

# COUNTY OF EL DORADO

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July 16, 2013

Appeal Deciding Officer  
Randy Moore, Regional Forester  
USDA Forest Service  
Regional Office R5  
1323 Club Drive  
Vallejo, CA 94592

Dear Mr. Moore:

Pursuant to 36 CRF Part 215 the Board of Supervisors for the County of El Dorado is requesting administrative review of the Record of Decision and Final Supplemental Environmental Impact Statement for the Eldorado National Forest Travel Management plan.

The purpose and need for the proposed action as described in the Final SEIS has significantly expanded from Draft SEIS, which calls into question the adequacy of the Draft SEIS range of alternatives. Although not formally stated as part of the purpose and need for the proposed action in the Final SEIS, it is clear that the Forest Service used the Final SEIS as an opportunity to conduct advanced mitigation of potential habitat loss for the Sierra Nevada yellow-legged frog. The Court's Final Order in *Center for Sierra Nevada Conservation, et al. v. U.S. Forest Service et al.* narrowly defined the subject for review in the supplemental environmental analysis. Specifically, the Court only required the Forest Service to reconsider the Riparian Conservation Objective Analysis for RCO #2 Standards and Guidelines #100 pertaining to meadows on the 42 routes. As stated on the Eldorado National Forest's 42 Routes Project Update website, "Habitat, species effect, etc. is not part of the order." Yet, the Record of Decision indicates that the effects of two newly proposed threatened and endangered species was a considered "in addition to" the adverse effects on meadows. Not only does this inclusion significantly alter the expressed need for the proposed action, had the Forest Service's concerns about the Sierra Nevada yellow-legged frog been disclosed in the Draft SEIS, the County's comments on the scoping of the Proposed Action and the Draft SEIS would have taken this into account. As such, the County was not afforded the opportunity to speak to this issue, as it was not relevant to the Proposed Action or Preferred Alternative.

Further evidence that the purpose and need of the Final SEIS deviated from the Draft SEIS is the inclusion of new surveys, "performed by aquatic biologists in 2012 and 2013 to evaluate whether

routes crossed wet streams or traveled next to wet features that could provide breeding or overwintering habitat for the SNYLF” (Final SEIS p. 87-88). Of the 24 routes surveyed for the Sierra Nevada yellow-legged frog in the *Biological Assessment of the El Dorado National Forest Travel Management Supplemental Environmental Impact Statement Alternative*, 19 were surveyed prior to the publication of the Draft SEIS. Only five routes were surveyed in May and June of 2013, and three of those were previously surveyed in 2012. In short, only two routes were newly surveyed for the Sierra Nevada yellow-legged frog in preparation for the Final SEIS. The vast majority of the Forest Service’s work conducted on the Sierra Nevada yellow-legged frog in relation to Travel Management Plan was completed before the publication of the Draft SEIS in February 2013. The Board of Supervisors is very concerned that that this information was not disclosed in the Draft SEIS, was available at the time, and now appears to be a critical part of the decision rationale of the Record of Decision. We believe the withholding of this information may be a violation of NEPA.

In addition, the *Biological Assessment* has been misapplied. The Final SEIS indicates that, “Sierra Nevada yellow-legged frogs were found to be present on routes 17E24...and 17E28, and absent at stream crossings along the other surveyed routes, based on these visual encounter surveys.” However the two “sightings” in the “2012 and 2013” surveys were actually past sightings. One occurred in 2011 and the other occurred 18 years ago in 1995. If anything, the Biological Assessment indicates that no frogs are present anywhere near the routes surveyed. Therefore the Final SEIS conclusion that use of off highway vehicles threatens all life stages of the Sierra Nevada yellow-legged frog through degradation of aquatic and riparian habitat is unsubstantiated.

The analysis of effects to the Sierra Nevada yellow-legged frog contains additional flaws. The assertion that, “Road and trail use by motorized vehicles and motorcycles have been known to result in direct impacts to Sierra Nevada yellow-legged frog from habitat degradation and road kill at wet crossings,” is completely unsupported. The citation of Ian Spellerberg’s 1998 meta-analysis of the ecological effects of roads is utterly misleading, if not deceptive. The citation provides the illusion that Spellerberg studied the impacts of off-highway vehicle use on the yellow-legged frog. However, Spellerberg’s article was not a scientific study, but simply a survey of literature commissioned by the New Zealand Department of Conservation. Few if any of the articles surveyed were applicable to amphibians, forests, or roads used by off-highway vehicles. A more applicable conclusion from the Spellerberg article is that, “Ecological studies of [habitat] fragmentation are growing in number but there are still very few reports which analyse [sic] the effects of fragmentation by roads.”

According to the U.S. Fish and Wildlife Service the primary causes for the decline of yellow-legged frog populations are predation from non-native trout and the spread of chytrid fungus, *Batrachochytrium dendrobatidis* (Bd). Neither of these factors are related to off-highway vehicle use. In fact, in developing the Proposed Rule to list the Sierra Nevada yellow-legged frog as endangered, the U.S. Fish and Wildlife Service cited research stating:

- “Physical habitat destruction does not appear to be the primary factor associated with the decline of the mountain yellow-legged frogs.”

- “...direct effects from recreation have not been implicated as a major cause of the decline of these species.”
- “Roads also exist within the range of the mountain yellow-legged frog, and more may be constructed. However, neither of these factors [roads and timber harvesting] has been implicated as an important contributor to the decline of this species.”

The Final SEIS acknowledges that no studies have been done to directly assess whether or not recreational activities impact the yellow-legged frog. Therefore, actions referenced in the Final SEIS as *potentially* modifying habitat such as alterations of water chemistry and temperature, sedimentation, or alterations of channel morphology are, at this point speculation.

The analysis of effects to the Sierra Nevada yellow-legged frog is premature. The U.S. Fish and Wildlife Service published the Proposed Rule on critical habitat designation on April 25, 2013. There have been many requests from the public, local agencies, and Congressional representatives for an extension of the comment period on the Proposed Rule. In addition, the U.S. Fish and Wildlife Service has announced that an additional comment period will be available following the publication of its economic impact study of the Proposed Rule. Given the magnitude of the habitat proposal and its impact on local communities, a final determination on habitat could be quite distant. Consequently, the Forest Service cannot adequately predict what routes will ultimately be included in the habitat designation.

We believe the Forest Service has erred with regard to closure of route 10N14, Mule Canyon. The affected meadow is at the very beginning of the route. The upper section of the route was previously inaccessible by other routes named in the Court order. However, route 10N26 will once again be designated for public motorized use, which again allows access to route 10N04. Route 10N04 was not directly closed by the Court order, but inaccessible due to the closure of other routes. Now accessible, route 10N04 allows access to the upper portions of 10N14 well beyond the affected meadow. Therefore, route 10N14 should only be closed at the meadow site and the upper end of 10N14 should be open to public motorized use. This would also allow access to routes 10N14A, 10N14B, 10N14HA and 17E17. In short, closing 10N14 at the meadow site opens up several more miles of routes that would needlessly remain closed.

Finally, to date, the Forest Service has yet to respond to County’s substantive comment regarding the impact to other forest system roads and the Rubicon Trail. The four sentences on page 84 of the Final SEIS are inadequate and do not consider the cumulative effects of the closure of the “big four” trails on off-highway vehicle opportunities. Although agreeing with the County’s position that demand on the Rubicon and other trails will increase, the Forest Service has offered no quantitative estimate of the demand, the reasonably foreseeable environmental, economic and social consequences, possible mitigation measures or costs.

The Board of Supervisors requests that all routes or portions of routes found not to cross meadows, and those routes or portions of routes that cross meadows in compliance with Standard and Guideline #100 be immediately opened. The Final SEIS should be revised to exclude the proposed designation of yellow-legged frog habitat as a factor in the decision to close Forest Service routes. The revised Final SEIS should also take a hard look at the cumulative effects of route closures on other off-highway vehicle opportunities including the reasonably foreseeable

environmental, economic and social consequences of displaced traffic. We would welcome the opportunity to discuss these issues with you and your staff directly.

Sincerely,

Ron Briggs, Chairman  
Board of Supervisors  
County of El Dorado