

California Native Plant Society

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Appeal of Record of Decision and Final Supplemental Environmental Impact Statement for the Sierra Nevada Forest Plan Amendment, signed January 21, 2004

April 29, 2004

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To Whom It May Concern:

This is an administrative appeal of the Sierra Nevada Forest Plan Amendment Final Supplemental Environmental Impact Statement (FSEIS) and Record of Decision (ROD), approved by USFS Pacific Southwest Region Regional Forester Jack Blackwell on January 21, 2004 on behalf of the California Native Plant Society (CNPS) pursuant to 36 CFR § 217. The California Native Plant Society (CNPS) is a non profit organization of more than 10,000 laypersons and professional botanists organized into 32 chapters throughout California. The mission of the California Native Plant Society is to increase understanding and appreciation of California's native plants and to conserve them and their natural habitats, through education, science, advocacy, horticulture and land stewardship. Our members and chapters work closely with the U.S. Forest Service and other State and Federal agencies to manage and conserve rare and common botanical resources in California. Our members also use Sierra Nevada National Forests extensively for research, education and recreation.

The final 2004 ROD Violates the National Forest Management Act (NFMA) and the Forest Service Manual (FSM) in its failure to protect sensitive plants and avoid a trend towards federal listing. This problem is primarily the result of the numerous instances where both the 2003 proposed action (Alternative S2) and the 2004 ROD weaken, obscure, or remove essential management direction from the January 2001 ROD that had been designed to protect Sierra Nevada ecosystems from poorly managed grazing, logging,



Dedicated to the preservation of California native flora

roadbuilding and other activities.

Of great concern to CNPS is the fact that the 2004 ROD increases risk to sensitive plant species beyond even that proposed under 2003 Alternative S2 because standards and guidelines key to conservation and management of sensitive plants were removed from the SNFPA between the 2003 Proposed Action (Alternative S2) and the final ROD.

Further, the 2004 FSEIS, as the 2003 DSEIS did previously, violates the NEPA by failing to provide an adequate analysis of the impacts of the ROD to sensitive plants and failing to meet legal requirements to demonstrate that the proposed action will not lead to a trend towards federal listing under the Endangered Species Act for sensitive plants, particularly those identified as "highly vulnerable" in previous NEPA analyses.

We appeal and protest the 2004 FSEIS and the final ROD because this plan will irreparably degrade the health of sensitive Sierra Nevada plant communities, place at risk the viability of numerous species, damage soils, water quality and other irreplaceable resources. This plan will cause severe harm to this region, its ecosystems, and its economy, in violation of numerous laws and regulations including the National Forest Management Act (NFMA), the Endangered Species Act (ESA), the Clean Water Act (CWA), and the Forest Service Manual (FSM).

The FSEIS violates NEPA (i) because it fails to address substantive issues raised in CNPS and other public comments on the DSEIS, (ii) because, like the DSEIS proposed action analysis, the FSEIS fails to provide an adequate description of the environmental impacts of the ROD, and (iii) neither the 2004 FSEIS or Biological Evaluation (BE) mention or provide any environmental impact analysis of changes in standards and guidelines covering sensitive plant conservation between the 2003 Alternative S2 and the final 2004 ROD.

CNPS has participated in the development of the Sierra Nevada Framework since its inception more than a decade ago. The Forest Service expended unprecedented effort to solicit and respond to public concerns throughout the process culminating in the 2001 ROD. Countless public meetings were held throughout the State and the public had the opportunity to review and comment proposed management direction almost constantly as it developed. The agency also made unprecedented efforts to bring the scientific community into Framework development. In almost 30 years of working closely with the Forest Service on botanical issues, CNPS never experienced the level of openness and consultation with the public and with non-agency scientists that occurred in this process. All of this hard work produced a well reasoned set of Forest Plan amendments that complied with procedural and environmental laws and found a reasonable balance between commodity production and legal requirements for resource protection in the Sierra Nevada.

We are extremely disappointed that the high standards of scientific analysis, respect for public input, rigorous adherence to legal mandates, and dedication to conservation of the unique resources of the Sierra Nevada that characterized the 2001 Framework have been abandoned in the 2003-2004 revisions.

Further, in addition to our own appeal points, we concur with and incorporate by reference the appeal, statement of reasons, and relief requested by the Sierra Nevada Forest Protection Campaign (SNFPC) in their entirety.

STATEMENT OF REASONS

I. THE 2004 ROD FAILS TO MAINTAIN VIABLE POPULATIONS OF SENSITIVE PLANT SPECIES IN THE SIERRA NEVADA IN VIOLATION OF THE NFMA AND ITS REGULATIONS (36 C.F.R. § 219.19). THE 2004 FSEIS FAILS TO EVALUATE IMPACTS TO SENSITIVE PLANTS, PARTICULARLY THOSE IDENTIFIED AS HIGHLY VULNERABLE, IN VIOLATION OF THE NEPA (40 C.F.R. § 1500 ET SEQ.)

The following is an excerpt from our comments on 2003 Revised Sierra Nevada Forest Plan Amendment (SNFPA) Alternative S2 and the accompanying DSEIS. These comments address the inadequacy of the environmental impacts and analysis and the viability risks to threatened, endangered, proposed and sensitive (TEPS) plants in the 2003 proposed actions. Because these legal violations of the NFMA and the NEPA were not addressed in the 2004 FSEIS or ROD, they remain applicable.

NEPA, NFMA, FSM AND SENSITIVE PLANT CONSERVATION

Several sections of the Proposed Action affect TES plants. As is demonstrated below and in the comments of the SNFPC, the Proposed Action makes substantive changes to the management of logging, grazing, roadbuilding, fire and other management activities. These changes will increase disturbance throughout the planning area, particularly in old forests and aquatic ecosystems. There are of course numerous TES plants that depend on these habitats thus may be affected by these changes.

The DSEIS states,

"The FEIS evaluated the effects of the alternatives on 135 species of threatened, endangered, and sensitive species of vascular plants, bryophytes, and lichens. The species were subdivided into 14 ecological guilds according to their habitat associations. Many of the species were included in multiple guilds. The species within each guild were described and the risk factors for associated species were listed. The risk factors were then used to assess the effects implementing the alternatives on each species for 50 years. Assessments were completed for overall habitat and population trends. This analysis demonstrated that 12 species are sensitive to the variation in management that would be provided by some of the alternatives. For the remaining 123 species, there were no projected changes from current habitat or population conditions for any alternative.

For the twelve species that were sensitive to national forest management, all were judged to have adequate protection to avoid the loss of viability and a trend towards listing in all of the alternatives. There is no evidence to suggest that implementing the proposed changes would depart from these findings.

Therefore, no additional analysis is warranted in the SEIS." (DSEIS p. 331)

This arbitrary dismissal of the potential impacts of the Alternatives to 135 species of TES plants violates both National Environmental Policy Act (NEPA) and National Forest Management Act (NFMA).

The National Environmental Policy Act (NEPA) requires that environmental impact statements

"be concise, *clear, and to the point*, and shall be supported by evidence that the agency has made the necessary environmental analyses." (40 CFR § 1502.1)

The NEPA regulations also state that the description of the alternatives:

"is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present *the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public*. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action *so that reviewers may evaluate their comparative merits*." (40 CFR § 1502.14, emphasis added)

Among other things, an EIS is required to

"...provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." (40 CFR § 1502.1)

The discussion of potential significant impacts must include analysis of cumulative impacts (40 CFR § 1508.7; 1508.25), defined as:

"the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." (40 CFR § 1508.7)

The National Forest Management Act (NFMA) regulations require

"Fish and wildlife habitat shall be managed to maintain viable populations of

existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area." (36 CFR § 219.19)

The Secretary of Agriculture's Policy on Fish and Wildlife. Departmental Regulation 9500-4 clarifies that the viability requirement applies to plants by directing the Forest Service to:

"1. Manage "habitats for all existing native and desired nonnative plants, fish, and wildlife species in order to maintain at least viable populations of such species." Forest Service Manual (FSM) § 2670.12

The DSEIS does not reveal which 12 species were judged to be sensitive to management, provides no discussion of how the conclusion was reached that only 12 species are sensitive to the alternatives, and presents no data or other evidence to support that conclusion. It also presents no evidence to support the "judgment" that either the 12 species sensitive to management, or the remaining 123, will be adequately protected under all Alternatives. No description of any component of the "adequate" protection is provided. Readers are expected to simply accept this conclusion with no discussion and no supporting evidence. CNPS sees no reason to do so.

On the contrary, there are several reasons why this conclusion is questionable. First, as the DSEIS states, the 135 TES plants fall into 14 ecological guilds according to the habitats in which they occur:

1. Meadows and seeps 26	8. Ultramaphic (serpentine) substrates
2. Vernal wet 17	9. Cliff 8
3. Riparian woodland 6	10. Edaphic specialists 16
4. Riparian forest 13	11. Interior (old growth) forest 2
5. Bogs and fens 8	12. Gap phase 15
6. Non-forested lakeshore and streamside 11	13. Post-fire openings 2
7. Rock outcrops 26	14. General openings 36
	No guild assignment 12

At least 12 of these taxa were judged to be at high vulnerability in the SNFPA FEIS based on high population concern scores and high threat.

Several of these habitat types will be significantly affected by the changes to the SNFPA in the Proposed Action. These include species associated with interior forests, gap phase, post fire openings, and all wetland-associates including the following

guilds: meadows and seeps, vernal wet areas, riparian woodland, riparian forest, bogs and fens, and lakeshore and streamside.

(i) Riparian Guilds

For aquatic, riparian and meadow guilds, the Proposed Action is likely to affect these plants through its changes to grazing management, logging, roadbuilding and fire and fuels management. Regarding these two activities, the SEIS environmental consequences section states:

For Livestock Grazing "The grazing changes proposed in the SEIS relate specifically to certain standards and guidelines for the great gray owl, willow flycatcher and Yosemite toad and to clarify interpretation of standards and guidelines. In general, the changes proposed in Alternative S2 are designed to allow local flexibility to design management practices that still adhere to the intent of the standards and guidelines in Alternative S1. Since they are developed site-specifically and locally , *it is not possible to assess the effects at the bioregional scale* . However, *to the extent that they adhere to the original intent*, the difference in effects *would be expected* to be minimal. " (DSEIS p. 160-1, emphasis added)

Although the DSEIS predicates its prediction of minimal impacts on adherence to the intent of the grazing standards and guidelines in Alternative S1, it conspicuously avoids explicit commitment to such adherence.

Because, as the DSEIS acknowledges, it is impossible for the Forest Service to predict how livestock will be managed under the Proposed Action, the DSEIS cannot, and does not attempt to, present any reliable description of the environmental consequences of the Proposed Action in grazed areas. As the DSEIS states, this failing is particularly acute for the bioregional scale cumulative effects of the individual changes to grazing management plans that will occur throughout the planning area under S2. This is a clear violation of NEPA's requirements, cited above, for clarity, concision, precision, and for analyses which present sufficient information, including on cumulative impacts, so that the public and decisionmakers can evaluate alternatives.

Another example of this problem can be found in the DSEIS "Summary of Effects to Aquatic, Riparian and Meadow Ecosystems":

"The FEIS determined that the overall effector on the landscape will be either mechanical fuel treatments or catastrophic wildfires. Both Alternatives S1 and S2 are judged to perform similar to the Modified 8 Alternative from the FEIS, which was determined to best protect the values associated with aquatic and riparian habitats. The primary differences between the analysis in the FEIS and the SEIS are related to the changed spatial distribution of SPLATs rather than differences between Alternatives S1 and S2. *Alternative S2 might be thought to have a higher potential risk to aquatic resources than Alternative S1 simply because it*

prescribes slightly higher amounts of mechanical treatments. However with the application of the same Aquatic Management Strategy goals and related standards and guidelines, Alternative S2 would *tend to* result in projects with similar on-the-ground effects between the two alternatives." (DSEIS p. 161, emphasis added)

This remarkable paragraph again, like the one quoted above, explicitly avoids making any unambiguous statement about the environmental consequences of the Proposed Action or attempt to estimate the cumulative impacts to riparian guilds. All statements regarding environmental consequences are speculative, i.e. "Alternative S2 would *tend to* result...; *to the extent that they adhere to the original intent*, the difference in effects *would be expected to* be minimal."

Because of this peculiar ambiguity, it is extremely difficult, and probably impossible, for the public or decisionmakers accurately to understand environmental consequences based on this DSEIS. Therefore it does not meet the intent or statutory requirements of NEPA.

Careful perusal of the DSEIS, however, does reveal clues regarding likely outcomes for aquatic, riparian and meadow ecosystems under the Proposed Action. The Proposed Action would allow higher levels of logging and mechanical treatments, more miles of road construction and reconstruction, and higher forage utilization than would be allowed under Alternative S1.

First, for grazing, Alternative S2 states:

"For season-long grazing, Alternative S2 limits utilization of grass and grass-like plants for meadows in early seral status to 30-percent (or minimum 6-inch stubble height. For meadows in late seral status, utilization is limited to 40-percent (or minimum 4-inch stubble height). *Alternative S2 allows the above utilization standards to be modified to test alternative standards when current practices are maintaining range in good to excellent condition.*" (DSEIS p. 56, emphasis added)

It is extremely unlikely that many -or any -of these "tests" will examine practices that utilize less forage, shorter seasons of use, or reduce allowed streambank impacts. Many ranchers perceive these types of management practices as economically undesirable , so it is unlikely that they will be proposed. This perception is unfortunate because experience and scientific studies show that low to moderate utilization levels produce better long term economic returns than higher intensity grazing. As stated in a widely used range management textbook "[g]enerally , as stocking rate is increased, productivity per animal decreases" (Holecheck et al. , 1995 p. 182) and "net economic gains are maximized by moderate grazing" (Holecheck et al. , 1995 p. 185).

Nevertheless, it is a reasonable assumption that under the Proposed Action, "testing" will be dominated by tests of increased allowed utilization and will thus result in net increases in consumption of herbaceous species across the planning

area, particularly in riparian areas. It is unclear whether the “tests” will also apply to utilization limits for, oaks, willows and other browse species or to the streambank disturbance standard. Whether or not the flexibility clause applies to these standards, increased use of herbaceous species in riparian areas is likely to lead to increased riparian disturbance and associated increases in sedimentation, fecal contamination and other livestock-associated adverse impacts to aquatic ecosystems under Alternative S2 than Alternative S1.

The Proposed Action also makes significant changes to livestock management in aquatic ecosystems occupied by Willow Flycatcher, Great Gray Owl and Yosemite Toad. In areas where TES plants co-occur with these species, livestock impacts under Alternative S2 are likely to differ most significantly from those under Alternative S1. These impacts should have been evaluated in the DSEIS.

In addition to increases in allowed livestock impacts, higher levels of logging and mechanical treatments will also be allowed under Alternative S2 than Alternative S1 (DSEIS summary, p. 24). Road construction and reconstruction will also be substantially greater under Alternative S2 (DSEIS p. 237). These disturbances will increase sedimentation and alter the timing and amount of streamflow. Removal of riparian vegetation along perennial and ephemeral streams by grazing and logging can increase water temperature. The DSEIS section quoted above acknowledges these risks (DSEIS, p. 161). Again, the DSEIS claim that impacts will be similar between Alternatives S1 and S2 is supported solely by the unsubstantiated assumption that the goals of the ROD, and specifically of the Aquatic Management Strategy, will be adhered to as Alternative S2 is implemented. Based on the differences in allowed disturbance levels between the two alternatives, and the consequential substantial weakening of the Aquatic Management Strategy, we find no reason to accept this assurance.

Given that impacts will be concentrated in riparian areas where livestock and logging effects are both most intense, CNPS finds that there is sufficient evidence to conclude that viability risk to riparian guild TES plants may be greater under Alternative S2 than under Alternative S1. We see no evidence in the DSEIS to support its dismissal of even the need to analyze possible differences in impacts to and viability of TES plants between Alternatives.

(ii) Interior Forest, Post-fire Opening, Gap-Phase Guilds

The other guilds that may be impacted by the Proposed Action are the interior forest, post-fire opening, and gap-phase guilds. These guilds are vulnerable to impacts because the management of fire, fuels, and old forests will change under Alternative S2. For old forest associates, the DSEIS Summary section states that old forest conservation will be “moderate” under Alternative S2 as opposed to “high” under Alternative S1. The DSEIS states that the decrease in conservation “may be offset by decreases in wildfire acres” (DSEIS p. 25), but that is of course merely more speculation. Thus, there is at minimum some likelihood that the vulnerability of interior forest TES plants will increase under the Proposed Action. This vulnerability should have been analyzed in this DSEIS, and mitigation proposed. The fact that

both interior forest associate TES plants were among the “highly vulnerable” group in the original Framework SNFPA FEIS (Vol. 3, Ch. 3, Pt. 4.6. p. 10) makes this even more imperative. This omission further calls into question the adequacy of this document under the NEPA.

Gap phase habitat quality and quantity is also likely to differ considerably between Alternatives S1 and S2. This is particularly true for the areas covered by the Quincy Library Group (QLG) management plan, where impacts of Alternative S2 will be greatest. The DSEIS states that there will be increased fragmentation in old forests in QLG areas because of group selection (DSEIS p. 25). Canopy cover standards vary widely between the two Alternatives (DSEIS p. 190 and elsewhere), both in and out of the QLG area. This will change the size, quantity, distribution and character of forest openings. Miles of road construction and reconstruction will be much greater in the QLG area under Alternative S2. Roads, DFPZs, group selection, and other logging gaps, and overall decreases in canopy cover are all likely significantly to affect plants in the gap phase guild. It is not clear how the vulnerability of this group will be affected. The characteristics of anthropogenic openings are different from openings caused by natural windthrow or wildfire. For example, road construction and logging can result in extensive soil disturbance, particularly compaction (SNFPA FEIS Vol. 2, Ch. 3, part 3.8 p. 358), that is more intense than that in natural gaps. As with the interior forest guild, the omission from this NEPA analysis of any discussion of these potential impacts to gap phase TES plants is curious.

Finally, wildfire behavior is predicted to differ between Alternatives S1 and S2. This is discussed throughout the DSEIS (e.g. DSEIS p. 161 - 165). Wildfire causes extensive changes in soil chemistry (Agee, 1993) and stimulates reproduction and recruitment of fire following plant and animal species (Chang, 1996; Agee, 1993), many of which do not appear in the absence of elevated soil temperatures or smoke, i.e. they do not appear following logging. As above, the impacts of these changes on the vulnerability of the post-fire openings guild should have been discussed in order for this DSEIS to be NEPA compliant.

We understand that much of the DSEIS’s assertion that there are no differences in impacts to TES plants between Alternatives is based on the fact that the mandate for development of TES plant conservation strategies is not altered in Alternative S2. CNPS commends the Forest Service for its commitment to development of these strategies and for its diligent efforts in this area since - and indeed before - the ROD was signed in 2001.

However, the DSEIS shows measurable differences in allowed levels of human disturbance between Alternatives. These differences certainly have at least the potential to impact some of the 135 TES plants, particularly in the guilds identified above. Conservation strategies for all TES taxa will not be developed for years. During these years, if Alternative S2 is implemented, impacts to some TES plant species and habitat, and possibly to their viability will occur. In the absence of conservation strategies, Forest Service protection of TES plants during logging operations typically emphasizes “flag and avoid” strategies. Often no protection at all is provided from livestock impacts. These approaches do not protect plants from the

long term and landscape scale cumulative impacts to habitat character and quality that will result from the increased road construction, reduced canopy cover, and increased grazing impacts that are proposed under Alternative S2, particularly in the QLG area. Conservation strategies that have not been developed cannot mitigate those impacts. Therefore, this DSEIS should have examined these impacts and proposed some offsetting mitigation, at least pending development of the conservation strategies.

This discussion demonstrates that it is impossible for decisionmakers or the public accurately to predict the impacts of the Alternatives to TES plants from this DSEIS. Further the DSEIS complete failure even to discuss the possibility of any adverse impacts to TES plants under the Proposed Action prevents the document from demonstrating that the Proposed Action will meet the NFMA viability requirement for TES plants. Rather the DSEIS discussion suggests that cumulative impacts to several TES plant guilds is likely to increase under the Proposed Action. The absence of any discussion of the effects of the Alternatives on TES plants, even for the high vulnerability group, violates both the letter and intent of NEPA.

This DSEIS should have included a legally and biologically adequate analysis of the likely impacts to the viability of TES plants.

The 2004 FSEIS and ROD should have remedied these failures. Because they did not, both should be withdrawn (see Relief requested, below).

II. REMOVAL OF SENSITIVE PLANT SURVEY STANDARDS AND GUIDELINES

The problems discussed above are exacerbated by the removal of key standards and guidelines regarding sensitive plant protection that were present in the January 2001 ROD and the 2003 DSEIS. Even more troubling, the FEIS contains several false statements about the removal of these standards and guidelines and fails to provide any analysis of the impacts of this change to deciding officers or to the public, in violation of numerous NEPA requirements for analysis of all significant impacts.

See e.g. 40 CFR § 1500.1 (b):

“NEPA procedures must insure that *environmental information is available to public officials and citizens before decisions are made and before actions are taken*. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” (emphasis added).

The January 2001 ROD mandates:

“Threatened, Endangered, Proposed, and Sensitive Plant Species Conduct field surveys for threatened, endangered, proposed, and sensitive (TEPS) plant species early enough in the project planning process so that the project can be designed to conserve

or enhance TEPS plants and their habitat. Conduct surveys according to procedures outlined in the Forest Service Handbook (FSH 2609.25.11). If additional field surveys are conducted as part of project implementation, document the survey results in the project file.

Minimize or eliminate direct and indirect impacts from management activities on TEPS plants unless the activity is designed to maintain or improve plant populations (Forest Service Manual 2670).

Ensure that all projects involving revegetation (planting or seeding) adhere to regional native plant policies." (2001 ROD, Appendix A p. 29-30, emphasis added.)

This entire section is missing from the 2004 ROD. The sensitive species biological evaluation (BE) for the 2004 ROD states that

"The supplemental analysis for the programmatic Biological Evaluation has been integrated directly into the FSEIS Chapters 3.. and 4..." (BE, p. 1)

Perusal of Chapter 4 of the FSEIS reveals:

"Some additional information since completion of the SNFPA FEIS pertaining to 10 species is presented in Chapter 3. This information does not substantially alter the analysis and conclusions made in the FEIS. As documented in Appendix C of the SEIS, the effects to vascular plants, bryophytes, and fungi were adequately addressed in the FEIS and further analysis is not warranted. ***This conclusion was based upon retention of standards and guidelines pertaining to endangered, threatened, proposed and sensitive plant species protection, noxious weeds, and special aquatic elements such as bogs and fens.*** In addition, the commitment to completing Conservation Assessments for the 28 highly vulnerable plant species will not change and several Conservation Assessments are currently being prepared to meet the expected rate of completion identified in the SNFPA ROD. " (FSEIS Sec 4.3.5. p 315, emphasis added).

The statement in bold is false. Standards and guidelines pertaining to sensitive species were not retained; they were removed.

Thus the information and analysis in the FSEIS and BE concerning the viability of TESP plants neither reflects nor supports the decision in the ROD.

The FSEIS goes on to state,

"The primary protection measures used in both the HFQLG and SNFPA for plant species is the ***requirement for field surveys and project design features to minimize and mitigate adverse effects during site-specific project planning.***" (FSEIS Sec 4.3.5. p 315, emphasis added).

If field surveys are the “primary protection measures” for TESP plants, how can the Forest Service justify the removal of the requirement for early surveys? Again, the information in the FEIS fails to reflect or support the decision and management direction in the ROD.

FSEIS Appendix A states that removal of these TESP plant standards and guidelines is insignificant because the measures are “covered by existing law, regulation or direction” (FSEIS Appx. A, p. 366). This may be true to some extent for the standards and guidelines involving minimization of impacts to TEPS plants and use of natives in revegetation, although we still oppose the removal of these sections because it is desirable to restate, emphasize, and clarify important management direction in order to make it as easy as possible for field staff to have access to, and thus implement, all relevant requirements.

However, there is no existing direction in the NFMA, FSM, Forest Service Handbook or elsewhere that requires that TEPS surveys be conducted “early enough in the project planning process so that the project can be designed to conserve or enhance TEPS plants and their habitat.” Thus, this statement in FSEIS Appendix A is false with respect to this section of the TESP plant standards and guidelines. Once again, the FEIS fails to provide correct information to the public or decisionmakers regarding the environmental impacts of the TESP plant standards and guidelines, in direct violation of NEPAs requirements that such impacts be analyzed and disclosed. The information in the FEIS fails to reflect or support the decision and management direction in the ROD.

This requirement in the 2001 ROD represented a significant advance in the management of TEPS plants on Forest Service lands. CNPS’ decades of experience with Forest Service project planning and implementation have included numerous projects in which TEPS plant surveys are not performed until actual project implementation has begun - much less early enough in the planning process so species and habitat conservation can be seamlessly built into project design. Species conservation is distinctly easier and infinitely more effective when surveys are performed early in, or preferably prior to, project planning. This simple measure allows all interdisciplinary team members and decisionmakers to be fully aware of - and thus avoid in advance through project design - any potential significant impacts to TEPS species during project design.

The commonly used “flag and avoid” method, in which surveys occur after a project has been designed, after NEPA review, and often even during project implementation itself, is decidedly inferior. First, TESP species that are missed due to survey error may be destroyed. Surveys prior to project design provide an opportunity for all those involved in a project to be educated about the habitat type and the appearance of TESP species, increasing the chances that any at risk species missed in prior surveys will be detected during implementation. Second, the “flag and avoid” method can require projects to be awkwardly adjusted, sometimes substantially, in response incoming data on TESP species. Further, project constraints may prevent the use of the best available mitigation methods to conserve species or essential habitat characteristics of newly discovered TESP populations. In the worst cases, TESP species may not be detected in time to

allow adjustment or mitigation, leading to damage or destruction of individuals or populations.

Moreover, the “flag and avoid” technique does not allow for adequate cumulative impacts analyses for TESP species or their habitats, as required by NEPA (40 CFR § 1508.7). Without surveys prior to environmental analysis, it is difficult to know what proportion of a TESP species may be impacted by a project, or how impacts to populations in the planning area will affect the species as a whole.

Finally, projects planned in the absence of knowledge of the location or type of TESP species that may be affected, can also cause significant alterations (beneficial or detrimental) to essential habitat characteristics, such as hydrology, pollinator ecology or microclimate, which may adversely affect individuals, populations, or even species viability. This essential information is much less likely to be available to project planners in the absence of the early survey language.

These problems were what led to the placement of the early survey language in the original 2001 ROD. The early survey standard and guideline is essential to meeting NEPA requirements for interdisciplinary analysis and identification of significant direct, indirect and cumulative impacts (see 40 CFR § 1500.1 (b), quoted above regarding information gathering, §1508.8 regarding direct, indirect, and cumulative impacts, and §1501.2(a) regarding interdisciplinary planning), and NFMA requirements for species viability maintenance (36 CFR § 219.19). The removal of the early survey language without explanation and without environmental impacts analysis constitutes a violation of both NEPA and NFMA in this FSEIS and ROD, and will lead to further violations during future project implementation in the field.

RELIEF REQUESTED

Based upon the serious flaws stated above, CNPS asks that you reverse the Regional Forester's 2004 Record of Decision and Final Supplemental Environmental Impact Statement. We also recommend that you direct the Regional Forester to implement the original 2001 Sierra Framework Plan. As stated above, the original plan met all legal, scientific, and conservation requirements. The implementation of a scientifically sound, multi-stakeholder adaptive management plan, as outlined in the 2001 Sierra Framework Record of Decision, would provide the appropriate structure for both ecologically and economically sound management and conservation of Sierra Nevada resources.

In addition to our own appeal points, we concur with and incorporate by reference the appeal, statement of reasons, and relief requested by the Sierra Nevada Forest Protection Campaign (SNFPC) in their entirety.

Thank you for your consideration of this appeal.

Sincerely,



Emily B. Roberson, Ph.D.
Senior Policy Analyst

References

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