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Subject: Piute Travel Management Plan Scoping Comments for Sequoia ForestKeeper & Kern-Kaweah Chapter of the Sierra Club

Sequoia ForestKeeper (SFK) and the Kern-Kaweah Chapter of the Sierra Club (the Club) thank you for the opportunity to comment. With these comments, SFK and the Club seek to ensure that motorized travel in the Piute Mountains is managed sustainably to ensure the long-term health of the affected environment and to minimize conflicts with other important uses and to be consistent with the minimization of effects on other resources of the Forest.

The Notice of Intent (NOI) for this proposal states: “The purpose behind the Piute Mountains travel management project is to evaluate motor vehicle recreation opportunities in the Piute Mountains, while maintaining the natural and cultural resources present in those parts of the Piute Mountains managed by the Forest Service.” 76 Fed. Reg. 9537, 9538 (Feb. 18, 2011).

While the NOI then lists the needs for this action, it should be emphasized that the Forest Service must

consider the criteria presented in Subpart B of the Forest Service Travel Management Rule of 2005 during the environmental analysis regarding proposed changes to the forest transportation system. These considerations include:

- Possible impacts to natural and cultural resources;
- Public safety;
- Access to public and private lands;
- Availability of resources to maintain and administer roads, trails and use areas if actions proposed are undertaken;
- Minimizing damage to soil, watersheds, vegetation and other forest resources;
- Minimize disturbance of wildlife and disruption of wildlife habitat;
- Minimize the potential for disagreement between the various users of forest lands;
- Recognize the possible consequences of conflicting forest uses; and
- Compatibility of motorized and non-motorized uses of forest lands.

Id. at 9538-39.

In order to fulfill these obligations, the DEIS must consider and analyze the following:

1. Alternatives to the Proposed Action

The Piute TMP EIS should include a full range of alternatives to the proposed action and no-action alternatives. *See* 42 U.S.C. § 4332(2)(C)(iii). The agency must “[r]igorously explore and objectively evaluate all reasonable alternatives, and, for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” 40 C.F.R. § 1502.14. The analysis of alternatives to the proposed action is “ ‘the heart of the environmental impact statement.’ ” *Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 531 F.3d 1114, 1121 (9th Cir.2008) (quoting 40 C.F.R. § 1502.14). “The existence of reasonable but unexamined alternatives renders an EIS inadequate.” *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir.1998).

The Piute TMP must consider all reasonable alternatives to the proposed action. So far, at least six alternatives were identified by the Forest Service during the collaborative process, although it is not clear what the details of those alternatives entail. Moreover, additional concerns were noted regarding the alternative process at the last collaborative meeting on January 7, 2011:

Question: Will stakeholder proposal be treated the same as the other alternatives?

Answer: Per Supervisor Terrell, in addition to the stakeholder proposal, the MSA requires at least two alternatives; environmental concerns bring up another alternative; the Landers property issues bring up another so we already have five alternatives, and there may be a sixth; the Sequoia National Forest Travel management had five alternatives.

Question: Isn't this the Proposed Action?

Answer: Per Supervisor Terrell she committed that the Forest Service will use the Stakeholder Proposal map as the Proposed Action included in the Notice of Intent. She acknowledged that environmental interests have not fully participated in the process, although their concerns are recorded on the stakeholder input maps. While the USFS will use the Stakeholder Proposal as the Proposed Action in the NOI, it is likely to change through the environmental analysis in NEPA.

Question: Can people who did not engage in the process veto this?

Answer: There will not be a separate USFS/environmental stakeholder meeting process outside of the USFS public process that has taken place. If an alternative is not viable, it can be modified; there will be 4-5 meetings in Bakersfield, Ridgecrest, Porterville, Kernville and maybe Visalia to review the alternatives, and later with comments on the Draft EIS. As part of the public process groups can submit proposals and comments. There will likely be environmental issues that have to [be] addressed. The Forest Service is interested in collaboration; the Ranger has done a great job; Some options may drop out due to legal concerns; environmental mitigation may be required; the public will comment; and new information may result in modified alternatives.

January 7 Meeting Summary, p. 7 (available at http://www.fs.fed.us/r5/sequoia/projects/piutes-tm/stakeholder_working_group_index.html) (emphasis added).

But there are many more alternatives that must be considered, based on input during the collaborative and other concerns, which the Forest Service has not specifically identified. Each of the following alternatives achieves a different outcome, based on environmental concerns, from the proposed action and each is different from the no action alternative or proposed action:

No Action Alternative – Presumably, this alternative simply leaves conditions the same as they existed prior to the 2006 forest closure, in which there were no route designations for OHVs and the entire Piute area was open to cross-country travel.

Proposed Action Alternative – This is what was described in the scoping notice and NOI published in the Federal Register.

A. Additional Reasonable Alternatives that Must be Fully Developed

In particular, the following additional alternatives are reasonable and therefore must be fully developed and considered. Each of these alternatives is reasonable, as explained below. If the Forest Service eliminates any of these alternatives, it must “briefly discuss the reasons for their having been eliminated.” 40 C.F.R. § 1502.14. Otherwise, it must “[r]igorously explore and objectively evaluate all reasonable alternatives.” *Id.*

- 1) No Trail Designation Alternative – This alternative would not designate any trails open for OHVs. This alternative is necessary to establish a baseline of the environmental conditions in the Piutes without OHVs to determine the various impacts on resources (watershed, wildlife, other users, etc.) from other alternatives on that baseline. It is also necessary to determine how the minimization criteria from Subpart B should be analyzed to determine route designations. This alternative is reasonable because it would be considered the most “environmentally preferable alternative.” *See* 36 C.F.R. § 220.3 (“[T]he environmentally preferable alternative is that which causes the least harm to the biological and physical environment; it also is the alternative which best protects and preserves historic, cultural, and natural resources.”). Protecting and preserving historic, cultural, and natural resources are purposes for the Piute TMP, so this alternative serves those purposes. Finally, this alternative provides one end of the spectrum of a full range of alternatives that could be considered, whereas an All Trail Designation alternative would provide the opposite end of that same spectrum. The No Trail Designation Alternative is also necessary because the “no action” alternative, rather than representing a status quo of an undisturbed environment, is something very different.

This alternative is different from the “no action” alternative because the no action alternative simply continues the status quo of the current condition, which allows use of all trails in the Piutes and OHV use off designated trails.

- 2) All Trail Designation Alternative – As mentioned above, this alternative would explore the other extreme of designating every trail, including all user-created trails as open to OHVs. This alternative would have the greatest environmental impact (other than the no-action alternative), but could reasonably be implemented because it represents something like the designation of OHV use during the 2006 closure order. See Forest Order (available at http://www.fs.fed.us/r5/sequoia/projects/ohv_route_designation_strategy/maps/fo_maps_for_download.html). This alternative also differs from the no action alternative because it would not allow OHV use off designated trails.
- 3) No Trail Damage Alternative – This alternative would designate only trails where damage from OHVs has NOT been documented by Sequoia ForestKeeper (see Section III.A below) or the Forest Service during the Piute Fire BAER analysis. The concept for this alternative was proposed during the collaborative process (see item #11 in Section 3.B. below and Exhibit F – “Environmental Resource Concerns” column) and represents a reasonable policy of designating only trails where no known resource damage has occurred or been documented. This alternative is also reasonable because it could minimize the Forest Service’s maintenance costs and would serve to fulfill the Forest Service’s obligations under the “minimization criteria” in the 2005 Travel Management Rule (see Section 2 below).
- 4) No User-Created Trail Alternative – This alternative would designate only trails that are already part of the numbered trail system and NOT designating trails created by users, which are identified as “U” trails on the proposed action map. The concept for this alternative was proposed during the collaborative process (see item #6 in Section 3.B. below and Exhibit F – “Environmental Resource Concerns” column) and represents a reasonable policy of designating only trails that the Forest Service originally envisioned for the Piutes. It also represents a policy that deters the creation of new user-created trails on the Sequoia NF without environmental analysis or a decision by the Forest Service that the trail was needed or desired.
- 5) Piute Fire Area Alternative – This alternative would designate only trails for OHVs outside the Piute Fire Area boundary. This would be similar in effect to the forest order that closed trails during the Piute Fire, and should delay designation of these trails until the fire area has sufficiently recovered. The concept for this alternative was proposed during the collaborative process (see item #7 & #8 in Section 3.B. below and Exhibit F – “Environmental Resource Concerns” column). Moreover, it is supported by the attached Exhibits from the Forest Service’s Piute Fire BAER reports that describe the reasons (Exhibit A) and specific trail damage (Exhibit B) in the Piute Fire Area, as well as the great costs to repair or restore damage from these trails resulting from the combination of OHV trail use and erosion potential after the fire.
- 6) Potential Wilderness/Roadless Protection Alternative – This alternative would only designate trails open for OHVs outside the Woolstaff Inventoried Roadless Area (IRA), and could be merged with any of the other action alternatives considered. The concept for this alternative was proposed during the collaborative process (see item

#7 in Section 3.B. below). Moreover, this alternative is also supported by the Mediated Settlement Agreement (MSA) on p. 101: “Both potential trail projects are located in Roadless areas thus raising the issue of NEPA documentation” (meaning “the existing trail (formally Forest Service Trail 34E31 north of Dry Meadow”). A map of the Woolstaff IRA is included as Exhibit C. This alternative is reasonable because the designation of motorized OHV trails in an IRA area would have adverse effects on both roadless and wilderness values and could preclude the Woolstaff IRA (a potential Wilderness area) from consideration for Wilderness in the future, due to established motorized use and degradation of wilderness values.

- 7) SPNM Retention/No Forest Plan Amendment Alternative – This alternative would only designate trails open to OHVs outside the Semi-Primitive Non-Motorized (SPNM) areas, except that it would allow designation of only the one trail identified in the Mediated Settlement Agreement (MSA), p. 100 (34E31 to the forest boundary north of Dry Meadow). It would otherwise leave the SPNM area unchanged. But it would not designate those trails within the SPNM that are currently used by OHVs illegally, including 34E41, 32E52, and U00013.¹ This alternative could also be merged with any of the other action alternatives being considered. This alternative is reasonable because it would implement the MSA and retain the Recreation Opportunity Setting envisioned in the Forest Plan. Moreover, it would support a policy that the Forest Service will not tolerate the illegal use of trails by OHVs in the SPNM or reward this illegal use with new trail designations in the SPNM.

It should be noted that the Forest Service and all parties to the MSA agreed, by consensus, that “OHVs shall be allowed to continue to utilize the trail [34E31] from Dry Meadow north to the Forest Service Boundary. This shall entail an exception to the full implementation of the SPNM standards as established in the Forest Plan. . . . All other aspects of SPNM management shall be implemented.” MSA, pp. 100-101. This promise must be kept. In fact, at the time, “The Sequoia National Forest maintains that it made sound management decisions regarding the designation of the Semi-Primitive Non-Motorized (SPNM) areas, considering all the variables involved.” MSA, p. 92.

But nowhere in the MSA or the Forest Plan did the Forest Service ever state that it would allow OHV use of trails 34E41, 32E52, or U00013. It should not do so now, and must present this alternative, which would keep the promise in the MSA.

B. Crafting or Identifying a Preferred Alternative or Modified Proposed Action

In addition to the various alternatives identified by the Forest Service and those identified above, the Final EIS should include a Preferred Alternative or Modified Proposed Action that incorporates all of the best aspects of the various alternatives, applying the minimization criteria from the 2005 Travel Management Rule, the Executive Orders, and considering the site-specific concerns identified herein and previously submitted to the Sequoia National Forest.

¹ “The Sequoia National Forest LRMP states that no OHV roads and trails will be designated within established semiprimitive non-motorized areas.” 76 Fed. Reg. 9537, 9538 (Feb. 18, 2011).

We expect that this alternative will likely be drastically different from the proposed action, based on the many site-specific concerns identified herein and previously by the Forest Service in its Piute Fire BAER reports.

C. Designation policies that should guide all action alternatives

- 1) Do not designate OHV trails through meadows or that access meadows – OHV Routes should be excluded from all meadows, including Dry Meadow, and all routes in meadows or to meadows that are not fenced should not be designated, but re-routed around meadows to prevent inadvertent access by vehicles. This concept was proposed during the collaborative (see item # 9 in Section 3.B below and Exhibit F – “Environmental Resource Concerns” column) and should be incorporated in the designation criteria for all alternatives as a minimization criterion to avert resource damage.
- 2) Do not designate OHV trails on or to the Pacific Crest Trail – OHV Routes should be excluded from the Pacific Crest Trail (PCT) and all routes that go to the PCT areas should be closed and restored to natural, even if they originate on BLM managed land. OHV use of the PCT is strictly illegal. This concept was proposed during collaborative (see item # 9 in Section 3.B below and Exhibit F – “Environmental Resource Concerns” column). For evidence of PCT use by motorcycles, see the following videos posted on YouTube:

ILLEGAL OFF-ROADING - November 25, 2009 – ABC Channel 23; see http://www.youtube.com/watch?v=l_KDR6Y0hxE

Pacific Crest Trail Off-Road Abuse in Kern County; see <http://www.youtube.com/watch?v=pYWSPAJRB48&feature=related>

ILLEGAL OFF-ROADING 2010; see http://www.youtube.com/watch?v=Sfu0Xo_P4G4&feature=channel_video_title

PART II - OHV DESTRUCTION of the PACIFIC CREST TRAIL - January 9 - 10, 2010; see <http://www.youtube.com/watch?v=CzE-PtIshyY>

And this is the way things should be:

ORV Watch Tribute to Law Enforcement; see http://www.youtube.com/watch?v=2qfoRCSRLwc&feature=channel_video_title

- 3) Do not designate OHV trails that were created illegally in the SPNM – These are routes in the SPNM area where the Forest Service explicitly prohibited OHVs and failed to enforce these closures. This does not include the one trail allowed in the MSA (34E31). The Forest Service should not designate those trails within the SPNM that are currently used by OHVs illegally, including 34E41, 32E52, and

U00013. The Forest Service should support a policy that it will not tolerate the illegal use of trails by OHVs or reward this illegal use with new trail designations.

- 4) Designate Routes to Minimize Effects from Climate Change – The Piute route designation analysis should consider the beneficial environmental effects of significantly reducing motorized use on the forest’s as it relates to climate change. This concept was identified during the collaborative (see item #5 in Section 3.B below and Exhibit F – “Environmental Resource Concerns” column). The EIS should consider or disclose the potential consequences of motorized recreation in the Forest as it pertains to both increased carbon from vehicle emissions as well as ecosystem disjunction where a natural area is used as a road or trail. Given that OHVs are associated with both the ignition of wildfires and the spread of exotic weeds, it is likewise reasonable to expect the Forest Service to designate routes and restore areas previously damaged by OHVs.

An understanding of the predicted impact of climate change should, in turn, shape in important ways the various alternatives under consideration by the Forest Service. For example, given that so many of the predicted outcomes of climate change center on increased soil erosivity, dust storms, shrinking water resources, drier riparian areas, invasion of exotic plants, and the spread of hotter, larger wildfires, it is entirely reasonable to expect the Forest Service to design its alternatives to minimize soil disturbance as much as possible.

The Forest Service should draw on EPA’s research and consult with EPA staff whose report “provides information on how existing practices could be adjusted or new strategies developed, to address the effects of climate change on natural resources.”² According to the report, these strategies involve increasing the resilience of ecological systems to climate change.

2. The Forest Service Must Implement the “Minimization Criteria” from the 2005 Travel Management Rule and ORV Executive Orders

Under the 2005 Travel Management Rule and the ORV Executive Orders, the Forest Service must consider or implement minimization criteria when determining appropriate routes for off-road vehicle use. *See* Ex. Ord. 11644, as amended by Ex. Ord. 11898, § 9; 36 C.F.R. § 212.52(b). Under those criteria and regulations the Forest Service must close certain motorized vehicle routes that will cause or are causing significant resource damage. *Id.*

In order to meet the requirements of the 2005 Travel Management Rule, the Forest Service must show that, in developing the Travel Plan, it “consider[ed] ... with the objective of minimizing” the impacts of ORV use on each of the following: (1) damage to soil, watershed, vegetation, and other forest resources; (2) harassment of wildlife and significant disruption of wildlife habitats;

² EPA, Global Change Research Program, Science in Action: Building a Scientific Foundation for Sound Environmental Decisions, *Assessment Provides Strategies for Managing Natural Resources in a Changing Climate: Findings of the U.S. Climate Change Science Program Synthesis and Assessment Product 4.4* at 2, available at http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf.

(3) conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and (4) conflicts among different classes of motor vehicle users of National Forest System lands or neighboring Federal lands. 36 C.F.R. § 212.55(b). To ensure that the Travel Plan meets these substantive guidelines, the Court must review the record for evidence that the Forest Service: (1) considered ORV impacts in terms of the minimization criteria and (2) made efforts to minimize these impacts given the fact that ORV use is a permissible recreational use on the national forests and ORV use, like any other human activity on the forest, will have some impact on the natural environment. Here, the Administrative Record does not demonstrate whether or how Defendants implemented and incorporated the minimization criteria into the Travel Plan.

First, the 2005 Travel Management Rule first requires that the Forest Service consider damage to soil, watershed, vegetation, and other forest resources. *See* 36 C.F.R. § 212.55(b)(1). Consistent with these requirements, the Route Designation Matrices must include information regarding watershed criteria, erosion potential, vicinity of sensitive plants, and weed risk rating.

Second, the 2005 Travel Management Rule requires the Forest Service to consider “[h]arassment of wildlife and significant disruption of wildlife habitats.” *See* 36 C.F.R. § 212.55(b) (2). The Route Designation Matrices must include information regarding route density for wildlife effects by hydrologic unit, and routes in riparian habitat conservation area.

Third, the 2005 Travel Management Rule requires the Forest Service to consider “[c]onflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands” and “[c]onflicts among different classes of motor vehicle users of National Forest System lands or neighboring Federal lands.” *See* 36 C.F.R. § 212.55(b) (3), (4). The Route Designation Matrices must include information regarding ease of enforcement, consistency with Forest Plan recreation opportunity spectrum, user conflicts,³ connectivity with BLM routes, and private access issues.

Not only must the Forest Service show that the minimization criteria were considered, to fully meet the requirements of the 2005 Travel Management Rule the Forest Service must also demonstrate that the minimization criteria were then implemented into the decision process consistent with the objective of minimizing their impacts. The Forest Service, therefore, must provide a detailed description of how the selected routes were designed “with the objective of minimizing” impacts. In other words, the Forest Service must explain how the minimization criteria were applied in the route designation decisions.

3. The Forest Service Must Respond to Site-Specific Reports of Trail Damage and Our Input During the Collaborative in its Route Designation Determinations in Applying its Minimization Criteria

A. Site-Specific Reports of Trail Damage

³ “User conflicts” are defined as “perceived conflicts between motorized and non-motorized recreation uses as well as different types of motorized use such as conflicts between ATV and motorcycle users.”

- 1) Sequoia ForestKeeper Reports & Photographs – In order to assist the Forest Service in determining which trails to consider for designation, Ara Marderosian submitted detailed, site-specific observations of trail damage and photographs to the Forest Service, including:

135 Pages of Survey Data Sheets: The Survey Data Sheets showing photo numbers and GPS locations of where the photos were taken, which document locations where trail damage was found in the Piute Mountains. These pages were submitted in sets of different numbers of pages (13, 23, 45, and 54) for a total of 135 Survey data sheets. The data sheets contained data points from the Piute and Greenhorn Mountains. The total number of data points on the 135 sheets, excluding the Greenhorns, is 440.

4 CDs: CDs of photos documenting damaged trails in the Piute Mountains.

The Forest Service has acknowledged receiving these reports and photographs, and stated that we do not need to resubmit them during this scoping process because these reports and photographs are in the Forest Service's possession. See Exhibit D (e-mail from Deputy District Ranger Brenda Ehmann)

- 2) Forest Service Piute Fire BAER Assessment – After the Piute Fire, the Forest Service published a report titled the “Trails-Watershed Specialist Report Piute Fire BAER Assessment,” dated August 3, 2008 by Casey Shannon of the Forest Service. See Exhibit B. This report details substantial trail damage of OHV trails in the Piute Fire area resulting from the combination of the fire and OHV use on these trails.

In its designation assessment, the Forest Service must consider and respond to the detailed site-specific damage reports listed in this report and any follow-up action recommended in this report to determine whether the trails listed in this report can meet the minimization criteria for designation. The trails discussed in this report include:

- Trail 34E34 near Inspiration Point, 2 miles to north
- Trail 34E31, the Dry Meadow trail section from Woolstalf Meadow to Dry Meadow
- Trail 34E42, north of Woolstalf Meadow along Woolstalf Creek and to east
- Trail 34E43 and 34E45 near the old Piute Lookout site over a four mile reach
- Trail 33E68 to the north of Piute Peak to Cold Springs saddle
- Trail 33E65 from near Cold Spring north 2.5 miles toward Leibel Peak
- U-Trails (User Created Trails) U00069, U00042, U00075, U00076 (all in South Fork Erskine Creek, and 00160 and U00169 (upper Woolstalf Creek).

Exhibit B at 3-4.

Moreover, the report recommends:

Close all Forest Trails (system and user-defined) north of Piute Mountain Road.

Trail Closures

Duration – Three Growing Seasons to Return the Watersheds to 85% of Pre-Burn Condition (based on research referenced and discussed in Vegetation Recovery Report).

Id. at 9. It has only been 2 growing seasons since the Piute Fire, and designations of these trails should await full recovery.

The report states that overall treatment cost to mitigate the damage on these trails was \$160,400. The Piute TMP DEIS should state whether any of the repairs and restoration was done and whether it was effective prior to designating any of the trails listed in the report.

B. Our Input During the Collaborative Session

All of the following input provided by Ara Marderosian of Sequoia ForestKeeper during the collaborative/stakeholder meetings is also reflected in the Forest Service's summary document of comments, sent to participants on January 18, 2011, which is titled "PIUTE TRAVEL MANAGEMENT STAKEHOLDER RECOMMENDATIONS FOR DRAFT PROPOSAL" under the column titled "NATURAL RESOURCE CONCERNS." See Exhibit F – Comments.docx File from Anna West e-mail.pdf.

For the Meeting on Nov 5th
Subject:- How to have a conversation.

- 1) **The Forest should proceed to follow the requirements under Subpart A of the Travel Management regulations before carrying out route designation under Subpart B** of the Travel Management regulations. Travel Management Plan Subpart A analysis must be the basis for a minimum travel management system that does not exceed the Forest Service's ability to manage and enforce the TMP. The Transportation Plan must be informed by a Subpart A of the Travel Management Rule, 36 C.F.R. § 212, to a) identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands; b) identify the roads under its jurisdiction that are no longer needed to meet Forest resource management objectives, and that, therefore, should be decommissioned or considered for other uses, such as trails; and c) complete a science-based Travel Analysis to inform these decisions.
- 2) Discuss **user conflicts on trails**, such as how to deal with the dangers of mountain bikes to hikers and horses or OHVs to hikers or horses.

- 3) Discuss how to will deal with the **needs of wildlife** that may be adversely affected by open roads or trails because of their sensitivity to noise or the presence of people, such as Pacific fishers.
- 4) All current directions and authority for road and trail on National Forest lands are tiered from Executive Order (E.O.) 11644, signed by President Nixon in 1972, and modified by President Carter’s E.O. 11989 in 1977.⁴ These executive orders should be the guiding principles for the purpose and needs related to OHVs and route designation.

The Orders state that the route designation procedures “will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.”⁵

In accomplishing this broad goal, the executive orders specifically require that the designation of motorized areas and trails shall be in accordance with the following:

Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public lands.

Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats.

Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

Areas and trails shall not be located in officially designated Wilderness Areas.

- 5) The Forest Service has a legal duty to **address the impacts of climate change** both from land management actions and to the resource area in the Plan.
- 6) **User-created routes should be closed and restored to natural.**
- 7) **OHV Routes should be excluded from mapped areas of concern and protection, including roadless, primitive, wilderness, and private property and all OHV routes that go to these areas should be closed and restored to natural.**

⁴ Route Designation Guidebook: National Forests in California, USDA Forest Service, June 2004 (revised September 2006).

⁵ Executive Order 11644 § 1 (1972) as amended by Exec. Order 11989 (1977) – Use of Off-Road Vehicles on Public Lands.

- 8) The Forest Service must **complete official post-fire surveys of botanical and biological areas like nest sites, Home Ranges and PACs for California spotted owl, Northern goshawk, and complete thorough surveys surrounding the area where Pacific fisher have been observed.**
- 9) **OHV Routes should be excluded from all meadows**, including Dry Meadow, and all routes in meadows or to meadows that are not fenced should be closed and restored to natural to prevent inadvertent access by vehicles.
- 10) **OHV Routes should be excluded from the Pacific Crest Trail (PCT)** and all routes that go to the PCT areas should be closed and restored to natural, even if they originate on BLM managed land.
- 11) **OHV Routes were surveyed, GPS'd, and photographed in 2006 and many were found to have OHV tread-caused erosion that indicates that maintenance levels are insufficient to manage the existing system**, that OHV's damage trails under Piute Mountain conditions, and many of these damaged routes should be closed and restored to natural. Many of the trails were newly created in fear that they may be closed and so they cross Kelso Creek in injurious ways, come too close to private property, like TR12 which comes onto Jawbone Canyon Road not far from Claraville. The USFS kept the other side of the road posted and fenced off, but riders created a trail around that fence and through an area adjacent to a USFS wildlife area. One unnecessary trail was cut last year near, if not on, private property in Claraville: near a tree with a corner marker Corner #3 of Tract 40 15 N 0 degrees 10' E 32.93 chain and Corner #4 15 S 0 degrees 10' W 8.46 chain. Most users are conscientious but some make new trails, are reckless, and even ride with no mufflers or inadequate mufflers. The USFS position on enforcement, especially during breeding seasons, and on dirt bike activists cutting new trails must prevent these activities.
- 12) Some other Piute residents are reviewing the map for additional concerns, but all residents of the Piute Mountains should be notified of the Piute TMP collaboration, so all residents have an adequate opportunity to input their concerns. A number of residents have reported to SFK and Forest Service representatives about threats to residents made by a minority of OHV riders, which could prevent some residents from attending collaboration meetings.
- 13) The Piute Mountain area is drastically hunted out, and one neighbor was told by Terry Mullens, California Department of Fish & Game Warden, that "we've had a bear poacher operating in our area." I don't know whether this person was caught but the bear population is nearly gone and, since hunters often ride around in open-top vehicles with rifles in hand looking for something to shoot, perhaps the best way to preserve the OHV route system for those who want to ride, would be to have the Piute Mountain TMP prohibit hunting until the bear population can be restored.

4. Cumulative Impacts Analysis Must Consider Piute Fire & Projects

The Forest Service must consider the cumulative impact of the proposed actions together with all current, past, and reasonably foreseeable future actions on soils, watersheds, wildlife, and other resources. Wildlife impacts that should be addressed include those on California spotted owls, goshawks, California condor, and Pacific fishers. Current and past actions include the Piute Fire Roadside Hazard Tree Project, the Piute Fire Reforestation Project, and the Piute Fire Restoration Project, as well as the effects from the Piute Fire itself and any other actions the Forest Service is or has considered. This may include the Clear Creek Project, which has previously been identified as a potential future action.

5. Direct and Indirect Impacts Analysis Must Take a Hard Look

The travel management rule requires that the agency “shall consider effects on the following, with the objective of minimizing: (1) Damage to soil, watershed, vegetation, and other forest resources; (2) Harassment of wildlife and significant disruption of wildlife habitats; (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands” 36 C.F.R. § 212.55(b). Each route designation requires a detailed analysis of the effect of that designation on the above factors and for other issues raised by staff and the public during comment periods. The analysis should include an explanation of how that particular route minimizes damage, harassment, and conflicts to comply with the rule and with NEPA.

“General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Neighbors of Cuddy Mt. v. United States Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998). Analysis of site-specific impacts must “contain a reasonably thorough discussion of the significant aspects of the probable environmental consequences.” *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982). NEPA mandates a “hard look at a decision’s environmental consequences.” *Id.* An agency may not “rely upon forecasting difficulties or the task’s magnitude to excuse the absence of a reasonably thorough site-specific analysis of the decision’s environmental consequences.” *Id.* at 765; *see also Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1357 (9th Cir. 1994) (site-specific analyses for approval of multiple sites required when the agency makes a “critical decision . . . to act on site development.”) (citations omitted). Generalized statements that apply to the routes en-mass are insufficient. *See Idaho Conservation League v. Guzman*, No. 4:10-26, 2011 WL 447456 at *14-17 (D. Idaho, Feb. 4, 2011) (“Simply listing the criteria and noting that they were considered is not sufficient to meet this standard. Instead, the Forest Service must explain how the minimization criteria were applied in the route designation decisions.”).

6. Full Disclosure of TMP’s Effects on Roadless Characteristics and Wilderness Values

In its analysis, the Forest Service must fully disclose the effects from designating the various routes in the Woolstaff IRA on its roadless characteristics and wilderness values. The Forest Service has “a duty under NEPA to consider the potential impacts of the Travel Plan on wilderness values and roadless characteristics in the Forest’s RWAs and IRAs.” *Idaho Conservation League v. Guzman*, No. 4:10-26, 2011 WL 447456 at *6 (D. Idaho, Feb. 4, 2011)

(referring by footnote to “*Smith v. U.S. Forest Serv.*, 33 F.3d 1072, 1076-79 (9th Cir.1994) (holding Forest Service had duty to consider effect of proposed timber sale on roadless area's wilderness potential under Washington State Wilderness Act of 1984); *Nat'l Audobon Soc'y v. Forest Serv.*, 4 F.3d 832, 836 (9th Cir.1993) (holding EIS flawed because Forest Service did not consider timber sales effect on roadless and undeveloped characteristics of project area under Oregon Wilderness Act) (overruled on other grounds)).

7. Compliance with SNFPA Requirements for RCAs and CARs

Route designations must also comply with SNFPA Standards and Guidelines within Critical Aquatic Refuges (CARs) and Riparian Conservation Areas (RCAs). SNFPA RCO objective #4 states: “Ensure that management activities . . . within RCAs and CARs enhance or maintain physical and biological characteristics associated with aquatic- and riparian-dependent species.”

8. The Forest Service must use the “best available science” standard

Current Forest Service regulations require that projects that implement forest plans consider the best available science in their analysis. 36 C.F.R. § 219.35(a), (d) (2000); 69 Fed. Reg. 58055 (Sept. 29, 2004). To correctly apply this standard, the Forest Service “should seek out and consider all existing scientific evidence relevant to the decision and it cannot ignore existing data. . . . The Forest Service must determine which data are the most accurate, reliable, and relevant, and that will be reviewed deferentially, but it still must be good science-that is reliable, peer reviewed, or otherwise complying with valid scientific methods.” *Ecology Center v. U.S. Forest Service*, 451 F.3d 1183, 1194, n. 4 (10th Cir. 2006).

This also means that, in the final analysis, the Forest Service must disclose and discuss any science that it rejected as less accurate, reliable, or relevant than the science it actually applied to the project.

For Sequoia ForestKeeper and the Kern-Kaweah Chapter of the Sierra Club,



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Exhibits sent as separate files.