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16 **UNITED STATES DISTRICT COURT FOR THE**  
17 **EASTERN DISTRICT OF CALIFORNIA**

18 SIERRA SNOWMOBILE FOUNDATION, a )  
nonprofit corporation; JEFF WITTMAN; MARY )  
19 KRUPKA; JOHN WATTS; BLUERIBBON )  
COALITION, INC., a nonprofit corporation; )  
20 AMERICAN COUNCIL OF SNOWMOBILE )  
ASSOCIATION INC., a nonprofit corporation, )

21 Plaintiffs, )

22 vs. )

23 UNITED STATES FOREST SERVICE, Pacific )  
Southwest Region; JASON KUIKEN, in his )  
24 capacity as Forest Supervisor for the Stanislaus )  
National Forest; UNITED STATES )  
25 DEPARTMENT OF AGRICULTURE, United )  
26 States Forest Service, )

27 Federal Defendants. )  
28

Case No.: 2:21-CV-01913-JAM-DB

**[PROPOSED] ANSWER AND CROSS-CLAIMS BY DEFENDANT-INTERVENOR APPLICANTS WILDEARTH GUARDIANS AND CALIFORNIA WILDERNESS COALITION**

1 Intervenor-Defendants WildEarth Guardians and California Wilderness Coalition answer  
2 and respond to the Complaint filed by Plaintiffs Sierra Snowmobile Foundation *et al.* as follows:<sup>1</sup>

3 **I. JURISDICTION**

4 1. The allegations in this paragraph constitute conclusions of law to which no response  
5 is required.

6 2. The allegations in this paragraph constitute conclusions of law to which no response  
7 is required.

8 3. The allegations in this paragraph constitute conclusions of law to which no response  
9 is required.

10 **II. INTRODUCTION**

11 4. The allegations in the first sentence of this paragraph contain Plaintiffs’  
12 characterization of the case to which no response is required. The allegations in the second  
13 sentence of this paragraph purport to characterize the Stanislaus National Forest Over-Snow  
14 Vehicle (“OSV”) Use Designation Record of Decision (“ROD”), which speaks for itself and is the  
15 best evidence of its content.

16 5. The allegations in this paragraph contain Plaintiffs’ characterization of the case to  
17 which no response is required.

18 6. The allegations in this paragraph contain a description of the relief Plaintiffs are  
19 seeking to which no response is required.

20 7. The allegations in this paragraph contain a description of the relief Plaintiffs are  
21 seeking to which no response is required.

22 8. The allegations in this paragraph contain a description of the relief Plaintiffs are  
23 seeking to which no response is required.

24 **III. PARTIES**

25 9. Intervenors deny the allegations in this paragraph because they lack sufficient  
26 knowledge or information to form a belief as to the truth of the allegations.

27 \_\_\_\_\_  
28 <sup>1</sup> The numbered paragraphs and headings correspond to the numbered paragraphs and  
headings in Plaintiffs’ Complaint, ECF No. 1.



1 is required.

2 22. The allegations in this paragraph purport to characterize NEPA and its implementing  
3 regulations, which speak for themselves and are the best evidence of their content.

4 23. The allegations in this paragraph purport to characterize NEPA and its implementing  
5 regulations, which speak for themselves and are the best evidence of their content.

6 **B. The Travel Management Rule**

7 24. The allegations in this paragraph purport to characterize the Forest Service’s Travel  
8 Management Rule, which speaks for itself and is the best evidence of its content.

9 25. The allegations in this paragraph purport to characterize the Forest Service’s Travel  
10 Management Rule, which speaks for itself and is the best evidence of its content.

11 26. The allegations in this paragraph purport to characterize the Forest Service’s Travel  
12 Management Rule, which speaks for itself and is the best evidence of its content.

13 27. The allegations in this paragraph purport to characterize the Forest Service’s Travel  
14 Management Rule, which speaks for itself and is the best evidence of its content.

15 28. The allegations in this paragraph purport to characterize the Forest Service’s Travel  
16 Management Rule, which speaks for itself and is the best evidence of its content.

17 **C. National Forest Management Act**

18 29. The allegations in this paragraph purport to characterize the National Forest  
19 Management Act (“NFMA”), which speaks for itself and is the best evidence of its content.

20 30. The allegations in this paragraph purport to characterize NFMA, which speaks for  
21 itself and is the best evidence of its content.

22 31. Intervenors admit the allegations in the first sentence of this paragraph. Intervenors  
23 deny the allegations in the second sentence of this paragraph because they lack sufficient  
24 knowledge or information to form a belief as to the truth of the allegations.

25 32. The allegations in this paragraph purport to characterize the 2017 Stanislaus National  
26 Forest Plan direction, which speaks for itself and is the best evidence of its content.

27 **D. Administrative Procedure Act**

28 33. The allegations in this paragraph purport to characterize the Administrative

1 Procedure Act (“APA”), which speaks for itself and is the best evidence of its content.

## 2 **VI. FACTUAL BACKGROUND**

### 3 **A. Stanislaus National Forest and OSV Use**

4 34. The allegations in the first three sentences of this paragraph purport to characterize  
5 the final Environmental Impact Statement (“EIS”) or Forest Plan, which speak for themselves and  
6 are the best evidence of their content. The allegations in the first clause of the fourth sentence  
7 purport to characterize the Forest Plan, which speaks for itself and is the best evidence of its  
8 content. Intervenors deny the allegation in the second clause of the fourth sentence that Near  
9 Natural and proposed wilderness areas were never formally closed to OSV use.

10 35. The allegations in this paragraph purport to characterize the final EIS, which speaks  
11 for itself and is the best evidence of its content.

12 36. The allegations in this paragraph purport to characterize the final EIS, which speaks  
13 for itself and is the best evidence of its content.

14 37. The allegations in this paragraph are vague and ambiguous and Intervenors deny  
15 them because they lack sufficient knowledge or information to form a belief as to the truth of the  
16 allegations.

17 38. The allegations in the first sentence of this paragraph purport to characterize the  
18 Forest Plan, which speaks for itself and is the best evidence of its content. Intervenors deny the  
19 allegations in the second sentence of this paragraph.

### 20 **B. Project Scoping and Draft EIS**

21 39. The allegations in the first sentence of this paragraph purport to characterize the  
22 Notice of Intent, which speaks for itself and is the best evidence of its content. Intervenors admit  
23 the allegations in the second sentence. The allegations in the third sentence of this paragraph  
24 purport to characterize NEPA’s implementing regulations, which speak for themselves and are the  
25 best evidence of their content. The allegations in the fourth sentence purport to characterize the  
26 draft EIS, which speaks for itself and is the best evidence of its content.

27 40. Intervenors admit the allegations in the first sentence of this paragraph. The  
28 remaining allegations purport to characterize the draft EIS, which speaks for itself and is the best

1 evidence of its content.

2 41. The allegations in this paragraph purport to characterize the draft EIS, which speaks  
3 for itself and is the best evidence of its content.

4 42. The allegations in this paragraph purport to characterize the draft EIS, which speaks  
5 for itself and is the best evidence of its content.

6 43. The allegations in this paragraph purport to characterize the draft EIS, which speaks  
7 for itself and is the best evidence of its content.

8 44. The allegations in this paragraph purport to characterize the draft EIS, which speaks  
9 for itself and is the best evidence of its content.

10 45. The allegations in this paragraph purport to characterize the draft EIS, which speaks  
11 for itself and is the best evidence of its content.

12 46. The allegations in this paragraph purport to characterize the draft EIS, which speaks  
13 for itself and is the best evidence of its content.

14 **C. FEIS and Draft ROD**

15 47. Intervenors admit the allegations in the first sentence of this paragraph. The  
16 allegations in the second sentence and table purport to characterize the draft EIS and final EIS,  
17 which speak for themselves and are the best evidence of their content.

18 48. The allegations in this paragraph purport to characterize the final EIS or draft EIS,  
19 which speak for themselves and are the best evidence of their content.

20 49. The allegations in the first two sentences of this paragraph purpose to characterize  
21 the final EIS, which speaks for itself and is the best evidence of its content. Intervenors deny the  
22 allegations in the third sentence of this paragraph.

23 50. The allegations in this paragraph purport to characterize the final EIS, which speaks  
24 for itself and is the best evidence of its content.

25 51. The allegations in this paragraph purport to characterize the final EIS, which speaks  
26 for itself and is the best evidence of its content.

27 52. The allegations in this paragraph purport to characterize the final EIS, which speaks  
28 for itself and is the best evidence of its content.

1 53. The allegations in this paragraph purport to characterize the draft ROD, which  
2 speaks for itself and is the best evidence of its content.

3 54. The allegations in this paragraph purport to characterize the draft ROD, which  
4 speaks for itself and is the best evidence of its content.

5 55. Intervenors admit the allegations in this paragraph.

6 **D. The Final ROD**

7 56. Intervenors admit the allegations in the first sentence of this paragraph. The  
8 remaining allegations purport to characterize the draft ROD, final ROD, and final EIS, which speak  
9 for themselves and are the best evidence of their content.

10 57. The allegations in this paragraph purport to characterize the draft ROD, final ROD,  
11 and final EIS, which speak for themselves and are the best evidence of their content.

12 58. The allegations in this paragraph purport to characterize the final ROD, which speaks  
13 for itself and is the best evidence of its content.

14 59. The allegations in this paragraph purport to characterize the final ROD, which speaks  
15 for itself and is the best evidence of its content.

16 60. The allegations in this paragraph purport to characterize the final ROD or final EIS,  
17 which speak for themselves and are the best evidence of their content.

18 61. The allegations in this paragraph purport to characterize the final ROD and final EIS,  
19 which speak for themselves and are the best evidence of their content.

20 62. Intervenors deny the allegations in this paragraph.

21 **FIRST CLAIM FOR RELIEF**  
22 **(Violation of National Environmental Policy Act—Failure to Adequately Consider**  
23 **Environmental Impacts)**

23 63. Intervenors restate and incorporate by reference their response to all preceding  
24 paragraphs.

25 64. The allegations in this paragraph constitute conclusions of law to which no response  
26 is required. To the extent a response is required, Intervenors deny the allegations.

27 65. The allegations in this paragraph constitute conclusions of law to which no response  
28 is required. To the extent a response is required, Intervenors deny the allegations and deny that

1 Plaintiffs are entitled to any relief.

2 66. The allegations in this paragraph constitute conclusions of law to which no response  
3 is required. To the extent a response is required, Intervenor deny the allegations and deny that  
4 Plaintiffs are entitled to any relief.

5 **SECOND CLAIM FOR RELIEF**  
6 **(Violation of National Environmental Policy Act—Failure to Meet Purpose and Need of the**  
7 **Project)**

7 67. Intervenor restate and incorporate by reference their response to all preceding  
8 paragraphs.

9 68. The allegations in this paragraph purport to characterize the final EIS, which speaks  
10 for itself and is the best evidence of its content.

11 69. The allegations in this paragraph constitute conclusions of law to which no response  
12 is required. To the extent a response is required, Intervenor deny the allegations.

13 70. Intervenor deny the allegations in this paragraph.

14 71. Intervenor deny the allegations in this paragraph.

15 72. The allegations in this paragraph constitute conclusions of law to which no response  
16 is required. To the extent a response is required, Intervenor deny the allegations.

17 **THIRD CLAIM FOR RELIEF**  
18 **(Violation of the National Forest Management Act—Inconsistency with the Forest Plan)**

19 73. Intervenor restate and incorporate by reference their response to all preceding  
20 paragraphs.

21 74. The allegations in this paragraph purport to characterize NFMA, which speaks for  
22 itself and is the best evidence of its content.

23 75. The allegations in this paragraph purport to characterize the Forest Plan, which  
24 speaks for itself and is the best evidence of its content.

25 76. The allegations in the first sentence of this paragraph purport to characterize the  
26 Forest Plan and ROD, which speak for themselves and are the best evidence of their content.  
27 Intervenor deny the allegations in the second sentence. The allegations in the third sentence  
28 constitute conclusions of law to which no response is required. To the extent a response is required,



1 Intervenor deny the allegations.

2 77. The allegations in this paragraph constitute conclusions of law to which no response  
3 is required. To the extent a response is required, Intervenor deny the allegations.

4 **FOURTH CLAIM FOR RELIEF**  
5 **(Violation of the National Forest Management Act and National Environmental Policy Act—**  
6 **Inadequate Scientific Information in the Evaluation of Effects)**

7 78. Intervenor restate and incorporate by reference their response to all preceding  
8 paragraphs.

9 79. The allegations in this paragraph purport to characterize the Forest Plan, which  
10 speaks for itself and is the best evidence of its content.

11 80. The allegations in this paragraph constitute conclusions of law to which no response  
12 is required. To the extent a response is required, Intervenor deny the allegations.

13 81. The allegations in this paragraph constitute conclusions of law to which no response  
14 is required. To the extent a response is required, Intervenor deny the allegations.

15 82. The allegations in this paragraph constitute conclusions of law to which no response  
16 is required. To the extent a response is required, Intervenor deny the allegations.

17 **FIFTH CLAIM FOR RELIEF**  
18 **(Violation of the Travel Management Rule—Arbitrary Application of the Minimization**  
19 **Criteria)**

20 83. Intervenor restate and incorporate by reference their response to all preceding  
21 paragraphs.

22 84. The allegations in first sentence of this paragraph purport to characterize the Forest  
23 Service's Travel Management Rule, which speaks for itself and is the best evidence of its content.  
24 Intervenor admit the allegations in the second sentence.

25 85. The allegations in the first sentence of this paragraph constitute conclusions of law to  
26 which no response is required. To the extent a response is required, Intervenor deny the  
27 allegations. The allegations in the second sentence purport to characterize the draft ROD, which  
28 speaks for itself and is the best evidence of its content.

86. The allegations in this paragraph constitute conclusions of law to which no response  
is required. To the extent a response is required, Intervenor deny the allegations.

1           87.    The allegations in this paragraph constitute conclusions of law to which no response  
2 is required. To the extent a response is required, Intervenor deny the allegations.

3                                   **VII.    PRAYER FOR RELIEF**

4           Plaintiffs’ prayer for relief does not require a response. Intervenor deny that Plaintiffs are  
5 entitled to the relief they request or to any relief whatsoever.

6                                   **CROSS-CLAIMS**

7           1.    WildEarth Guardians and California Wilderness Coalition hereby Cross-Claim and  
8 Complain in Intervention against Defendants United States Forest Service, Jason Kuiken, and  
9 United States Department of Agriculture to challenge the Stanislaus National Forest Winter Travel  
10 Plan EIS and ROD, and accompanying Forest Plan Amendment, for failing to adequately assess the  
11 impacts of its Over-Snow Vehicle (“OSV”) designations, and ensure consistency of its decisions  
12 with all applicable legal requirements, with regard to certain wildlife species. The Forest Service  
13 failed to thoroughly analyze, and thus improperly dismissed, adverse impacts of OSV use that may  
14 occur under the new winter travel plan to species that are already imperiled—specifically Sierra  
15 Nevada red fox, Yosemite toad, and Sierra Nevada yellow-legged frog, which are all listed as  
16 threatened or endangered under the Endangered Species Act (“ESA”), as well as Forest Service  
17 sensitive species Pacific marten. The new plan allows OSV use in occupied habitat for each of  
18 these species, which could injure or disturb them and impair their reproductive success. Some of  
19 this habitat occurs in Near Natural roadless areas that were closed to motorized use for decades but  
20 are now open under the winter travel plan due to a Forest Plan amendment.

21           2.    Accordingly, Intervenor bring cross-claims against the Stanislaus winter travel plan  
22 and Forest Plan amendment for violating NEPA, NFMA, and the Forest Service Travel  
23 Management Rule and seek an order from the Court requiring the Forest Service to complete further  
24 analysis on the impacts to these four species and amend the winter travel plan to comply with these  
25 laws. Intervenor do not seek to vacate or remand the plan pending this new analysis because the  
26 plan includes many environmentally beneficial aspects that are unrelated to Intervenor’s challenges.

27                                   **JURISDICTION AND VENUE**

28           3.    This Court has jurisdiction over Intervenor’s cross-claims pursuant to 28 U.S.C.

1 § 1331 (federal question), 28 U.S.C. §§ 2201–02 (declaratory judgment), and 5 U.S.C. §§ 702, 706  
2 (APA) because their claims arise under NEPA, 42 U.S.C. § 4321 *et seq.*, NFMA, 16 U.S.C. § 1600  
3 *et seq.*, and the Forest Service’s Travel Management Rule, 36 C.F.R. Part 212.

4 4. Venue is proper in this Court under 28 U.S.C. § 1391(e) because a substantial part of  
5 the events or omissions giving rise to these claims has occurred, and a substantial part of the  
6 property that is the subject of these claims is situated, within the federal judicial district of the  
7 Eastern District of California.

8 5. Intervenor’s cross-claims arise out of the same transaction or occurrence that forms  
9 the subject matter of Plaintiffs’ Complaint because they challenge the same Stanislaus National  
10 Forest winter travel plan that Plaintiffs challenge.

11 6. Federal Defendants have waived sovereign immunity pursuant to 5 U.S.C. § 702.

12 7. Intervenor has exhausted administrative remedies for their cross-claims.

13 8. If Intervenor prevails, they will seek an award of costs, attorney fees, and other  
14 expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412.

15 **PARTIES**

16 9. Intervenor WildEarth Guardians (“Guardians”) is a non-profit organization dedicated  
17 to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West.  
18 WildEarth Guardians has more than 194,000 members and supporters, including many in  
19 California. WildEarth Guardians has organizational interests in the proper and lawful management  
20 of OSV use on National Forest lands, including on the Stanislaus National Forest. WildEarth  
21 Guardians and its members have a procedural interest in ensuring that all Forest Service activities  
22 comply with all applicable federal statutes and regulations.

23 10. WildEarth Guardians’ members derive aesthetic, recreational, scientific,  
24 inspirational, educational, and other benefits from recreating during all seasons on the Stanislaus  
25 National Forest. WildEarth Guardians’ members visit the forest for quiet recreation purposes, such  
26 as cross country skiing, backcountry skiing, snowshoeing, hiking, camping, observing wildlife,  
27 photography, and scientific study. Its members enjoy observing, attempting to observe, and  
28 studying wildlife in the wild, including signs of presence of species such as Sierra Nevada red fox,

1 Pacific marten, Sierra Nevada yellow-legged frog, Yosemite toad, and other wildlife. The  
2 opportunity to possibly view these species or their sign, and simply knowing these species exist in  
3 areas in which they recreate on the Stanislaus National Forest, is of significant interest and value to  
4 WildEarth Guardians’ members, and increases their use and enjoyment of these areas. WildEarth  
5 Guardians’ members have regularly engaged in quiet recreation activities during winter and other  
6 seasons on this forest, and intend to continue such pursuits in the future.

7 11. Intervenor California Wilderness Coalition (“CalWild”) is a non-profit organization  
8 based in Oakland, California that works to protect and restore California’s wildest natural  
9 landscapes, which provide clean air and water, refuges for wildlife, and outstanding opportunities  
10 for recreation and spiritual renewal for people. CalWild has more than 7,000 members and  
11 supporters, many of whom recreate in the wild places and rivers of the Stanislaus National Forest,  
12 including in the Pacific Valley and Eagle Near Natural areas. CalWild members enjoy the peace  
13 and solitude of these areas and observing wildlife there when they recreate. CalWild commented on  
14 and mobilized their supporters to comment in support of protecting wild places in the 1992  
15 Stanislaus National Forest Land and Resource Management Plan and in the 2021 Stanislaus winter  
16 travel plan because of their aesthetic, recreational, inspirational, and scientific interest in seeing and  
17 experiencing natural areas and the creatures that inhabit them without disturbance from motorized  
18 vehicles.

19 12. Guardians and CalWild participated in the decision-making process for the  
20 Stanislaus winter travel plan by submitting comments on the draft EIS and objections to the final  
21 EIS, draft ROD, and Forest Plan amendment. They raised concerns about OSV impacts to wildlife  
22 and motorized use in Near Natural areas in their comments and objections.

23 13. The Stanislaus winter travel plan adversely affects wintering wildlife that occupies  
24 the forest, such as Sierra Nevada red fox and marten, by allowing OSV use in winter habitat for  
25 these species that disturbs and displaces them, impairs their ability to den and raise young, and  
26 allows for predators and competitors such as coyotes to access their habitat in winter. It also  
27 adversely affects species that hibernate through winter under the snow, such as Sierra Nevada  
28 yellow-legged frog and Yosemite toad, by allowing OSV use that can degrade riparian habitat

1 through soil compaction and toxic OSV emissions or crush the amphibians as they emerge from  
2 hibernation in the spring and move to breeding areas. Additionally, the Forest Plan amendment and  
3 winter travel plan allow for motorized use in Near Natural areas that had been off-limits to such use,  
4 reducing the wildness of these areas which in turn adversely affects these species.

5 14. Defendants' violations of law that impair wildlife and Near Natural areas on the  
6 Stanislaus National Forest adversely and irreparably injure the aesthetic, recreational, health,  
7 inspirational, and other interests of Guardians and CalWild and their members. These are actual,  
8 concrete injuries to Guardians and CalWild, caused by Defendants' violations of law, which will  
9 continue until and unless the Court provides the relief prayed for in this Cross-Claim.

10 15. Defendant United States Forest Service ("Forest Service") is an agency within its  
11 parent agency the United States Department of Agriculture. The Forest Service is charged with  
12 managing the public lands and resources of the Stanislaus National Forest in accordance and  
13 compliance with federal laws and regulations.

14 16. Defendant Jason Kuiken is the Forest Supervisor of the Stanislaus National Forest,  
15 who signed the Stanislaus winter travel plan ROD. Supervisor Kuiken is responsible for ensuring  
16 the decisions of the Stanislaus National Forest comply with all applicable laws and regulations.  
17 Forest Supervisor Kuiken is sued solely in his official capacity.

## 18 **FACTUAL BACKGROUND**

19 17. Overall, Intervenors support much of the new Stanislaus winter travel plan, which is  
20 the first travel plan on the forest to regulate OSV use by designating the specific areas and trails  
21 open to such use and prohibiting it everywhere else. The final plan, however, does not adequately  
22 protect several wildlife species that are already in an imperiled status. Intervenors bring these  
23 cross-claims to address violations of law with regard to these species.

### 24 **A. Imperiled Wildlife on the Stanislaus National Forest and Impacts of OSVs.**

25 18. Due to its proximity to the Sierra Crest and presence of numerous wilderness or  
26 roadless areas, the Stanislaus National Forest is home to a wide variety of wildlife. Species range  
27 from those that occupy high elevation mountain habitat to those in lower elevation forests. Of  
28 particular relevance here are four species that are designated as threatened or endangered under the

1 ESA or as Forest Service sensitive species due to their declining populations and shrinking  
2 geographic range.

3 19. First, the Sierra Nevada red fox “distinct population segment” (DPS) found in the  
4 highest elevations of the Sierra Nevada mountain range in California is at very high risk of  
5 extinction. This DPS has been declining for decades and was listed as an *endangered* species under  
6 the ESA just three weeks after the Forest Service signed the decision for the Stanislaus winter travel  
7 plan. These animals are adapted to living in cold areas with deep snow and have physical features  
8 that facilitate movement over snow. They mate in mid-February to early March and give birth in  
9 April and early May, with relatively low reproductive rates compared to other mammals.

10 20. Based on known detections, the current range of the Sierra Nevada red fox DPS  
11 extends along the Sierra Crest from Highway 88 almost to Kings Canyon National Park. The entire  
12 DPS contains only about 20–40 adults. The core of this red fox DPS is a population of foxes living  
13 near Sonora Pass. These animals are the descendants of a much larger population that occurred  
14 along the upper elevations of the Sierra Nevada Mountains from Tulare to Sierra counties but the  
15 small Sonora Pass population is the only remaining core population known to exist within these  
16 mountains. Fewer than twenty foxes are estimated to still persist in the general area defined as the  
17 Sonora Pass and habitat extending along the eastern crest zone of the Stanislaus Forest.

18 21. Through scat and remote camera surveys, it is known that foxes occupy the 411-acre  
19 area near Sonora Pass that was designated for OSV “snow play” use in the Stanislaus winter travel  
20 plan. Detections of fox have also occurred in a broader area around Sonora Pass and in the Pacific  
21 Valley Near Natural Area. The Eagle Near Natural Area does not have known detections from the  
22 very limited photo detection surveys conducted there, but it contains highly suitable fox habitat that  
23 connects to Emigrant Wilderness and to occupied red fox habitat at Sonora Pass.

24 22. The Sierra Nevada red fox DPS is well below a viable level, with scientists  
25 estimating a minimum population size of 150 to be viable. Because the only known core  
26 population—at Sonora Pass—is so small and isolated, it is experiencing inbreeding depression and  
27 reduced genetic diversity. In addition to inbreeding and low genetic diversity, other threats to this  
28 species are hybridization with nonnative red fox, and competition and predation from coyotes.

1 Normally coyotes do not occupy areas with heavy snows so do not directly compete with foxes in  
2 winter or access their dens. If they are able to intrude into this winter habitat, they will compete  
3 with foxes for prey, restrict them from den sites, and prey upon foxes and their young. Any death  
4 of foxes or reproductive failure in this small population resulting from coyote presence would  
5 further reduce the viability of the entire DPS. Trails also facilitate access for nonnative foxes that  
6 can breed with the Sierra Nevada DPS and dilute the gene pool. In fact, the only known  
7 reproduction for this DPS since 2011 was hybrid pups created by interbreeding with nonnative  
8 Great Basin red foxes.

9       23.     Second, Pacific marten are small furbearers that also occupy high elevation remote  
10 areas, seeking out deep snow in winter to isolate themselves from humans as well as predators such  
11 as coyote and bobcat. They are solitary and territorial and generally avoid human encounters.  
12 These small animals have thermoregulation needs in winter that require them to rest under the snow  
13 to reduce heat loss and they often change rest locations depending on temperature and snow  
14 condition. They are adapted to travel on top of snow but may also move under the snowpack for  
15 thermal protection. Females prepare natal dens where they give birth in late March or April, and  
16 then often move their kits to maternal dens when they are 7–13 weeks old.

17       24.     Marten have declined in abundance and range, leading to their designation as a  
18 sensitive species in Forest Service Region 5 and a California “species of special concern.” Marten  
19 have been documented in numerous scattered, upper elevation locations on the Stanislaus National  
20 Forest through 25 years of remote camera detections. They have been detected throughout the  
21 Pacific Valley and Eagle Near Natural Areas, including the parts of those areas now open to OSV  
22 use, and are known to occupy habitat in the Sonora Pass area.

23       25.     Furbearers such as Sierra Nevada red fox and Pacific marten tend to inhabit remote,  
24 wild areas with little human intrusion. OSVs can adversely impact these two species when the  
25 machines intrude into their winter habitat. For one, these machines compact the snow and create  
26 trails that coyotes and bobcats can use to access deep snow habitat that otherwise would be  
27 inaccessible. Coyotes and bobcats can predate upon adult and juvenile foxes and marten, compete  
28 with them for prey species, and disrupt den site establishment and use. Nonnative foxes can



1 hybridize with Sierra Nevada red fox and dilute their native gene pool. Due to low snow years,  
2 coyotes are extending the time they spend at Sonora Pass and other high elevation crest areas,  
3 increasing competition with foxes and marten. OSVs add to that threat by facilitating more access  
4 through compacted snow.

5 26. OSVs can also disturb under-snow rest areas or travel corridors that marten may use  
6 for thermoregulation, or crush or disturb fox and marten prey that live under the snow in winter.  
7 They can disrupt fox and marten denning behaviors and alter den site selection. And numerous  
8 studies have shown OSVs can cause increased stress levels and movement away from the machines  
9 for many mammals, making them expend extra energy at a time when energy levels are already  
10 low.

11 27. Third, Sierra Nevada yellow-legged frog is an endangered species under the ESA.  
12 Existing populations of this species are small and isolated; they have disappeared from 65–95% of  
13 their historic range. This species is endemic to the northern and central Sierra Nevada and is largely  
14 restricted to high elevation National Forest lands. These frogs usually inhabit lakes, ponds,  
15 marshes, meadows, and streams above 4,500 feet elevation. They overwinter under ice in lakes and  
16 streams, emerging immediately following or even during snowmelt as they move to breeding sites.  
17 Six currently occupied sites and four more historic sites occur within the Stanislaus winter travel  
18 plan action area. The action area also contains portions of four subunits of ESA-designated critical  
19 habitat for the species. Of the occupied sites, only the Stanislaus Meadow site has a moderate  
20 population of about 35 adult frogs, while the remaining sites are smaller.

21 28. Fourth, Yosemite toad is listed as a threatened species under the ESA and is also  
22 endemic to high elevations in the Sierra Nevada Mountains. They inhabit high elevation wet  
23 meadows and lakeshores, with breeding occurring shortly after snowmelt in shallow waters of wet  
24 meadows, ponds, and slow-moving streams. They overwinter under the snow in rodent burrows,  
25 crevices under rocks and stumps, and root tangles of trees. The species has declined significantly  
26 and current populations are very small, often less than twenty adult males. Yosemite toads occupy  
27 nine sites within the winter travel plan action area and portions of two critical habitat subunits occur  
28 within the area. Occupied sites include the Herring Creek area and Highland Lakes complex, which



1 each contain multiple breeding populations.

2         29. OSVs can have negative direct and indirect effects on these amphibians. Because  
3 they emerge from overwintering habitat early in the spring and can move over snow or ice to reach  
4 breeding areas, OSVs can strike and kill them during this time. Noise and vibrations from OSVs  
5 and grooming equipment can cause elevated stress levels and altered behavior, reducing fitness and  
6 survival. In sensitive meadow habitat, OSVs can compact the snow or cause soil rutting as snow  
7 levels decrease, impairing under-snow hibernation sites and damaging meadow habitat. And OSVs  
8 emit toxic air pollutants and can leak oil and fuel, which settle in the snow and run off into riparian  
9 areas as the snow melts.

10 **B. Stanislaus Winter Travel Plan Deficiencies Related to these Species.**

11         30. The Stanislaus winter travel plan designated OSV trails and use areas that directly  
12 overlapped with important habitat for all of these species. To assess the impact of the OSV  
13 designations on Sierra Nevada red fox and Pacific marten, the Forest Service simply quantified how  
14 much suitable habitat for these species was designated for OSV use. It did not specifically consider  
15 *winter* habitat, the quality of the habitat (i.e. where high quality habitat occurs) or the known  
16 detection sites of fox and marten for its analysis. It also failed to consider known or potential  
17 denning locations for each species based on the sightings and habitat. The EIS did not contain any  
18 maps showing where overlap of OSV use and suitable habitat occurred and the estimated level of  
19 OSV use, nor any maps showing seasonal habitats, locations of fox and marten detections, dens, or  
20 quality of habitat. OSV use is a greater threat to the species in areas of high quality winter habitat  
21 or denning habitat and around known locations of the animals.

22         31. The Forest Service admitted the Sonora Pass area is occupied by Sierra Nevada red  
23 foxes. Scat surveys provide extensive evidence of use by foxes within the 411-acre Sonora Pass  
24 OSV snow play area. Individual foxes have been documented in a broader area outside of the snow  
25 play area as well, which will likely also receive OSV use when riders seek out areas to “high mark.”  
26 The Eagle Near Natural Area that is now open to OSV use contains high quality habitat for red fox.  
27 Numerous remote camera detections of marten occur in the action area, including within the Sonora  
28 Pass area and the Pacific Valley and Eagle Near Natural Areas that are open to OSV use. The EIS

1 failed to display or describe baseline data on red fox detections and habitat quality and compare that  
2 to locations of OSV trails and use areas.

3 32. The Near Natural Areas will experience increased OSV use under the new winter  
4 travel plan, increasing harassment of wildlife and disruption of wildlife habitat present in those  
5 areas. The Near Natural Areas were closed to all motorized use under the 1991 Forest Plan in order  
6 to protect their important values as roadless areas, including their value in providing important  
7 habitat and corridors for sensitive wildlife species. For this winter travel plan, the Forest Service  
8 had to amend the Forest Plan to allow for OSV use in the Near Natural Areas. Although the areas  
9 experienced some trespass OSV use in the past, showing these areas as open on new winter  
10 recreation maps will draw more OSV users to them, an impact the EIS failed to acknowledge.

11 33. For the Sonora Pass area, the Forest Service imposed a seasonal OSV closure date of  
12 April 15, still allowing three to four months of OSV use in a play area that occurs within core  
13 occupied habitat of the extremely endangered Sierra Nevada red fox. This use will facilitate  
14 intrusion by coyotes into the fox's winter habitat, one of the biggest threats to the species, and  
15 increase potential disturbance of foxes or their prey species.

16 34. With regard to Sierra Nevada yellow-legged frog and Yosemite toad, the winter  
17 travel plan designated OSV use in key habitat occupied by the species. All six of the frog's  
18 occupied sites in the action area are designated for OSV use, and two of the six are expected to  
19 receive moderate or high use. Almost 6,000 acres of critical habitat for the frog is open to OSV use,  
20 including designated trails and almost 3,000 acres of OSV play areas. Stanislaus Meadow, which  
21 has by far the largest population of yellow-legged frogs in the area and is designated as critical  
22 habitat, is expected to receive high OSV use, in part because it has a groomed trail that transects the  
23 meadow.

24 35. For Yosemite toad, nine sites occupied by toads are designated for OSV use, and five  
25 may receive moderate use. More than 19,000 acres of critical habitat are open to OSV use,  
26 including trails and more than 7,000 acres of OSV play areas. The Highland Lakes complex and  
27 Herring Creek area each have multiple breeding populations of toads, with ten locations in the  
28 Herring Creek area containing toads. Both areas are designated as critical habitat. Herring Creek is

1 expected to receive low/moderate OSV use and the Highland Lakes complex is expected to receive  
2 moderate use. An ungroomed OSV trail is designated along Herring Creek for many miles, running  
3 along the margins of multiple meadows occupied by toads.

4 36. The EIS for the winter travel plan describes the number of acres of frog and toad  
5 habitat open to OSV use, and includes a map of the species' critical habitat and occupied sites, but  
6 does not show where OSV use areas or trails overlap the critical habitat or occupied sites. The plan  
7 institutes a 24" snow depth requirement for Stanislaus Meadow and Highland Lakes area but not for  
8 any of the other frog or toad sites, including the Herring Creek area. Other than the Sonora Pass  
9 OSV play area, it also did not impose any seasonal restrictions on OSV use for sites occupied by  
10 Sierra Nevada yellow-legged frogs or Yosemite toads to protect the amphibians as they emerge  
11 from hibernation and move to breeding locations.

12 37. The EIS failed to take a hard look at all of the direct and indirect effects of its OSV  
13 use designations on these species, and explain how these designations minimized harassment and  
14 disruption of habitat for them. Climate change is adversely affecting all four of these species as  
15 well and the impacts of OSV use are an additional stressor that compound the climate change  
16 threats to the species. The EIS for the winter travel plan did not adequately consider these  
17 cumulative impacts.

18 **FIRST CLAIM FOR RELIEF**  
19 **Violation of National Environmental Policy Act**

20 38. Intervenors incorporate by reference all preceding paragraphs in this cross claim.

21 39. NEPA requires agencies to take a "hard look" at all direct, indirect, and cumulative  
22 effects of their proposed actions. 42 U.S.C. § 4332(C); 40 C.F.R. § 1508.8. To do this, they must  
23 adequately describe the environmental baseline, and use high quality information and accurate  
24 scientific analysis to assess the environmental effects of the action. 40 C.F.R. §§ 1500.1(b),  
25 1502.15.

26 40. The Forest Service failed to comply with these requirements of NEPA and its  
27 regulations with regard to its analysis of impacts to Sierra Nevada red fox, Pacific marten, Sierra  
28 Nevada yellow-legged frog, and Yosemite toad. The EIS did not adequately describe the

1 environmental baseline by failing to document the quality and occupancy of habitat in the action  
2 area for red fox and marten and show how those characteristics related to the location of OSV  
3 designations and estimated level of OSV use. The EIS also failed to adequately assess all direct,  
4 indirect, and cumulative effects of the OSV designations on these four species by: (1) not  
5 considering habitat quality and known detections in its effects analysis, (2) underestimating the  
6 impact of OSV use on these species—particularly in key habitat areas, and (3) assuming use in Near  
7 Natural Areas will decrease rather than increase under the new winter travel plan.

8 41. By failing to take a hard look at all environmental effects of the OSV designations,  
9 the Forest Service issued a Final EIS that was arbitrary, capricious, and contrary to NEPA, and thus  
10 unlawful under the APA, 5 U.S.C. § 706(2)(A).

11 **SECOND CLAIM FOR RELIEF**  
12 **Violation of Travel Management Rule**

13 42. Intervenors incorporate by reference all preceding paragraphs in this cross claim.

14 43. The Forest Service must locate each area and trail designated for OSV use with the  
15 objective of minimizing damage to natural resources, harassment of wildlife and disruption of  
16 wildlife habitat, and conflicts with other recreation uses. 36 C.F.R. §§ 212.55(b), 212.81(d).

17 44. The agency failed to comply with this direction when issuing the Stanislaus winter  
18 travel plan because it did not properly apply the criteria to minimize harassment of, and disruption  
19 of habitat for, Sierra Nevada red fox, Pacific marten, Sierra Nevada yellow-legged frog, or  
20 Yosemite toad. The winter travel plan allows OSV use in important occupied and high quality  
21 habitat for each of these species without adequate mitigation measures to alleviate potential harm.  
22 Further, the agency did not adequately take into account important factors for its minimization  
23 analysis, including habitat quality, potential denning sites, and specific detection locations and  
24 where those overlapped with OSV trails and use areas, in its analysis for these species. By allowing  
25 OSV use in important habitat within the action area for these species without even considering  
26 information critical for this analysis, the Forest Service failed to properly apply the minimization  
27 criteria for wildlife for the Stanislaus winter travel plan.

28 45. By failing to properly apply the minimization criteria, the Forest Service issued a

1 winter travel plan that was arbitrary, capricious, and contrary to the Travel Management Rule, and  
2 thus unlawful under the APA, 5 U.S.C. § 706(2)(A).

3 **THIRD CLAIM FOR RELIEF**  
4 **Violation of National Forest Management Act**

5 46. Intervenors incorporate by reference all preceding paragraphs in this cross claim.

6 47. Pursuant to the 2012 NFMA regulations, an agency can amend a Forest Plan if  
7 certain requirements are met, which must be considered in an agency’s analysis of the effects of the  
8 amendment. The regulations set forth substantive requirements that must be met for various  
9 resources in order to approve a Forest Plan amendment. 36 C.F.R. §§ 219.8—219.11. These  
10 substantive requirements include: provide for ecological integrity, *id.* § 219.8(a)(1); provide for  
11 species diversity, *id.* § 219.9(a), (b); provide for integrated resource management, including fish and  
12 wildlife species, fish and wildlife habitat, and adaption of ecosystems to stressors such as climate  
13 change, *id.* § 219.10(a). The Forest Service must analyze whether its Forest Plan amendment meets  
14 these substantive requirements if it determines the amendment may have substantial adverse effects  
15 to those particular resources or lessen protections for those resources. *Id.* § 219.13(b)(5). Species  
16 that are potential “species of conservation concern” receive heightened consideration. *Id.*  
17 § 219.13(b)(6).

18 48. The Forest Service used a Forest Plan amendment to open the Pacific Valley and  
19 Eagle Near Natural Areas to OSV use. The agency concluded it did not need to analyze whether  
20 this amendment met the regulation’s substantive requirements related to wildlife because the  
21 amendment would not have any substantial adverse effects to wildlife or habitat, or lessen  
22 protections for wildlife, including potential species of conservation concern. This conclusion was  
23 unreasonable because designating trails and OSV use areas in Near Natural Areas will increase  
24 OSV use there, which will lessen protection for and adversely affect Sierra Nevada red fox, Pacific  
25 marten, Sierra Nevada yellow-legged frog, and/or Yosemite toad—all of which are potential species  
26 of conservation concern that have important habitat in or adjacent to these Near Natural Areas.

27 49. By failing to comply with NFMA regulations for Forest Plan amendments with  
28 regard to substantive requirements related to wildlife, the Forest Service issued a Forest Plan

1 Amendment for the winter travel plan that was arbitrary, capricious, and contrary to NFMA, and  
2 thus unlawful under the APA, 5 U.S.C. § 706(2)(A).

3 **PRAYER FOR RELIEF**

4 Intervenor's pray that the Court grant the following relief:

- 5 A. Order, adjudge, and declare that the Forest Service violated NEPA and the APA in  
6 issuing the Final EIS and winter travel plan for the Stanislaus National Forest;
- 7 B. Order, adjudge, and declare that the Forest Service violated the Travel Management Rule  
8 and the APA in issuing the winter travel plan for the Stanislaus National Forest;
- 9 C. Order, adjudge, and declare that the Forest Service violated NFMA and the APA in  
10 issuing the Forest Plan Amendment for the Stanislaus winter travel plan;
- 11 D. Order the Forest Service to conduct a supplemental EIS analysis on impacts of its OSV  
12 designations to Sierra Nevada red fox, Pacific marten, Sierra Nevada yellow-legged frog,  
13 and Yosemite toad;
- 14 E. Order the Forest Service to use that supplemental EIS analysis to consider whether it  
15 must change the OSV designations in the winter travel plan to comply with the Travel  
16 Management Rule and NFMA, and amend the plan to make any necessary changes;
- 17 F. Grant any injunctive relief requested by Intervenor's;
- 18 G. Award Intervenor's their reasonable costs, litigation expenses, and attorneys' fees  
19 associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C.  
20 § 2412 *et seq.*, and
- 21 H. Grant such further relief that the Court deems just and proper.

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Dated: January 21, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of January 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which in turn automatically generated a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF system, causing the following counsel to be served by electronic means:

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Dated: January 21, 2022

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