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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

19 CENTER FOR SIERRA NEVADA
20 CONSERVATION, a non-profit corporation,
21 CENTER FOR BIOLOGICAL DIVERSITY, a
22 non-profit corporation, and FOREST ISSUES
23 GROUP, a non-profit corporation,

24 Plaintiffs,

25 vs.

26 UNITED STATES FOREST SERVICE, an
27 agency of the U.S. Department of Agriculture, and
28 RAMIRO VILLALVAZO, in his official capacity
as Forest Supervisor for the Eldorado National
Forest,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

I. INTRODUCTION

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2 **1.** This is an action for declaratory and injunctive relief challenging the Record of Decision
3 (“ROD”) and the Final Environmental Impact Statement (“FEIS”) issued by the Eldorado National
4 Forest and the United States Forest Service (“USFS”) for the Eldorado National Forest Travel Planning
5 decision challenged herein. Plaintiffs, Center For Sierra Nevada Conservation (“CSNC”), Center For
6 Biological Diversity (“CBD”), and Forest Issues Group (“FIG”) challenge the decisions by the USFS
7 denying their administrative appeals and approving the ROD and FEIS for the Eldorado Travel Planning
8 decision.

9 **2.** This action arises under, and alleges violation of, the National Environmental Policy Act
10 (“NEPA”), 42 U.S.C. § 4321 *et seq.* and its implementing regulations; National Forest Management Act
11 (“NFMA”), 16 U.S.C. § 1600 *et seq.*; the Administrative Procedure Act (“APA”), 5 U.S.C. § 501 *et*
12 *seq.*; Executive Order 11644, as amended by Executive Order 11989; and implementing regulations
13 established pursuant to these federal statutes and executive orders protecting the rights and interests of
14 the Plaintiffs in this matter.

15 **3.** This complaint challenges specifically the following actions: (1) Defendants’ decisions to
16 approve the Eldorado National Forest Public Wheeled Motorized Travel Management ROD (“Eldorado
17 Travel Planning decision”), dated March 31, 2008; (2) the FEIS for the Eldorado Travel Planning
18 decision dated March, 2008, and; (3) the June 27, 2008, denial of Plaintiffs’ administrative appeals of
19 the Eldorado Travel Planning decision. Plaintiffs seek an order directing defendants to withdraw the
20 ROD and FEIS.

21 **4.** Pending Defendants’ compliance with the requirements of NEPA, NFMA, APA, the
22 Executive Orders and the rules and regulations implementing these laws, Plaintiffs may seek temporary,
23 preliminary, or permanent injunctions against federally approved activities related to the decisions
24 complained of herein to forestall irreparable injury to the environment and to Plaintiffs’ interests, and
25 any other such relief as the Court deems appropriate.

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II. JURISDICTION

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2 **5.** Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question), § 2201
3 (declaratory relief), § 2202 (injunctive relief), and 28 U.S.C. § 1346 (United States as a defendant). This
4 cause of action arises under the laws of the United States, including the National Environmental Policy
5 Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*; National Forest Management Act (“NFMA”), 16 U.S.C. §§
6 1600 *et seq.*; the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, and; Executive Order
7 11644, as amended by Executive Order 11989; and implementing regulations established pursuant to
8 these federal statutes and executive orders. An actual, justiciable controversy exists between Plaintiffs
9 and Defendants. The requested relief is proper under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 &
10 706.

11 **III. VENUE and RELATED CASES**

12 **6.** Venue in this court is proper under 28 U.S.C § 1391 or § 1392. This case is properly
13 filed in the Eastern District of California. The actions at issue, the approval of Record of Decision
14 (“ROD”) and issuance of a Final Environmental Impact Statement (“FEIS”), were developed and issued
15 by Defendants in this judicial district. Additionally, the property subject to these decisions is located in
16 this judicial district. Venue therefore properly vests in this district.

17 **7.** This case is connected and related to *Center for Sierra Nevada, et al. vs. John Berry,*
18 *Eldorado National Forest Supervisor, et. al.,* CIV-S-02-0325 LKK/JFM, United States District Court,
19 Eastern District of California, and the agency actions at issue originated from the Order dated Aug. 16,
20 2005, of the Honorable Lawrence K. Karlton in that matter.

21 **8.** This case is also connected and related to *Public Lands For The People, et al. vs. United*
22 *States Department Of Agriculture, et. al.,* CIV-S-09-1750 LKK/KJM, United States District Court,
23 Eastern District of California, which is currently pending before the Honorable Lawrence K. Karlton.

24 **IV. PARTIES**

25 **9.** Plaintiff CENTER FOR SIERRA NEVADA CONSERVATION (“CSNC”) is a non-
26 profit corporation organized in 1986 and headquartered in Georgetown, California. CSNC and its
27 members have a long-standing interest in protecting the biodiversity, wildlands, ecosystem values, and
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1 long-term sustainability of natural resources on private and public lands in the vicinity of the Eldorado
2 National Forest. The CSNC and its members regularly use and will continue to use the trails and other
3 areas within the Eldorado National Forest – including the specific trails and adjacent areas at issue in
4 this Complaint – for recreational and aesthetic pursuits, including, but not limited to, fishing, hiking,
5 hunting, wildlife appreciation, nature observation, photography, aesthetic enjoyment, and spiritual
6 rejuvenation. The degraded conditions of the Eldorado National Forest are a detriment to achieving the
7 group’s goal of protection and restoration, and the its members and staff continue to be injured by the
8 mismanagement of the Eldorado National Forest challenged in this action. These injuries would be
9 redressed by the relief sought.

10 **10.** Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“CBD”) is a non-profit
11 corporation with offices with offices in San Francisco, Los Angeles, and Joshua Tree, California;
12 Oregon; Arizona; New Mexico; and Washington, D.C. CBD is actively involved in species and habitat
13 protection issues throughout North America, and has over 40,000 members including many members
14 who reside and recreate in California. One of the CBD's primary missions is to protect and restore
15 habitat and populations of imperiled species throughout western North America. The group’s members
16 and staff include individuals who visit the Eldorado National Forest and have biological, health,
17 educational, scientific research, spiritual and aesthetic interests in the Sierra Nevada forest ecosystems
18 and the species and habitats affected by the decision at issue and intend to continue to do so in the
19 future. CBD's members and staff regularly use and intend to continue to use lands throughout the Sierra
20 Nevada, including the Eldorado National Forest, as well as the rivers, streams and other waters found
21 therein, for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational
22 activities. CBD's members and staff have researched, studied, observed, and sought protection for many
23 imperiled species, including federally listed threatened and endangered species that live in the Sierra
24 Nevada and in the Eldorado National Forest. CBD’s members and staff have and continue to derive
25 scientific, recreational, educational, conservation, and aesthetic benefits from the continued existence of
26 these imperiled species in the wild and the preservation of the ecosystems upon which they depend. The
27 degraded conditions of the Eldorado National Forest are a detriment to achieving the group's goal of
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1 protection and restoration, and the its members and staff continue to be injured by the mismanagement
2 of the Eldorado National Forest challenged in this action. These injuries would be redressed by the relief
3 sought.

4 **11.** Plaintiff FOREST ISSUES GROUP (“FIG”) is a non-profit corporation that focuses its
5 activities on the public lands and forests of the Sierra Nevada region. This work involves review of U.S.
6 Forest Service projects for environmental conformance to NEPA and the 2001 Sierra Nevada Forest
7 Plan Amendments, including on-the-ground review of road/trail use, vegetation impacts and specific
8 trees marked for sale. The group is particularly concerned with how Forest Service management of
9 timber sales and recreation cumulatively impact the forests of the Sierra Nevada region. FIG performs
10 analysis of the need for roads and trails for access to these projects and private property. Protection of
11 North/South wildlife corridors are of a special concern. FIG has done extensive GIS mapping analysis of
12 both private and public lands to determine cumulative impacts of Forest Service and industrial
13 corporation projects. This checkerboard analysis allows us to provide support for specific land
14 acquisitions in the Tahoe and El Dorado National Forests using the federal Land and Water
15 Conservation Fund program. FIG members have hiked in lands adjacent to the Granite Chief wilderness
16 to determine viability of the extension for this wilderness in the Tahoe/El Dorado National Forests. FIG
17 and its members regularly use and will continue to use the trails and other areas within the Eldorado
18 National Forest – including the specific trails and adjacent areas at issue in this Complaint – for
19 recreational and aesthetic pursuits, including, but not limited to, fishing, hiking, hunting, wildlife
20 appreciation, nature observation, photography, aesthetic enjoyment, and spiritual rejuvenation. The
21 degraded conditions of the Eldorado National Forest are a detriment to achieving the group’s goal of
22 protection and restoration, and the its members and staff continue to be injured by the mismanagement
23 of the Eldorado National Forest challenged in this action. These injuries would be redressed by the relief
24 sought.

25 **12.** This suit is brought by CSNC, CBD and FIG on behalf of themselves and their adversely
26 affected members and staff (collectively Plaintiffs). Plaintiffs and their members’ present and future
27 intended use of the Eldorado National Forest and the waters therein is and will be directly and adversely
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1 affected by the decisions, actions, and failures to act alleged in this Complaint. Those adverse effects
2 include, but are not limited to: (1) disruption of their recreation experiences; (2) reduction and
3 impairment of recreation opportunities; (3) impacts to native plants and wildlife and their habitats within
4 the Eldorado National Forest; (4) impacts to riparian areas, wet meadows, and water quality; and (5)
5 impaired aesthetic value of trails and other areas caused by USFS' malfeasance and nonfeasance in
6 managing ORV use in the Eldorado National Forest. The ongoing injuries caused by Defendants' failure
7 to follow mandatory procedures in designating and reviewing off road vehicle ("ORV") routes include,
8 but are not limited to, increased water, noise and air pollution in the Eldorado National Forest and
9 surrounding environs, degradation and impairment of the Forest landscape, disruption of wildlife,
10 destruction of native plants, destruction of soil structure and quality, increased user conflicts, and loss of
11 opportunities for solitude and nature appreciation. In addition, Plaintiffs and their members have an
12 interest in ensuring that the Forest Service complies with all applicable laws, regulations, and
13 procedures pertaining to the management of public lands.

14 **13.** Plaintiffs and their members use the Eldorado National Forest lands and the waters
15 therein that will be managed under the challenged ROD for recreational, scientific, educational,
16 aesthetic, and commercial purposes and intend to continue to do so in the future. Plaintiffs and their
17 members derive recreational, scientific, educational, aesthetic, and commercial benefits from the
18 Eldorado National Forest lands through fish and wildlife observation, hiking, study, photography,
19 recreational boating and rafting, and recreational fishing.

20 **14.** The Record of Decision at issue herein approves motorized use and activities that will
21 significantly degrade the natural values currently enjoyed by Plaintiffs and their members.

22 **15.** The decision approving the challenged travel plan creates an actual and imminent
23 infringement of Plaintiffs' interests.

24 **16.** The decision approving the challenged travel plan, and its imminent harm to Plaintiffs, is
25 traceable directly to Defendants' actions.

26 **17.** The aesthetic, conservation, recreational, commercial, scientific, educational, and
27 procedural interests of plaintiffs and their respective staff and members described above have been, are
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1 being, and, unless the relief prayed for herein is granted, will continue to be adversely affected
2 and irreparably injured by defendants' failure to comply with the law as described below. Plaintiffs have
3 no adequate remedy at law.

4 **18.** Because Defendants' actions approving the challenged travel plan violate several
5 procedural and substantive laws, a favorable decision by this Court will redress the actual and imminent
6 injury to the plaintiffs.

7 **19.** Plaintiffs filed comments and appeals with USFS during the administrative process
8 culminating in the issuance of the FEIS and ROD challenged herein. The administrative appeals were
9 denied. Plaintiffs have exhausted their administrative remedies and have no further adequate remedy at
10 law.

11 **20.** Defendant UNITED STATES FOREST SERVICE ("USFS") is an agency of the United
12 States Department of Agriculture. The USFS is responsible for the administration and management of
13 the federal lands subject to this action, including implementation of NEPA, NFMA, the APA, the
14 Executive Orders and the various laws and policies protecting the rights and interests of the Plaintiffs in
15 this matter.

16 **21.** Defendant RAMIRO VILLALVAZO is the Forest Supervisor for the Eldorado National
17 Forest. In that capacity, he is directly responsible for properly managing vehicle and trail use in the
18 Forest and ensuring that ORV route designation and use in the Forest complies with the Eldorado Forest
19 Plan and all other applicable laws. He officially resides in Placerville, California. Defendant Villalvazo
20 is sued in his official capacity.

21 **V. LEGAL BACKGROUND**

22 **22.** On February 8, 1972, President Richard Nixon signed Executive Order 11644 – "Use of
23 off-road vehicles on the public lands."

24 **23.** Executive Order 11644, in its preface, explains that:

25 The widespread use of [off-road] vehicles on the public lands – often for
26 legitimate purposes but also in frequent conflict with wise land and resource
27 management practices, environmental values, and other types of recreational
28 activity – has demonstrated the need for a unified Federal policy toward the use of
such vehicles on the public lands.

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2 **24.** Section 3 of Executive Order 11644 mandates that the Forest Service designate “specific
3 areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in
4 which the use of off-road vehicles may not be permitted....”

5 **25.** Section 3 of Executive Order further mandates that agency-specific off-road vehicle
6 regulations “shall be in accordance with” a series of conservation-oriented designation criteria which
7 obligate the Forest Service to “minimize” adverse impacts to forest resources and “minimize conflicts”
8 between off-road vehicle use and other forest users.

9 **26.** On May 24, 1977, President James Carter amended Executive Order 11644, adding
10 Section 9. Section 9 obligates the Forest Service to “immediately close” areas or trails “causing
11 considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic
12 resources of particular areas or trails of the public lands” and to keep such areas or trails closed “until
13 such time” that the Forest Service “determines that such adverse effects have been eliminated and that
14 measures have been implemented to prevent future recurrence.”

15 **27.** On November 9, 2005, the Forest Service published a “Travel Management Rule”
16 (“TMR”) to “implement” Executive Order 11644, as amended by Executive Order 11989. 70 Fed. Reg.
17 68264 (Nov. 9, 2005). As noted in the Final Rule:

18 These Executive orders direct Federal agencies to ensure that the use of off-road
19 vehicles on public lands will be controlled and directed so as to protect the
20 resources of those lands, to promote the safety of all users of those lands, and to
21 minimize conflicts among the various uses of those lands.

22 **28.** The TMR was promulgated not only to implement Executive Order 11644, as amended
23 by Executive Order 11989, but to also revise outdated regulations. As the TMR explains:

24 Current regulations at 36 CFR part 295, which provide for allowing, restricting,
25 or prohibiting motor vehicle travel, were developed when OHVs were less widely
26 available, less powerful, and less capable of cross-country travel than today’s
27 models. The growing popularity and capabilities of OHVs demand new
28 regulations, so that the Forest Service can continue to provide these opportunities
while sustaining the health of [National Forest System] lands and resources.

70 Fed. Reg. 68264, 68265.

1 **29.** The TMR mandates that each National Forest presumptively eliminate cross-country
2 motor vehicle use and generally restrict motor vehicle use to designated roads and trails. As explained
3 by the TMR, “the magnitude and intensity of motor vehicle use have increased to the point that the
4 intent of [Executive Order] 11644 and [Executive Order] 11989 cannot be met while still allowing
5 unrestricted cross-country travel.” 70 Fed. Reg. 68264, 68265.

6 **30.** These regulations provide in part that: “[m]otor vehicle use on National Forest System
7 roads, on National Forest System trails, and in areas on National Forest System lands shall be designated
8 by vehicle class and, if appropriate, by time of year by the responsible official on administrative units or
9 Ranger Districts of the National Forest System.” 36 C.F.R. § 212.51(a). In making planning decisions
10 regarding ORV use in the National Forests, the Forest Service:

11 shall consider effects on National Forest System natural and cultural resources, public
12 safety, provision of recreational opportunities, access needs, conflicts among uses of
13 National Forest System lands, the need for maintenance and administration of roads,
14 trails, and areas that would arise if the uses under consideration are designated; and the
availability of resources for that maintenance and administration.

15 36 C.F.R. § 212.55(a).

16 **31.** These regulations also require the Forest Service to identify the minimum road system
17 needed for the management of the national forest. Specifically, the regulations require each forest to

18 identify the minimum road system needed for safe and efficient travel and for
19 administration, utilization, and protection of National Forest System lands. In
20 determining the minimum road system, the responsible official must incorporate a
21 science-based roads analysis at the appropriate scale and, to the degree practicable,
22 involve a broad spectrum of interested and affected citizens, other state and federal
23 agencies, and tribal governments. The minimum system is the road system determined to
be needed to meet resource and other management objectives adopted in the relevant land
and resource management plan (36 CFR part 219), to meet applicable statutory and
regulatory requirements, to reflect long-term funding expectations, to ensure that the
identified system minimizes adverse environmental impacts associated with road
construction, reconstruction, decommissioning, and maintenance.

24 36 C.F.R. § 212.5(b). In this case, the Forest Service failed and refused to undertake the mandatory
25 minimum road system analysis, 36 C.F.R. § 212.5(b) (also referred to as “subpart A”).

26 **32.** These regulations further require that the Forest Service designate ORV trails to
27 minimize damage to soils, watersheds, and other resources; to minimize disruption of wildlife and their
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1 habitat; and to minimize conflicts with other recreational uses. 36 C.F.R. § 212.55(b)(1)-(4).

2 Additionally, the Agency must consider “[c]ompatibility of motor vehicle use with existing conditions
3 in populated areas, taking into account sound, emissions, and other factors.” *Id.* at § 212.55(b)(5).

4 **33.** The USFS’ regulations also require that the Forest Service provide public notice and
5 allow for public involvement in designating or revising use of trails and off-road areas. 36 C.F.R. §
6 212.52.

7 **34.** The Forest Service is required to monitor ORV use on national forest lands. 36 C.F.R. §
8 212.57. If such monitoring reveals considerable adverse effects to other resources, the Forest Service
9 must close or restrict use until the problem is resolved to prevent recurrence. 36 C.F.R. § 212.52(2).

10 **35.** The Forest Service’s ORV trail designation and use regulations were enacted through
11 formal notice-and-comment rule making procedures, and codify and clarify the two earlier Executive
12 Orders designed to control and minimize the adverse effects of ORV use on public lands. Executive
13 Order 11644, signed by President Nixon in 1972, required federal agencies – including the Forest
14 Service – to designate trails for ORV use in limited areas; to mark areas and trails open to ORV use; to
15 provide the public with maps depicting such classifications and designations; to minimize the effects of
16 ORV use on specifically identified natural resources; and to monitor ORV impacts on public lands. Five
17 years later, in 1977, President Carter signed Executive Order 11989, giving federal agencies additional
18 direction and authority to control ORV use on public lands. Executive Order 11989 empowered federal
19 agencies to adopt a "closed, unless signed open" policy for ORV use, and to immediately close to ORV
20 use public lands suffering from ORV damage.

21 **VI. FACTUAL BACKGROUND**

22 **36.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
23 paragraphs.

24 **37.** The Eldorado National Forest (“ENF” or “Forest”), located in the heart of the Sierra
25 Nevada mountain range, is situated in central California, east of Sacramento and west of Lake Tahoe.
26 Parts of Alpine, Amador, Eldorado, and Placer Counties lie within the ENF. The Forest contains a total
27 of over 789,994 acres of forestlands of diverse topography, soil type, vegetation, and habitat type.

1 **38.** The Forest is located just one hour from the metropolitan area of Sacramento with a
2 population of over one million people, and two to three hours driving time from the San Francisco Bay
3 area with a population of over six million, the USFS has classified it as an Urban National Forest.

4 **39.** Located within the ENF are two federally-designated wilderness areas – the Desolation
5 and Mokelumne Wilderness Areas.

6 **40.** The Forest also provides habitat for numerous endangered, threatened, and sensitive
7 wildlife species, species of concern, and management indicator species, including the Bald eagle,
8 California red-legged frog, California spotted owl, Great gray owl, Northern goshawk, Willow
9 flycatcher, Pacific fisher, American marten, Sierra Nevada red fox, California wolverine, Foothill
10 yellow-legged frog, Mountain yellow-legged frog, Northwestern pond turtle, Yosemite toad, Mule deer,
11 and assorted species of trout. A variety of listed, sensitive, and rare plant species can likewise be found
12 within the Eldorado National Forest. The Forest includes portions of the Pacific Deer Herd winter range,
13 including critical winter range, and summer habitat, including fawning areas, for the Pacific, Blue
14 Canyon and Grizzly deer herds .

15 **41.** The Forest contains essential recovery habitat for the threatened California red-legged
16 frog which was listed as threatened under the Endangered Species Act (“ESA”) in 1996. 61 Fed. Reg.
17 25813 (May 23, 1996). In the final listing rule, the Fish and Wildlife Service noted that urbanization,
18 agriculture, and many other land-disturbing activities have caused substantial changes in the red-legged
19 frog habitat in California and noted that preservation and proper management of open space in riparian
20 areas is a “fundamental requirement in the survival and recovery of the California red-legged frog.” *Id.*
21 at 25819. In 2002, the Fish and Wildlife Service adopted the Recovery Plan for the California Red
22 Legged Frog which identified both “recovery unit” boundaries and 35 “core areas” for the recovery of
23 the species including 2 core areas within the Eldorado National Forest—the Middle Fork of the
24 American River and the Cosumnes River-South Fork of the American River. Recovery Plan at 51
25 (Figure 12), 54 (Table 5). The Recovery Plan provides specific recommendations to reduce impacts to
26 the species and its habitat, for example, by excluding all vehicular traffic from riparian and other
27 wetland areas “unless adequate stream crossings exist to prevent sedimentation.” The Recovery Plan
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1 also recommends permanent and seasonal closures be used to manage habitat impacts and the use of
2 sediment monitoring and development and maintenance of siltation ponds as potential tools for
3 maintaining and improving habitat in impacted areas. None of these measures were adopted by the
4 Forest Service to mitigate impacts of adopted plan to the California red-legged frog or other riparian
5 species affected by this decision.

6 **42.** At least two Federal candidate species are found within the Eldorado NF—the Yosemite
7 toad (*Bufo canorus*) and the Sierra Nevada mountain yellow-legged frog (*Rana sierrea* formerly *Rana*
8 *mucosa*).¹ The Fish and Wildlife Service has found that both of these species warrant listing. 67 Fed.
9 Reg. 75834 (December 10, 2002; Yosemite toad); 68 Fed. Reg. 2283 (January 16, 2003; Mountain
10 yellow legged frog in Sierra Nevada Mountains). The ESA and the Forest Service’s own guidance
11 require protection of these candidate species and their habitats in order to promote recovery so that
12 listing may not be necessary in the future. *See, e.g.*, 36 C.F.R. § 241.1 (cooperation in protection of
13 wildlife); 16 U.S.C. § 1533(b)(3)(C)(Secretary shall monitor candidate species’ status and act to prevent
14 significant risk to the well being of any such species); Forest Service Manual (“FSM”) § 2670.12(3) (the
15 Forest Service shall “[a]void actions ‘which may cause a species to become threatened or
16 endangered.’”), FSM § 2670.32(5) (the Agency should “[e]stablish objectives for federal candidate
17 species, in cooperation with the FWS or NOAA Fisheries and the states.”). The Forest Service admits
18 that the route designation in the chosen alternative (Modified B) may adversely impact the Mountain
19 yellow-legged frog (FEIS at 3-189 to 3-191) and Yosemite toad (FEIS at 3-191 to 3-193) as well as
20 other riparian dependent species. The Forest Service determined that the chosen alternative “may affect
21 individuals” of both candidate species but concluded, without explanation, that the chosen alternative “is
22 not likely to cause a trend towards Federal listing or a loss of viability” for each of these candidate
23 species. However, the chosen alternative fails to provide sufficient protections or mitigations for
24 impacts to either of these candidate species and their habitats, and thus, fails to avoid actions which may
25 cause further decline.

26 _____
27 ¹ The mountain yellow-legged frog was recently redescribed as two distinct species: the southern
28 mountain yellow-legged frog (*R. muscosa*) and the Sierra Nevada mountain yellow-legged frog (*R.*
sierrae) (Vredenburg *et al.*, 2007)

1 **43.** The elevation of the ENF ranges from 1,000 feet in the foothills to more than 10,000 feet
2 above sea level along the Sierra crest. The mountainous topography is broken by steep canyons of the
3 Mokelumne, Consumnes, American, and Rubicon Rivers. Plateaus of generally moderate relief are
4 located between these steep canyons.

5 **44.** Besides varying greatly in topography, the Forest contains extremely diverse soils and
6 vegetation types.

7 **45.** Water is a major resource on the Eldorado National Forest. The average acre on the forest
8 receives about 56 inches of precipitation annually. The surface water of Eldorado National Forest is of
9 excellent quality all year around and yields approximately 1.4 million acre-feet annually. Numerous
10 streams, natural lakes, and man-made reservoirs provide key features for a substantial share of all
11 recreation activities. The Forest contains 611 miles of fishable streams in the four major river systems.

12 **46.** Roads on the Eldorado NF are a primary source of erosion and sedimentation as
13 compared to other management activities.

14 **47.** As used in this Complaint, “off-road vehicle” or “ORV” is the generic term used to
15 describe motorized vehicles equipped for travel off of improved and maintained roads. Such vehicles
16 include high-clearance jeeps and trucks, cross-country motorcycles, dune buggies, snowmobiles, off-
17 highway vehicles (“OHV”), and all-terrain vehicles (“ATVs”).

18 **48.** ORV’s have significant, negative impacts on practically every aspect of the natural
19 environment wherever they are used. For example, ORV’s degrade air and water quality; impair others’
20 ability to enjoy natural sights, sounds and smells; and create safety hazards – for ORV users themselves
21 and others. Most natural areas sustain damage due to the impacts of ORVs. These impacts include, but
22 are not limited to, damage to soils and vegetation; harm to wildlife and wildlife habitat; degraded water
23 quality and riparian health; and harm to cultural resources. Former Chief of the USFS, Dale Bosworth,
24 described the harm ORV’s can inflict on Forest Resources: “Each year, the national forests and
25 grasslands get hundreds of miles of unauthorized roads and trails due to repeated cross-country use.
26 We’re seeing more and more erosion, water degradation, and habitat destruction. We’re seeing more and
27 more conflicts between users.” Dale Bosworth, “We Need a New National Debate,” Presentation to
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1 Izaak Walton League, 81st Annual Convention, July 17, 2003.

2 **49.** On or about January 6, 1989, Paul F. Barker, the Regional Forester for the Pacific
3 Southwest Region of the USFS, signed a Record of Decision (“ROD”) approving the Eldorado National
4 Forest Land and Resource Management Plan (“LRMP” or “Forest Plan”). An accompanying
5 programmatic Final Environmental Impact Statement (“FEIS”) was prepared to analyze the
6 environmental impacts of the Forest Plan.

7 **50.** Among other things, the Forest Plan contains management policies, standards, and
8 guidelines for ORV use within the Forest. The overall management direction in the Forest Plan is to
9 restrict ORV use in the Eldorado National Forest to designated roads and trails on a majority of the
10 Forest.

11 **51.** The Forest Plan establishes standards and guidelines regarding ORV use, in part, to
12 protect and maintain the Forest’s threatened, endangered, and sensitive species.

13 **52.** In 2001, the Forest Plan was amended to incorporate the Sierra Nevada Forest Plan
14 Amendment (SNFPA). *See* Sierra Nevada Forest Plan Amendment EIS and Record of Decision (USDA
15 Forest Service 2001) (SNFPA).

16 **53.** Pursuant to the Aug. 16, 2005 order of the Honorable Lawrence K. Karlton in *Center for*
17 *Sierra Nevada, et al. vs. John Berry, Eldorado National Forest Supervisor et. al.*, CIV-S-02-0325
18 LKK/JFM, United States District Court, Eastern District of California, on October 26, 2005, the Forest
19 published in the Federal Register a Notice of Intent (“NOI”) initiating the planning process which
20 produced the decision challenged herein.

21 **54.** Judge Karlton’s order expressly required the Forest’s travel planning process “to be
22 consistent with regional guidelines for OHV route designation, with new national OHV regulations
23 which the Forest Service expects will be promulgated later this year, and with the requirements of the
24 National Environmental Policy Act and the National Forest Management Act.”

25 **55.** After allowing for comment by the public — including Plaintiffs — in March of 2008,
26 the ENF issued the FEIS and ROD challenged herein.

1 **56.** The Forest chose the action alternative (Modified B) with the highest number of vehicle
2 miles (1,847) — and the most stream crossings — of all considered, despite the Forest’s
3 acknowledgement that it cannot afford to maintain them. The alternative has no provision for physically
4 closing or restoring undesignated routes, or for providing the required level of law enforcement.
5 Contrary to established, and growing, evidence, the relied upon mitigation options — “user education”
6 and signage as opposed to route closure and increased enforcement — will not support the conclusion
7 that the public will not continue to use (and expand) the wide system of use-created (illegal) routes. As
8 noted above, the Forest also failed and refused to undertake the mandatory minimum road system
9 analysis. 36 C.F.R. § 212.5(b).

10 **57.** The FEIS is almost completely lacking in site-specific analysis; relying primarily on GIS
11 layers of inappropriate scale for a project-level analysis. Indeed, in one example, the geologic review
12 completely omits consideration of the selected alternative. Also, the range of the action alternatives
13 considered all skew to a narrow range of high-usage and with little, if any, consideration of material
14 reduction of motorized use on the Forest.

15 **58.** The ROD contradicts conditions imposed in Biological Evaluations for aquatic species to
16 ensure consistency with Riparian Conservation Objectives imposed by the Sierra Nevada Forest Plan
17 Amendments that there be no motorized routes crossing meadows.

18 **59.** The FEIS and ROD contradict Judge Karlton's August 16, 2005, order in *Center for*
19 *Sierra Nevada, et al. vs. John Berry, Eldorado National Forest Supervisor, et. al.*, CIV-S-02-0325
20 LKK/JFM, that expressly required the Forest's travel planning process challenged herein “to be
21 consistent with regional guidelines for OHV route designation, with new national OHV regulations
22 which the Forest Service expects will be promulgated later this year, and with the requirements of the
23 National Environmental Policy Act and the National Forest Management Act.”

24 **60.** Plaintiffs timely submitted administrative appeals of the ROD and said appeals were
25 denied by Defendants on June 27, 2008.

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FIRST CLAIM FOR RELIEF

The FEIS Lacks Site-Specific Analysis and Therefore Violates NEPA

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3 **61.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
4 paragraphs.

5 **62.** The National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, *et seq.*,
6 establishes a national policy to “prevent or eliminate damage to the environment and biosphere.” NEPA
7 represents “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. NEPA
8 recognizes “the critical importance of restoring and maintaining environmental quality,” declares that
9 the Federal government has a continuing responsibility to use “all practicable means” to minimize
10 environmental degradation, and directs that “to the fullest extent possible...the policies, regulations and
11 public laws of the United States shall be interpreted and administered in accordance with the policies set
12 forth in this chapter.” 42 U.S.C. §§ 4331(a) and 4332(1). NEPA further recognizes the right of each
13 person to enjoy a healthful environment. 42 U.S.C. § 4331(c).

14 **63.** The ENF, pursuant to NEPA and NEPA’s implementing regulations, must take a hard
15 look at the direct and indirect environmental consequences of a proposed action to the human
16 environment. *See* 42 U.S.C. § 4332(2)(C)(i); 40 C.F.R. §§ 1502.16, 1508.8, and 1508.14.

17 **64.** The Council for Environmental Quality (“CEQ”) NEPA Regulations (*see* 40 C.F.R. §
18 1501.2), which are binding on the Forest Service, establish a complex system to ensure that the
19 government considers the environmental impacts of its actions *before* taking those actions. This system
20 requires notice to, and comments from an informed public and other affected parties who provide the
21 government with information about the potential environmental impacts the actions may have.

22 **65.** NEPA requires “responsible [federal] officials” to prepare an Environmental Impact
23 Statement (“EIS”) on proposals for legislation and “other major Federal actions significantly affecting
24 the quality of the human environment.” Under NEPA, an agency must prepare an EIS when an action
25 may have a significant environmental effect. 42 U.S.C. § 4332.

26 **66.** When an agency undertakes a major Federal action that constitutes an irretrievable
27 commitment of resources, it is required to prepare a detailed EIS relating to its intention to act upon
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1 each particular site that will be impacted. In addition, the EIS must “succinctly describe the environment
2 of the area(s) to be affected by the alternatives under consideration.” 40 C.F.R. § 1502.15. Furthermore,
3 the EIS must describe the direct and indirect environmental effects of the regulation. 40 C.F.R. § 1508.8.

4 **67.** The purpose of an EIS is to ensure that decision-makers and citizens are provided
5 environmental information “before decisions are made and before actions are taken.” 40 C.F.R. §
6 1500.1(b)-(c). An EIS must “provide full and fair discussion of significant environmental impacts.” *Id.* §
7 1502.1.

8 **68.** The designation of any road, trail or area for ORV use is a project level decision and
9 requires site-specific analysis under NEPA. Instead, the ENF has produced a programmatic analysis that
10 fails to provide the required site-specific analysis and is, in fact, even less specific than the Landscape-
11 level analyses prepared for some watersheds. The FEIS lacks the site-specific analysis required by
12 NEPA at the project level.

13 **69.** According to the FEIS, “the primary data source used for this analysis was existing GIS
14 data, collected from past surveys and inventories.” FEIS 3-1. However, it is clear from the analysis
15 throughout Chapter 3, the GIS data was of an inappropriate scale to provide the site-specific analysis
16 required. Data sheets were not completed for all routes designated and many routes were, in fact,
17 designated despite recommendations to the contrary, and without explanation. Another data source
18 noted in the FEIS were route evaluation forms. While Route Evaluation forms were completed for non-
19 system routes and Maintenance Level 1 (ML-1) roads proposed for change to ML-2, existing ML-2
20 roads were not evaluated, despite the knowledge that ML-2 roads are causing direct and indirect, as well
21 as cumulative impacts on water quality, wildlife and non-motorized recreationists. FEIS 3-1.

22 **70.** Similarly, the Soil Resources section was based not on site-specific analysis of routes,
23 but rather:

24 [U]pon a comparison of seasonal closures during wet weather period and the following
25 information collected from the GIS database: soils susceptible to gully erosion, total miles
26 of routes open by alternative, and condition of native surfaced roads based on field
27 assessments. Since sustained, steep gradients are also an indicator of the risk of erosion a
28 query of routes with gradients of 15 percent or greater and 200 feet or more in length was
attempted. *It was unsuccessful due to limitations in the data base.*

FEIS 3-26 (emphasis added).

1 **71.** The Forest’s failure to generate site specific data based on admitted limitations of data
2 does not discharge NEPA’s mandate. The Forest admitted that that the information failure would
3 directly, and adversely, affect the way that it manages its transportation system and enforces motorized
4 use:

5 Not designating routes in poor condition would remove from the system routes that
6 require high maintenance. This would allow more effective use of limited maintenance
7 resources. *However, the condition surveys did not specifically address causes, so some
8 poor condition ratings could be due to a lack of maintenance, and not necessarily due to
9 poor location.*

8 FEIS 3-29 (emphasis added.)

9 **72.** There is no mention of the selected alternative — Modified B — in the Geology section
10 of “Affected Environment” section (chapter 3) of the FEIS. There are tables addressing the comparable
11 impacts and hazards of all other alternatives, but the one the Forest chose to implement was not
12 addressed.

13 **73.** The FEIS unlawfully concludes that “[t]here are no direct, indirect, or cumulative effects
14 from any of the alternatives *because geologic hazards relative to roads and trails evaluated at this scale
15 (1:24000) are not measurable.*” FEIS 3-20 (emphasis added). The fact that effects are not measurable at
16 the macro scale is not determinative that no such effects are present.

17 **74.** The FEIS fails to provide site specific analysis of the direct, indirect, or cumulative
18 impacts of the existing road system, of the increased use of the existing road system to achieve the goals
19 of challenged travel plan, upon stream temperature, sediment delivery, flow regime, water quality,
20 aquatic species, and aquatic habitat.

21 **75.** The Forest’s failure to adequately consider site specific analysis of the direct, indirect, or
22 cumulative impacts to the environment, in particular to aquatic species, habitat, and water resources, is
23 therefore arbitrary, capricious, an abuse of discretion, in excess of statutory authority and limitations,
24 short of statutory right, and not in accordance with the law and procedures required by law. 5 U.S.C. §§
25 706(2)(A), (C), (D).

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SECOND CLAIM FOR RELIEF

**The USFS's Failure to Consider a
Reasonable Range of Alternatives Violates NEPA**

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4 **76.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
5 paragraphs.

6 **77.** Defendants, pursuant to NEPA, must consider “alternatives to the proposed action” and
7 “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal
8 which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. §§
9 4332(2)(C)(iii), 4332(E).

10 **78.** In considering alternatives, the Forest Service must “[r]igorously explore and objectively
11 evaluate all reasonable alternatives” to a proposed action including a “no action” alternative. 40 C.F.R. §
12 1502.14(a), (d).

13 **79.** Alternatives must be presented in a “comparative form ... thus sharply defining the issues
14 and providing a clear basis for choice among options by the decision maker and the public.” 40 C.F.R. §
15 1502.14.

16 **80.** Defendants violated NEPA and NEPA’s implementing regulations because they failed to
17 consider a reasonable range of alternatives that would have protected the environment and minimized
18 the harm caused by implementation of the provisions of the challenged travel plan. The range of
19 alternatives analyzed is extremely narrow; all action alternatives provide high levels of vehicle access
20 on native surfaced roads.

21 **81.** Moreover, the FEIS should have analyzed a range of alternatives including at least one
22 alternative that included physical closure and restoration of undesignated routes and an alternative with
23 a lower level of vehicle access on native surfaced roads.

24 **82.** The USFS’s failure to properly define the scope of the NEPA analysis, the range of
25 alternatives within the NEPA process is therefore arbitrary, capricious, an abuse of discretion, in excess
26 of statutory authority and limitations, short of statutory right, and not in accordance with the law and
27 procedures required by law. 5 U.S.C. §§ 706(2)(A), (C), (D).

THIRD CLAIM FOR RELIEF

**Defendants’ Failure to Ensure the Scientific Integrity of the
Travel Plan’s FEIS Violates NEPA**

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4 **83.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
5 paragraphs.

6 **84.** NEPA requires federal agencies to consider the environmental consequences of their
7 actions. *See* 42 U.S.C. § 4331 *et seq.* NEPA ensures that the agency will have available, and will
8 carefully consider, detailed information concerning significant environmental impacts; it also guarantees
9 that the relevant information will be made available to the larger public audience that may also play a
10 role in both the decision-making process and implementation of that decision. *Robertson v. Methow*
11 *Valley Citizens Council*, 490 U.S. 332, 349 (1989).

12 **85.** The information presented in an EIS must be of high quality. 40 C.F.R. § 1500.1(b).
13 “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to
14 implementing NEPA.” *Id.*

15 **86.** “Agencies shall insure the professional integrity, including scientific integrity, of the
16 decisions and analysis in environmental impact statements.” 40 C.F.R. § 1502.24. “They shall identify
17 any methodologies used and shall make explicit reference by footnote to the scientific and other sources
18 relied upon for conclusions in the statement.” *Id.*

19 **87.** Defendants are required to ensure the scientific integrity of the discussions in the
20 challenged travel plan FEIS. 40 C.F.R. § 1502.24. The USFS is also required to disclose reliable
21 scientific evidence that contradicts the agency’s analysis. 40 C.F.R. §§ 1502.16(a), 1502.16(b),
22 1508.27(b)(4), 1508.27(b)(5).

23 **88.** NEPA requires an agency to include and respond to all substantive comments received on
24 the Draft EIS, including discussion of any responsible opposing view that was not adequately discussed
25 in the Draft EIS, and indicate the agency’s response to the issues raised. 40 C.F.R. § 1503.4.

26 **89.** If the methodology used in preparing a section of an EIS is questioned, then the agency
27 must, in a substantive and meaningful manner, explain why the particular method was used and why an
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1 alternative methodology is not appropriate. If the agency decides not to respond to a comment, it must
2 cite the sources, authorities, or reasons that support its position. 40 C.F.R. § 1503.4.

3 **90.** The Sierra Nevada Forest Plan Amendments' ("SNFPA") Biological Evaluation ("BE")
4 for aquatic species establishes conditions to ensure consistency with SNFPA's Riparian Conservation
5 Objectives ("RCOs").

6 **91.** The SNFPA aquatic species BE expressly imposes a criteria for consistency with RCO #2
7 of the SNFPA: "Routes do not bisect or go through meadows."

8 **92.** The challenged ROD contemplates locating up to 4.8 miles of 20 separate roads or routes
9 in protected meadow areas, in direct contravention of the BE's proscription.

10 **93.** The FEIS does not adequately explain why challenged travel plan's ROD contradicts
11 conditions imposed in Biological Evaluations for aquatic species to ensure consistency with Riparian
12 Conservation Objectives imposed by the Sierra Nevada Forest Plan Amendments that there be no
13 motorized routes crossing meadows.

14 **94.** Defendants' failure to resolve this conflict was pointed out in specific substantive public
15 comments, but Defendants failed to adequately respond to those comments in the FEIS.

16 **95.** The FEIS makes assertions that are unsupported by any documentation or citation of
17 relevant scientific literature and that are strongly contradicted by existing relevant scientific literature
18 and understanding.

19 **96.** The USFS's failure to insure the scientific integrity of the challenged travel plan FEIS
20 and ROD is therefore arbitrary, capricious, an abuse of discretion, in excess of statutory authority and
21 limitations, short of statutory right, and not in accordance with the law and procedures required by law.
22 5 U.S.C. §§ 706(2)(A), (C), (D).

23 **FOURTH CLAIM FOR RELIEF**

24 **Defendants' Actions Are Inconsistent With The Eldorado Forest Plan**
25 **(As Amended by the Sierra Nevada Forest Plan Amendments) and Thus Violate NFMA**

26 **97.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
27 paragraphs.

1 **98.** NFMA, 16 U.S.C. § 1600, *et seq.*, establishes the statutory framework for management of
2 the National Forest System. The National Forest Management Act requires the Forest Service to develop
3 a Land and Resource Management Plan (“Forest Plan”) for each National Forest, including the Eldorado
4 National Forest. 16 U.S.C. § 1604. The Forest Plan provides for multiple use management of the
5 National Forests including recreation, range, timber, wildlife and fish, and wilderness. 16 U.S.C. §
6 1604(e)(1).

7 **99.** Pursuant to NFMA, all site-specific actions taken within the National Forest must be
8 consistent with the Forest Plan for that given National Forest. 16 U.S.C. § 1604(i).

9 **100.** The Eldorado Forest Plan requires the Forest service to maintain, protect, and, in some
10 instances, restore water quality, soil productivity, terrestrial and aquatic wildlife and plant species and
11 habitats, and riparian conditions.

12 **101.** The Sierra Nevada Forest Plan Amendments’ (“SNFPA”) Biological Evaluation (“BE”)
13 for aquatic species establishes conditions to ensure consistency with SNFPA’s Riparian Conservation
14 Objectives (“RCOs”).

15 **102.** The SNFPA, and its incorporated RCOs, amend the ENF’s Forest Plan.

16 **103.** The SNFPA aquatic species BE expressly imposes a criteria for consistency with RCO #2
17 of the SNFPA: “Routes do not bisect or go through meadows.”

18 **104.** The challenged ROD contemplates locating up to 4.8 miles of 20 separate roads or routes
19 in protected meadow areas, in direct contravention of the BE’s proscription.

20 **105.** The challenged ROD contradicts conditions imposed in Biological Evaluations for
21 aquatic species to ensure consistency with Riparian Conservation Objectives imposed by the Sierra
22 Nevada Forest Plan Amendments that there be no motorized routes crossing meadows.

23 **106.** Defendants’ failure to comport the ROD with the proscriptions of the SNFPA BE doe
24 RCO number 2 is therefore arbitrary, capricious, an abuse of discretion, in excess of statutory authority
25 and limitations, short of statutory right, and not in accordance with the law and procedures required by
26 law. 5 U.S.C. §§ 706(2)(A), (C), (D).

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FIFTH CLAIM FOR RELIEF

**Defendants’ Failure to Undertake a Minimum Road System Analysis
Violates the Travel Management Regulations**

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4 **107.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
5 paragraphs.

6 **108.** The Travel Management Planning regulations require the Forest Service to identify the
7 minimum road system needed for the management of the national forest. 36 C.F.R. § 212.5(b).

8 **109.** The Forest Service failed and refused to undertake the mandatory minimum road system
9 analysis before or concurrently with undertaking the adoption of a site specific route network.

10 **110.** As a result, the Forest Service has failed to identify the minimum road system needed for
11 safe and efficient travel and for administration, utilization, and protection of National Forest System
12 lands as required by the regulations.

13 **111.** Defendants’ failure to comply with the regulations is a violation of law.

14 **112.** Defendants’ failure to undertake the mandatory minimum road system analysis before or
15 concurrently with undertaking the adoption of a site specific route network is therefore arbitrary,
16 capricious, an abuse of discretion, in excess of statutory authority and limitations, short of statutory
17 right, and not in accordance with the law and procedures required by law. 5 U.S.C. §§ 706(2)(A), (C),
18 (D).

19 **SIXTH CLAIM FOR RELIEF**

20 **The FEIS’ Lack of Site-Specific Analysis Violates the Travel Management Regulations**

21 **113.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
22 paragraphs.

23 **114.** The Forest Service’s Travel Management regulations state that the Agency “shall
24 consider effects on the following, with the objective of minimizing: (1) Damage to soil, watershed,
25 vegetation, and other forest resources; (2) Harassment of wildlife and significant disruption of wildlife
26 habitats; (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National
27 Forest System lands or neighboring Federal lands . . .” 36 C.F.R. § 212.55(b).
28

1 **115.** According to the FEIS, “the primary data source used for this analysis was existing GIS
2 data, collected from past surveys and inventories.” FEIS 3-1. However, it is clear from the analysis
3 throughout Chapter 3, the GIS data was of an inappropriate scale to provide the site-specific analysis
4 required. Data sheets were not completed for all routes designated and many routes were, in fact,
5 designated despite recommendations to the contrary, and without explanation. Another data source
6 noted in the FEIS were route evaluation forms. While Route Evaluation forms were completed for non-
7 system routes and Maintenance Level 1 (ML-1) roads proposed for change to ML-2, existing ML-2
8 roads were not evaluated, despite the knowledge that ML-2 roads are causing direct and indirect, as well
9 as cumulative impacts on water quality, wildlife and non-motorized recreationists. FEIS 3-1.

10 **116.** Similarly, the Soil Resources section was based not on site-specific analysis of routes,
11 but rather:

12 [U]pon a comparison of seasonal closures during wet weather period and the following
13 information collected from the GIS database: soils susceptible to gully erosion, total miles
14 of routes open by alternative, and condition of native surfaced roads based on field
15 assessments. Since sustained, steep gradients are also an indicator of the risk of erosion a
16 query of routes with gradients of 15 percent or greater and 200 feet or more in length was
17 attempted. *It was unsuccessful due to limitations in the data base.*

18 FEIS 3-26 (emphasis added).

19 **117.** The Forest’s failure to generate site specific data based on admitted limitations of data
20 does not discharge NEPA’s mandate. The Forest admitted that that the information failure would
21 directly, and adversely, affect the way that it manages its transportation system and enforces motorized
22 use:

23 Not designating routes in poor condition would remove from the system routes that
24 require high maintenance. This would allow more effective use of limited maintenance
25 resources. *However, the condition surveys did not specifically address causes, so some
26 poor condition ratings could be due to a lack of maintenance, and not necessarily due to
27 poor location.*

28 FEIS 3-29 (Emphasis added.)

118. There is no mention of the selected alternative — Modified B — in the Geology section
of “Affected Environment” section (chapter 3) of the FEIS. There are tables addressing the comparable

1 impacts and hazards of all other alternatives, but the one the Forest chose to implement was not
2 addressed.

3 **119.** The FEIS unlawfully concludes that “[t]here are no direct, indirect, or cumulative effects
4 from any of the alternatives *because geologic hazards relative to roads and trails evaluated at this scale*
5 *(1:24000) are not measurable.*” FEIS 3-20 (emphasis added). The fact that effects are not measurable at
6 the macro scale is not determinative that no such effects are present.

7 **120.** The FEIS fails to provide site specific analysis of the direct, indirect, or cumulative
8 impacts of the existing road system, of the increased use of the existing road system to achieve the goals
9 of challenged travel plan, upon stream temperature, sediment delivery, flow regime, water quality,
10 aquatic species, and aquatic habitat.

11 **121.** The Forest’s failure to adequately consider site specific analysis of the direct, indirect, or
12 cumulative impacts to the environment, in particular to aquatic species, habitat, and water resources, did
13 not comply with the mandate imposed by 36 C.F.R. § 212.55(b) and is therefore arbitrary, capricious, an
14 abuse of discretion, in excess of statutory authority and limitations, short of statutory right, and not in
15 accordance with the law and procedures required by law. 5 U.S.C. §§ 706(2)(A), (C), (D).

16 SEVENTH CLAIM FOR RELIEF

17 Defendants’ Failure to Demonstrate the Travel Plan’s Compliance 18 With Other Laws Violates NEPA

19 **122.** Plaintiffs hereby incorporate by this reference the allegations presented in all preceding
20 paragraphs.

21 **123.** NEPA requires that USFS’s decisions comply with other laws, including Executive
22 Orders, the TMR and the Endangered Species Act, (“ESA”), 16 U.S.C. § 1531 *et seq.*, 40 C.F.R. §§
23 1500.2(a), 1502.2(d), 1502.25(a)

24 **124.** The ESA requires federal agencies to utilize their full authority to conserve threatened
25 and endangered species. 16 U.S.C. § 1536(a)(1). The Forest Service is also required to avoid actions
26 that may cause species to become threatened or endangered. FSM § 2670.12(3).

27 **125.** Defendants failed to use its full authority and discretion to advance species conservation,
28 including by failing to include a proactive program to meaningfully reduce the large and widespread

1 impacts of its roads and their use on listed species. Instead, the ROD continece's these adverse
2 impacts.

3 **126.** Executive Order 11644 and the TMR regulations require that the Forest Service designate
4 ORV trails and usage areas to minimize damage to soils, watersheds, and other resources; to minimize
5 disruption of wildlife and their habitat; and to minimize conflicts with other recreational uses. E.O.
6 11644 § 3; 36 C.F.R. § 212.55(b)(1)-(4). Additionally, the Agency must consider “[c]ompatibility of
7 motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and
8 other factors.” *Id.* at § 212.55(b)(5).

9 **127.** Defendants’ FEIS and ROD unlawfully elevate a level of motorized use on the ENF over
10 the other multiple use goals of minimizing damage to soils, watersheds, and other resources; minimizing
11 disruption of wildlife and their habitat; and minimizing conflicts with other recreational uses. In doing
12 so the Forest Service also failed avoid impacts to wildlife that may cause them to become threatened or
13 endangered.

14 **128.** Defendants’ failure to ensure that the challenged travel plan FEIS and ROD comply with
15 other laws is therefore arbitrary, capricious, an abuse of discretion, in excess of statutory authority and
16 limitations, short of statutory right, and not in accordance with the law and procedures required by law.
17 5 U.S.C. §§ 706(2)(A), (C), (D).

18 **PRAYER FOR RELIEF**

19 **Plaintiffs respectfully request that this Court:**

20 1. Declare that the Defendants violated the National Environmental Policy Act, the National
21 Forest Management Act, Administrative Procedure Act, Executive Order 11644, as amended, and their
22 implementing regulations in preparing and approving the Eldorado Travel Planning decision Final
23 Environmental Impact Statement, and Record of Decision;

24 2. Declare that the Eldorado Travel Planning decision FEIS and ROD are insufficient as a
25 matter of law, and order the Defendants to undertake a legally sufficient travel management planning
26 process including the minimum road system analysis and adequate environmental review by a date
27 certain;

1 3. In order to protect the environmental resources of the Eldorado National Forest during
2 the interim: mandate that Defendants maintain route closures for the protection of the environment and
3 the prohibition on cross country travel; and enjoin the Defendants and their agents from authorizing any
4 ORV activities in riparian areas and wet meadows, any use of illegally created routes, and any new
5 ORV routes within the Eldorado National Forest, until and unless the violations of federal law set forth
6 herein have been corrected to the satisfaction of this Court;

7 4. Award Plaintiffs their costs of suit and attorneys fees; and

8 5. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

9 Respectfully submitted,

10 Dated: September 9, 2009

/s/ Lisa T. Belenky

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