunteer, do rehabilitation projects, undertake research, or otherwise make use of lands within the boundaries of the Stanislaus National Forest.

CSERC represents the concerns of many of the hundreds of thousands of recreational visitors who come to the Stanislaus National Forest each year to savor its scenic vistas, enjoy its quiet serenity, search for its reclusive wildlife, recreate along streams and rivers, hike through wild roadless areas, hunt, fish, swim, and otherwise make use of the public forest. CSERC staff and CSERC members are active users of the local national forest and advocate for wildlife and water quality whenever proposed projects pose risk to resources on local public lands.

Above and beyond the use of the general Stanislaus Forest overall, CSERC's staff and members directly recreate, observe wildlife, and engage in scientific research within the Pacific Valley and Eagle "Near Natural" roadless areas as well as the upper Highway 108 corridor of the Sonora Pass.

B. Statement of Position

In filing this Objection, CSERC seeks to ensure (a) that semi-primitive non-motorized Forest Plan direction is retained for the Pacific Valley and Eagle Near Natural roadless areas as spelled out in the existing 1991 Stanislaus National Forest Land and Resource Management Plan ("Forest Plan") and (b) that the final adopted OSV Use Designation plan provides adequate protection for critically at-risk populations of Sierra Nevada red fox and American marten (and true minimization of impacts to the two at-risk species).

II. Statement of Reasons for this Objection.

A) Major NEPA defects make the EIS and draft ROD flawed and deficient

- 1. The EIS contains incorrect and misleading information (regarding the environmental baseline and the "no action" alternative) that biases the NEPA analysis and misleads the public.**

The heart and core of any environmental analysis depends upon an accurate, fair, and informative description of the baseline condition and the status quo (No Action) alternative. The OSV EIS, including information provided in support of Alternative 5- Modified, fails to provide accurate acknowledgment of the true, legally-mandated baseline condition. Despite repeated input from CSERC and other members of the interested public urging the Forest Service to correct misinformation in the EIS, the Forest staff has chosen to describe incorrectly the actual, legal, current baseline condition. As a result, the EIS presents inaccurate descriptions that cause significantly misunderstanding of the status quo.

The EIS fails **to acknowledge, and therefore misinforms the public, as to the actual legal status of national forest areas presently available or closed to snowmobile use.**

Instead, the baseline condition described in the EIS (as depicted in the No Action alternative) presents the existing condition as allowing for snowmobile use on thousands of acres of Forest land even though a vast majority of this acreage, such snowmobile use is either not permitted under the Forest Plan or is not feasible due to areas being at low elevations where an adequate snowpack for snowmobile use is never available over the winter season. In describing the environmental baseline in this manner, the EIS misleads the interested public by providing an inaccurate basis of comparison of the impacts between the five alternatives considered.

a. Background context concerning the Forest Service's failure to enforce Forest Plan.

The pattern of misinformation concerning the actual status of motorized use in various land use designations is a reflection of nearly three decades of political choices made by Stanislaus Forest officials concerning the choice to ignore snowmobile trespass into “non-motorized” management areas due to a desire by those Forest officials to minimize outcry from interests who promote motorized use and “access” as political positions.

In 1991, then-Forest Supervisor Jan Wold sat in her office with CSERC director John Buckley and explained that she was not recommending the Pacific Valley roadless area for Wilderness, despite it receiving so much public support in comments received for the Stanislaus Forest Plan process.¹ She pointed to page 28 of the ROD for the Forest Plan, which emphasized:

“Pacific Valley: Although this area is considered by many to be highly suitable for Wilderness designation, I am not recommending that it be designated. The Pacific Valley region presents a unique opportunity to provide an outstanding area for semi-primitive non-motorized (SPNM) recreation outside of the designated Wilderness system. It is perhaps the best opportunity for this type of recreation area in the Sierra Nevada.”

Thus, the rationale provided by the Forest Plan decision-maker for not designating the highly suitable Pacific Valley roadless area for Wilderness was that by managing it as non-motorized, **it presented a unique and outstanding opportunity to provide for non-motorized recreation** outside of the designated Wilderness system – perhaps the best opportunity in the Sierra Nevada. In the ROD, Supervisor Wold made it very clear that the area was to be managed as roadless and non-motorized.

Since the adoption of the still-existing Forest Plan back in 1991, a rotating line of subsequent Forest Supervisors and line officers have each openly acknowledged to CSERC staff that they were not enforcing the Forest Plan direction that requires semi-primitive non-motorized management within Near Natural roadless areas and Proposed Wilderness areas. As

¹ CSERC comment letter of October 8, 2018 pages 12-15

ex-Forest Supervisor Tom Quinn explained to CSERC's director, local pro-use support groups and county supervisors would be riled up by any proposed adoption of Forest Orders to enforce no-snowmobile use in the roadless areas. Supervisor Quinn stated at that time that these interests were already upset by road management policies and by Regional USFS policies for the Californai spotted owl. Supervisor Quinn openly stated that he did not intend to take any action to enforce the non-motorized Forest Plan mandate for semi-primitive non-motorized areas. Similarly, recent ex-Forest Supervisor Jeanne Higgins also acknowledged in conversations with CSERC's director that she had no plans to adopt Forest Orders to enforce the existing Stanislaus Forest Plan mandate of non-motorized management in the Near Natural roadless areas.

The negative environmental consequences of the repeated decisions made by a string of Forest Supervisors not to enforce the Forest Plan have been exacerbated by a number of pro-snowmobile Forest Service staff openly communicating at public meetings that snowmobile riders could trespass into roadless areas without any consequences. When CSERC's director complained to Forest Supervisors on two occasions about Forest staff actively encouraging snowmobile trespass, no resulting actions were taken to correct the problem. In addition, during Open House meetings held as part of this OSV plan process, Forest staff, including District Rangers, further communicated to snowmobilers that no enforcement of non-motorized management in roadless areas would take place. For Forest line officers to tell the public that they could violate the Forest Plan management direction without consequences was extremely frustrating to CSERC staff to hear.

Worse, over this lengthy planning process, various District Rangers and the Forest Supervisor have repeatedly encouraged snowmobile riders to "tell us where you want to ride" without ever constraining that by "where it is actually legal to do so..." Over and over the Forest Supervisor and staff invited snowmobilers to describe their wishes for remote, extreme riding opportunities without the agency first making it clear what the Forest Plan actually mandates as legal direction. THIS DIRECTLY ENCOURAGED SNOWMOBILERS IN THIS PROCESS TO THEN PUSH FOR RIDING IN MANY AREAS WHERE IT IS PRESENTLY ILLEGAL TO RIDE.

This important background context regarding the lack of actual compliance by the Forest Service with the agency's own Forest Plan is inadequately revealed in the EIS. One sentence buried in the vast amount of planning text acknowledges in Chapter 2 of the FEIS: *"OSV use is occurring in management areas in the forest under current management of which the Forest Plan directs are to be managed as non-motorized (i.e., within Near Natural and Proposed Wilderness areas)."* At the least, the wording of that admission is very challenging for interested members of the public to understand. Most citizen participants have no clue that the Forest Plan related to SPNM Near Natural management has not been diligently enforced for 28 years.

The consistent failure of Forest officials to enforce the Forest Plan has directly influenced the development of the Proposed Action, the Preferred Alternative, and the final selected Alternative 5-Modified. Because the EIS obscured critically relevant information, it

biases the entire planning process unfairly toward diminishment of the importance of the Forest Plan management direction for the non-motorized areas.

As discussed below, as a result of this lack of enforcement by Forest Service officials, the EIS presents a false comparison between the amount of riding allowed under existing law as well as the actual amount of snowmobile riding that is occurring, either legal or illegal, in the Forest. At the least, nothing in the NEPA documentation for this project explains the extent to which illegal riding is in fact occurring, the reasons that is occurring, and the Forest's own actions in either regulating or deciding not to regulate OSV riding in these Near Natural designated areas. This approach does not meet NEPA's minimum standards for disclosure and analysis of relevant project information with the potential for substantial adverse impacts on the natural environment.

b. The EIS' description of the No Action alternative is highly misleading.

As shared in previous CSERC comments,² Alternative 2 is described as the “No Action” baseline for comparison among the alternatives. The EIS asserts that under this alternative, 684,505 acres of NFS lands “would be available” for public cross-country OSV travel on the Stanislaus Forest. Under the existing Forest Plan, all of the Near Natural semi-primitive non-motorized areas ARE NOT LEGALLY AVAILABLE FOR MOTORIZED USE. Yet their acres are misleadingly lumped in as “available” under current management by the EIS.

Thus, the EIS puts forward information that is directly in conflict with the existing Forest Plan, thereby leading snowmobile interests to believe that nearly 700,000 acres of NFS lands are currently legally available to snowmobile use, which is completely inaccurate.

Moreover, the general public is *wrongly informed* to believe that the final selected alternative will reduce this wildly inflated figure of available OSV riding, therefore giving the public the incorrect perception that the proposed OSV Plan will *improve* environmental conditions. Not only is motorized use prohibited in the Near Natural semi-primitive non-motorized areas by the existing Forest Plan, but hundreds of thousands of acres of the national forest rarely get even a few inches of snow and cannot possibly be “available” for use by snowmobiles. Thus, not only are areas with motorized use “prohibitions” incorrectly identified as “available,” but areas without the physical possibility of providing snowmobile use are also shown incorrectly as “available” for purposes of alternatives comparison

The inaccuracy and misinformation of the EIS concerning “available” OSV use areas is widespread within the document. For example, the EIS discusses a Summary of Environmental Impacts tied to Significant Issue #1 and the possible loss of popular, highly desirable areas that “have been historically available for public, cross-country OSR use (e.g., some use within Near Natural Areas).” Alternative 2 shows 33,910 acres highly desirable riding areas as “available under current management” with Near Natural Areas included in that acreage.

² CSERC comment letter October 8, 2018 pages 5-8

That characterization in both places is misleading and false. **The existing Stanislaus Forest Plan prohibits motorized use in Near Natural Areas, so those areas are NOT “available” for motorized use**, and it skews the EIS to include thousands of acres of such non-motorized areas in the description of highly desirable, “historically available” OSV riding areas on NFS lands.

One of the most glaring examples of misinformation was actually featured and promoted openly by the Forest Service staff at Open House public meetings for this project, despite CSERC staff pointing it out directly to staff at those public sessions. The Alternative 2 OSV Plan maps displayed at Open House sessions (and which were also provided online) contained clearly false and misleading information.³ These maps showed front-country, low elevation areas that never receive measurable snow as “open and available for over-snow vehicle use.” The maps even showed isolated patches of USFS lands that are foothill inholdings surrounded by private land as being available for OSV use. That is clearly misinformation, since in many cases there is not even public road access to such parcels. But of higher concern, the map for Alternative 2 showed as “open and available for snowmobile access” many thousands of acres of national forest lands that the current Forest Plan allocated to Near Natural, and which are legally closed to motorized use.

Over and over, the snowmobile advocates attending the Open House meetings were misled into thinking that Alternative 3 (consistent with the current Forest Plan direction for the Near Natural areas) would take away riding opportunities that were shown by the Alternative 2 map to currently be legally available. Even when CSERC staff pointed out that the misleading maps were highly flawed, Forest staff continued to use them to “educate” Open House participants.

In addition to the publicly displayed Alternative 2 maps showing semi-primitive non-motorized Near Natural areas as “open and available” for OSV use, the maps also misleadingly showed Proposed Wilderness areas as being “currently available” for OSV use.⁴ Again, in fact, the Forest Plan’s legal direction prohibits any motorized use in Proposed Wilderness areas

THE WIDESPREAD MISINFORMATION CREATED BY FALSELY SHOWING SEMI-PRIMITIVE NON-MOTORIZED NEAR NATURAL AND RECOMMENDED WILDERNESS AREAS AS CURRENTLY “AVAILABLE FOR OSV USE” DIRECTLY UNDERMINES THE ACCURACY OF MANY PIVOTAL ISSUES ANALYZED BY THE EIS.

As examples, for “Significant Issue #3” concerning impacts on Wildlife, Table S-15 (on pages xxi – xxvii of the DEIS) falsely shows acres within Near Natural areas as being “available”

³ CSERC comment letter of October 8, 2018 pages 7-8

⁴ In addition to the brief examples of misinformation or inaccurate text within the EIS documents that are provided, CSERC intends, with the submission of this Objection, that all of CSERC’s highly detailed comments and written input provided previously to Stanislaus Forest staff shall be incorporated as pertinent documents into the legal record for this Objection. In particular, CSERC’s comment letter of October 8, 2018 pgs. 3-8 further describe in detail the misinformation and inaccurate descriptions or incorrect data in the EIS that cumulatively compound the information defects or flaws that are identified above.

for OSV use when considering the effects of the five alternatives. Meanwhile, Alternative 2, current management, is shown as having highest number of acres available for OSV use in areas critical for the American marten and the Sierra Nevada red fox. The EIS then misleadingly claims that the Proposed Action and the Preferred Alternative each will result in a significant “decrease” in areas of habitat impacts compared to Alternative 2’s baseline condition.

The current Stanislaus Forest Plan’s legal requirements should be the basis for describing existing management. The Forest Plan is the legal mandate for management on the local Forest. If these legal mandates were accurately presented by the EIS, then Alternative 1 and Alternative 5 would both be shown as greatly INCREASING disturbance of habitat for both the marten and Sierra Nevada red fox, rather than DECREASING disturbance as the EIS claims.

THE FAILURE OF THE EIS TO BASE COMPARISONS ON THE EXISTING FOREST PLAN DIRECTION MASKS THE TRUE PROPOSED INCREASE IN DISTURBANCE TO AT-RISK WILDLIFE AND OTHER SIGNIFICANT NEGATIVE EFFECTS THAT WOULD OCCUR UNDER THE PREFERRED ALTERNATIVE. ⁵

The EIS' approach of inflating the existing baseline of where snowmobile use is allowed in the Forest has the effect of improperly skewing the assessment of environmental impacts and consideration of alternatives in a manner that is contrary to NEPA. Here, the EIR wrongly takes the position that because of some unknown amount of illegal riding on the Forest, the NEPA impact analysis must simply assume that all this acreage would be available for future riding in the absence of the proposed project. This approach is contrary to law. For example, in *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 739 F. Supp. 2d 1260, 1276-1277 (E.D. Cal. 2010), the court noted that allowing the environmental baseline to become inflated with respect to environmental impacts due to past illegal activity was improper where an agency retained regulatory authority over the activity and where the proposed project was ultimately intended to regulate such activity in the future as part of a proposed plan. *See id.* at 1277 (in contrast to cases allowing for past illegal activity to constitute the environmental baseline, "[h]ere, TRPA proposes to act on its existing duty to enforce permit requirements, to issue permits to only those existing buoys that can otherwise be lawfully permitted, and to remove the remaining buoys only to permit other unrelated buoys in their place.") This approach is also consistent with the Travel Planning Rule, which limits snowmobile riding only to areas where such use is officially designated in a forest plan. *See* 36 CFR § 212.81(c). *See also Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir. 2008) ("It was thus improper for NPS to refer to those elements as part of the status quo at the time the no action alternative was presented to the public. A no action alternative in an EIS is meaningless if it assumes the existence of the very plan being proposed.")

The EIS is significantly flawed due to the intentional choice by the Forest team authoring the EIS text to disregard what the existing Forest Plan currently requires as the legal baseline

⁵ As discussed below, this is also a violation of the minimization criteria requirements set forth in the Travel Management Rule. *See* 36 CFR § 212.55..

condition. In this instance, the interested public has been misled by the failure of the Forest staff's public presentations as well as by the OSV EIS that repeatedly provides baseline information that does not accurately describe the existing legal requirements of the Forest Plan. See *Oregon Natural Desert Ass'n v. Jewell*, 840 F.3d 562, 569 (9th Cir. 2016) (agency has "a duty to assess, in some reasonable way, the actual baseline conditions.") Here, the EIS defines the legal baseline as if Forest Plan requirements do not have legal meaning violates NEPA.

2. The EIS dismisses the importance of compliance with the Forest Plan.

Compounding the failure of the EIS to describe the baseline based upon the current Forest Plan, the draft ROD⁶ basically states that violating the management direction in the existing 1991 Stanislaus Forest Plan is permissible because the Forest Plan really isn't a legal mandate that must be actually followed.

"The 1991 LMP contains Standards and Guidelines that state that Near Natural areas are to be "Managed to ROS (Recreation Opportunity Spectrum) class of Semi-Primitive Non-Motorized" and that these areas are "Closed to Motorized use." This 1991 LMP was developed in full compliance with NEPA regulations pertaining to public involvement. Therefore, the management direction included in the Forest Plan is to manage Near Natural areas as non-motorized.

However, management direction provided in the Forest Plan does not, in itself, create a legal mandate or present a standalone, legally enforceable management tool, nor does it criminalize activities occurring in contradiction to Forest Plan direction. In other words, the direction to manage Near Natural and Proposed Wilderness areas as non-motorized does not, without further action from the forest, deem OSV use in these management areas non-permissible or illegal.

That assertion in the draft ROD professes that prohibitions on an activity by the Forest Plan does not make the activity non-permissible. This proposition is contrary to law. Under NFMA, site-specific activities authorized by the Forest Service must comply with forest plan standards. See 16 U.S.C. § 1604(l); 36 C.F.R. § 219.15(b),(d); *Alliance for the Wild Rockies v. Savage*, 899 F.3d 970, 978 (9th Cir. 2018) ("Failing to comply with the provisions of a forest plan is a violation of NFMA"); *Wilderness Soc. v. Thomas*, 188 F.3d 1130, 1132 (9th Cir. 1990) ("All permits and contracts for the use of the forests must be consistent with the forest plans.")

Besides being legally incorrect, the Forest's position is a further insult to the environmental community that has been frustrated for 28 years by the refusal of the Forest to enforce the Forest Plan's requirements for management direction in roadless areas. The EIS's

⁶ Draft Record of Decision, Stanislaus National Forest Over-Snow Vehicle (OSV) Use Designation, pages 11-12

dismissal of the need for compliance with the Forest Plan also undermines trust by the interested public that commitments made by the Forest Service to collaborative stakeholder groups can be relied upon to be enforced.

The Forest Service perspective presented in the draft ROD underscores the views communicated to CSERC by the Stanislaus Forest Supervisor and line officers asserting that the Forest Service sees value in maximizing economic benefits for motorized recreation businesses (rather than providing a more balanced OSV plan approach) by selecting an OSV plan alternative that pleases snowmobilers who desire a diversity of riding opportunities.

If the draft ROD stands and the Region approves motorized use in areas where the existing Forest Plan prohibits such use, the EIS rationale highlighted above will be reaffirmed. **The Region will be agreeing that prohibition of an activity by a Forest Plan does not actually make the activity non-permissible. CSERC cannot believe that such an irrational legal argument can be acceptable to the Region.**

B) The EIS does not take the required 'hard look' at the impacts to Sierra Nevada red fox and American marten that would be caused by opening up roadless Near Natural areas and critical habitat in the upper Sonora Pass to snowmobiles.

NEPA has two objectives. "First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process." *Baltimore Gas & Elec., Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 7, 97 (1983) "NEPA emphasizes the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision-making to the end that the agency will not act on incomplete information, only to regret its decision after it is too late to correct." *Center for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1166 (9th Cir. 2003). NEPA "establishes 'action-forcing' procedures that require agencies to take a 'hard look' at environmental consequences." *Kern v. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir. 2002).

The EIS in this case fails to take the required 'hard look' at the impacts to Sierra Nevada red fox and American marten of opening up of roadless Near Natural high elevation habitat areas to snowmobiles.

As noted previously, the draft ROD and the selection of Alternative 5-Modified would approve legal motorized use within Near Natural roadless areas that presently are directed by the existing Forest Plan to be managed as non-motorized. There is no argument by the EIS

authors concerning that point. Existing legal direction prohibits motorized use in the roadless areas - including the Pacific Valley roadless area and the Eagle roadless area.

CSERC's previous comments explain why compacting of snow by snowmobiles has been identified by SNRF researchers as a major threat to the SNRF by allowing coyotes to travel on the packed snow to access higher elevation areas that would otherwise be inaccessible due to snow depth. CSERC's previous comments have referenced scientific literature and have referenced comments submitted by biologist Darca Morgan and SNRF expert and U.C. Davis professor Ben Sacks. However, the Response to Comments portion of the FEIS incorrectly ignores the focus of these comments raised in relationship to the stress posed by snowmobile use, especially "high-marking" or multiple snowmobiles racing back and forth across open habitat areas in between patches of whitebark pines or other habitat where foxes have been shown to take shelter based on CSERC's years of photo-detection surveys.

CSERC emphasizes the substantial amount of scientific testimony that has been provided throughout this planning process in CSERC's comments and by SNRF and marten researchers as well as other wildlife biologists who have voiced opposition to opening up the high elevation Near Natural roadless areas and the 400+ acre snow-play snowmobile area that would be approved for winter season use by the draft ROD.⁷ In this objection, CSERC is not restating these extensive comments and citations concerning the issue of snowmobile stress and disturbance for SNRF and marten and the potential for compaction to markedly increase conflicts/predation/competition for SNRF and marten with coyote. Further, SERC could provide many pages of corrections to incorrect statements in the Response to Comments and could submit extensive rebuttals to wildly misleading statistical claims that the Alternative 5-Modified plan would only affect a tiny overall portion of suitable habitat for the SNRF and the marten. The Forest biologist is fully aware of how misleading the EIS responses are when in reality the known occupied habitat of the SNRF within the Stanislaus Forest would be significantly adversely affected by Alternative 5-Modified if approved. Over and over, the pages of tables and comparisons made and arguments provided by the I.D. Team responding to comments do not accurately address the focus of wildlife comments or the true nature of potential adverse effects. Instead, the thrust of the agency's EIS response is to dismiss the potential for significant harm.

Of special importance is the fact that in response to the FEIS and the draft ROD, Sierra Nevada red fox expert U.C. Davis Professor Ben Sacks has provided new comments that bolster previous comments that he and other fox specialists submitted throughout the process.⁸ His latest comments underscore scientific grounds for keeping motorized use (snowmobiles) out of the two high-elevation Near Natural areas and the critically important occupied habitat where the "snow-play" area would be allowed in the upper Sonora Pass by the approval of Alternative 5-Modified.

⁷ See e.g., Comments of Darca Morgan, dated October 9, 2018, as well as cited studies, submitted on behalf of Winter Wildlands Alliance, Snowlands Network, The Wilderness Society and WildEarth Guardians.

⁸ April 30, 2019 comment letter submitted by Benjamin N. Sacks, Adjunct Professor, Director Mammalian Ecology and Conservation Unit, University of California Davis. (Included in Appendix A of this Objection)

"If the Stanislaus Forest decision on the Over-Snow Vehicle plan is revised to drop the proposal to open motorized use in the two Near Natural high elevation roadless areas (where so much suitable SNRF habitat exists) and to drop the proposed 411-acre snowmobilers snow-play area high in the Sonora Pass, those two important changes would minimize the potential winter season disturbance and impacts to the SNRF within the critical upper elevation areas of the Stanislaus National Forest. I recommend those changes in the final Record of Decision for the plan."

April 30, 2019 comment letter of Benjamin N. Sacks – Adjunct Professor, Director
Mammalian Ecology and Conservation Unit, University of California, Davis

In sum, by dismissing strong concerns from experts knowledgeable about the vulnerability and plight of the SNRF in particular as well as the marten, the EIS does not take the requisite 'hard look' at the impacts to these species that will be caused by opening up these Near Natural areas and critical wildlife areas to snowmobiles.

C) The OSV plan as described in the draft ROD fails to comply with minimization requirements of the Travel Management Rule or with the 2012 Planning Rule.

1) The opening up of roadless Near Natural areas to legal motorized use is a significant negative impact that is inconsistent with the minimization requirements of the Travel Management Rule for multiple reasons.

From the very first scoping input for this long planning process, many actively engaged representatives of conservation groups, those representing scientific research on high elevation furbearers, non-motorized recreational interests, and other commenters have collectively urged the Stanislaus Forest staff to reject alternatives that would open up legal motorized use within wild, roadless areas. Reasons provided for those requests by commenters include:⁹

- increasing risks for rare and vulnerable wildlife species;
- potential conflicts with non-motorized recreational use;
- the diminished chances of an area designated as "motorized" to be approved in the future by Congress as non-motorized Wilderness;
- the increased potential for snowmobilers to trespass into existing Wilderness;

⁹ CSERC comment letter August 5, 2015, pages 6-7 and pages 25-26, plus CSERC comment letter of October 8, 2018, page 12 as well as extensive oral comments communicated to Stanislaus Forest line officer staff at numerous OSV meetings and at numerous face to face sessions at the Supervisor's Office.

- and, the piece-meal management decision to alter the management of two wilderness-eligible areas without a full Forest Plan analysis of all such areas within the Stanislaus Forest.

Whether or not the Region is convinced that there is significant risk or significant impacts that would occur if Alternative 5-Modified is approved, there is no debate that the reasons listed above would increase rather than decrease potentially significant negative impacts. This directly violates the minimization requirements of the Travel Management Rule.

2. The proposed decision violates the minimization criteria of the Travel Management Rule because it increases the risk of snowmobile use disturbance and stress, and increases the risk of predation/competition by coyotes for the rare Sierra Nevada red fox (SNRF) and American marten

The Travel Management Rule requires the Forest Service, in designating National Forest System trails to consider the effects of allowing snowmobile use on "[h]arassment of wildlife and significant disruption of wildlife habitats" with the objective of minimizing such impacts. " See 36 CFR § 212.255(b)(2).

Here, the Pacific Valley and Eagle roadless areas were designated by the current, existing Stanislaus Forest Plan not only as semi-primitive non-motorized areas, but also as Near Natural Management Area 3 land allocations. **The Stanislaus Forest LRMP FEIS (page IV-108) provides regulatory direction for Near Natural management as follows:**

"Give consideration to Threatened, Endangered and Sensitive species in the management of unroaded and Near Natural Areas, with special attention to Fisher and pine marten habitat areas over 7,000 feet elevation (see Map 3, Appendix I).

That Map 3, Appendix I shows that the areas now being proposed for OSV use by Alternative 5-Modified completely overlap with mapped fisher and marten habitat in the Eagle roadless area and with both fisher and marten habitat in the Pacific Valley roadless area.

Thus, although the current existing Stanislaus Forest LRMP designates the Pacific Valley and Eagle, (and also the Night) roadless Near Natural areas as areas to be managed with special attention for rare furbearers such as fisher and marten, the new OSV plan proposes to allocate these same wildlife areas as appropriate for winter season motorized snowmobile use that poses potential disturbance for such furbearer species.

The significant impact of potential stress caused by snowmobile motorized use on the SNRF and the American marten and the other effects that would occur in these species' critical habitat are pivotal issues that the conservation community has raised in discussions with Forest staff throughout the planning process. We have strong grounds for our concerns. As we have

underscored, **CSERC biologists and other CSERC staff have engaged for more than two decades in furbearer surveys that CSERC has generously provided at no cost to Yosemite National Park and to the Forest Service as a public service.** We understand how few SNRF have been found to persist within the project area because CSERC staff has worked alongside highly esteemed SNRF researchers from universities, the California Department of Fish and Wildlife Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service, and from National Park Service.

OVER DECADES OF SNRF AND FISHER/MARTEN WORK GROUP MEETINGS, AGENCY AND UNIVERSITY RESEARCHERS HAVE UNDERScoreD HOW VULNERABLE THE POPULATIONS OF THESE SPECIES ARE IN THE SIERRA NEVADA REGION. IN PARTICULAR, THE SONORA PASS POPULATION OF SIERRA NEVADA RED FOX FACES THREATS FROM A VARIETY OF STRESSORS, ESPECIALLY IN RECENT YEARS WHEN GENETIC FACTORS, DROUGHT CONDITIONS, AND OTHER FACTORS HAVE COMBINED TO ENDANGER SNRF VIABILITY.

HERE, THERE IS NO DEBATE THAT APPROVING LEGAL MOTORIZED USE IN FURBEARER HABITAT AREAS THAT ARE NOT CURRENTLY APPROVED FOR SUCH MOTORIZED USE WILL INCREASE, RATHER THAN MINIMIZE, RISK FOR THESE VULNERABLE WILDLIFE SPECIES.

Thus, by increasing risk (as the OSV plan would do based upon input by SNRF and marten researchers) to these furbearer species, Alternative 5-Modified fails to comply with the minimization criteria of the Travel Management Rule. Conversely, if the Forest Service were to choose an OSV plan alternative that did not legalize motorized use in Near Natural areas and did not open up legal motorized riding across thousands of acres of occupied and suitable habitat for these at-risk furbearers, the Forest would be minimizing risk compared to Alternative 5-Modified.

CSERC acknowledges that the Forest Service does not need to eliminate risk to wildlife in order to be consistent with the minimization criteria of the Travel Management Rule. But the Forest Service does need to ensure that it is not substantially increasing risk to these imperiled species by approving a travel management decision that opens up some of the most critical habitat areas in the Forest to snowmobile use. As noted in *Central Sierra Environmental Resource Center v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1097-1098 (E.D. Cal. 2013):

“Unlike NEPA, which requires agencies to assess environmental consequences of their decisions but does not obligate agencies to take actions that minimize those consequences, the TMR requires the Forest Service to aim to minimize environmental damage when designating routes. The Forest Service has not explained how satisfying the procedural requirements of NEPA through the EIS analysis meets the substantive requirements of Subpart B of the TMR, nor pointed to any specific parts of the EIS that sufficiently demonstrate its application of the minimization criteria.”

In this OSV plan, the opening up to legal motorized use of so many thousands of acres of suitable and occupied SNRF and marten habitat within the Pacific Valley and Eagle Near Natural

areas and the approval to allow winter season motorized use within the 400+ acres of occupied SNRF habitat high in the Sonora Pass would significantly increase risk of stress, disturbance, and compaction of snow that could result in coyote predation and competition, and would increase overall potential for harm to the SNRF and the American marten.

Such an unnecessary expansion of a use that is potentially harmful to these species does not meet the Travel Management Rule's minimization requirements. *See e.g., WildEarth Guardians v. U.S. Forest Service*, 790 F.3d 920, 932 (9th. Cir. 2015) ("[M]ere 'consideration' of the minimization criteria is not enough to comply with the TMR. Rather, the 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' 'damage to . . . harassment of wildlife,'.... The Forest Service cannot rely upon a forest-wide 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.")

3. The decision to approve legal snowmobile use in Near Natural non-motorized areas does not minimize conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands given that it decreases the chances that roadless areas eligible for future Wilderness designation will be selected for Wilderness status.

The Travel Management Rule also requires the Forest Service, in designating National Forest System trails to consider the effects of allowing snowmobile use on "conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands." *See* 36 CFR § 212.255(b)(3).

Here, the EIS dismisses comments from CSERC and many other interests that by approving legal motorized use within roadless areas that are currently pristine, non-motorized, and eligible for Wilderness, that the Forest's action would reduce the potential for Congress in the future to judge such areas as suitable for Wilderness designation. Despite adding an "IRA analysis" to the FEIS, the EIS fails to adequately respond to this potentially significant land management impact.

For example, the EIS authors assert that because roadless areas weren't approved as recommended Wilderness in the 1991 Forest Plan, they do not contain wilderness characteristics. They also assert that because there are many considerations that may lead to future decisions by Congress for whether or not to designate a roadless areas as Wilderness, the approval of motorized use in roadless areas by this Plan is not a significant potential impact. The Response to Comments assumes that since these areas would still be technically 'eligible' for Wilderness designation and that their 'roadless' characteristics would not be altered by the OSV plan decision, the OSV plan will have no effect on this potential recreational value.

Rather than re-state pages of points raised on this potential negative effect for future Wilderness consideration that were provided in previous CSERC comment letters, CSERC again points to the minimization requirement of the Travel Management Rule.

There is no question that approving motorized use to be legal within a roadless Near Natural area will have a negative effect on the future evaluation of the area as Wilderness by Congress. For Congress to approve Wilderness designation for the affected area, Congress would need to take action in the future to remove that legally entitled motorized use in order to designate the area as permanent Wilderness. Here, the Region cannot dispute the fact that approving motorized use in a roadless area otherwise eligible for Wilderness will increase the likelihood that Congress will judge that area to be less desirable for such a designation (because allowed motorized use would need to be curtailed and eliminated). That altered condition of Forest Service management for affected roadless areas increases the conflict with proposed recreational uses of National Forest System lands as Wilderness, see 36 CFR § 212.255(b)(3), rather than minimizing that conflict as required by the Travel Management Rule.

D. The strategy of approving Forest Plan Amendments (in order to get around conflicts created by the OSV plan with the current Stanislaus Forest Plan) violates the 2012 Planning Rule and pre-judges the outcome of the next Forest Plan revision process.

The 2012 Planning Rule allows the Forest Supervisor to determine when a forest plan amendment may be appropriate. However, there is a very clear intent that the choice to adjust a forest plan through a forest plan amendment cannot be arbitrary, but, instead, it must be based on a clearly supported need to do so. See 36 CFR § 219.13(b)(1).

Here, in the righthand column of Table 1 - Stanislaus National Forest Over-Snow Vehicle Use Designation Project Forest Plan Amendments (draft ROD page 4), **CSERC strongly opposes, and urges the Region to reject, any approval of the first five proposed Forest Plan Amendments.** Those Amendments would authorize and allow motorized use “where it is normally prohibited” and would specify exemptions to the Forest-wide S&Gs for Near Natural and Special Interest Areas. As set forth below, there is no verified “need” for these amendments that can be supported under the Forest Planning Rules, and thus any action to approve forest plan amendments should be set aside by the Region in this instance.

1. The 2012 Planning Rule and its directives require that a “...well-supported and effective rationale determining a need to change the plan must be based on a good source of information.”¹⁰

¹⁰ FSH 1909.12 – Land Management Planning Handbook, Chapter 20, page 4 of 10.

Under the 2012 Planning Rule, '[f]or every plan amendment, the responsible official shall: (1) Base an amendment on a preliminary identification of the need to change the plan. The preliminary identification of the need to change the plan may be based on a new assessment; a monitoring report; or other documentation of new information, changed conditions, or changed circumstances.' 36 CFR § 219.13(b)(1).

CSERC has emphasized in comments throughout the years of this planning process¹¹ that the Forest Service has provided zero evidence to show that there is a current lack of over-snow vehicle use opportunities or other evidence that in any way justifies opening up non-motorized Near Natural areas to legally authorized snowmobile use.

In conversation after conversation with Forest staff, including Forest supervisors and district rangers, CSERC staff has never heard a single explanation of a monitoring study, a use study, or any other evidence that snowmobile riders are suffering from a lack of riding opportunities. There is no evidence in the EIS that shows any "...well supported and effective rationale determining a need to change..." Forest Plan direction that currently requires Near Natural areas to be managed as non-motorized.

On pages 11 and 12 of the draft ROD, after dismissing the need for a Forest Plan to be adhered to just because it prohibits an activity, the text describes the consistency requirement of NFMA and states that "this requires the forest to measure proposed activities against the forest-wide standards and guidelines and management prescriptions included in the Forest Plan..." The draft ROD on page 12 then points to 36 CFR 219 as grounds for allowing a forest plan to be amended to allow an action or activity to occur.

However, those grounds allowing a forest plan amendment are constrained by the requirement for there to be a "well-supported and effective rationale determining a need to change."¹²

21.2 – Information Basis for Plan Development, Plan Amendment, and Plan Revision

"New plans, plan amendments, and plan revisions are based on a need to change the plan. Usually the Responsible Official begins a plan revision because it is time to do so; that is, NFMA requires plan revision "at least every 15 years." 16 USC 1604 (f)(5). In that case, how much of the content of the plan must change in the revision process is the "need to change the plan" inquiry.

*Otherwise, if a need to change the plan is identified that cannot be made through administrative changes (36 CFR 219.13) or by changing management practices rather than plan components, an amendment or revision should be started, as appropriate. **A well-supported and effective***

¹¹ August 5, 2015 comment letter, pages 5-6 and October 8, 2018 comment letter, pages 8-9, and February 3, 2016 joint comment letter for the Stanislaus Forest winter travel planning collaborative process, submitted by Winter Wildlands Alliance, The Wilderness Society, Snowlands Network, and CSERC, pages 2-4.

¹² FSH 1909.12 Land Management Planning Handbook, Chapter 20 – Land Management Plan, page 4.

rationale determining a need to change the plan must be based on a good source of information.”

No such well-supported and effective rationale exists to support the need for any forest plan amendment in the Stanislaus Forest OSV plan.

Neither in the Purpose and Need or in the draft ROD is any verifiable evidence provided that snowmobile riding opportunities outside of currently designated “non-motorized” areas are either insufficient or that a change in management for those areas is well-supported.

In CSERC’s October 8, 2018 comments, we noted that in the DEIS, Significant Issue #1 was described as the concern by snowmobilers that proposed OSV-use designations “may eliminate popular, highly desirable areas that have been historically available for public, cross-country OSV use (e.g., some use within Near Natural Areas)”. The EIS failed to correctly note that the phrase “historically available” referenced uncertain and unquantified illegal trespass in areas legally off-limits to motorized use under the Forest Plan. Further, the first Significant Issue discussion in the EIS described a supposed concern that new OSV areas may be less desirable than current use areas, that there may be an insufficient quantity (miles and trails) for OSV use, and that there may be insufficient miles of groomed OSV trails. A final part of that first Significant Issue describes a concern by snowmobilers over the designation of minimum snow depth requirements.

Nowhere in the Significant Issues section nor in the Purpose of Need section of the EIS is there any clear evidence provided of a verified “need” to either allow snowmobile riders to continue to periodically trespass into off-limits areas or to identify other new snow-play “high-marking” extreme riding opportunities on national forest lands to satisfy a need. In the FEIS, Vol. 1, Chapter 2, the Purpose and Need is defined as:

“Purpose and Need Based on the regulations for the management of OSV use on National Forest System (NFS) lands (36 CFR Part 212, Subpart C and Part 261, Subpart A), the purpose and need of this project is to establish a manageable system of designated NFS trails and areas on NFS lands for OSV use in the Stanislaus National Forest to: provide access, ensure that OSV use occurs when and where there is adequate snow for that use to occur, promote the safety of all users, enhance public enjoyment, minimize impacts to natural and cultural resources, and minimize conflicts among the various uses of NFS lands.”

This Purpose and Need provides no rationale or any reference to the need to expand snowmobile use into sensitive high elevation areas, nor does it identify any verified lack of adequate remote, high elevation extreme terrain riding areas in the Forest for snowmobilers to utilize under current Forest Plan direction. Overall, the EIR provides no rationale to show that existing legally authorized riding areas are in any way insufficient for providing access and ensuring that OSV use occurs where it is safe, or for public enjoyment. Thus, there is no well-supported, good source of information to justify a forest plan amendment.

Similar to the DEIS, the FEIS lists as the #1 Significant Issue: “Availability of Motorized Over-Snow Recreation Opportunities.” Yet nowhere are there are statistical studies, satisfaction studies, or other evidence to prove that a significant deficiency exists that justifies the OSV plan opening up off-limits areas to provide new legal riding opportunities. Page xiv of Chapter 2 provides statistical comparisons of different “opportunities” that would result from adoption of different alternatives, but again there are zero citations of any effective rationale or evidence in support of a need for change.

Pages 15-16 of Chapter 2 include these statements relative to forest plan amendments:

“If alternative 1, 4, or 5 is selected, forest plan amendments would be needed to make the designation of Near Natural or Proposed Wilderness areas for OSV use consistent with the Forest Plan. Specifically, the Forest Plan would be amended to include management direction to provide winter motorized use (i.e., OSV use) where those areas are designated under this activity-level decision.”

“OSV use is also occurring over two special interest area (SIA) roads which the Forest Plan directs are to be managed as closed to motor vehicle travel. Designating OSV use over these roads and whether these designations would impact the unique features of each of these roads is being considered. All four action alternative, including alternative 3 would designate OSV use overlapping these roads. As such, a forest plan amendment would be needed to make the proposed OSV-use designations consistent with the Forest Plan.”

“And lastly, although the current Forest Plan already directs that OSV use is only permitted where there is 12 inches or more of snow and no contact is made with native soil or vegetation (USDA Forest Service 2017, p. 53 and 55) and each alternative would maintain this direction forestwide, a more prohibitive, deeper snow depth is being considered in two specific areas. Alternatives 1, 3, 4, and 5-modified incorporate the 12-inch and 24-inch minimum snow depth requirement differently. Therefore, in order to simplify the Forest Plan direction, the forest would amend the Forest Plan to defer management direction to the designation of areas and trails consistent with travel management regulations (i.e., this project’s Decision).”

“The proposed changes to the Stanislaus Forest Plan would be consistent with the 2012 Planning Rule’s stated levels of planning at 36 CFR 219.2 in which forest plans do not authorize activities or projects, nor do they make commitments for taking site-specific actions. Rather, forest plans provide the sideboards for future site-specific actions (36 CFR 219.2(b)(1) and (2)).”

Again, nothing in this core forest plan amendment section of the EIS provides well-supported and effective rationale showing a need for change of the existing forest plan. Likewise, under **DECISION RATIONALE** in the draft ROD, there is absolutely no “well-supported and effective rationale” or “a good source of information” that shows any evidence that justifies the need for a forest plan amendment to change non-motorized use requirements.

In sum, here the Forest appears to be taking the position that Forest Plan amendments are 'necessary' in order to legalize current illegal activities that are contrary to the Forest Plan. CSERC takes the position that this approach establishes a damaging precedent that unlawful activities on the Forest can establish the basis for a forest plan amendment which permanently rewards that illegal behavior by making it the new law of the Forest Plan. At the least, such a position should not and cannot not meet the requirements of the Forest Planning Rule for forest plan amendments.

THIS POINT LIES AT THE HEART OF THIS OBJECTION.

WITHOUT THE SLIGHTEST EVIDENCE THAT THERE IS ANY LACK OF SUFFICIENT OVER-SNOW RIDING OPPORTUNITIES IN AREAS THAT ARE LEGALLY AVAILABLE CURRENTLY FOR SNOWMOBILE USE, STANISLAUS FOREST LINE OFFICERS ARBITRARILY DECIDED TO RESPOND TO THE WISHES EXPRESSED BY A SLICE OF SNOWMOBILE RIDERS WHO SEEK EXTREME "HIGH-MARK" RIDING IN AREAS IN ADDITION TO THE HIGHLAND LAKES AREA THAT IS NOW FULLY AVAILABLE FOR THIS USER GROUP. REPEATEDLY INVITING OSV ADVOCATES TO "TELL US WHERE YOU WANT TO RIDE," THE FOREST HAS NOW ASSUMED THAT THE RESULTING SNOWMOBILERS' WISHES JUSTIFY A FOREST PLAN AMENDMENT THAT WILL GUT NON-MOTORIZED REQUIREMENTS IN THE PACIFIC VALLEY AND EAGLE NEAR NATURAL ROADLESS AREAS.

This Objection really boils down to whether the Region will allow the Forest to go far beyond the Purpose and Need identified in the OSV plan EIS and to fail to comply with the 2012 Planning Rule directive that a forest plan amendment be based upon a good source of information that provides a well-supported and effective rationale for justifying a forest plan amendment. There is no well supported and effective rationale nor is there any good source of information to justify authorizing motorized use in existing non-motorized Near Natural areas through the approval of forest plan amendments to allow the Forest Service to deviate from the existing Stanislaus Forest LRMP Standard and Guideline requirements as shown in Table 1, page 4, of the draft ROD.

- 2. The Forest Service has not applied the specific substantive requirements of 36 CFR § 219.9 to the plan direction being modified or removed by the amendment.**

The 2012 Planning Rule requires the Forest Service to apply the specific substantive requirement(s) within §§ 219.8 through 219.11 that are directly related to the plan direction being added, modified, or removed by the proposed Forest Plan amendment. See 36 CFR § 219.13(b)(5)-(6). First the Forest Service: *"...must determine that a specific substantive requirement is directly related to the amendment when scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse effects associated with that requirement, or when the proposed amendment would substantially lessen protections for a specific resource or use. See 36 CFR § 219.13(b)(5)(i)-(ii),* Second, *if species of conservation concern (SCC) have not been identified for the plan area and if scoping or NEPA effects analysis for the proposed*

amendment reveals substantial adverse impacts to a specific species, or if the proposed amendment would substantially lessen protections for a specific species, the responsible official must determine whether such species is a potential SCC, and if so, apply section § 219.9(b) with respect to that species as if it were an SCC. See 36 CFR § 219.13(b)(6).

Here, the Forest Service has not complied with these requirements with respect to 36 CFR § 219.9, which protects the "[d]iversity of plant and animal communities." In particular, the EIS does not consider this regulatory protection as 'directly related' to the OSV plan, despite the clear impacts described above to the Sierra Nevada red fox and American marten due to the opening up of specific habitat areas as described above to snowmobiles. *See e.g.*, DEIS, p. 17 (Forest Service determines that Forest Plan amendments are only directly related to 36 CFR 219.10 Multiple Use, (a)(1) recreation settings and opportunities.)

As a result, the EIS fails to comply with 36 CFR § 219.13(b)(5)-(6) with respect to impacts to the Sierra Nevada red fox and American marten, including the requirements that the Forest Service consider and evaluate the amendments' impacts on ecosystem integrity and diversity with respect to these species, ensure maintenance of the ecological conditions necessary to maintain a viable population of these species within the plan area, or even to identify whether these imperiled species constitute "species of conservation concern" whose protection and viability must be assessed under these regulatory provisions. As discussed above, and in CSERC's comments and other comments submitted during the NEPA process, the proposed Forest Plan amendments have the potential for significant adverse impacts on these imperiled species, which clearly meet the species of conservation concern criteria.

E) A reasonable, feasible compromise alternative put forward by CSERC to fully meet (and exceed) the Purpose and Need, while greatly reducing conflicts, was ignored by the Responsible Official and was never analyzed by the EIS.

Both in detailed written comments¹³ and in face-to-face meetings with two district rangers, the I.D. Team leader, and the Forest Supervisor, CSERC communicated a final revised, middle-ground, compromise modification of Alternative 3 that would have incorporated a significant number of the Forest Supervisor's desired objectives in Alternative 5-Modified. CSERC relied upon two decades of interactions with the snowmobile advocacy community, Alpine County supervisors, Forest Service staff, and the diversity of public stakeholder interests to put forward a solution that would provide benefits to all participants in this years-long planning process.

CSERC is aware that a core group of remote-access extreme riding snowmobilers have prioritized their desire for nearly 20 years to be able to high-mark out in the Bull Run Peak and

¹³ CSERC comment letter October 8, 2018, pages 35-37, plus map attachment.

Henry Peak portion of the Pacific Valley roadless area. Based on this recognition, CSERC used on-the-ground knowledge of the area to provide public comment input to the Forest Service recommending that **IF** the Forest Service intended to deviate from existing non-motorized management direction for the Pacific Valley and Eagle Near Natural roadless areas, that instead of broadly opening those high value wildlife areas to snowmobile use, the Forest should do the following: Provide a corridor 500' wide along both sides of 19EV43 to create a 1,000' travel corridor to access a new mile-wide OSV snow-play area south of Marshall Canyon, west of Henry Peak, and north of Bull Run Peak. This compromise plan would open the most sought-after high-marking area described by snowmobilers over years of discussions. Allowing new legal snowmobile use in that defined area would be seen as a positive outcome by many of the more extreme riders who are the vocal group that the Forest has admitted it aims to please.

By limiting the amount of the Pacific Valley roadless area and furbearer habitat that would be opened up to motorized use, and by keeping the current Forest Plan non-motorized management direction for the Eagle roadless (Near Natural) area, the overall disturbance of furbearers in critical habitat would be far, far less than under the Alternative 5-Modified scenario. CSERC's compromise proposal would also provide a 300' buffer from the existing Wilderness boundary, decreasing the potential for Wilderness trespass compared to Alternative 5- Modified. **It would result in snowmobilers getting the single most desirable area they have sought over years of discussions at public meetings, while at the same time maintaining all remaining non-motorized requirements of the existing Forest Plan so as to truly minimize risk and disturbance to SNRF and marten, as required by the planning rules.**

CSERC clearly believes that doing a forest plan amendment is not called for, not based upon any evidence for a "need" for such an amendment, and is inappropriate to be done piecemeal without fully analyzing the cumulative effects of management change for all of the Near Natural roadless areas within the Stanislaus Forest. But if the Region discounts that strong legal argument, then the compromise solution CSERC carefully crafted provides a middle-ground solution.

Unfortunately, the FEIS' response to comments on this issue (p. 75) does not actually address numerous CSERC recommendations. And for CSERC's key compromise proposal to open a new OSV opportunities area, the sole response was: *"This recommendation was considered and is addressed in the draft ROD (Decision Rationale)..."* **However, in fact the FEIS assertion is incorrect. The draft ROD does not respond in any way to CSERC's October 8, 2018 compromise recommendation** to open up a narrow slice of the Pacific Valley roadless area in order to provide OSV riders with their most-sought-after riding objective. In fact, there is absolutely no mention of CSERC's October 8, 2018 compromise proposal anywhere in the draft ROD, and certainly not in the DECISION RATIONALE.

CSERC asserts that it is a violation of NEPA for the FEIS and the draft ROD to completely ignore and fail to meaningfully evaluate a compromise proposal that would achieve the Purpose and Need while minimizing conflicts – especially when that proposal was

responsively received as a potentially productive recommendation when CSERC's director met directly with numerous key Forest staff to discuss the proposal.

III. Suggested Remedies to Resolve the Key Issues of this Objection.

In the Request for Relief discussion that follows, CSERC identifies not what would be most desirable in a final OSV plan for at-risk wildlife, wild areas, and quiet recreation, but instead, CSERC requests a minimally-revised Alternative 5-Modified based upon recommended concessions affecting all sides.

While legal deficiencies and identified NEPA or other violations would potentially still remain in the FEIS, it is expected that a revised final Record of Decision (as requested by this Request For Relief) would so measurably reduce the level of objection to the OSV Plan that further legal debates over those remaining points of contention could be determined non-significant.

REQUEST FOR RELIEF

Based upon the points raised in this Objection letter, we request that the Region direct the Responsible Forest Official to amend the FEIS and the draft ROD so as to ensure that there will be the following adjustments:

- 1. The final Record of Decision will designate a seasonal closure of the 400+ acre winter season snow-play area within the core occupied furbearer habitat in the upper Highway 108 corridor of the Sonora Pass that will extend from January 1 to June 30 annually.**

The draft ROD on page 5 describes this issue as "(7) Implementing a season of use in the Highway 108 OSV use area near Sonora Pass;..." and describes the approval of the Highway 108 Sonora Pass area snow-play area under the heading: **Season of Use: Highway 108 OSV-use Area (411 acres)** on pages 7 and 8 of the draft ROD. In those pages, the draft ROD asserts that "...the wildlife biologist determined that closing SNRF suitable habitat areas to OSV after January 1 annually was not 'necessary' ... ", and that the "...wildlife biologist did not, however, dismiss the need for some action to minimize the potential for adversely impact potential breeding of the small isolated population known to inhabit the Sonora Pass area."

In order to be consistent with the requirements of the Travel Management Rule, CSERC requests that the Region direct the Responsible Forest Official to include in the final ROD the closure of the Highway 108 OSV-use area located at Sonora Pass (411) acres to cross-country OSV use by designating a seasonal closure from January 1 to June 30 annually in order to minimize adverse impacts of the OSV plan on the Sierra Nevada red fox and American marten.

2 . The final Record of Decision will drop the proposed adoption of five of the eight Forest Plan Amendments (Table 1 in the draft ROD) that would remove prohibitions on motorized use or allow exceptions to the existing Standard and Guideline requirements concerning motorized use.

The Over-Snow Vehicle Use Designation Project Forest Plan Amendments proposed as shown in Table 1, page 4, of the draft ROD would result (if allowed) in three **Forestwide** Forest Plan amendments to existing Standards and Guidelines (the top three listed amendments), two **Near Natural** Forest Plan amendments to existing Standards and Guidelines (the fourth and fifth listed amendments), and one **Special Interest** Forest Plan amendment narrowly focused on the Emigrant Road and Big Trees-Carson Valley Road.

CSERC requests, as a remedy for the conflicts with legal regulatory requirements identified in this Objection, that the Region direct the Responsible Forest Official to adjust the draft ROD so that in the final ROD, the five forest plan amendments proposed as **forestwide** and **Near Natural** shall be eliminated and removed from the final ROD. **As a result, motorized use will continue to be prohibited in non-motorized areas.** Accordingly, no changes would be approved to alter the existing Standard and Guidelines that specify that motorized use is normally prohibited except for delineated exceptions, areas are closed to motorized use except for currently delineated exceptions, and Near Natural areas are to be managed to the ROS Class of Semi-Primitive Non-motorized as consistent with Closed Motor Vehicle Travel Management. The current Forest Plan direction for the Pacific Valley and Eagle Near Natural roadless areas would remain semi-primitive non-motorized until such time that a future Stanislaus National Forest Land and Resource Management Plan revision process addresses the issue of appropriate management for all of the Near Natural roadless areas and Proposed Wilderness Areas within the Stanislaus Forest.

Due to the extensive wildlife studies, scientific literature, and extremely broad range of comments submitted during the OSV plan process concerning the vulnerable status of the Sierra Nevada red fox and the American marten within the high elevation habitat areas of the Near Natural roadless areas, it is consistent with the intent of the Travel Management minimization criteria for the OSV plan to avoid any new legally approved disturbance to be allowed within critical habitat where such disturbance is not firmly shown to be needed to accomplish the Purpose and Need. As discussed, in this OSV plan and in the EIS, no clear evidence has been presented or established that justifies opening up highly critical occupied habitat of these furbearers to motorized use and disturbance when the existing Forest Plan expressly prohibits such use in Near Natural areas.

(Should the Region and the Forest agree with the validity and balance of these two requests for relief and the public trust benefit of ensuring that the final ROD for the OSV plan is consistent with the existing Stanislaus Forest Plan, then CSERC openly commits to advocating for the Hiram Peak snow-play area to be recommended as a middle-ground compromise motorized use area proposal in a future Forest Plan in order to minimize intrusion into rare

furbearer habitat elsewhere (high elevation roadless areas), while still providing a highly desired extreme riding opportunity for snowmobilers.

CONCLUSION

After so many years of CSERC attempting to work collaboratively with the Forest Service to reduce public opposition to often contentious projects and plans put forward by the Region and the Stanislaus Forest, the Forest's ultimate decision on this OSV plan objection will provide the greatest clarity yet as to whether or not the conservation community can trust in clearly defined Forest Plan direction and in regional staff's commitment to promises made.

CSERC looks forward to discussing appropriate resolutions to points raised in this objection with the reviewing officer. We ask to be informed in writing of any responses to these objections or of any further opportunities to comment on the decision. We close with CSERC's shared interest in many of the important Objection points raised in the Objections by WildEarth Guardians, The Wilderness Society, and other organizations that joined in their Objection and the Objection filed by Snowlands Network and Winter Wildlands Alliance. Rather than be redundant in re-stating in this Objection many of the key concerns and violations that are identified in those two Objections, CSERC instead provides our Center's supportive agreement with their key points raised – in particular the points related to the need for compliance with NFMA and the Travel Management Rule.

Respectfully,

A handwritten signature in black ink that reads "John Buckley". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

John Buckley, executive director
CSERC

Appendix A

- **Letter from Randy Moore, concerning Roadless Area management**
- **Comment letter from Benjamin Sacks, SNRF research expert**
- **Map of CSERC's October 8, 2018 compromise proposal OSV area**

Letter from Randy Moore, concerning Roadless Area management

File Code: 1920-4-1

Date: November 28, 2007

Route To:

Subject: Roadless Area Management Direction

To: Forest Supervisors and Directors

This letter is to clarify the current status of roadless area management. I also want to emphasize my continued commitment to working cooperatively with the State of California Resources Agency for any proposed projects in inventoried roadless areas to ensure mutually acceptable protections are established. In Region 5 we are committed to protecting the important environmental values contained in the 4.4 million acres of inventoried roadless areas in California. Please go to <http://roadless.fs.fed.us/> to find the links to the court documents and 2001 Roadless Rule referenced in this letter.

On February 6, 2007, the United States District Court for Northern California issued a final injunction stemming from its September 20, 2006 decision in the consolidated cases California v. USDA and Wilderness Society v. USFS. A summary of this injunction is as follows; please see the web reference above to view the full text:

- Use the 2001 Roadless Rule - The State Petitions Rule, adopted at 70 Fed. Reg. 25,654, 25,661-62 (May 13, 2005), is set aside, and the Roadless Rule, adopted at 66 Fed. Reg. 3,244, 3,272-73 (January 12, 2001), has been reinstated and made effective by the California district court ruling.
- Management Actions Must Meet the 2001 Roadless Rule – The court ordered that “Federal defendants are enjoined from taking any further action contrary to the Roadless Rule without first remedying the legal violations identified in the Court’s opinion of September 20, 2006. Such further actions by the Forest Service include, but are not limited to, approving or authorizing any management activities in inventoried roadless areas that would be prohibited by the 2001 Roadless Rule, and issuing or awarding leases or contracts for projects in inventoried roadless areas that would be prohibited by the 2001 Roadless Rule. The effective date of this injunction is September 20, 2006.”
- Oil and Gas Leases – The court also directed that the “2001 Roadless Rule shall apply to all activities and any step of the leasing process commenced after the May 13, 2005, unlawful repeal of the Roadless Rule on any and all mineral leases of National Forest lands that issued after January 12, 2001.” As of the date of this letter, there have been no oil and gas leases issued in Region 5 after January 12, 2001. Please contact Rich Teixeira, Regional Minerals and Geology Group Leader, at (707) 562-8965, for any questions regarding oil and gas leasing.

Interim Directive No. 1920-2006-1 expired on July 16, 2007, and the Washington Office has no current plans to renew this interim directive. This interim directive continued the reservation of authorities and exceptions that have been applicable for the past several years.

Instead, the agency is operating under the district court's order directing reinstatement of the 2001 Roadless Rule (36 CFR Part 294, <http://roadless.fs.fed.us/>) which means that:

- A road may not be constructed or reconstructed in inventoried roadless areas except as provided in paragraph (b) of section 294.12. These exceptions include road construction/reconstruction needed for public health and safety (flood, fire, catastrophic events); roads needed pursuant to outstanding rights/statute/treaty; prevention of resource damage, etc. Refer to 294.12(b) for a complete listing of exceptions.
- Timber may not be cut, sold, or removed in inventoried roadless areas except as provided in paragraph (b) of section 294.13. The cutting, sale, or removal of timber for the exceptions listed is expected to be infrequent. Examples of these exception include cutting, sale or removal of timber to improve threatened, endangered, proposed, or sensitive species habitat, to maintain or restore the characteristics of ecosystem composition and structure, such as to reduce the risk of uncharacteristic wildfire effects...., for roadless areas that have been substantially roaded timber may be cut, sold, or removed only in the substantially altered portion or the inventoried roadless area. Refer to 294.13(b) for a complete listing of exceptions.

At this time, authorizing projects or issuing or awarding contracts, permits or leases may only be done where the activity is consistent with the 2001 Rule. Forest Plan management provisions that do not conflict with the prohibitions of the 2001 Roadless Rule remain in effect. The IRA boundaries and prohibitions used and established by the 2001 Rule may not be changed through project decisions or through land management plan amendments or revisions (294.14(e)). Because some of these boundaries date back as far as the old RARE II inventories and may be obsolete, at some future time, the Chief may decide to update the IRA boundaries to more accurately reflect current conditions and to better fit identifiable boundaries. Any future changes to the boundaries will be conducted in an open process with public input.

The IRAs for Region 5 are available at the following site:

<http://www.fs.fed.us/r5/rsi/clearinghouse/gis-download.shtml#r5>

Look for “**R5_InventRoadlessAreas07_1**” in the first column.

Also, a color map can be viewed on the roadless website:

<http://roadless.fs.fed.us/states/ca/state3.shtml>

On the map key you will see a category titled “Inventoried Roadless Area where road construction or reconstruction is allowed.” These were for analysis purposes only. These were the areas that land management plans had made decisions that would have allowed road construction or reconstruction. But the 2001 Roadless Rule overrides these earlier decisions. And then at 294.14(e) it is clear that no more changes can be made to override the 2001 Rule. It states “the prohibitions and restrictions established in this subpart are not subject to reconsideration, revision, or rescission in subsequent project decisions or land and resource management plan amendments or revisions undertaken pursuant to 36 CFR part 219.”

The authority to make final decisions for projects affecting roadless character in inventoried roadless areas rests with the appropriate responsible official for the project. This will normally be a District Ranger or Forest Supervisor.

Working with the State of California Resources Agency - Prior to beginning the public scoping process for any proposed projects in IRAs, and before making key NEPA decisions, R5 Forest Service representatives will meet with the State of California Resources Agency to review and confer whether Forest Service proposals are consistent with the 2001 Roadless Rule and to work out any concerns. Responsible officials are to notify Christine Nota (Regional Forester's Assistant for working with State government, at (916) 498-5901, cnota@fs.fed.us) and Kathy Clement, Ecosystem Planning Staff Director, at (707) 562-8957, kclement@fs.fed.us) of any projects being planned in inventoried roadless areas. If we cannot reach consensus at the staff level, I will offer to meet with the State of California Resources Secretary personally (or arrange for mutually agreed to representatives) to resolve outstanding issues and to ensure consistency with the 2001 Roadless Rule.

In addition to these measures, I am affirming the goal of no net increase in miles of roads in inventoried roadless areas within each national forest in California (from letter dated April 4, 2006, file code 1900, from Regional Forester Bernard Weingardt to California Resources Secretary Mike Chrisman). I expect the use of exceptions in 294.12(b) and 294.13(b) to be infrequent. But as agreed to in the afore-mentioned letter, these exceptions should be used in a thoughtful, common sense-based approach to provide access for Native American Tribes to widely acknowledged sacred sites as allowed by treaty and/or on classified roads, meet legitimate public safety objectives, be managed for recreation use as determined through the travel management process, and allow for reasonable emergency fire fighting efforts. Roads that cannot be managed to mitigate sedimentation in sensitive watersheds should be removed or corrected for sedimentation problems in a cost effective manner.

Implementation of the travel management rule (36 CFR 212) will affect motorized use of IRAs by restricting all motorized vehicles to designated routes. Only roads and trails that are part of a national forest transportation system (NFS) can be designated for motorized vehicle use. Many IRAs contain unauthorized routes that were created through motorized cross country travel and are not part of the NFS. In some cases, after considering site-specific environmental impacts and public concerns, an unauthorized route could be considered for addition to the NFS as a NFS motorized trail. Decisions to convert unauthorized routes to NFS motorized trails within IRAs must be given thoughtful consideration, including analysis of the potential impacts on roadless area characteristics.

There are approximately 260,000 acres of National Forest IRAs in California managed by the Humboldt-Toiyabe National Forest of Region 4 and the Rogue-Siskiyou National Forest of Region 6. I have conferred with the Regional Foresters of Region 4 and Region 6 and they are in agreement and will manage these lands in accordance with the measures outlined in this letter.

For questions regarding roadless area management, please contact Kathy Clement, Ecosystem Planning Staff Director, at (707) 562-8957, or Brad Burmark, Regional Planner, at (707) 562-8950.

/s/ Beth G. Pendleton (for)

RANDY MOORE

Regional Forester

Letter from Professor Benjamin Sacks, U.C. Davis

UNIVERSITY OF CALIFORNIA, DAVIS

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

VETERINARY GENETICS LABORATORY
SCHOOL OF VETERINARY MEDICINE
TELEPHONE: (530) 752-2211
FAX: (530) 752-3556

ONE SHIELDS AVENUE
DAVIS, CALIFORNIA 95616-8744

April 30, 2019

Jason Kuiken, Forest Supervisor
Stanislaus National Forest
Attention: Over-Snow Vehicle Plan
19777 Greenley Road
Sonora, CA 95370

To the Forest Supervisor:

As one of the research scientists who has been actively searching for and striving to gain valuable information concerning the Sierra Nevada red fox in the Sierra Nevada region, I am sharing these final comments in response to the Over-Snow Vehicle plan for the Stanislaus National Forest. Without providing clear scientific rationale or citations, the Response to Comments section appears to dismiss many of the key concerns I raised in my comment letters about snowmobile use in the high elevation areas of the Forest causing potential significant negative impacts to the SNRF. While there is always uncertainty as to the significance of the actual degree of impacts for an activity that has not been well-studied for its impacts on a vulnerable species, it is my clear recommendation that the Forest Service should err on the side of caution with this plan and avoid adding stress to the fox population.

Specifically, I believe that there is scientific justification to withdraw the Alternative 5- Modified proposal to open up Near Natural high elevation roadless habitat in the Pacific Valley roadless area and the Eagle roadless area, both of which are currently designated by the Forest Service as non-motorized. To deviate from management direction (that currently does not legally allow motorized winter season disturbance of furbearers in those areas) would fail to ensure that the agency is acting prudently to avoid unnecessary impacts to SNRF.

Similarly, I urge the Forest Service to revise Alternative 5-Modified to eliminate the 411-acre Sonora Pass snow-play area for snowmobile use that is proposed to be open throughout the winter season until April 15th. The Sonora Pass portion of the SNRF population is highly vulnerable for multiple reasons, including inbreeding, photographic evidence of coyote presence seasonally at very high elevations, and other risk factors.

If the Stanislaus Forest decision on the Over-Snow Vehicle plan is revised to drop the proposal to open motorized use in the two Near Natural high elevation roadless areas (where so much suitable SNRF habitat exists) and to drop the proposed 411-acre snowmobilers snow-play area high in the Sonora Pass, those two important changes would minimize the potential motorized winter season disturbance and impacts to the SNRF within the critical upper elevation areas of the Stanislaus National Forest. I recommend those changes in the final Record of Decision for the plan.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ben Sacks", is written over a light blue rectangular background.

Benjamin N. Sacks, Adjunct Professor, Director Mammalian Ecology and Conservation Unit

Topographic map of the Carson Iceberg area. The map shows contour lines and a grid. A large area is outlined with a dashed line and numbered 1 through 10. The area is labeled 'OSI use area'. The map includes labels for 'CARSON ICEBERG WILDERNESS', 'Marshall Canyon', 'Bull Run', and 'OSI use area'. The map is oriented with North at the top.

Map details:

- Grid coordinates: 55° 69' to 55° 52' 30" N, 70° to 72° E.
- Topographic features: Carson Iceberg Wilderness, Marshall Canyon, Bull Run, OSI use area.
- Contour lines: 8000, 8200, 8400, 8600, 8800, 9000, 9200, 9400, 9600, 9800, 10000.
- Numbered area: 1 through 10.
- Other labels: 'CARSON ICEBERG WILDERNESS', 'Marshall Canyon', 'Bull Run', 'OSI use area', 'T 8 N 38° 30'.