Sierra Nevada
Forest Protection Campaign

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Dear Ms. Millet,

These comments on the proposed Freeman DFPZ/GS Project (the "Project") are submitted on behalf of the Sierra Nevada Forest Protection Campaign, the Sierra Club, and the Plumas Forest Project (collectively, the "Campaign").

The Forest Service has significantly curtailed the public's ability to review and critique this Project, because the agency has prepared only a cursory notice of the proposal and has not made available a draft environmental assessment detailing the environmental impacts of and alternatives to the Project. As a result, the Campaign is forced to make and preserve any and all objections to this Project at a stage when the details of the Project and the parameters of the environmental review are poorly defined.

By this letter, the Campaign requests that the Forest Service prepare and circulate for public comment an environmental assessment prior to issuing its decision notice for this Project – as is required by both the National Environmental Policy Act ("NEPA") and the Appeals Reform Act. The Campaign further requests that the issues, information, and analysis identified in this comment letter be considered, addressed, and disclosed in the environmental assessment and in any further review undertaken by the Forest Service as part of the planning process for this Project.

Finally, the Campaign wishes to make and preserve its objections to any and all aspects of the proposed Freeman Project that deviate from the standards and guidelines contained in the original 2001 Record of Decision for the Sierra Nevada Forest Plan Amendment ("2001 ROD") and implement the 2004 Record of Decision for the Sierra Nevada Forest Plan Amendment ("2004 ROD"). As demonstrated in the Notice of Appeal and Statement of Reasons submitted to the Chief of the Forest Service by the Sierra Nevada Forest Protection Campaign and other organizations, the 2004 ROD and accompanying final supplemental environmental impact statement ("FSEIS") fail to comply with the National Forest Management Act ("NFMA"), NEPA and other applicable environmental laws and regulations. (Sierra Nevada Forest Protection Campaign ("SNFPC") *et al*. 2004).[1] Therefore, in addition to the specific objections identified herein, the Campaign wishes to notify the Forest Service that, to the extent that the proposed Project implements any of the changes to the Sierra Nevada Forest Plan Amendment made by the 2004 ROD, the Project is contrary to the law.

[1] A copy of the appeal is attached hereto as an exhibit and is incorporated by reference into these comments.

I. The Forest Service Must Provide the Public With an Opportunity to Review and Comment on the Environmental Assessment for the Proposed Freeman Project Before the Agency Issues Its Decision Notice and Final NEPA Document.

The Notice, Comment, and Appeal Procedures promulgated by the Forest Service on June 4, 2003 ("Appeal Regulations") purport to grant the Forest Service the authority to determine the most effective timing for the publication of the legal notice of proposed actions. 36 CFR § 215.5 (a)(2). However, both NEPA, 42 U.S.C. § 4321 *et seq.*, and the Appeals Reform Act, Pub. L. 102-381, title III, Sec. 322, 106 Stat. 1419 (1992) (reproduced at 16 U.S.C. § 1612, Note), require the Forest Service to provide the public with an opportunity to review and comment on an environmental assessment for a proposed action affecting the National Forest System *before* a final decision is made. The Appeal Regulations do not give the Forest Service the authority to abrogate its responsibilities under NEPA and the Appeals Reform Act.

A. NEPA

Regulations promulgated by the Council on Environmental Quality ("CEQ") to implement NEPA and applicable to the Forest Service emphasize the importance of involving the public throughout the NEPA process. The very first section of CEQ's NEPA regulations states that "NEPA procedures must ensure that environmental information is available to the public officials and citizens *before decisions are made and before actions are taken*," and, furthermore, that "*public scrutiny [is] essential* to implementing NEPA." 40 C.F.R. § 1500.1(b) (emphases added). The CEQ regulations further provide that "Federal agencies shall *to the fullest extent possible* . . . encourage and facilitate public involvement in decisions which affect the quality of the human environment." *Id*. at § 1500.2(c) (emphases added). Consistent with these broad mandates, the CEQ regulations require the Forest Service to "[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures" and to "[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected." 40 C.F.R. §§ 1506.6(a), (b).

The requirement that an agency involve the public in the NEPA process is not limited to proposals that require an environmental impact statement, but also applies to proposals that require only an environmental assessment. The CEQ regulations specifically provide that agencies "shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing [environmental] assessments." 40 C.F.R. § 1501.4(b). CEQ has further explained that: "Section 1506.6 requires agencies to involve the public in implementing their NEPA procedures, and this includes public involvement in the preparation of EAs and FONSIs." 46 Fed. Reg. 18,026 (March 23, 1981) (*Forty Most Asked Questions Concerning CEQ's NEPA Regulations*).

The Ninth Circuit has correctly interpreted the CEQ regulations cited above "to mean that the public must given an opportunity to comment on draft [environmental assessments] and [environmental impact statements]." *Citizens for Better Forestry v. U.S. Dept. of Agriculture*, 341 F.3d 961, 970 (9th Cir. 2003) (quoting *Anderson v. Evans*, 314 F.3d 1006, 1016 (9th Cir. 2002). In *Citizens for Better Forestry*, the Ninth Circuit recently ruled:

> It is evident . . . that a complete failure to involve or even inform the public about an agency's preparation of an EA and a FONSI . . . violates [the CEQ] regulations. Th[e] wholesale neglect of the regulations' mandatory inclusion of the public in the process results in procedural injury. Moreover, it undermines the very purpose of NEPA, which is to 'ensure that federal agencies are informed of environmental consequences before making decisions and that the information is available to the public.'

Id. (quoting *Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 473 (9th Cir. 2000). *See also Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1247 (9th Cir. 1984) (holding that an agency's decision to allow only a five-day public comment period on an EA was inadequate and in violation of NEPA and the CEQ regulations); *Friends of Walker Creek Wetlands v. BLM*, 19 ELR 20852, 20854 (D. Or. 1988) (ruling that federal defendants "did not adequately provide for public participation to the extent practicable").

Consistent with the law cited above, the Forest Service must invite public comment on the environmental assessment for this Project before the agency makes its decision and issues a final NEPA document. Should the Forest Service fail to do so, the proposed Freeman Project will violate NEPA and will be subject to remand by the courts. *See Save the Yaak Committee v. Block*, 840 F.2d 714, 717 (9th Cir. 1988) (holding that because "NEPA is primarily a procedural statute . . . agency action taken without observance of the procedure required by law will be set aside").

An example of the flawed Freeman Project NEPA process is evidenced by the proposed action's complete lack of disclosure regarding the number of listed, sensitive, and MIS/SAR species at-risk in the project area, their existing habitat conditions, or how the proposed project will impact important wildlife resources. Interested parties and the public in general are left to guess as to the potential negative impacts of this proposal. Also, due to the lack of such important information, we are denied the ability to propose reasonable alternatives or mitigations related to possible project impacts to important wildlife resources.

B. Appeals Reform Act

By failing to disclose and provide for public comment on the environmental impacts of and alternatives to the proposed action, the Forest Service has also violated the Appeals Reform Act. Congress enacted the Appeals Reform Act after the Forest Service attempted to exempt most project-level decisions from the administrative appeal process. *See Idaho Sporting Congress v. U.S. Forest Service*, 843 F. Supp. 1373, 1375 (D. Idaho 1994). Of particular concern to Congress was ensuring that the public be allowed to participate in the Forest Service's decision-making process. *See, e.g.*, 138 Cong. Rec. S11, 643 (Aug. 4, 1992) (statement of Sen. Fowler, the principal sponsor of the Appeals Reform Act). Accordingly, the Appeals Reform Act specifically provides that "a person who was involved in the public comment process . . . through submission of written or oral comments *or by otherwise notifying the Forest Service of their interest in the proposed action* may file an appeal." *See* § 322(c).

Notwithstanding Congress' clear intent in enacting the Appeals Reform Act, the recently promulgated Appeal Regulations provide that only members of the public who submit "specific substantive written or oral comments" during the comment period will be allowed to appeal the

decision. *See* 36 C.F.R. § 215.13(a). "Substantive comments" are defined as those comments "that are within the scope of the proposed action, are specific to the proposed action, have a direct relationship to the proposed action and include supporting reasons for the Responsible Official to consider." 36 C.F.R. § 215.2. By precluding appeals by members of the public who notify the Forest Service of their interest in the proposed action but do not submit "substantive comments," the Appeal Regulations facially violate the Appeals Reform Act.

The Appeal Regulations are even more flagrantly illegal as applied to this Project, because the Forest Service has limited public comment to the scoping period. As a result, members of the public wishing to comment on the proposal lack the very information – information that would normally be included in a draft environmental assessment and accompanying documentation such as a biological evaluation for sensitive species – that is necessary to prepare the requisite "substantive comments." Put differently, by prohibiting the public from reviewing the environmental assessment until after the decision is made, the Forest Service can illegally limit the submission of precisely those comments that are most specific and substantive and thereby limit the number of persons eligible to appeal.

The National Forest Management Act (NFMA), 16 U.S.C. § 1604, directs the Secretary of Agriculture to develop land and resource management plans for administrative units of the National Forest System, such as the Plumas National Forest. NFMA further directs that actions implementing the plans, such as timber sale contracts, shall be consistent with the plans. 16 U.S.C. § 1604(i).

Beginning with the first regulations implementing NFMA, the Forest Service has recognized the right of interested parties to administratively appeal decisions implementing land and resource management plans.

In 1992, the Forest Service undertook a review of the administrative appeal procedures, which led to the publication of a proposed rule that would have prohibited appeals of projects, such as those on the Plumas NF, accompanied by environmental assessments (EAs). However, before a final rule was published, Congress enacted section 322 of the Department of the Interior and Related Agencies Appropriation Act of 1993, Pub. L. 102-381, 106 Stat. 1419 (1992) (hereinafter cited as .Appeals Reform Act.).

The Appeals Reform Act required the Secretary of Agriculture to establish a notice and comment and administrative appeal process for actions implementing land and resource management plans. The Act established a right to appeal such projects and stated that a person who was involved in the public comment process through submission of written or oral comments or by otherwise notifying the Forest Service of their interest in the proposed action may file an appeal. Appeals Reform Act, § 322 (c)(emphasis added).

In 1993, the Forest Service issued final rules to implement the Appeals Reform Act with respect to notice and comment and appeal of projects implementing land and resource management plans. The rules provided that any person who provided comment or otherwise expressed interest in a particular proposed action by the close of the comment period could file an administrative appeal. 36 CFR § 215.11(a)(2)(1994)(emphasis added).

In a related provision, the rules provided that appeals shall be dismissed without review if the appellant did not express an interest in the specific proposal at any time prior to the close of the comment period. 36 CFR §215.15(a)(5) (1994)(emphasis added).

In adopting the 1993 regulations, the Forest Service considered and rejected a proposal that the right to appeal be limited to individuals who submitted written comments during the comment period. The Forest Service stated as follows: Section 322(c) of the [Appeals Reform] Act makes clear that a person who has submitted written or oral comments or otherwise notified the Forest Service of an interest in the proposed action during the public comment process may appeal a decision. Therefore, it is not in keeping with the Act to restrict the right of appeal only to those who have submitted written comments. 58 Fed. Reg. 58907 (November 4, 1993)(emphasis added).

In 2003, the Forest Service revised the rules relating to notice and comment and appeal of projects implementing forest plans. In a number of respects, the new rules substantially narrow the opportunities for members of the public to comment on and appeal decisions. Specifically, the new rules limit the right to appeal to .individuals and organizations who submit substantive written or oral comments during the 30-day comment period. 36 CFR 215.13(a)(2004).

Similarly, the new rules provide that an appeal shall be dismissed without review if the individual or organization did not submit substantive comments during the comment period. 36 CFR § 215.16(a)(6)(2004). These provisions are virtually identical to those rejected by the Forest Service in 1993 because they were inconsistent with the Appeals Reform Act. Contrary to the Appeals Reform Act, the new rules no longer allow an appeal to be filed by a person who expressed interest in a project or filed comments other than during the specific 30-day comment period.

For the reasons above, the Campaign cannot urge the Forest Service strongly enough to change the notice and comment procedures employed for this Project and provide a meaningful opportunity for the public to comment on the environmental assessment – as the agency is required to do under the law and has always done in the past. Doing so will benefit both the public and the agency, because in the absence of a public comment period for the environmental assessment, the public will be forced to respond to the details of the environmental assessment through the administrative appeal process. This will encourage potentially unnecessary administrative appeals and force the agency to conduct its environmental review process in an adversarial forum.

II. The Forest Service Should Consider and Address a Number Significant Issues in Its Environmental Review and Planning for the Proposed Project.

The Campaign requests that the following issues, information, and analysis be considered, addressed, and disclosed in the environmental review for this Project and as part of the planning process for this Project:

A. Description of the Project

The Forest Service should provide a clear and detailed description of the Freeman Project, including the nature, intensity, and extent of planned logging by unit.

- With respect to size of trees that will be removed, the Forest Service should identify the diameter limit that will be removed within each treatment unit, based upon the 40 percent basal area retention standard in the 2004 ROD (p. 50) (30 percent within eastside pine forests outside of the defense zone, 2004 ROD, p. 51). The Forest Service should provide the underlying data that supports the diameter limit that will be removed. If the project will remove any trees in excess of 30 inches in diameter, the Forest Service should explain the basis for such logging (2004 ROD, p. 50). The Forest Service should not consider "operability" as an excuse for removing trees > 30" in DFPZ, group selection units, and individual tree selection areas as mentioned on p. 2 of the Freeman proposed action. Logically, operability issues should not be present in a quarter mile to a half mile wide DFPZ. Furthermore, operability issues should also not be present in group selection units that are essentially small clear cuts that propose removing all trees <30".

- The Forest Service should establish an objective definition of "cost efficient treatments" (2004 ROD, p. 51) and provide data to support any claim that the removal of larger trees is necessary to achieve such efficiency. The need to remove trees larger than 20 inches in diameter to meet fuel objectives in the Sierra Nevada region is disputed by fire scientists. (Guldin and Stine 2003, p. 8). However, the Forest Service has stated that larger trees must be logged to pay for the cost of fuel reduction treatments. (2004 ROD, p. 9).

- The Forest Service should disclose the canopy cover limit that will be applied within each treatment unit and the amount by which canopy cover can be reduced within each unit. If the limit will be less than 50 percent, the Forest Service should explain why the 50 percent standard cannot be met, as required by the 2004 ROD (pp. 50-51). This explanation should include the documented fire behavior research to support conclusion regarding crown thinning and the need to log trees >20" dbh.

- The Freeman project comprises a project area of 14,695 acres, including treatments to be consistent with the Herger-Feinstein Quincy Library Group Plan (as referenced above). Of these 14,695 acres, 3,990 acres are for 13 miles of DFPZ construction. Out of the total project area, 795 acres are in riparian habitat conservation areas. A detailed analysis of how this level of compaction and general ground disturbance is consistent with meeting the RCOs and standards should be included in this proposal. The watershed analysis should also disclose the current disturbance levels in the RCAs and their predicted recovery rates in conjunction with the impacts associated with the proposed action.

- There is no information concerning any species, except for the Bald Eagle. Without information detailing the locations of PACs in relation to the project it is likely both the DFPZs, Group Selection Units, and Individual Tree Selection areas will impact ecologically important home range core areas (Bingham & Noon 1997) for the spotted owl as well as suitable foraging and nesting habitat, in general. An analysis of the impacts upon existing HRCAs and overall spotted owl home ranges should be included in this project. Both HRCAs and home range designations are biologically important areas for spotted owls, and should therefore be included in this impacts analysis as was done in the 1999 H-F QLG EIS and the 2001 SNFPA. The Treatment by Unit table (Table 1) discloses that 828 acres of units containing group selection treatment also include special

prescription areas for the Bald Eagle. A detailed analysis of the impacts to the Bald Eagle within these units should be included in the project.

- The project plans for 288 acres of group selection harvest. The proposed action, however, does not identify whether any basal area or canopy cover retention standards will apply to such logging, as required by law (SNFPC *et al*. 2004, p. 123).

- The Forest Service should identify the snag and down wood retention levels as directed in the 2004 ROD (p. 51) and the basis for such standards.

- The Forest Service should disclose the acreage of planned treatments by treatment type, including (where applicable) group selection, defensible fuel profile zones ("DFPZs"), area treatments, individual tree selection, and other approaches. The agency should specifically identify any logging proposed for purposes other than fuels reduction (*e.g.*, reducing stand density, salvage, insect and disease), including the planned acreage of such logging, the specific units in which such logging will occur, and the rationale for any such treatments. If the project involves reducing stand density to address forest health concerns, the Forest Service should identify the objective criteria used to select the trees removed to meet this objective. The project should identify the specific contribution of fuels reduction treatments to the decreased risk of insect and disease problems related to stand density concerns. The Forest Service should identify whether any basal area or canopy cover retention standards will apply to such logging, as required by law. (SNFPC *et al*. 2004, p. 123).

- The Forest Service should identify the acreage and type of logging by land allocation, including (where applicable) old forest emphasis area, threat zone of the wildland urban intermix ("WUI"), defense zone of the WUI, protected activity centers ("PACs"), and owl home range core areas ("HRCAs"). We believe community protection should be the first priority and question the amount of non-WUI logging in the past and that currently is being planned, including the 1,581 acres of logging outside of the DFPZs and WUI in the Freeman project, in the QLG Pilot area.

- The Forest Service should disclose the amount of planned road construction and reconstruction and analyze impacts on habitat fragmentation and connectivity, weed invasion, increased predation, and poaching. The Freeman project on p. 6 identifies 2 miles of temporary road construction, 0.2 miles of road would be relocated, and 1.9 miles of roads would be reconstructed. The environmental impacts of temporary road construction and restoration (disturbance) should be fully analyzed.

- If the project is adjusting the boundaries of the WUI compared to the boundaries assumed in the 2004 ROD, the Forest Service should explain the basis for the change and analyze the environmental impacts.

As noted above, the Campaign wishes to make and preserve here its objections to any and all deficiencies in the environmental assessment for this Project relating to the project description, including the definition of its purpose and need.

B. California Spotted Owl

The conservation status of the California spotted owl in the Sierra Nevada is precarious. (SNFPC *et al*. 2004, pp. 12-14). Demographic studies from the southern, central, and northern Sierra Nevada have consistently indicated that the owl's population is declining. The most recent analysis of this research concluded that "all the demographic evidence available – such as estimated vital rates, rates of population change, and differences in paired studies – suggest substantial caution in owl conservation and management efforts." (Franklin *et al*. 2004, p. 41). Moreover, the fact that the owl appears to be faring appreciably worse on national forest lands than on nearby national park lands suggests that logging has contributed to reduced survivorship and declining owl populations. (*Id.*, pp. 37-38, 40).

There is strong evidence that logging pursuant to the 2004 ROD, particularly logging of medium and large trees, reduction in canopy cover, removal of large snags and down wood, and logging within owl PACs, owl HRCAs, old forest emphasis areas, and areas of concerns, will degrade owl nesting and foraging habitat and threaten the owl's viability. (SNFPC *et al*. 2004, pp. 14-20). The Forest Service's Science Consistency Review concluded that the new plan "incurs greater risk" to the owl than the Framework (Stine and Keane 2003, p. 9), and the agency's Washington Office Director of Fish and Wildlife found that the new plan is "a prescription for continued owl declines." (Gladen 2003, p. 11). The owl scientists who have reviewed the plan have uniformly concluded that the plan increases the risks to the owl's population, threatening the owl's viability and distribution and contributing to a trend towards federal listing under the Endangered Species Act. (Noon 2004; Verner 2003b; Blakesley and Noon 2003; Peery 2004; Bond 2003).

Given the risks to the owl of implementing the 2004 ROD, it is essential that the Forest Service take a detailed and careful look at the likely impacts on the owl and its habitat of implementing the project. An adequate analysis should address, at a minimum, the following issues. (*See* SNFPC *et al*. 2004, pp. 9-28, 77-80).

- The Forest Service should disclose the amount of owl nesting and foraging habitat currently within the project planning area and the amount of nesting and foraging habitat that will be logged. Owl nesting habitat should be defined in terms of CWHR class 5D and 6, and owl foraging habitat should be defined by CWHR classes 4M, 4D, 5M, 5D, and 6 with canopy cover greater than or equal to 50 percent. Canopy cover less than 50 percent should not be considered as suitable owl habitat. (SNFPC *et al*. 2004, pp. 10-11).

- The Forest Service should disclose the number of PACs and HRCAs within the project planning area and the number and acreage of PACs and HRCAs (both individually and cumulatively) that will be logged. The QLG Act prohibits logging within PACs but the Forest Service should still disclose the potential indirect impacts to PACs from logging adjacent to these critical areas.

- With respect to each HRCA, the Forest Service should identify the current amount of owl nesting and foraging habitat and the amount that will be degraded by the project, which was specifically identified by the Science Consistency Review as important information to be addressed in environmental planning. (Stine and Keane 2003, pp. 4, 6). The analysis should assess the percentage of suitable habitat within each HRCA both before and after project implementation.

- The Forest Service should disclose the acreage of old growth stands 1 acre or larger that will be logged. Research indicates that these small inclusions of habitat are important for the California spotted owl (Blakesley 2003; Moen and Gutierrez 1997), and they were protected under the 2001 ROD. Both the U.S. Fish and Wildlife Service and the Forest Service's Washington Office have expressed concerns about the elimination of protection for these stands under the 2004 ROD. (USDI Fish and Wildlife Service 2003c, pp. 4-5; Gladen 2003, pp. 10-11).

- The Forest Service should identify and disclose any of the "areas of concern" identified by Verner et al. (1992) that will be logged, including the existing amount of owl nesting and foraging habitat within such areas and the amount of nesting and foraging habitat that will be degraded. The Forest Service should analyze the extent to which such logging within areas of concern may affect the owl's distribution and dispersal in the planning area. (*See* SNFPC *et al*. 2004, p. 20).

- For projects in the Quincy Library Group ("QLG") pilot project area, the Forest Service should specifically address information in the 1999 biological evaluation for the QLG pilot project, which identifies significant impacts to the California spotted owl resulting from fragmentation and loss of key habitat elements due to the pilot project logging program.

As noted above, the Campaign wishes to make and preserve here its objections to any and all deficiencies in the environmental assessment for this Project relating to the discussion of affected environment, impacts (including cumulative impacts), alternatives and mitigation measures that bear on the California spotted owl.

C. American Marten

The marten is among the most habitat-specific mammals in North America, and changes in the quality, quantity, and distribution of available habitat can affect their distributional range in the Sierra Nevada. (USDA Forest Service 2001, Vol. 3, Chap. 3, part 4.4, p. 23). The marten is closely associated with the structural characteristics of old forests, especially large trees, large snags and down wood, and dense canopy cover. (SNFPC *et al*. 2004, pp. 41-43). Research has shown that the marten is highly sensitive to forest fragmentation, generally tolerating a landscape that has no greater than 20-25 percent forest openings. (*Id.*, p. 43).

Because of its low reproductive potential and large home range, together with its affinity for old forests, the marten is considered vulnerable to local extirpation. (USDA Forest Service 2001, Vol. 3, Chap. 3, part 4.4, pp. 22-23). Extensive surveys by Forest Service researchers have indicated that there is a significant gap in the marten's distribution in the northern Sierra (Zielinski 2002; Kucera et al. 1995), which may be related to the relative absence of old forests in this area. (Kucera 2004).

There is strong evidence that logging pursuant to the 2004 ROD, particularly logging of medium and large trees, reduction in canopy cover, removal of large snags and down wood, and logging within the QLG pilot project area, will degrade marten denning, resting, and foraging habitat. (SNFPC *et al*. 2004, pp. 45-48). The forest carnivore experts who have reviewed the plan have uniformly concluded that it increases the risks to the marten's population, threatening

the marten's viability and distribution and potentially leading to local extirpation. (Barrett 2004a; Kucera 2004; Buskirk 2003).

Given the risks to the marten of implementing the 2004 ROD, it is essential that the Forest Service take a detailed and careful look at the likely impacts on the marten and its habitat of implementing the project. An adequate analysis should address, at a minimum, the following issues. (*See* SNFPC *et al*. 2004, pp. 41-48, 83-85).

- The Forest Service should disclose the impact of group selection openings on the marten. Given the marten's sensitivity to forest openings, the Forest Service should analyze the percentage of openings within marten habitat before and after project implementation with respect to a threshold of 20-25 percent forest openings.

- The Forest Service should disclose the existence of marten within the planning area. The apparent absence of the marten from portions of the QLG pilot project area requires substantial caution in allowing additional logging within and adjacent to this area. The Forest Service should disclose and discuss any local survey information that indicates presence or absence of marten within the planning area.

- The Forest Service should disclose the impacts on marten distribution and viability of removing medium-large trees and large snags and down wood and decreasing canopy cover within the planning area.

- The Forest Service should disclose the impacts of proposed logging on marten habitat connectivity and on the fragmentation of existing habitat, particularly within checkerboard lands in the central and northern Sierra. (SNFPC *et al*. 2004, pp. 38-39). The 2004 ROD directs the Forest Service to "minimize old forest habitat fragmentation," to assess fragmentation issues in the [biological evaluation], to assess potential impacts on habitat connectivity, and to consider retaining forested linkages as part of "project-level analysis." (2004 ROD, pp. 53-54). Special attention should be paid to impacts of any proposed DFPZs or road construction on habitat connectivity and fragmentation within the QLG pilot project area, which has been identified by the Forest Service and others as a significant concern. (SNFPC *et al*. 2004, pp. 47-48; 1999 QLG ROD, p. 8-9)

- For projects in the QLG pilot project area, the Forest Service should specifically address information in the 1999 biological evaluation for the QLG pilot project, which identifies significant impacts to the marten resulting from fragmentation and loss of key habitat elements due to the pilot project logging program.

- The Forest Service should disclose the amount and intensity of proposed logging within furbearer management areas or forest carnivore networks that have been proposed or adopted by each National Forest.

As noted above, the Campaign wishes to make and preserve here its objections to any and all deficiencies in the environmental assessment for this Project relating to the discussion of affected environment, impacts (including cumulative impacts), alternatives and mitigation measures that bear on the American marten.

D. Northern Goshawk

The northern goshawk is a Forest Service Sensitive Species. In the Sierra Nevada, the goshawk breeds throughout the ponderosa pine/mixed conifer, red fir and lodgepole pine vegetation types, and in eastside pine forests on the east slope. (USDA Forest Service 2001, Volume 3, Chapter 3, part 4.4, p. 113). "Northern goshawks require mature conifer and deciduous forests with large trees, snags, downed logs, dense canopy cover, and open understories for nesting, and use forests with dense to moderately open overstories, open understories interspersed with meadows, brush patches, riparian areas, or other natural or artificial openings for foraging." (*Id*., p. 117).

The FSEIS identified that the 2004 ROD could adversely affect goshawk habitat with a particular emphasis on eastside pine habitats. Reduction in basal area without a canopy cover limits in eastside pine types (FSEIS, p. 284) higher reduction in canopy cover (*Id*., p. 285), and simplification of stand structure (*id*.) were all associated with the implementation of the 2004 ROD. The analysis in the FSEIS anticipates that "mitigations to retain higher levels of stand basal area or canopy cover to ensure adequate foraging and nesting habitat within a project area could be incorporated into individual projects." (*Id*., p. 284).

Given the risks identified in the FSEIS, the Forest Service must make a detailed assessment of the likely impacts of implementing this project on northern goshawk and its habitat. An adequate analysis should address, at a minimum, the following issues.

- The Forest Service should disclose the amount and intensity of harvest proposed in goshawk territories.

- The Forest Service should evaluate goshawk density in the vicinity of the Project and prepare an assessment of the potential for the Project to adversely alter habitat and increase habitat and population gaps. (*Id*., p. 286

- The Forest Service should consider one or more alternatives to the proposed Project that limit the reduction of canopy closure and basal area to ensure that high quality nesting and foraging habitat is associated with specific territories.

- For projects in the QLG pilot project area, the Forest Service should specifically address information in the 1999 biological evaluation for the QLG pilot project, which identifies significant impacts to the goshawk resulting from fragmentation and loss of key habitat elements due to the pilot project logging program.

- This Freeman project's viability finding must consider the 1999 QLG appeal response p.28-29 (3/28/2000) in which the Forest Service bases its finding for goshawk viability on maintaining 40% cc in DFPZs where it currently exists. QLG FEIS goshawk effects section and Appendix J indicates that DFPZs would not require reduction below 40% cc. Lowering canopy cover below 40% in DFPZs will significantly impact the Northern goshawk, possibly leading to a trend towards Federal listing and significant impacts to the environment, requiring an EIS.

As noted above, the Campaign wishes to make and preserve here its objections to any and all deficiencies in the environmental assessment for this Project relating to the discussion of

affected environment, impacts (including cumulative impacts), alternatives and mitigation measures that bear on the northern goshawk.

E. Management Indicator Species

In the 2004 ROD (p. 70), the Forest Service readopted Appendix E of the 2001 SNFPA FEIS, including the annual monitoring plan for various Management Indicator Species and Species At Risk ("MIS/SAR") that are considered particularly vulnerable to impacts from National Forest management.

The Forest Service should disclose the direct, indirect, and cumulative impacts to each MIS/SAR affected by this Project, including amounts and changes in habitat and all population trend data to support findings under NFMA to insure the diversity and continued viability of animal species in this region. 16 U.S.C. 1604 § 6(g) (3)(B), 36 C.F.R. § 219 *et. seq*. MIS/SAR identified in the forest plan and Appendix E for Old Forest, Aquatic-Riparian and Hardwood Ecosystems should be identified and analyzed in the Project planning area.

As noted above, the Campaign wishes to make and preserve here its objections to any and all deficiencies in the environmental assessment for this Project relating to the discussion and evaluation of affected environment, impacts, including purported project benefits and cumulative impacts, alternatives and mitigation measures that bear on the issues of MIS/SAR.

F. Fire and Fuels

The 2004 ROD was based partly on the assumption that logging under the 2001 ROD could not achieve the Forest Service's fuels reduction objectives. However, as demonstrated in the Campaign's appeal of the 2004 ROD, the Forest Service has failed to demonstrate in the FSEIS that logging trees greater than 20 inches in diameter or reducing canopy cover to below 50 percent is necessary to reduce the risk of catastrophic fire. (SNFPC *et al*. 2004, pp. 62-71). Therefore, it is essential that the Forest Service include a careful and detailed analysis of fire and fuels issues in project-specific environmental documentation to justify proposed logging with respect to fuels reduction. The analysis should include, at a minimum, the following.

- The Forest Service should provide estimates of projected flame length, fire resiliency, mortality of dominant and codominant trees, and probability of initiation of crown fire for each alternative, and disclose the underlying data and rationale.

- The Forest Service should provide estimates of projected fire condition class for each alternative, together with underlying data and rationale.

- The Forest Service should prepare an analysis of impacts on fire hazard based on thinning from below up to a range of diameter limits, beginning with 6 inches in diameter and increasing by 2 inch increments to the maximum diameter limit allowed by the 2004 ROD.

- Based upon concerns raised by leading fire scientists (Stephens 2004; Stephens 2003; Stephens 1998; van Wagtendonk 1996), the Forest Service should provide an analysis of tradeoffs leading to increased fire hazard from increased canopy openings. The Forest Service should disclose specific microclimate effects, including changes in wind speed,

humidity, understory re-growth, and maintenance issues in treatment areas as part of the fuels analysis.

- The Freeman project fails to comply with Appendix J of the 1999 QLG FEIS, and its direction to treat aerial fuels in a way the insures the retention of clumps of the largest trees, rather than uniform spacing of residual trees.

- The Campaign is concerned that the current fuels reduction strategy is targeting larger size class trees 20-30" dbh in spite of recent scientific information (SNFPC Appeal 2004 ROD/FSEIS p. 65-77) that these trees do not contribute, in a significant way, to catastrophic wildfire behavior.

  To further support this claim we reference the attached e-mail from Dr. Phil Omi, Professor of Forest Fire Science at Colorado State University (9/6/02) stating in the Report "Effect of Fuels Treatments on Wildfire Severity," (Omi and Martinson 2002), that chronicled research into fire behavior in treated and untreated stands in four recent large wildfires, the treated stands where generally small diameter trees not large dominant or co-dominant trees.

  Dr. Omi responds in an e-mail (attached) that the fuel treatments in the study sites were generally cutting trees of 8"-10" inches in diameter, typical pre-commercial or timber stand improvement activity, and generally did not affect overall canopy cover. This level of treatment had positive impact upon wildfire behavior in the sites examined.

  The authors state, "crown bulk density was not the fuel hazard variable most strongly correlated to fire severity at our study sites. Instead, height to live crown, the variable that determines crown fire initiation rather propagation (Van Wagner 1977), had the strongest correlation to fire severity in the areas we sampled" (Omi and Martinson 2002, p. 22).

  They further state, "'fuels treatments' that reduce basal area or density from above (i.e., removal of the largest stems) will be ineffective within the context of wildfire management" (Ibid).

  The Forest Service needs to consider and respond to this information in the EA.

As noted above, the Campaign wishes to make and preserve here its objections to any and all deficiencies in the environmental assessment for this Project relating to the discussion and evaluation of affected environment, impacts, including purported project benefits and cumulative impacts, alternatives and mitigation measures that bear on the issues of fire and fuels.

G. Riparian Issues and Analysis

Both the 2001 ROD and the 2004 ROD rely upon an Aquatic Management Strategy to protect and enhance riparian and aquatic resources. However, the FSEIS recognizes that the 2004 ROD "may pose higher short term risks to aquatic resources because it prescribes larger amounts of mechanical treatments and greater treatment intensities." (FSEIS, p. 215).

The FSEIS also recognized the need to complete site-specific analyses of cumulative effect of any proposed action on aquatic and riparian resources. (FSEIS, Volume 2, p. 31). At a minimum the Forest Service must evaluate the following in this project analysis.

- The Forest Service should quantify the amount and intensity of timber harvest proposed in Riparian Conservation Areas ("RCAs") and Critical Aquatic Refuges ("CARs").

- The Forest Service should make a finding, supported by evidence in the environmental analysis, that the proposed Project is consistent with the Riparian Conservation Objectives ("RCO") and the standards and guidelines in the 2004 ROD. (2004 ROD, pp. 62-66). This should include a detailed analysis of proposed actions where greater than 5% of the RCA will be compacted and a statement of how this level of compaction is consistent with meeting the RCOs and standards. (FSEIS, p. p. 210)

- The Forest Service should prepare a cumulative watershed effects analysis that discloses the threshold of concern for the affected watersheds, the level of disturbance contributed by the proposed action and proposed mitigation measures when project activities would cause the watershed to approach or exceed the threshold for concern.

- The Forest Service should assess road conditions for the project area, identify maintenance and restoration needs for stream crossings, and identify maintenance and decommissioning of specific roads.

- The Freeman project must comply with the SAT Guideline requirements for watershed analysis (2004 SNFPA ROD p.67) and the results of this analysis must be disclosed and utilized in the Freeman project.

As noted above, the Campaign wishes to make and preserve here its objections to any and all deficiencies in the environmental assessment for this Project relating to the discussion and evaluation of affected environment, impacts, including purported project benefits and cumulative impacts, alternatives and mitigation measures that bear on the issues of aquatic issues and analysis.

H. Other Planning Issues

The following issues should also be analyzed and disclosed in the environmental impact statement and/or environmental assessment for this Project.

First, the environmental impact statement and/or environmental assessment for this Project should analyze an alternative that fully implements the 2001 ROD. Such an alternative is necessary to allow the public and the decision maker to compare directly the environmental impacts of implementing the 2004 ROD and the consequences of implementing the 2001 ROD.

Second, the Forest Service must also make an independent finding in a biological evaluation with respect to the Project's impacts on sensitive species such as the California spotted owl, Northern goshawk, and American marten. The 2004 ROD and FSEIS did not analyze site-specific impacts and did not fully consider cumulative impacts. As the Forest Service stated in the FSEIS:

> The modeling for the SNFPA provides a relative comparison of bioregional-scale effects of the alternatives on vegetation and habitat over time. It also provides information to the decision maker and public regarding potential spatial effects, for example numbers of PACs potentially treated, acres in home range core areas potentially treated, and so forth. However, the SEIS presents a programmatic level analysis. *Site-specific effects will be analyzed and mitigations measures will be developed when actual projects are planned and designed on the ground. Biological evaluations will also be developed at the site-specific project scale*.

(FSEIS, Volume 2, Response to Comments, p. 118, emphasis added) Similarly, in the November 25, 2003 biological opinion that accompanied the FSEIS, the Forest Service stated:

> The documentation in the FSEIS and this letter constitutes the programmatic Biological Evaluation for sensitive animal and plant species that are known or are suspected to occur within the planning area . . . Forest Service policy specifies that Biological Evaluations will be prepared for all project-level actions that are proposed to implement the selected alternative. The programmatic Biological Evaluation will provide a baseline to consider bioregional cumulative effects in these project-level analyses. *These project-level Biological Evaluations will be able to consider the spatial and temporal direct, indirect, and cumulative effects at the local scale and will make independent determinations for each affected sensitive species*.

(Biological Evaluation, p. 2, emphasis added) Therefore, as anticipated in the FSEIS and accompanying biological evaluation, the Forest Service must make new determinations at the project level with respect to species viability and the potential trend towards federal listing. *See, e.g., Sierra Club v. Block*, 576 F. Supp. 959 (D. Or. 1983) ("A programmatic EIS will often be insufficient as it relates to site-specific actions. This may be because it does not contain sufficient detail to satisfy NEPA requirements, or because new information is revealed subsequent to its preparation.").

Third, because the Forest Service made numerous assumptions in modeling the 2004 ROD in the FSEIS that were not incorporated into the plan's standards and guidelines (SNFPC *et al*. 2004, pp. 110-113), the Forest Service should disclose the extent to which the Project is consistent or inconsistent with the 2004 ROD *as modeled in the FSEIS.* For example, the environmental assessment should disclose whether any sugar pine larger than 6 inches in diameter will be removed in SPLATs, DFPZs, or defense zones; whether any trees larger than 20 inches in diameter will be removed in SPLATS; whether any trees larger than 24 inches in diameter will be removed from DFPZs, old forest emphasis areas, or the defense zone; and whether 50 percent canopy cover will be retained within old forest emphasis areas. (*See* SNFPC *et al*. 2004, pp. 111-112). To the extent that the Project is not consistent with the 2004 ROD, as modeled in the FSEIS, the environmental assessment must carefully analyze the differences, including cumulative impacts.

Fourth, the Forest Service should disclose other important Standards and Guidelines contained in the specific Land and Resource Management Plan that are not identified in the 2004 ROD. An explanation of forest plan consistency should be provided with each site-specific analysis.

Finally, with respect to all of the foregoing issues, the Forest Service should analyze the cumulative impacts of the project together with "other past, present, and reasonably foreseeable future actions." 40 CFR 1508.7. This cumulative effects analysis is particularly important in the QLG pilot project area since the negative cumulative impacts finding in the 1999 H-F QLG Biological Evaluation lead to an abandonment of the full QLG logging proposal. The QLG Program of Work is currently known to the Forest Service and displayed on the Forest Service QLG website http://www.fs.fed.us/r5/hfqlg/ and includes specific descriptions of acres to be treated and the sawlog volumes generated for these Forest Service projects scheduled to 2009. In addition to considering logging on public lands, it is essential that the analysis also address logging on private timberlands, particularly within checkerboard areas where private lands are intensively intermingled with Forest Service lands. (SNFPC *et al*. 2004, pp. 95-98). This analysis should include the environmental impacts of maintaining any proposed DFPZs or area treatments, which are reasonably foreseeable future actions.

As noted above, the Campaign wishes to make and preserve here its objections to any and all deficiencies in the environmental assessment for this project relating to the discussion and evaluation of affected environment, impacts (including cumulative impacts), alternatives and mitigation measures that bear on the planning and evaluation issues listed above.

I. Quincy Library Group Pilot Project

Projects within the QLG pilot project area require special consideration and analysis. The Forest Service concluded as part of the QLG environmental impact statement process that full implementation of the project "could pose a serious risk to the viability of the owl in the planning area, thereby making the implementation of Alternative 2 inconsistent with the National Forest Management Act and its implementing regulations." (USDA Forest Service 1999a). The U.S. Fish and Wildlife Service expressed concerns "that the proposed action will negatively affect spotted owl survival and/or reproduction for the following reasons: (1) habitat loss, (2) habitat fragmentation, and (3) changes in prey base." The Service concluded as follows: "<u>The Service believes the implementation of Alternative 2 poses a significant threat to the long-term viability of the California spotted owl, Pacific fisher, and American marten due to the loss, degradation, and fragmentation of suitable habitat</u>." (USDI Fish and Wildlife Service 1999, p. 16, emphasis added). The Record of Decision approving the QLG pilot project reiterated these concerns about owl viability, concluding that fully implementing the QLG pilot project "could pose a serious risk to the viability of the California spotted owl in the planning area." (USDA Forest Service 1999c). Similar concerns were expressed by the Regional Forester in adopting the 2001 Framework. (USDA Forest Service 2001b, p. 51). The Forest Service has failed to cite any new information that would warrant changing these findings. *See* SNFPC *et al*. 2004, pp. 20-24.

Given these serious concerns about impacts of the QLG project on owl and marten viability, it is essential that projects in the QLG pilot project area take a careful look at site-specific and cumulative impacts on these species and their habitat. In particular, the Forest Service must make an *independent finding* in the biological evaluation for such projects as to whether project implementation may contribute to a trend towards federal listing. As noted above, both the FSEIS and the accompanying biological evaluation clearly recognized the limitations of the bioregional modeling presented in the FSEIS and the need for need for site-specific analysis during project planning. Accordingly, relying upon the FSEIS to support such a

site-specific finding, particularly when the FSEIS failed to address site-specific impacts or adequately to consider cumulative impacts, would be legally inadequate.

Projects in the QLG area must also disclose and analyze whether there have been previous entries into the project area pursuant to the CASPO guidelines. As described in the Campaign's appeal of the 2004 ROD, such multiple entries would be contrary to law. (SNFPC *et al*. 2004, p. 123). Plans for multiple entries and the re-logging of recently treated areas such as the Meadow Valley project, where the Forest Service is planning to utilize group selection logging in recently treated units, currently in desired condition. The impacts from such actions should be fully disclosed and assessed in the EA/BE for the Freeman project. The Forest Service should also disclose whether any group selection units will comply with basal area and canopy cover retention standards, as required by Alternative 2 in the QLG FEIS. (SNFPC *et al*. 2004, p. 123).

Finally, the Campaign request the Forest Service disclose the upper diameter level associated with the cumulative basal area and canopy closures requirements of the project.

As noted above, the Campaign wishes to make and preserve here its objections to any and all deficiencies in the environmental assessment and/or biological evaluation for this project relating to the discussion and evaluation of affected environment, impacts (including cumulative impacts), alternatives and mitigation measures that bear on the implementation of the QLG pilot project.

III. The Proposed Project Violates NEPA, NFMA, and Other Applicable Laws.

As detailed in the attached Notice of Appeal, the 2004 ROD for the Sierra Nevada Forest Plan Amendment and accompanying FSEIS violate NEPA, NFMA, and other applicable laws. Therefore, to the extent the proposed Project implements the 2004 ROD, it too is contrary to the law. As noted above, the Campaign wishes to make and preserve its objections to any and all aspects of the proposed Project that deviate from the standards and guidelines contained in the original 2001 ROD and implement the changes to those standards and guidelines made by the 2004 ROD.

Conclusion

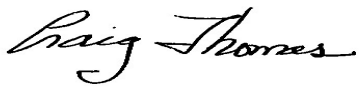
In conclusion, the Campaign hereby requests that it be provided with a copy of the environmental assessment (draft and final), the biological assessment and biological evaluation for plants and wildlife, any fire report, silvicultural report, or hydrology report, any analysis of MIS/SAR, forest plan consistency checklist, and any separate cumulative effects analysis. The Campaign also requests a list or index to the project file. We request color paper maps of the project and unit boundaries and a map of the important wildlife areas in (and near) the project area and analysis area from ID Team leader, when they are created. We request GIS unit boundaries (with group selection areas and groups identified) and record of historic projects in the area, on CD.

The Campaign requests that these documents be provided as soon as available, preferably in an electronic format.

The Campaign reserves the right to submit further comments on this project when we are presented with the necessary information requested in this comment letter.

Thank you for considering these comments.

Sincerely,



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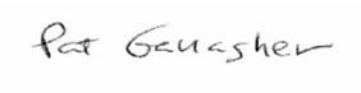

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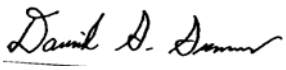

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