

NOTICE OF APPEAL
and
STATEMENT OF REASONS

SLAPJACK PROJECT
PLUMAS NATIONAL FOREST
FEATHER RIVER RANGER DISTRICT

JAMES M. PEÑA, FOREST SUPERVISOR, DECIDING OFFICER
BERNARD WEINGARDT, REGIONAL FORESTER, APPEAL DECIDING OFFICER

November 13, 2006

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**Notice of Appeal and Statement of Reasons
Slapjack Project, Plumas National Forest, Feather River Ranger District
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Appellants, Sierra Nevada Forest Protection Campaign (“SNFPC” or “Campaign”) and Sierra Club, hereby appeal the Record of Decision (“ROD”) approving the Slapjack Project signed by Forest Supervisor James M. Peña on September 13, 2006, pursuant to 36 C.F.R. Part 215. Public notice appeared in the Feather River Bulletin on September 27, 2006. The appeal deadline is November 13, 2006, and this appeal is timely filed. Appellants filed timely and substantive comments on this project and have standing to appeal the project pursuant to 36 C.F.R. § 215.13(a) (2005).

Below we set forth the specific grounds for this appeal. In addition, the Slapjack project implements the 2004 Sierra Nevada Framework ROD (USDA Forest Service 2004a), and tiers to the accompanying FSEIS (USDA Forest Service 2004b). As demonstrated in our appeal of the 2004 ROD and FSEIS (SNFPC et al. 2004), both the 2004 plan and the FSEIS fail to comply with the National Forest Management Act, the National Environmental Policy Act, and other environmental laws. A lawsuit challenging the 2004 Framework is currently pending in federal court. Therefore, for the programmatic reasons set forth in our appeal of the 2004 ROD and FSEIS,¹ the Slapjack project is also contrary to law.

I. THE FOREST SERVICE FAILED TO TAKE A HARD LOOK AT REASONABLE ALTERNATIVES INVOLVING LESS INTENSIVE LOGGING

A. All of the Action Alternatives in the Slapjack FEIS are Virtually Identical.

The Slapjack final environmental impact statement (“FEIS”) purports to consider six alternatives in detail, in addition to the no action alternative. FEIS at 2-1 to 2-2. However, with respect to the amount and intensity of proposed logging, all of the action alternatives are virtually identical. The FEIS acknowledges that “[t]he action alternatives are the same in terms of DFPZ construction and individual tree selection harvest; canopy cover and diameter limits for tree removal; road system improvements; and restoration of wildlife, aquatic, and riparian ecosystems.” FEIS at 2-3. Thus, all of the action alternatives involve the same acreage of DFPZs and individual tree selection, FEIS at 2-4, and involve identical logging prescriptions. The only difference between the alternatives with respect to the amount of logging is very minor: Alternatives F-G propose 29 fewer acres of group selection than Alternatives B-E, which amounts to less than 1 percent fewer acres of total logging.

NEPA requires that the Forest Service consider a range of reasonable alternatives. In Sierra Nevada Forest Protection Campaign v. Tippin, 2006 WL 2583036 (E.D. Cal. 2006), the court held that the Creeks EIS failed to consider a range of alternatives as required by NEPA. Like the Slapjack EIS, the action alternatives in the Creeks EIS were “nearly identical, as evidenced by the fact that the Forest Service analyzes them [together] throughout most of the FEIS.” Id. at *6. Like the Slapjack EIS, all the action alternatives in the Creeks EIS “contain identical quantities

¹ A copy of the appeal was attached to our earlier scoping comments on this project and is hereby incorporated into this appeal by reference.

of DFPZs and area thinning.” Id. In the Creeks case, the court held that “the Forest Service arbitrarily and capriciously failed to analyze an adequate range of alternatives.” Id. at *9. Because the Slapjack EIS is virtually identical to the Creeks EIS in its consideration of alternatives, the same conclusion applies to the Slapjack EIS. See also Klamath-Siskiyou Wildlands Center v. U.S. Forest Service, 373 F. Supp.2d 1069 (E.D. Cal. 2004)(holding EIS contrary to NEPA where all action alternatives are “nearly identical”); Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 812-14 (9th Cir. 1999)(holding that EIS that “considered only a no action alternative along with two virtually identical alternatives” failed to comply with NEPA).

B. There is Substantial Evidence, Not Considered in the Slapjack FEIS, that Fire and Fuels Goals Can Be Met with Less Intensive Logging.

As discussed in our comments on the draft EIS, the analysis of fire and fuels issues in the EIS is fundamentally flawed by its failure to consider a wider range of logging prescriptions that could achieve the project’s fuels reduction goals. In particular, the EIS fails to acknowledge, discuss, and respond to a broad array of scientific information and opinion indicating that the agency’s fuels reduction goals can be met while maintaining higher canopy cover (e.g., 50 percent) and utilizing a lower logging diameter limit (e.g., 20 percent). Instead, the EIS only considers one set of logging prescriptions, which are embedded in all of the action alternatives. In this way, the EIS establishes a false dichotomy of “doing the project” or “doing nothing.” By failing to acknowledge extensive evidence that fuels reduction goals can be achieved with less intensive logging, and by failing to consider in detail alternatives utilizing less intensive logging, the EIS falls short of NEPA’s requirements.

There is substantial evidence indicating that it is not necessary to reduce canopy cover to 40 percent or below or to remove trees up to 30” dbh, as proposed in the Slapjack project, to reduce the risk of catastrophic wildfire. Much of this evidence is cited in the Campaign’s appeal of the 2004 ROD, which was incorporated in our scoping comments on the Slapjack project. (SNFPC et al. 2004, pp. 62-71). It is generally recognized by fire scientists that fire resiliency largely is achieved by removing surface fuels and small diameter material. “Most of the trees that need to be removed to reduce accumulated fuels are small in diameter and have little or no commercial value.” (U.S. General Accounting Office 1999, p. 44). “When thinning is used for restoration purposes in dry forest types, removal of small diameter material is most likely to have a net remedial effect. Brush, small trees, along with fine dead fuels lying on top of the forest floor, constitute the most rapidly ignited component of dry forest.” (Christensen et al. 2002, p. 2). Thus, “surface fuels are the means by which crown fires are sustained.... Without heavy surface fuels, crown fires are almost always absent, regardless of canopy cover, size class distribution, or the height to live crown.” (Rice 2003, p. 2).

Studies of the effects of fuel treatments on fire behavior support the conclusion that fuel reduction that focuses on ladder fuels and small diameter material is effective in reducing catastrophic fire. Stephens (1998) examined a number of fuel treatments and used the model FARSITE to evaluate their efficacy. In all cases, the most successful fuel treatments included prescribed fire. Further, prescribed fire alone was as effective in reducing fire risk as treatments with logging and prescribed fire combined. “These treatments resulted in fuel structures that will

not produce extreme fire behavior at 95th percentile conditions.” (*Ibid.*, p. 32). Further, the vegetative conditions in the watershed where the fire effects were modeled included canopy cover conditions of up to 100 percent cover. The prescribed burning treatments did not reduce in any way the canopy cover of the dominant and co-dominant trees, yet these treatments were as effective as the thinning/biomass/prescribed burn treatments in which canopy cover was reduced to 50 percent in some areas of the watershed. Thus, no change in canopy cover of the dominant and co-dominant trees was necessary to meet the fuel objective under extreme weather conditions. Furthermore, reducing canopy in some areas to 50 percent did not result in any additional benefit. Similar results were reported by van Wagtendonk (1996) which again emphasized that removal of the surface and ladder fuels is effective in changing fire behavior. These studies demonstrate that it is not necessary to remove medium to large diameter trees or alter canopy cover in order to prevent crown fire and other extreme fire behaviors

Fire ecologist Carol Rice, in an analysis attached to our comments on the DEIS, provides a detailed review of relevant scientific literature and case studies demonstrating that the goal of reducing catastrophic wildfire and promoting fire resilient forests can be met without logging trees up to 30” diameter or reducing canopy cover to 40 percent or below, as proposed in the Slapjack project. (Rice 2005). Thus, for example, Stephens and Moghaddas (2005a) studied a range of treatments on the Blodgett Forest in the central Sierra Nevada as part of the Forest Service’s national Fire and Fire Surrogate study. They found that all studied treatments effectively reduced surface fire behavior and crown and torching indices while maintaining canopy cover in excess of 50 percent. Similarly, in a different study in the same area, Stephens and Moghaddas (2005b) concluded that thinning from below was more effective at reducing predicted mortality in trees up to 51 cm diameter when compared with any type of silvicultural treatment resulting in plantations and individual tree selection, despite the fact that canopy cover in the thinning from below treatment was 57 percent. Similarly, Perry et al. (2004) and Omi and Martinson (2002) both found that severe fire could be prevented with an 8-10" dbh limit, followed by prescribed burning or mastication. By failing to address this research and incorporate lower diameter limits into specific alternatives, the Slapjack FEIS fails to comply with NEPA.

C. Relying Entirely on Analyses from Other Projects that Are Not Comparable Is Not Supportable.

The Slapjack EIS failed to analyze in detail an alternative with 50 percent canopy cover retention and a logging diameter limit of 20”, or any alternatives involving less intensive logging than proposed. Instead, the EIS eliminated such alternatives from detailed consideration by citing to analysis relating to other timber sales, Empire and Watdog. FEIS at 2-20. This argument is unpersuasive for several reasons.

First, Forest Service analysis of other QLG logging projects, such as Euro on the Tahoe National Forest and North 49 on the Lassen National Forest, has demonstrated that fuels reduction objectives can be satisfied utilizing a 20” dbh limit, rather than the 30” dbh limit in the proposed action (Tahoe National Forest 2005, pp. 12-14; Lassen National Forest 2004, pp. 4-5). Moreover, some QLG projects on the Plumas National Forest (such as Meadow Valley) have utilized a 20” dbh limit within DFPZs, indicating that the Forest Service considers such logging

to be effective in achieving fuels reduction goals. The fact that analysis for the Empire and Watdog project may have reached a different conclusion is not determinative of whether such alternatives would be effective within the Slapjack project area. NEPA requires that the Forest Service undertake site-specific analysis relating to a particular project, which the agency failed to do for Slapjack.

Second, research shows that fire regimes “vary in both interval and severity depending on vegetation, topographic position, site quality, and other local factors.” FEIS at 3-64. The fire and fuels analysis for the Empire and Watdog projects was based on site-specific factors, such as vegetation, elevation, slope, and weather, which do not apply to the Slapjack project. The Empire fire and fuels analysis unambiguously states: “This is a site specific analysis using site specific stand data; specific results of this analysis are not intended for use or application beyond the Empire Project Area.” (Empire Fire, Fuels and Air Quality Report, June 30, 2006, p. 19). Similarly, the Watdog fire and fuels modeling was based on “site-specific vegetation characteristics ... extracted from forest inventoried data” and reflected “vegetation and fuel composition characteristics within the project area.” (Watdog Draft Supplemental EIS, pp. 45-46). The Slapjack fire and fuels analysis was also “based on stand and unit-level site-specific information.” FEIS at 3-59. Therefore, the Forest Service should have analyzed the alternatives suggested by the Campaign and others based on site-specific data, rather than relying on the results of analyses from other areas.

Beyond that, there are important differences between the Slapjack project area and the Empire and Watdog project areas that would affect the analysis of the kinds of fuels treatments necessary to achieve project goals. For example, Slapjack is at substantially lower elevation than Empire and Watdog. Compare Slapjack Silviculture Report at 8 (Slapjack elevation ranges from 1100-3800 feet) with Empire FSEIS (Empire elevation from 3400-7711 feet) and Watdog DSEIS at 50 (Watdog elevation from 3000-6200 feet). The Empire project area includes predominantly south-facing slopes, which are more susceptible to wildfire. (Empire Fire and Fuels Report, p. 3). The Watdog project is predominantly on ridgetops above steep slopes, which means that fires entering the area are likely to have a faster rate of spread and higher flame lengths. (Watdog DSEIS at 56). The Empire project uses a different weather station to predict likely weather than Slapjack. Compare Empire Fire and Fuels Report at 18 (using Quincy Weather Station) with Slapjack FEIS at 3-60 (using Pike County Weather Station). And finally, the fire and fuels analysis for the projects were based on a different proportion of Fuel Models, indicating that the fuels characteristics of the Slapjack area are different than those of the Empire and Watdog areas. Compare Slapjack FEIS at 3-65 (Slapjack area includes 44% Model 10, 23% Model 9, and 27% Models 4-6) with Watdog DSEIS at 49-50 (Watdog area includes 70% Model 10 and 15% Model 9) and Empire Fire and Fuels Report at 7-9 (Empire area includes 67% Model 10, 16% Model 9, and 12% Model 5).

The Campaign has submitted extensive information and analysis critiquing the conclusions set forth in the Empire and Watdog documents suggesting that less intensive logging is not effective in reducing severe wildfire. To the extent that the Forest Service is relying upon or incorporating analyses from Empire and Watdog into the Slapjack EIS, we hereby incorporate by reference our appeal of the Empire project (October 2, 2006) and our comments on the Watdog DSEIS

(October 16, 2006), together with the attachments and other documents incorporated into the Empire appeal and Watdog comments.

In sum, there are significant site-specific differences between the Slapjack area and the Empire and Watdog areas that make it unsupportable to apply the results of the Empire and Watdog fire and fuels analyses to the Slapjack area. Because of these important differences, the Forest Service should have analyzed alternatives involving less intensive logging based on the site-specific characteristics of the Slapjack area, rather than relying entirely on analyses from other areas that are not comparable.

Similarly, the Slapjack FEIS relies on the analyses from the Empire and Watdog projects to conclude that the Slapjack project would not be economically feasible without logging trees up to 30" diameter and reducing canopy cover to 40 percent. FEIS at 2-20. Again, however, the analyses in the Empire and Watdog projects were based on site-specific conditions and cannot be assumed to apply to the different vegetative and other characteristics of the Slapjack project. Like the Creeks EIS, "nowhere in the [Slapjack] FEIS does the Forest Service provide any analysis regarding the cost-effectiveness of each of the various alternative approaches." Sierra Nevada Forest Protection Campaign v. Tippin at *8. This absence of site-specific economic analysis "does not constitute a hard look at reasonable alternatives" as required by NEPA. Id.

Finally, the Slapjack EIS asserts "that there would be little difference in adverse environmental effects, at a landscape or project area level, in treating stands to 40 percent canopy with a dbh limit of 30 inches versus treating stands to achieve a 50 percent residual canopy cover with a dbh limit of 20 inches." FEIS at 2-21. This assertion is not only unsupported, but it flies in the face of criticism from leading scientists, who have concluded unanimously that the more intensive logging proposed in Slapjack would have greater adverse consequences to old forest wildlife, such as the California spotted owl and Pacific fisher, than would the less intensive logging that the Campaign supports. See the Campaign's comments on the Slapjack DEIS and the Campaign's appeal of the 2004 Framework ROD for detailed discussion of these issues. Moreover, the Biological Assessment for the Slapjack project acknowledges that 40 percent canopy cover "is a minimal requirement for foraging/dispersal habitat" for the California spotted owl, and that "retaining a minimum of 40% canopy cover may not maintain even minimal quality foraging habitat for mature and old-forest dependent species." Biological Assessment and Evaluation at 102, 135-36. Therefore, the assertion that maintaining greater canopy cover would make little difference in terms of environmental impacts is contrary to the agency's own analysis for the Slapjack project.

In conclusion, the failure to take a hard look at reasonable alternatives involving less intensive logging, including but not limited to an alternative maintaining 50 percent canopy cover and protecting trees greater than 20" diameter, was contrary to NEPA.

D. NEPA Requires Consideration of an Alternative Based Upon the 2001 Framework.

As demonstrated in the Campaign's comments on the DEIS, NEPA requires consideration of an alternative based upon the 2001 Framework. The Forest Service's summary dismissal of such an alternative does not withstand careful scrutiny. See FEIS at 2-22. The first three reasons offered

in the FEIS all rely upon the 2001 Framework's inclusion of a 50 percent canopy cover retention standard and a 20" diameter logging limit for certain land allocations. However, as we just discussed, the rejection of alternatives involving 50 percent canopy cover and 20" diameter logging limits in the Slapjack EIS was unwarranted. Therefore, the EIS cannot rely on this as a rationale for rejecting a 2001 Framework alternative.

The Slapjack FEIS also states that "several projects" planned under the 2001 Framework are currently being implemented and have been found to "compromise DFPZ effectiveness." But the EIS does not provide the names of these projects and does not cite to any specific data or information. NEPA requires that the Forest Service disclose underlying data, to allow meaningful public participation; relying on the unsubstantiated opinions of unnamed "fire managers" does not comply with NEPA's full disclosure requirements.

Therefore, as the court recently held in Sierra Nevada Forest Protection Campaign v. Tippin, NEPA requires that the Forest Service consider an alternative based upon the 2001 Framework in the Slapjack EIS.

II. THE FOREST SERVICE FAILED ADEQUATELY TO CONSIDER THE PROJECT'S IMPACTS TO THE CALIFORNIA SPOTTED OWL AND ITS HABITAT

The Slapjack FEIS failed to take a hard look at the project's impacts on the California spotted owl and its habitat in several respects. First, the EIS failed to disclose the results of owl surveys within the project area. Second, the EIS failed to analyze the project's impacts to owl habitat at the territory/home range scale. Third, the EIS failed to analyze the implications of planned logging within owl home range core areas (HRCAs). Finally, the EIS failed adequately to analyze the cumulative impacts of private land logging on the owl and its habitat. Please see the attached statement by Monica Bond (Bond 2006), which we incorporate by reference into this appeal, for further discussion of these issues.

In our comments on the DEIS, we requested that the Forest Service disclose in as much detail as possible the results of spotted owl inventory efforts within the project area during the past several years. The EIS inexplicably fails to disclose this information. The EIS acknowledges that the Forest Service has conducted project-level surveys during the past three years, but states only that "there have been up to seven pairs and seven successfully fledged young over the past three years." FEIS at 3-221. NEPA requires that the Forest Service disclose the best available specific information with respect to owl occupancy, breeding status, and reproduction over time for each owl territory within the analysis area. The failure to provide this important information violated NEPA.

Second, the EIS entirely fails to analyze the project's impacts to owl habitat at the scale of home ranges or territories. As the Forest Service acknowledged in the QLG EIS, "[I]and management actions that reduce habitat suitability within home ranges can accelerate population declines." (USDA Forest Service 1999b, p. AA-42). The QLG EIS analyzed the plan's impacts to owl home ranges based on the assumption that home ranges need to include at least 50 percent suitable habitat. According to the QLG EIS, reducing suitable habitat below 50 percent "results in an increased risk of a potential decrease in owl population," in which case the "likelihood of

long term viability is questionable.” *Id.* Conversely, if “habitat remains above 50 percent, it is assumed that no population change will occur.” *Id.* The Forest Service has analyzed impacts at this scale for numerous QLG projects, such as Creeks. To the extent that owl territory boundaries have not been precisely delineated, the Forest Service should approximate boundaries, utilizing the best available habitat surrounding owl activity centers, based on an assumed home range size of 4700 acres. (USDA Forest Service 2001a, Vol. 3, Chapter 3, part 4.4, p. 75). The Forest Service has failed to explain why such analysis was not included in the Slapjack EIS.

Third, although the EIS sets forth the number of acres of habitat that will be affected within 1,000 acre owl home range core areas (HRCAs), it entirely fails to analyze the implications of reducing habitat within HRCAs. There is substantial evidence that logging within owl home ranges, and particularly within HRCAs, can contribute to reduced survival, reduced fecundity, and other adverse effects on the owl. (Bingham and Noon 1997; Bart 1995; USDA Forest Service 2001a, Volume 3, Chapter 3, part 4.4, pp. 92-93). The Slapjack project appears to pose a particular threat to the owl because of the large amount of logging within HRCAs and the fact that some HRCAs currently have less than 1,000 acres of suitable habitat. See Bond 2006. According to the FEIS (p. 3-267-268), the Slapjack project would log approximately 1,621 acres, or approximately 25 percent of the total acreage, of HRCAs within the analysis area. The 2004 Framework FSEIS, in analyzing the impacts of implementing the 2004 ROD, was based on the assumption that approximately 20 percent of HRCAs would be logged. (USDA Forest Service 2004b, pp. 262-63). Thus, the Slapjack project will have proportionally greater adverse impacts on owl HRCAs than assumed in the 2004 Framework EIS. Moreover, many of the HRCAs currently have less than 1,000 acres of habitat (700 acres of foraging habitat), so they already contain less than the desired amount of suitable habitat, making them more vulnerable.

Although the EIS discloses the acreage of habitat currently within HRCAs and the acreage that will be affected by the Slapjack project, FEIS at 3-268, it entirely fails to assess the implications of reducing habitat within HRCAs. For example, what is the risk that the PACs associated with each HRCA will experience a decline in owl occupancy, survival, or reproduction as a result of the reduction in habitat? Given the large amount of logging within certain HRCAs, such as YU003 and YU024, adverse impacts to owl survival and fecundity are likely. In addition, the EIS misleadingly lumps all “foraging habitat” together, which obscures the fact that areas with higher canopy cover (e.g., greater than 70 percent) appear to be more important in terms of owl demography. (Bond 2006; Seamans 2005; Chatfield 2005). The EIS should assess the relative risk to each PAC/HRCA, as the Forest Service has done for other QLG projects such as Creeks. Further, the EIS should assess the implications for the owl population in the QLG area of these site-specific impacts.

The analysis of impacts to the owl in the EIS is incomplete in other important respects. First, the owl analysis area in the EIS is considerably too small, only incorporating the project area plus an additional .5 miles. FEIS at 3-216. The basis for such a small area is not disclosed or justified in the EIS. Research on owl dispersal indicates that owls disperse over considerable distances, with a median breeding dispersal distance of 7 km, or approximately 4.2 miles. (Blakesley et al. 2006a). Juvenile dispersal covers even greater distances, averaging approximately 10-16 miles. (USDI Fish and Wildlife Service 2003, p. 7582). Given that owls routinely disperse more than .5

miles, limiting the analysis area to only .5 miles beyond the project fails to address the project's likely impacts. By utilizing an overly small analysis area, the EIS fails to disclose all of the project's likely impacts on the owl and its habitat, including cumulative impacts of logging outside the project area boundaries.

The EIS also fails adequately to disclose the project's likely cumulative impacts on the owl and its habitat, particularly including impacts of logging on private lands. The project area is "surrounded by private land" (Biological Evaluation, p. 98), and approximately 1/3 of the analysis area is private land. (DEIS, p. 3-204). The DEIS generally acknowledges that "much of the private land bordering the project area [has] been either heavily harvested or at least thinned, with the old growth component removed." (DEIS, p. 3-207). The Ninth Circuit has recently confirmed that timber sale EISs must analyze the cumulative impacts of logging on private lands within the project analysis area. Natural Resources Defense Council v. U.S. Forest Service, 421 F.3d 797, 814-16 (9th Cir. 2005). The Slapjack EIS mentions the possibility of future logging on private lands in the analysis area, but the information presented is both confusing and inadequate. The EIS states that future logging is planned on 4,000 acres of private lands, which includes "9,100 acres of seed tree removal; 210 acres of sanitation salvage; 1,600 acres of clearcuts; and 1,735 acres of shelterwood removal." FEIS at 3-271. Obviously these numbers do not make sense.

More importantly, the EIS does not disclose where the proposed private logging is located relative to spotted owl habitat or territories. The EIS should analyze how much suitable owl habitat on private land will be logged, and then assess the cumulative effects of such habitat degradation with that proposed by the Slapjack project. More specifically, the EIS should disclose the amount of private lands that will be logged within each owl territory, and analyze the cumulative effects of such logging together with logging with owl territories proposed by the Slapjack project. Without this kind of information, the EIS fails to provide the "quantified assessment" of the "combined environmental impacts" of the various projects considered, together with "the effect of this loss on the spotted owl," as required by NEPA. *Klamath-Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 994, 997 (9th Cir. 2004).

For all of these reasons, the Slapjack EIS fails to take a hard look at the project's likely impacts on the California spotted owl and its habitat, contrary to NEPA.

III. THE FOREST SERVICE HAS FAILED TO GATHER AND ANALYZE WILDLIFE MONITORING DATA AS REQUIRED BY LAW

A. The Forest Service Has Failed to Obtain Required Monitoring Data.

The Forest Service is required by its own regulations and management plans to monitor the populations of management indicator species ("MIS") and other wildlife. 36 C.F.R. § 219.19 requires that the population trends of MIS be monitored. These regulations require "that the Forest Service identify [MIS], monitor their population trends, and evaluate each project alternative in terms of the impact on both [MIS] habitat and [MIS] populations." The Lands Council v. Powell, 379 F.3d 738 (9th Cir. 2004). Because the Plumas LRMP was adopted and amended pursuant to these regulations, they continue to govern management and apply to the

Slapjack project. Sierra Nevada Forest Protection Campaign v. Tippin at *15. In addition, both the Plumas LRMP and the 2004 Framework, which amended the Plumas LRMP, include monitoring requirements, including the requirement that population trends of certain MIS be monitored annually. The Forest Service failed to comply with these requirements in approving the Slapjack project. As a result, the EIS also failed adequately to assess the project's environmental impacts to these species and their habitat.

The Plumas LRMP was first approved in 1988. This plan was subsequently amended in 1992, 2001 and 2004. The amendment in 2004 adopted an adaptive management and monitoring program that is described in Appendix E of the FEIS issued in 2001. (USDA Forest Service 2001a). The Plumas plan as amended in 2004 includes the monitoring originally specified as well as the additional monitoring identified in Appendix E. As reflected in Table 1, the Forest Service has failed to obtain and report the monitoring data required by Appendix E for any of the MIS. In addition, for four species the Forest Service has also failed to comply with the monitoring requirements imposed by the original Plumas LRMP. Beyond this, there are 25 species that may be affected by the Slapjack Project and are listed in Appendix E as requiring annual population monitoring. (Table 2). These species and their monitoring results were not discussed in the Slapjack Project analysis.

Table 1. Species considered in the Slapjack Project for which the monitoring requirements in the Plumas Land and Resource Management Plan (PLRMP) (amended 2004) have not been addressed in the environmental analysis.

Species	Forest Plan Monitoring Requirement	Frequency	Monitoring Reported in Slapjack Documents
Canada goose	“Counts of adults and young on selected sites.” (PLRMP 1988)	Not specified.	Monitored from 1989 to 1990 (MIS report, p. 14)
	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring data provided since 1990.(MIS, p. 14)
Golden eagle	“direct counts of adults and young on selected nest sites” (PLRMP 1988)	Annually	No monitoring in last 10 years. (MIS report, p. 15)
	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring in last 10 years. (MIS report, p. 15)
California spotted owl	“population trend and habitat trend in network territories” (PLRMP 1988)	Annually	Trend not determined.
	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring data provided.
Northern goshawk	“Survey of designated habitat to determine occupancy and reproductive success” (PLRMP 1988)	“Survey for occupancy in 25% of established nest groves annually” (PLRMP 1988)	No monitoring data provided.
	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring data provided.
Western gray squirrel	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring data provided.
Townsend’s big-eared bat	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring data provided.
Western red bat	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring data provided.
Pallid bat	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring data provided.
Foothill yellow-legged frog	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring data provided.
Swainson's thrush	Population monitoring required. (Amended PLRMP 2004)	Annually	No monitoring data provided.

Table 2. Species from Appendix E (USDA Forest Service 2001a) that require population monitoring and that may be affected by the Slapjack Project. These species were not addressed in the environmental analysis.

CWHR #	Common Name	Habitat Type ¹
B134	Blue grouse	Open, medium to mature-aged stands of conifers
B141	Mountain quail	Open, brushy stands of conifer and deciduous forest and woodland, and chaparral
M151	Black bear	Dense mature forest of many types
B129	Peregrine falcon	Woodland, forest riparian
B251	Band-tailed pigeon	Hardwood, hardwood-conifer and conifer
B309	Olive-sided flycatcher	Mixed conifer, montane hardwood-conifer
M025	Long-eared myotis	Brush, woodland, forest; crevices, bark, snags
M026	Fringed myotis	Hardwood-conifer; crevices, mines
M027	Long-legged myotis	Woodland , forests, chaparral; rock tree bark, snags
M029	Small-footed myotis	Arid wooded and brushy uplands near water
M030	Silver-haired bat	Conifer, montane riparian
M034	Hoary bat	Dense foliage of medium to large trees
M049S1	Sierra Nevada snowshoe hare	Montane riparian with thickets of alder/willow; young conifer with chaparral
M050	White-tailed hare	Early successional stages of various conifer
B138	Turkey	Riparian, oak and oak-conifer forests
B272	Long-eared owl	Riparian, dense tree
B079	Mallard	Lakes, rivers
B110	Osprey	Lakes, rivers; open forest for cover
B299	Red-breasted sapsucker	Montane riparian, montane hardwood-hardwood, mixed-conifer, aspen red fir; near meadows, lakes and slow streams
B430	Yellow warbler	Riparian (open canopy), montane shrub, open coniferous
B510S1	Mountain white-crowned sparrow	Open montane riparian
FN02	Pacific lamprey	Stream
B304	Hairy woodpecker	Mixed conifer and riparian
B308	Pileated woodpecker	Mature, montane conifer
B300	Williamson's sapsucker	Conifer, lodgepole, aspen

¹ Extracted from "California's Wildlife" edited by Zeiner, D.C. et al 1988-1990.

In sum, the Forest Service's approval of the Slapjack project without appropriate or sufficient monitoring data for these species is contrary to the agency's regulations and to governing provisions of the Plumas forest plan. See Sierra Nevada Forest Protection Campaign v. Tippin at *20; Earth Island Institute v. U.S. Forest Service, 442 F.3d 1147 (9th Cir. 2006).

B. Monitoring data for snags in the project area was not disclosed.

Large snags are an essential habitat element for many wildlife species including California spotted owl, northern goshawk, and woodpeckers. (See for example BE, p. 43). Furthermore, the BE concluded that “[p]ast management practices, including logging, firewood cutting, road construction, and other activities, have probably led to a decline in the number of large diameter trees and snags in the project area, with a detrimental effect on associated wildlife species.” (*Ibid.*, p. 44). Although the Slapjack BE (p. 162) was unable to determine whether or not there was a net loss or gain in snags as a result of the project, other similar projects on the Plumas

National Forest have concluded that there will be a decline in the numbers of snags in the project area as a result of some treatments. (See for example Watdog DSEIS, p. 56). Despite the recognized importance of snags to wildlife and the likely negative effect of the project on snags, the DSEIS fails to report any monitoring information on the current level and quality of snags in the project area. To evaluate effects on snag retention, the FEIS relies on the notion that the snag retention standards in the proposed action will provide for the necessary levels of snags. (See various citations in the BE/BA including, pp. 120, 155, 160, 162). However, this approach fails to consider that the standard applies only where such snags are available. Further, this assumption indicates nothing about the present level of snags in the project area. An adequate analysis of effects must report both the existing condition and the potential effect of the action on changing that condition. The FEIS fails to provide this.

As early as 1988, the importance of snags on the forest was recognized. The PLRMP (p. 5-12) requires that snags be inventoried annually “during timber sale planning, compartment exams, or fuel reduction programs.” The failure to gather and report information on snag densities is a violation of the forest plan. The failure to consider this information in the environmental analysis is also a violation of NEPA since in its absence, the quality of the available habitat can not be known nor can mitigation measures that might improve poor conditions be identified.

V. THE PROJECT PROPOSES EXCESSIVE REMOVAL OF TREES GREATER THAN 30” DIAMETER

The Slapjack project proposes to log up to 480 trees greater than 30” diameter for reasons of “operability.” FEIS at 3-200-201. We object to such a large number of these trees being removed. The 2004 Framework directs the Forest Service to “minimize impacts to >30-inch trees as much as practicable.” (USDA Forest Service 2004a, p. 68). The Forest Service has failed to make any showing that it will minimize the logging of trees greater than 30” as required by law. Rather, the FEIS assumes that roads and landings will cover approximately 80 acres, and that the average number of trees greater than 30” will be removed. FEIS at 3-200-201. This does not seem to reflect any effort to minimize the logging of such trees “as much as practicable.” We request that the Slapjack project be revised to include explicit language directing that logging of these trees be avoided to the greatest extent possible, and that the EIS be revised to reflect a far greater reduction in the number of these trees.

V. REQUEST FOR RELIEF

For the foregoing reasons, the Slapjack ROD and FEIS fail to comply with the National Forest Management Act, the National Environmental Policy Act, and other federal laws. Therefore, we request that the Appeal Deciding Officer direct the Forest Supervisor to prepare a supplemental EIS and to reconsider the decision.

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Respectfully submitted,

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REFERENCES

- Bart, J. 1995. Amount of suitable habitat and viability of Northern Spotted Owls. *Conservation Biology* 9:943-946.
- Bingham, B.B., and Noon, B.R. 1997. Mitigation of habitat "take": application to habitat conservation planning. *Conservation Biology* 11:127-139.
- Blakesley, J.A., Anderson, D.R., and Noon, B.R. 2006a. Breeding dispersal in the California spotted owl. *The Condor* 108:71-81.
- Blakesley, J.A. 2003. Ecology of the California Spotted Owl: breeding dispersal and associations with forest stand characteristics in northeastern California. Ph.D. dissertation, Colorado State University, summer 2003.
- Blakesley, J.A., Noon, B.R., and Shaw, D.W.H. 2001. Demography of the California spotted owl in northeastern California. *The Condor* 103:667-677.
- Blakesley, J.A., Shaw, D.W.H., and Noon, B.R. 2005. Ecology of the California spotted owl on the Lassen National Forest, 1990-2004: Final Report. Colorado State University, Fort Collins. October 2005.
- Bond, M. 2003. Comments on the Sierra Nevada Forest Plan Amendment Draft Supplemental Environmental Impact Statement. September 10, 2003.
- Bond, M. 2006. Appeal of the Slapjack project, USDA Forest Service, Plumas National Forest, Feather River Ranger District. November 10, 2006.
- Chatfield, A.H. 2005. Habitat selection by a California spotted owl population: A landscape scale analysis using resource selection functions. M.S. Thesis, Department of Fisheries, Wildlife, and Conservation Biology, University of Minnesota, December 2005.
- Christensen, N. L., Swetman, T. W., Erman, D. E., Perry, D., Morgan, P., Stephens, S., Omi, P. N., Graumlich, L., Romme, W. H., Zedler, P. H., Kauffman, J. B., and Baker, W. L. 2002. Letter to President Bush regarding the scientific basis for efforts to reduce risks from catastrophic wildfire. September 24, 2002.
- Lassen National Forest 2004. North 49 fuels report. Pacific Southwest Region, USDA Forest Service.
- Omi, P.N., and Martinson, E.J. 2002. Effects of fuels treatment on wildfire severity. Final report. Joint Fire Science Program Governing Board, Western Forest Fire Research Center, Colorado State University, Fort Collins, CO.
- Perry, D.A., et al. 2004. Forest structure and fire susceptibility in volcanic landscapes of the eastern High Cascades, Oregon. *Conservation Biology* 18: 913-926

- Rice, C. 2005. Critique of fire and fuels issues in the Creeks Project. November 4, 2005.
- Rice, C. 2003. Comments on the Sierra Nevada Forest Plan Amendment Draft Supplemental Environmental Impact Statement. September 8, 2003
- Seamans, M. E. 2005. Population biology of the California spotted owl in the central Sierra Nevada. PhD. Dissertation, University of Minnesota
- Sierra Nevada Forest Protection Campaign et al. 2004. Notice of Appeal of the Record of Decision and Final Supplemental Environmental Impact Statement for the Sierra Nevada Forest Plan Amendment. April 29, 2004.
- Stephens, S. L. 1998. Evaluation of the effects of silvicultural and fuels treatments on potential fire behavior in Sierra Nevada mixed-conifer forests. *Forest Ecology and Management* 105(1998): 21-35.
- Stephens, S.L. and Moghaddas, J.J. 2005a. Experimental fuel treatment impacts on forest structure, potential fire behavior and predicted tree mortality in a California mixed conifer forest. *Forest Ecology and Management*. 215:21-36.
- Stephens, S.L. and Moghaddas, J.J. 2005b. Silvicultural and reserve impacts on potential fire behavior and forest conservation: Twenty-five years of experience from Sierra Nevada mixed conifer forests. *Biological Conservation* 125:369-379.
- Tahoe National Forest 2005. Euro project environmental assessment. Sierraville Ranger District. May 2005.
- USDA Forest Service 1999a. Biological assessment and evaluation of Herger-Feinstein Quincy Library Group Forest Recovery Act. Prepared by Gary W. Rotta, Wildlife Biologist, Plumas National Forest. August 14, 1999.
- USDA Forest Service 1999b. Herger-Feinstein Quincy Library Group Forest Recovery Act, Final Environmental Impact Statement. Pacific Southwest Region. August 1999.
- USDA Forest Service 1999c. Record of Decision. Herger-Feinstein Quincy Library Group Forest Recovery Act Final Environmental Impact Statement. Pacific Southwest Region. August 1999.
- USDA Forest Service 2001a. Sierra Nevada Forest Plan Amendment, Final Environmental Impact Statement. Pacific Southwest Region. January 2001.
- USDA Forest Service 2001b. Sierra Nevada Forest Plan Amendment, Final Environmental Impact Statement, Record of Decision. Pacific Southwest Region. January 2001.

USDA Forest Service 2002. USDA Forest Service Region 5 Administrative Study 4202-01-02: Fires and Fuels Management, Landscape Dynamics, and Fish and Wildlife Resources - Integrated Research on the Plumas and Lassen National Forests. Pacific Southwest Research Station. Albany, California

USDA Forest Service 2004a. Record of Decision, Sierra Nevada Forest Plan Amendment, Final Supplemental Environmental Impact Statement. January 2004.

USDA Forest Service 2004b. Final Supplemental Environmental Impact Statement, Sierra Nevada Forest Plan Amendment. January 2004.

USDA Forest Service 2005. Sierra Nevada forest plan accomplishment monitoring report for 2004. USDA Forest Service, Pacific Southwest Region, R5-MR-026. July 2005. Available at www.fs.fed.us/r5/snfpa/am/monitoringreport2004/.

USDI Fish and Wildlife Service 1999. Comments, review and informal consultation on the draft environmental impact statement for the Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project. August 17, 1999.

USDI Fish and Wildlife Service 2003. Endangered and threatened wildlife and plants; 12-month finding for a petition to list the California spotted owl (*Strix occidentalis occidentalis*). 68 Fed. Reg. 7580 (February 14, 2003).

USDI Fish and Wildlife Service 2005. 90-day finding on a petition to list the California spotted owl as threatened or endangered. June 13, 2005.

U.S. Environmental Protection Agency 2004. Comments on Clarified Proposed Action for North 49 Project, Shasta County, California. June 24, 2004.

U.S. General Accounting Office 1999. Western national forests: A cohesive strategy is needed to address catastrophic wildfire threats. GAO/RCED-99-65. Report to the Subcommittee on Forests and Forest Health, Committee on Resources, House of Representatives, April 1999.

van Wagtenonk, J. W. 1996. Use of a deterministic fire growth model to test fuel treatments. Pages 1155-1166 *In* Sierra Nevada Ecosystem Project: Final report to Congress, Volume II, chapter 41. University of California, Davis.

Verner, J. 1999. Review of the Herger-Feinstein Quincy Library Group Draft Environmental Impact Statement. July 13, 1999.

Verner, J. 2003. Letter to Regional Forester Jack Blackwell. August 31, 2003.

Verner, J., McKelvey, K.S., Noon, B.R., Gutierrez, R.J., Gould, G.I., and Beck, T.W. 1992. The California spotted owl: A technical assessment of its current status. USDA Forest Service, Pacific Southwest Research Station, General Technical Report PSW-GTR-133, July 1992.