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PACIFIC RIVERS COUNCIL

13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**
16 **SACRAMENTO DIVISION**

17 PACIFIC RIVERS COUNCIL)
18 Plaintiff,)
19 vs.)
20 UNITED STATES FOREST SERVICE et al.,)
21 Defendants,)
22 CALIFORNIA FORESTRY ASSOCIATION et al.,)
QUINCY LIBRARY GROUP, an unincorporated)
23 citizens group; and CALIFORNIA SKI INDUSTRY)
ASSOCIATION,)
24 Intervenor-Defendants.)

Case No: CIV-S-05-0953 MCE/GGH
Related Cases CIV-S-05-0211 MCE/GGH
CIV-S-05-0905 MCE/GGH
CIV-S-05-0205 MCE/GGH

**STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGEMENT**

Date:
Time:
Judge: Hon. Morrison C. England, Jr.

1 **INTRODUCTION**

2 Pursuant to Civil Local Rule 56-260(a) and this Court’s October 26, 2005 Order Re: Briefing
3 Schedule, plaintiff Pacific Rivers Council submits the following statement of undisputed facts in support
4 of their Motion for Summary Judgment.

5 **UNDISPUTED FACTS**

6
7 1. The 2001 Framework Draft
8 Environmental Impact Statement (“2001
9 DEIS”) says that the Sierra Nevada region is
10 delineated by numerous watersheds supporting
11 diverse habitats—rivers, streams, lakes, ponds,
12 wetlands, and riparian areas—and is home to a
13 rich array of native aquatic species, many of
14 which have declined dramatically over the last
15 century.

1. 2001 Framework Draft Environmental
Impact Statement (“2001 DEIS”), Vol. 2, ch. 3
at p. 489.

12 2. The 2001 DEIS and 2001 Final
13 Environmental Impact Statement (“2001
14 FEIS”) state that the waters of the Sierra
15 Nevada national forests support 63 native fish
16 species.

2. 2001 DEIS, Vol. 3, app. R, at p. 28–31;
2001 Final Environmental Impact Statement
17 (“2001 FEIS”), Vol. 3, Chp. 3, Part 4.2.5, pgs.
18 63–66; Part 4.3.4., pgs. 40–62; Part 4.4.4., pgs.
19 246–266; Part 4.5.4., pgs. 111–125; SNFPA
20 2667.

16 3. The 2001 DEIS states that thirty-eight
17 (60%) of Sierra Nevada native fish species
18 have declined in population size and are at
19 moderate to high risk of continuing to decline,
20 and none of the species have robust
21 populations because “continued loss of aquatic
22 habitat characterizes the region as a whole.”

3. 2001 DEIS, Vol. 3, app. R, at p. 28–33;
2001 DEIS, Vol. 2, ch. 3 at 489.

20 4. According to the 2001 DEIS, thirteen
21 Sierra fish species are listed under the
22 Endangered Species Act (“ESA”) and 3 (i.e.,
23 the Bull trout, Cowhead lake tui chub, and
24 Eagle Lake tui chub) are presumed extinct.

4. 2001 DEIS, Vol. 3, app. R at p. 28–33.

23 5. The 2001 DEIS states that among the
24 Sierra fish species listed are the Paiute
25 cutthroat trout, Lahonton cutthroat trout, Little
26 Kern golden trout, and Central Valley chinook
27 salmon—all rare native fish that distinguish
28 the Sierra’s unique natural diversity.

5. 2001 DEIS, Vol. 3, app. R at p. 28–33.

26 6. The DEIS states that eleven of these
27 fish species are found exclusively or primarily
28 within Sierra Nevada national forest
boundaries.

6. 2001 DEIS, Vol. 2, ch. 3 at p. 490;
SNFPA CD#17, Doc. 503 at p. 1 and 3.

1 7. "[O]ne-third of the Sierra fishes
2 suffering significant declines from historic
3 abundance are confined to, or overwhelmingly
4 influenced by activities on, Forest Service
5 lands."

7. SNFPA CD#17, Doc. 503 at p. 3.

4 8. Habitat modification is an important
5 factor in the decline of Sierra fishes, and
6 "[w]hile road building, channelization, and
7 riparian grazing appear unlikely to
8 individually threaten the population viability
9 of many species, these activities clearly alter
10 habitat and may contribute to significant
11 cumulative effects on fishes."

8. SNFPA CD#17, Doc. 503 at p. 2.

8 9. According to A.J. Lind's 2000 Risk
9 Assessment ("Risk Assessment"), previously
10 wide-ranging amphibians have now almost
11 disappeared from the Sierra Nevada national
12 forests: the Foothill yellow-legged frog,
13 Mountain yellow-legged frog, California red-
14 legged frog, Cascades frog, Northern leopard
15 frog, and Yosemite toad are each at risk of
16 extirpation in the Sierra.

9. SNFPA CD#17, Doc.
amphib_arm_deis_admi#1EA13C. at p. 3-4.

13 10. The Risk Assessment states that the
14 California red-legged frog Sierra population
15 has declined by 99%.

10. SNFPA CD#17, Doc.
amphib_arm_deis_admi#1EA13C. at p. 3.

16 11. The Risk Assessment states that the
17 Cascades frog and Northern leopard frog have
18 both disappeared from 99% of their historic
19 range in the Sierra Nevada.

11. SNFPA CD#17, Doc.
amphib_arm_deis_admi#1EA13C. at p.4.

18 12. The Risk Assessment states that the
19 Foothill yellow-legged frog has disappeared
20 from 66% of its historic range in the Sierra
21 Nevada.

12. SNFPA CD#17, Doc.
amphib_arm_deis_admi#1EA13C. at p. 4.

21 13. According to the United States Fish
22 and Wildlife Service ("USFWS"), the
23 Mountain yellow-legged frog and Yosemite
24 toad were placed on the endangered species
25 candidate list; habitat loss and alteration from
26 national forest management were listed as
27 factors in their declines.

13. SNFPA CD#
SEIS_05_003974-003978, Doc. 512019.

25 14. The 2001 DEIS states that the 1996
26 Congressionally sponsored Sierra Nevada
27 Ecosystem Project Report ("Ecosystem
28 Report"), a comprehensive scientific and
socioeconomic analysis of the region
sponsored by Congress, concluded that aquatic

14. 2001 DEIS, Vol. 1, ch. 1 at p. 4.

1 and riparian ecosystems “are the most
2 degraded of all habitats in the Sierra Nevada.”

3 15. The Ecosystem Report also found that
4 “the most important identified cause of the
5 decline of Sierran vertebrates has been loss of
6 habitat, especially foothill and riparian
7 habitats.”

15. SNFPA 1649.

8 16. The 2001 FEIS defines the term “fuels
9 treatments” as “[t]he treatment of fuels that left
10 untreated, would otherwise interfere with
11 effective fire management or control.”

16. 2001 FEIS, Vol. 1, Glossary at p. 4.

12 17. The 2004 Framework Final
13 Supplemental Environmental Impact
14 Statement (“FSEIS”) states that fuels
15 management logging causes “soil disturbance
16 and biomass removal and consequently may
17 result in increased erosion and sedimentation,
18 runoff, [increased] water temperatures, and
19 altered inputs of woody debris to stream
20 channels.”

17. SNFPA 3281.

21 18. According to the FSEIS, the soil
22 compaction and biomass removal caused by
23 fuels management logging alters stream
24 structure and fish habitat.

18. SNFPA 3283.

25 19. The FSEIS states that roads “have the
26 greatest effects on aquatic ecosystems and
27 water quality in forested environments.”

19. SNFPA 3279.

28 20. According to the Quincy Library
Group Final Environmental Impact Statement
29 (“QLG FEIS”), roads are the largest single
30 human-caused source of sedimentation and
31 aquatic and riparian habitat degradation
32 throughout the Sierra Nevada.

20. QLG FEIS, chp. 3, p. 3-7.

33 21. Both the Ecosystem Report and the
34 1998 Sierra Nevada Science Review
35 specifically identified roads as “a major cause
36 of water quality problems and adverse impacts
37 to aquatic ecosystems.”

21. SNFPA 3907.

38 22. The FSEIS states that “roads can
39 deliver more sediment to streams than any
40 other human disturbance in forested
41 environments.”

22. SNFPA 3279.

- 1 23. The Ecosystem Report states that the use of roads near aquatic ecosystems
2 contributes to increased sedimentation—the most widespread symptom of stream
3 degradation in the Sierra Nevada.
- 4 24. According to the QLG FEIS, the QLG Pilot Project is a forest management project
5 spanning three of the Sierra Nevada national forests, including the Plumas, Lassen and the
6 Sierraville Ranger District of the Tahoe National Forest, and totaling a massive
7 2,422,163 acres of logging.
- 8 25. The QLG FEIS states that the QLG Pilot Project consists of a logging program focusing
9 on intensive, broad scale clear-cut logging of approximately 1,528,667 acres as well as
10 “defensible fuel profile zones,” or “DFPZs,” which are areas 1/4 to 1/2 mile wide where trees
11 and brush are clear-cut logged, partially logged, and removed by hand.
- 12 26. The QLG FEIS defines “group selection” as clear-cuts of up to 2 acres in size as “group
13 selecti
- 14 27. According to FSEIS, the QLG Pilot Project, calls for a projected 1,535 miles of
15 combined road construction, reconstruction, maintenance, and decommissioning over the 5-
16 year life of the Project.
- 17 28. According to the 2001 FEIS, on Nov. 20, 1998, the Forest Service published a notice of
18 intent to prepare an EIS for eleven national forests spanning the Sierra Nevada from the
19 Modoc Plateau, south to the giant sequoia groves, and east into Nevada.
- 20 29. The 2001 FEIS states that these eleven national forests cover over 11 million acres and
21 comprise over 60% of the land in the Sierra Nevada.
22
23
- 24 30. The Forest Service’s statement of “Purpose and Need for Action” was “to improve
25 national forest management direction for five broad problems: (1) conservation of old-forest
26 ecosystems, (2) conservation of aquatic, riparian, and meadow ecosystems, (3) increased
27 risk of fire and fuels buildup, (4) introduction of noxious weeds, and (5) sustaining hardwood
28 forests.”
23. SNFPA 1652.
24. QLG FEIS, ch. 3 at p. 3 & ch. 1 at p. 2–3.
25. QLG FEIS., ch. 1 at 2–3 & Glossary at p. 5.
26. QLG FEIS, Glossary at p. 7.
27. SNFPA 3395, Table 4.4.3b.
28. 2001 FEIS, Vol. 1, Summary at p. 7.
29. 2001 FEIS, Vol. 2, ch. 3 at p. 70 (Table 3.1j).
30. SNFPA CD#17, Doc. 872 at p. 6.

- 1 31. The 2001 FEIS states that the Forest Service issued a Final Environmental Impact
2 Statement ("FEIS") for the 2001 Framework on
3 January 12, 2001. 31. 2001 FEIS, Vol. 1, ch. 2 at p. 2.
- 4 32. The Forest Service stated in 2001 FEIS
5 that the 2001 Framework was one of the
6 alternatives that is "expected to pose the least
7 risk of negatively impacting riparian and aquatic
8 ecosystems[.]" 32. 2001 FEIS at Vol. 2, ch. 3 at p. 236.
- 9 33. In issuing the 2001 Record of Decision
10 ("2001 ROD"), Regional Forester Powell
11 explained that, although "there will be social and
12 economic impacts from the selection of [the
13 2001 Framework]. . . I believe the restoration
14 and protection of old forests and restoration of
15 aquatic, riparian and meadow ecosystems are
16 most important to the long- term health and
17 sustainability of Sierra Nevada ecosystems. I
18 could have selected an alternative that would
19 produce higher levels of measurable goods and
20 service, but these options pose greater
21 uncertainties and higher risks to ecosystem
22 sustainability and species viability." 33. SNFPA 829
- 23 34. In the 2001 ROD, Regional Forester
24 Powell specifically cited timber and grazing as
25 affected by the decision to adopt the 2001
26 Framework. 34. SNFPA 829.
- 27 35. In the 2001 ROD, Regional Forester
28 Powell concluded that the 2001 Framework
"best responds to multiple needs, including
ensuring sustainable forest ecosystems,
responding well to the five problem areas, and
providing a sustainable supply of goods and
services." 35. SNFPA 250.
36. In the 2001 ROD, Regional Forester
Powell decided against full implementation of
the QLG Pilot Project because full
implementation would run counter to the
conservation objectives of the 2001 Framework. 36. SNFPA 278–279.
37. In the 2001 ROD, Forester Powell
decided that the management strategy articulated
by the 2001 Framework would apply to most of
the QLG Pilot Project area. 37. SNFPA 278.

- 1 38. The 2001 Framework ROD allowed approximately 5,000 acres of the QLG Pilot
2 Project’s 1,528,667 acres of clear-cut logging to
3 proceed.
- 4 39. The 2001 ROD provided for a comprehensive Aquatic Management Strategy
5 (“AMS”).
- 6 40. The AMS provided for in the 2001 ROD consisted of (1) a set of management goals, (2)
7 standards and guidelines encapsulated in Riparian Conservation Objectives (“RCOs”),
8 and (3) two land allocations: Riparian Conservation Areas (“RCAs”) and Critical
9 Aquatic Refuges (“CARs”).
- 10 41. According to the 2001 ROD, Riparian Conservation Objectives “provide a checklist for
11 evaluating whether a proposed activity is consistent with the desired conditions described
12 by the AMS goals.” Each RCO has associated standards and guidelines for management.
- 13 42. The 2001 ROD defines Riparian Conservation Areas as “land allocations that are
14 managed to maintain or restore the structure and function of aquatic riparian and meadow
15 ecosystems.”
- 16 43. The 2001 FEIS defines a Critical Aquatic Refuge as “[a] relatively small watershed,
17 ranging in size from about 3,000 to 85,000 acres, that is sometimes nested within an emphasis
18 watershed and has localized populations of rare and/or at-risk populations of native fish and/or
19 amphibians. . . . The primary management goal for CARs is to preserve, enhance, restore or
20 connect habitats distributed across the landscape for sensitive or listed species to contribute to
21 their viability and recovery.”
- 22 44. The FSEIS states that logging within Riparian Conservation Areas (“RCAs”) reduces
23 forest canopy cover, which in turn adversely affects stream temperature, primary
24 productivity, fish habitat, and riparian microclimate.
- 25
- 26 45. Relying on the 2001 Framework’s standards and guidelines, the USFWS issued a
27 Biological Opinion (“USFWS BiOp”) that determined the 2001 Framework would not
28 jeopardize the continued existence of listed and
38. SNFPA 278; QLG FEIS, ch. 3 at p. 3 & ch. 1 at p. 2–3.
39. SNFPA 292–293
40. SNFPA 293–296.
41. SNFPA 295.
42. SNFPA 294.
43. 2001 FEIS, Vol. 1, Glossary at p. 2.
44. SNFPA 3281.
45. SNFPA 360

1 candidate fish and amphibian species.

2 46. The USFWS BiOP cited grazing as one
3 of the most detrimental activities to listed fish
species within the planning area.

46. SNFPA 460.

4 47. According to the November 16, 2001
5 Framework Appeal Decision (“Nov. 16th Appeal
6 Decision”), over 200 individuals and
7 organizations appealed the 2001 Framework
8 FEIS/ROD, but the new Chief of the Forest
9 Service designated himself reviewing officer for
10 the purpose of the consolidated appeals and then
11 determined that none of the appeals had merit.

47. SNFPA 563–567.

12 48. The Appeal Decision states that the
13 Forest Service recommended that the 2001
14 Framework be reviewed in light of recent severe
15 fires and the perceived need to manage
16 hazardous fuels.

48. SNFPA 564–567.

17 49. According to the Appeal Decision, the
18 new Forest Service Chief commenced a review
19 of the 2001 Framework to address concerns
20 raised by only a select group of appellants,
21 consisting of timber companies, grazing
22 permittees, ski resort operators, and off-road
23 vehicle associations.

49. SNFPA CD# SEIS_01_000693, Doc.
11091; SNFPA 563–564.

24 50. The Appeal Decision states that new
25 Regional Forester Blackwell re-evaluated the
26 2001 Framework (1) for “more flexibility in
27 aggressive fuels treatment while still providing
28 short-term and long-term protection for wildlife
and other resource values”; (2) based on
“possible new information” associated with the
National Fire Plan; and (3) to determine if
additional opportunities existed to harmonize the
goals of the QLG Pilot Project and the 2001
Framework.

50. SNFPA 566.

29 51. Regional Forester Blackwell chartered
30 the “Sierra Nevada Forest Plan Amendment
31 Review Team” to “initiate a broad review of the
32 elements and basis for the [2001 Framework].”

51. SNFPA CD#SEIS_01_00693–697;
SNFPA 1918.

33 52. In June 2003, after completing its review
34 of the 2001 Framework, the Forest Service
35 issued Draft Supplemental Environmental
36 Impact Statement (“DSEIS”).

52. SNFPA 3567.

- 1 53. The DSEIS was roundly criticized by the Forest Service’s Science Consistency Review
2 teams, who stated, “[t]he [DSEIS] clearly has a
3 different philosophy of risk, uncertainty and
4 resource management from the [2001
5 Framework]. . . . Where the [2001 Framework]
6 was conservative regarding management and
7 sensitive species, the [DSEIS] uses a few recent
8 studies [] as well as a set of social, economic,
9 and political considerations to justify a much
10 more aggressive approach to fuel management
11 and an easing of the standards and guidelines to
12 incorporate more local decision authority.”
- 13 54. According to the DSEIS, the estimated
14 salvage and green tree timber offered for sale
15 under the 2001 Framework would be 157
16 million board feet per year in the first decade,
17 whereas under the new 2004 Framework 448
18 million board feet of forest would be logged
19 each year for the first decade—nearly a three-
20 fold increase.
- 21 55. According to the FSEIS, the 2004
22 Framework called for “fewer restrictions on
23 [fuels] treatment methods and intensity.”
- 24 56. According to the FSEIS the 2004
25 Framework allows 45% more acres of initial
26 intentional burning and fuels management
27 logging, including a 250% increase in areas that
28 are mechanically logged.
57. According to the DSEIS, the 2001
Framework standards and guidelines state that
“[i]f [Yosemite toad occupancy] surveys are not
completed for any meadow, occupancy will be
assumed and the above restrictions [will] apply,”
but this restriction is not present in the 2004
Framework standards and guidelines.
58. The Science Consistency Review team
convened to evaluate the DSEIS found that the
2004 Framework’s “treatment of meadows and
riparian areas and their associated sensitive
animal species is awkward and inconsistent” and
that “allowing grazing and most recreational
activities to continue in areas occupied or
historically occupied by any of these species is
almost certainly incompatible with population
recovery.”
59. A supplemental Science Consistency
Review Report said, “Grazing can always be

53. SNFPA 2554.
54. DSEIS, Summary at p. 24.
55. SNFPA 3086.
56. SNFPA 3280; SNFPA 3290–91.
57. DSEIS, Appendix A at p. 260–261.
58. SNFPA 2512.
59. SNFPA at 2614.

1 reinstated but extinction is permanent.”

2 60. The FSEIS states that, unlike the 2001
3 Framework, 2004 Framework fully implements
the QLG Pilot Project.

60. SNFPA 3077.

4 61. Based on the 2001 ROD and the QLG
5 FSEIS, whereas the 2001 Framework allowed
6 approximately 5,000 acres of the QLG Pilot
7 Project’s 1,528,667 acres clear-cut logging to
8 proceed, the 2004 Framework allows for a
9 massive 2,422,163 acres of QLG Pilot Project
10 logging.

61. SNFPA 278; QLG FEIS, ch. 3 at p. 3 &
ch. 1 at p. 2–3.

8 62. According to the FSEIS, the 2004
9 Framework allows 115 miles of road
10 construction and 1520 miles of road
reconstruction in the first decade of
implementation alone.

62. SNFPA 3395, Table 4.4.3b.

11 63. The FSEIS states that “twice as many
12 miles of roads would be reconstructed under [the
2004 Framework] than [under the 2001
13 Framework].”

63. SNFPA 3282.

14 64. According to the FSEIS, much of the
15 road construction results from full
16 implementation of the QLG Pilot Project, which
17 allows “substantial amounts of road
18 reconstruction.”

64. SNFPA 3282.

19 65. The FSEIS states that the 2004
20 Framework more than quadruples road
21 construction from that projected by the 2001
22 Framework during the first decade (from 25
23 miles to 115 miles) and more than doubles road
24 reconstruction (from 655 miles to 1520 miles).

65. SNFPA 3395, Table 4.4.3a.

25 66. According to the FSEIS, following the
26 first decade, approximately 15 miles of
27 additional road construction per decade will be
28 needed outside the QLG Pilot Project.

66. SNFPA 3368.

23 67. The FSEIS states that, compared to the
24 2001 Framework, the 2004 Framework “is
25 projected to result in an additional 86 miles of
26 road construction, 43 miles of temporary road
27 construction, and 640 miles of road maintenance
28 per year” during the period of full QLG
implementation.

67. SNFPA 3395.

27 68. According to the FSEIS, due to the
28 increases in logging, the 2004 Framework
requires “more skid trails, [log] landings, and

68. SNFPA 3281.

1 other possible sources of sediment.”

2 69. The 2001 ROD acknowledges that log
3 skid trails and log landings used in connection
4 with logging cause soil compaction, increase
5 sediment runoff, disrupt surface and
6 subsurface water flow, and degrade water
7 quality.

69. 2001 ROD at 3-126; SNFPA 3281.

8 70. On January 21, 2004, Regional Forester
9 Blackwell signed the 2004 ROD, which replaced
10 the 2001 ROD and established the 2004
11 Framework.

70. SNFPA 2988 & 4003

12 71. The FSEIS claims that the risk of
13 increased erosion, soil sedimentation, and
14 changes in runoff is only “moderately higher”
15 under the 2004 Framework.

71. SNFPA 3280–81.

16 72. The FSEIS states that impacts to aquatic
17 habitat from the 2004 Framework are expected
18 to be “of limited magnitude, duration, and
19 extent.”

72. SNFPA 3282.

20 73. The FSEIS fails to identify and discuss
21 the scientific evidence in the record which
22 reaches the opposite conclusion regarding
23 “limited” effects on aquatic ecosystems,
24 associated species and water quality from
25 logging and intentional burning.

73. SNFPA 3280–85.

26 74. The FSEIS repeatedly and consistently
27 recognizes that “[the 2004 Framework] may
28 pose higher short-term risks to aquatic resources
because it prescribes larger amounts of
mechanical treatments and greater treatment
intensities.”

74. SNFPA 3169.

29 75. The FSEIS repeatedly asserts that
30 “[l]andscape and project analysis would be used
31 to further evaluate and mitigate possible
32 hydrologic effects”

75. SNFPA 3281–82 & 3284.

33 76. The FSEIS omits any analysis of the
34 impact of increased use of existing roads on the
35 California red-legged frog, Mountain yellow-
36 legged frog, Yosemite toad, Cascades frog or
37 Northern leopard frog.

76. SNFPA 3305–09 & 3366–77.

38 77. The FSEIS defers analysis of the impacts
39 from road construction within the habitat of the
40 Foothill yellow-legged frog until after “the
41 biological evaluation process.”

77. SNFPA 3366 & 3368.

42 78. The “Cumulative Effects” section of the

78. SNFPA 3256–3262 & 3308.

1 FSEIS fails to include any discussion of the
2 cumulative impacts caused by logging and
related road construction.

3 79. The “Cumulative Effects” section of the
4 FSEIS for specific species found in aquatic
5 ecosystems (*i.e.*, “The Species of the Sierra
6 Nevada,” Ch. 4, section 3) does not contain
7 analysis of the cumulative effects of logging
8 together with road construction.

79. SNFPA 3308, 3370, 3374–75.

9 80. The “Cumulative Effects” section of the
10 FSEIS does not contain any analysis of the
11 cumulative impact of road use and construction.

80. SNFPA 3256–3262.

12 81. The FSEIS sections addressing
13 “Cumulative Effects” for specific species found
14 in aquatic ecosystems do not contain any
15 analysis of the impacts of road use and
16 construction.

81. SNFPA 3308, 3370, 3374–3378.

17 82. According to the 2004 ROD, all
18 standards and guidelines from the 2001
19 Framework are replaced by the standards and
20 guidelines in the 2004 Framework FSEIS.

82. SNFPA 3005.

21 83. According to the FSEIS, whereas the
22 2001 Framework limited soil compaction in
23 RCAs to 5% of project activity area, the 2004
24 Framework replaces this restriction with “site-
25 specific evaluations.”

83. SNFPA 3280.

26 84. When comparing the 2001 and 2004
27 Frameworks, the FSEIS asserts that “[the 2001
28 Framework] and [the 2004 Framework]
incorporate the AMS and the same standards and
guidelines for aquatic, riparian, and meadow
ecosystems.”

84. SNFPA 3173.

85. The USFWS concluded that the 2001
Framework’s handling of grazing was “likely to
adversely affect listed and proposed species”
and proposed additional conservation
recommendations for the California red-legged
frog, the Mountain yellow-legged frog, and the
Yosemite toad.

85. SNFPA 510–523.

86. The Forest Service recommended that
Standard and Guideline RCA-41 of the 2001
Framework “should go further to eliminate
livestock grazing from Yosemite toad habitat
throughout the year to prevent the degradation of
adjacent upland habitats, the introduction of
sediment and pollutants into toad breeding sites,

86. SNFPA 517.

1 trampling of upland refugial habitat, dispersing
2 cover for juvenile and adult toads, and alteration
3 of meadow, stream and spring hydrology which
4 constitutes toad breeding sites.”

5 87. According to the FSEIS, the 2001 SNFPA 3408.
6 Framework’s strict prohibition against the
7 application of pesticides to livestock within
8 RCAs and CARs is eliminated in the 2004
9 Framework.

10 88. The FSEIS states that the 2004 SNFPA 3075
11 Framework adopts site-specific grazing
12 strategies as a result of changes in management
13 direction that allow more economic benefits to
14 be retained.

15 89. In the 2004 ROD, Regional Forester SNFPA 3000.
16 Blackwell states that the 2004 Framework’s
17 modifications to standards and guidelines will
18 reduce economic impacts to 14 grazing
19 operations.

20 90. The 2004 Framework removes the 2001 SNFPA 3280.
21 Framework restriction which limited soil
22 compaction in the Riparian Conservation Areas
23 to 5% of the project activity area and instead
24 provides only for post-approval “project-level
25 analysis” and “site-specific evaluations.”

26 91. The FSEIS acknowledges that livestock SNFPA 3372.
27 will cause adverse direct effects to Yosemite
28 toads, including mortality, as a result of
29 trampling of some toad tadpoles and egg masses
30 both in ponds where toads are breeding, as well
31 as “anywhere in meadows after the breeding and
32 rearing season has ended.”

33 92. The 2004 Framework allows grazing in SNFPA 308.
34 all unsurveyed suitable toad habitat and extends
35 the deadline for completing the surveys by two
36 years.

37 93. The U.S. Department of Agriculture SNFPA 2474.
38 commented that—given the activities proposed
39 in the 2004 Framework—there needs to be a
40 discussion in the FSEIS of the effects of the
41 2004 Framework “on riparian ecosystems,
42 stream and fisheries. It is not sufficient to
43 dismiss these as within the range of impacts
44 discussed in the framework” without further
45 analysis.

46 94. Not one fish is analyzed within the SNFPA 3304–3378.

1 FSEIS focal species context.

2 95. Over 6,000 appeals of the 2004 ROD
3 were filed.

95. SNFPA 4003.

4

5 Respectfully Submitted on November 14, 2005

_____/S/_____
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7 BRIAN GAFFNEY
8 MATT McFARLAND

9 for Plaintiff
10 Pacific Rivers Council

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