COUNTY OF EL DORADO

330 Fair Lane
Placerville, CA 95667
(530) 621-5390
(530) 622-3645 Fax

JAMES S. MITRISIN
Clerk of the Board

June 18, 2013

Public Comments Processing
Attn: FWS-R8-ES-2012-0100
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042-PDM
Arlington, VA 22203

Subject: Proposed Rule to list the Sierra Nevada Yellow-Legged Frog as Endangered and the Proposed Rule regarding the designation of critical habitat for the Sierra Nevada Yellow-Legged Frog.

To the United States Fish and Wildlife Service:

The Board of Supervisors of the County of El Dorado appreciates the opportunity to comment on the Proposed Rules to list the Sierra Nevada Yellow-Legged Frog as an endangered species, and the Proposed Rule designating critical habitat.

We would first like to request an extension of the comment period on the Proposed Rules. The Proposed Rules combine for 100 pages of Federal Register detailing more than a decade of legal issues, previous federal actions, dozens of scientific studies, and recent research culminating in these proposals. There was a total of 41 business days from the time the Proposed Rules were published in the Federal Register to the June 24 comment deadline. This is an insufficient amount of time for local agencies to become aware of the proposals, research the voluminous issues presented, understand the impact on the jurisdiction, and formulate responsible feedback.

Moreover, given the nature of comments the U.S. Fish and Wildlife Service is soliciting, it is extremely difficult for local agencies without professional scientific staff to meaningfully comment. The Proposed Rule regarding the endangered status notes that comments "merely" stating support or opposition will not be considered, and that the decision is to be made "solely on the basis of the best scientific and commercial data available." The Proposed Rule designating critical habit seems to allow consideration of economic impacts, yet again notes that the Secretary shall base the final decision on the "best available scientific data." The requirement to frame the decision exclusively on scientific data may be beyond the control of the U.S. Fish and Wildlife Service, but we do hope the Service recognizes the challenges this creates

local government and citizens generally as we endeavor to engage in the decision-making process.

It is for these reasons that the Board of Supervisors requested a hearing on the Proposed Rules in our previous communication dated June 4. While it is clear that certain environmental organizations, portions of the scientific community and federal staff are very familiar with the Sierra Nevada Yellow-Legged Frog, the issues presented in the April 25 Federal Register are new to the communities most impacted by the Proposed Rules. Citizens being asked to comment on complex issues deserve the opportunity to hear directly from federal agency representatives, learn about the consequences of the proposals, and ask questions *before* a comment deadline is imposed. Again, we implore the U.S. Fish and Wildlife Service to extend the comment period until El Dorado County residents and their local representatives are afforded the opportunity to attend a field hearing on these matters. The Proposed Rule on habitat designation has invited comment on "any way to provide for greater public participation, and understanding to assist [the U.S. Fish and Wildlife Service] in accommodating public concerns and comments." We know of no better way to encourage public participation than face-to-face discussion.

Many of the factors indicated on which the species may be listed appear to be based on assumption. For example, the discussion indicates that recreational foot traffic, camping, timber harvest and related activities, "are not thought to be major drivers of frog population dynamics." This statement implies that recreational foot traffic, camping and timber harvest activities are contributing to the decline of frog populations, albeit less significantly than other factors. However, the Proposed Rule clearly states that, "studies have not been conducted to determine the extent to which recreational activities are directly contributing to the decline of the mountain yellow-legged frog complex…" Similarly, fire management activities should not even be considered a threat of low prevalence if, "it is not known what impacts fire and fire management activities have had on historical populations of mountain yellow-legged frogs." The claim that dams and water diversion present a moderate, prevalent threat is unsubstantiated, and contradictory to the previous statement that habit loss or modification due to such projects "has not been quantified." Any factor not thoroughly studied should be excluded from consideration.

The U.S. Fish and Wildlife Service is also underestimating the adequacy of existing regulatory mechanisms. Before proceeding with the species listing, the U.S. Fish and Wildlife Service should undertake a study of the "large number" of mountain yellow-legged frog locations occurring within wilderness areas, and therefore afforded habitat protection via the Wilderness Act. In addition, the Board of Supervisors disagrees with the analysis of U.S. Forest Service final rule 77 FR 21162. The suggestion that the new rule could, at the discretion of regional foresters, result in the removal of limited protections for the mountain yellow-legged frogs under the Sierra Nevada Forest Plan Amendment is speculation. One could just as easily speculate that this delegation of authority to regional foresters will result in enhanced protections. Finally the U.S. Fish and Wildlife Service has overly discounted the protections afforded to the mountain yellow-legged frog under the California Endangered Species Act. Despite the California Department of Fish and Wildlife's take authorization for the statewide stocking program, as indicated in the Proposed Rule, stocking decisions are now based on criteria outlined in the 2010 Joint EIR/EIS for the Hatchery and Stocking Program. Fish stocking has significantly decreased.

This trend likely to continue when the California Department of Fish and Wildlife completes their basin management plans.

From the information available in the Proposed Rule to list Sierra Nevada Yellow-Legged Frog as endangered, it appears the decline of the species is inexorably isolated to two primary factors, 1) the introduction of trout, and 2) the spread of *Batrachochytrium dendrobatidis* (Bd). What is not clear is how the Proposed Rule to designate critical habitat mitigates either of these factors. As mentioned, the California Department of Fish and Wildlife has significantly reduced fish stocking; a 75% reduction since 2001. Adequate protections are now in place to guard against future stocking that would negatively impact mountain yellow-legged frog habitat. While predation in some water bodies will continue due to remaining trout populations, absent physical removal of trout, the designation of critical habitat does not afford the mountain yellow-legged frog any additional protection from predatory fish. Similarly, the U.S. Fish and Wildlife Service has offered no analysis of how the designation of critical habitat slows the progression of chytridiomycosis through mountain yellow-legged frog populations. In short, the Board of Supervisors fails to understand how the U.S. Fish and Wildlife Service can make a prudency determination on habitat as the mountain yellow-legged frog is neither currently threatened by taking or other human activity, nor will the designation provide additional benefit to the species.

We believe the acreage proposed as critical habitat, especially in subunit 2E is overreaching. The Proposed Rules on listing and the designation of critical habitat appear contradictory on this point. For example, the Proposed Rule to list indicates that the mountain yellow-legged frog typically moves only a few hundred yards from water sources, and the farthest a specimen has ever been detected from water is 1,300 feet. Although the mountain yellow-legged frog must remain close to a water source, it appears that entire watersheds are proposed for listing. This includes ridge tops and mountain slopes on which the mountain yellow-legged frog does not and cannot occupy and thrive. We also question why the U.S. Fish and Wildlife Service has excluded the use of the California Natural Diversity Database (CNDDB) when defining habit boundaries. A GIS overlay of the CNDDB on subunit 2E and 2F suggests that the proposed critical habitat is overly expansive and possibly in error. We have included a small version of this map for your reference. While the Board of Supervisors is unconvinced that the designation of habitat provides any enhanced benefit, should this proposal continue, it must be refined to only include reasonable habitat. All areas that do not directly contain primary constituent elements should be excluded from designation.

Respectfully, the County of El Dorado requests additional information on planned management activities for land proposed for critical habitat designation, especially within subunit 2E. The Crystal Basin area proposed as critical habitat is a major recreational destination, and as such a significant component of the El Dorado County economy. This area contains the Rubicon Trail, our world famous off-highway vehicle route enjoyed by tens of thousands of enthusiasts annually, which is also a County unmaintained road. The area also includes numerous U.S. Forest Service trails used extensively for a variety for recreational purposes including off-highway vehicle excursion, hiking, camping, fishing, and cross-country skiing. Any management activities of designated critical habitat must be carefully analyzed in light of recreational and economic benefits this area provides. We are confident that any additional restrictions arising from the designation of habitat that infringe on the benefits and freedoms

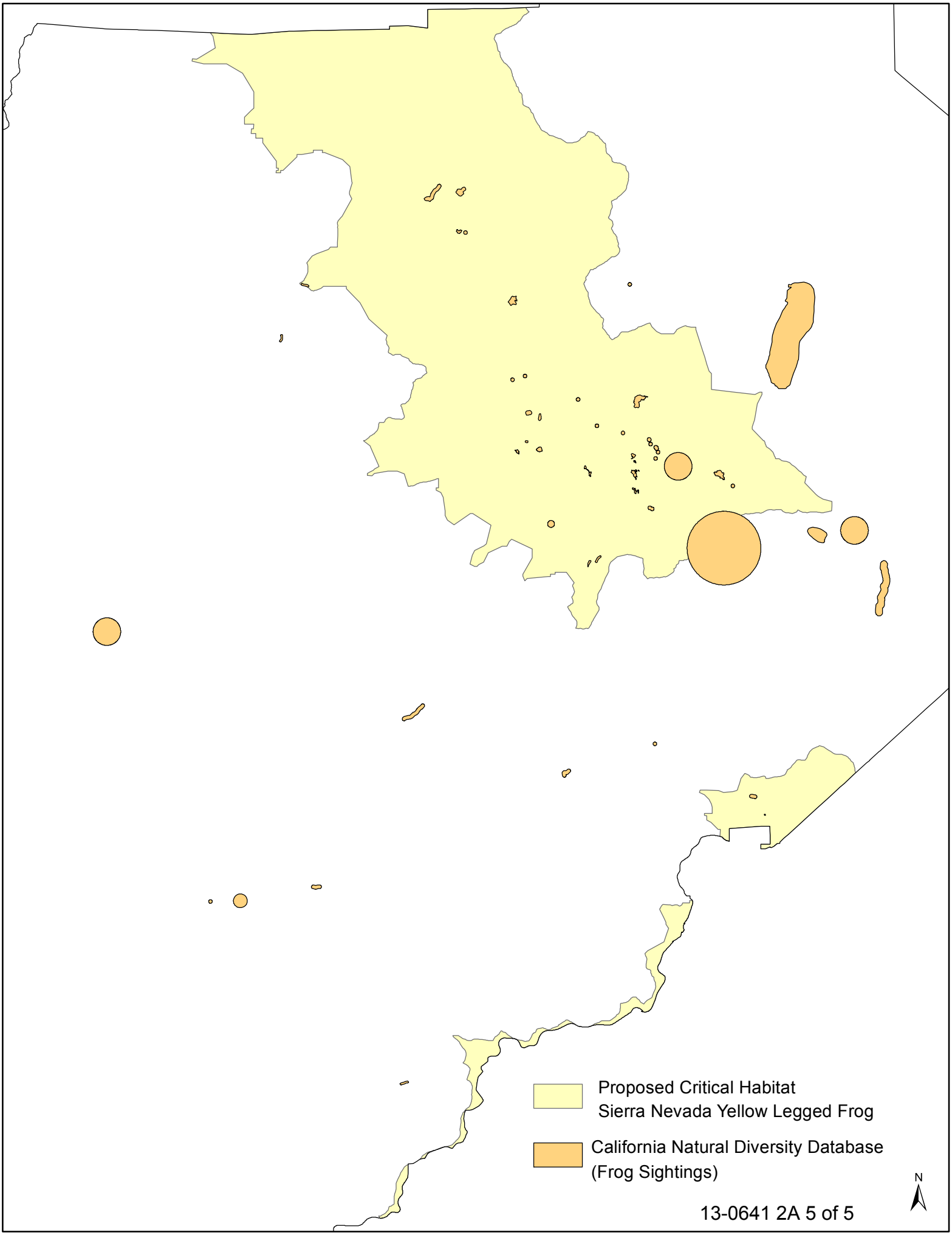
presently available to the public on the public's land would, in the words of Proposed Rule cause, "adverse social reactions to the designation…"

Finally, the County of El Dorado and the Sacramento office of the U.S. Fish and Wildlife Service enjoy very good relations. We welcome the opportunity to work through the details, and appreciate the Service's consideration to allow us more time to study the effects of the proposed habitat allowing us send meaningful comments.

Sincerely,

Ron Briggs, Chairman
Board of Supervisors
County of El Dorado

Enclosure


Proposed Critical Habitat
Sierra Nevada Yellow Legged Frog
California Natural Diversity Database
(Frog Sightings)
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