

**BILL LOCKYER**  
Attorney General

State of California  
**DEPARTMENT OF JUSTICE**



RONALD REAGAN BUILDING  
300 SOUTH SPRING STREET, SUITE 1702  
LOS ANGELES, CA 90013

Public: (213) 897-2000  
Telephone: (213) 897-2638  
Facsimile: (213) 897-2802  
E-Mail: [brian.hembacher@doj.ca.gov](mailto:brian.hembacher@doj.ca.gov)

August 11, 2004

Southern California Forest Plan Revisions  
USDA Forest Service Content Analysis Center  
P.O. Box 22777  
Salt Lake City, UT 84112

RE: Comments on the Draft Environmental Impact Statement and Forest Management Plans for Los Padres, Cleveland, San Bernardino, and Angeles National Forests

Dear Sir or Madam:

The Attorney General of the State of California submits the following comments regarding the Draft Environmental Impact Statement (DEIS) for the Forest Management Plans for Los Padres, Cleveland, San Bernardino, and Angeles National Forests. The Attorney General submits these comments pursuant to his independent power and duty to protect the natural resources of the State from pollution, impairment, or destruction in furtherance of the public interest. (See Cal. Const., art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974).) These comments are made on behalf of the Attorney General and not on behalf of any other California agency or office. While these comments focus on some of the primary issues raised by the DEIS, they are not an exhaustive discussion of all issues.

The Attorney General's Office has a long history of participation in national forest planning in California that reflects the importance of national forests and forest resources to the people of this State.<sup>1</sup> We have consistently supported comprehensive, regional planning

---

<sup>1</sup>Beginning in the 1980s, this Office has participated constructively in several forest planning efforts. For example, we submitted extensive comments on a number of proposed forest plans (including plans covering the Plumas, Sequoia, Tahoe, Modoc, Shasta-Trinity, and Lassen National Forests), appealed and intervened in the appeals of several plans, and participated in a seventeen-month mediation process for the Sequoia National Forest land management plan. We commented on and intervened in the administrative appeal in support of adoption of the comprehensive ecosystem management plan for Sierra Nevada Region, the Sierra Nevada Framework Plan. We also commented on the DEIS for the Oil and Gas Drilling Plan for Los Padres National Forest in 2002. One of our main criticisms of that DEIS was that such

approaches designed to protect and preserve all the values of the national forest resources within the State. These National Forests cover some of the most spectacular and sensitive areas of the State, including large swaths of undeveloped land with wilderness and roadless areas that provide vital habitat for a number of endangered and sensitive species. The forests offer unparalleled scenery and recreational opportunities, and are among the last remaining wild and open spaces in the whole of Southern California.

We believe that the DEIS and Plans fall short of the requirements under the National Environmental Policy Act (NEPA), 42 U.S.C. section 4321, *et seq.*, the National Forest Management Act (NFMA), 16 U.S.C. section 1604, *et seq.*, and the Wild and Scenic Rivers Act, 16 U.S.C. section 1271, *et seq.* The Forest Service appears focused on energy development and off-road vehicle use to the detriment of wilderness and more passive recreation use of the Forests. In order to reach its conclusions, the Forest Service fails to provide a full range of alternatives that would allow the public a chance for meaningful evaluation of the impacts of different mixes of forest uses. In addition, the Forest Service ignores significant impacts of its preferred alternatives and fails to address environmental harms resulting from its proposal. The Forest Service, in these Forest Management Plans and DEIS, has missed its primary opportunity to present a meaningful vision of the next few decades in Forest use and management, and, in doing so, has presented the public with a legally deficient planning document.

The first priority of the planning process is to maintain or restore the ecological sustainability of the National Forest. (36 C.F.R. § 219.2(a).) The Forest Management Plans should provide a full discussion of the balancing of the competing demands upon National Forests. (*Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1511 (9th Cir. 1992).) This includes taking into consideration the evolving social and economic demands upon the forests.

---

planning should not be done in isolation, but should be incorporated into the Forest Management Plan that was then in development. We made three essential points in our comments. First, we stated that DEIS made little sense because it sought to make specific lands available for leasing prior to completion of the comprehensive forest plan update that will involve balancing all competing uses of forest land for the maximum benefit to the public, and that may determine that oil and gas development is not the best use. Second, oil and gas drilling would create enormous potential risks to the viability of the California Condor, a species that just two decades ago hovered on the brink of extinction and now is making a recovery within the Los Padres National Forest. Yet this impact was not sufficiently analysed. Third, the hundreds of miles of new oil and gas pipelines that will be required present human health and environmental risks from potential ruptures and leaks that have not been adequately analyzed. We are distressed to find that the instant DEIS merely incorporates the Oil and Gas Drilling DEIS without further addressing these key points. (DEIS, Appendices, at 136.)

(36 C.F.R. § 219.1(b)(3).) It is through the forest planning process required by the NFMA, that the Forest Service determines the best use of the forest lands in relation to all possible values for the same lands, including protection of biological and aesthetic resources and recreational uses. Forest Management Plans must comply with the NEPA, which requires the preparation of an EIS whenever major federal actions significantly affect the quality of the human environment. (42 U.S.C. § 4332(2)(C).) The EIS must: "set forth sufficient information for the general public to make an informed evaluation ... and for the decision maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action." (*Sierra Club v. United States Army Corps of Engineers*, 701 F.2d 1011, 1029, n.18 (2d Cir. 1983).)

The purpose of Forests Management Plans is to provide strategic direction to guide all resource management activities in the forests. (DEIS at 1-5.) It is an opportunity to provide a vision that includes restoring and preserving the forests, in addition to allowing reasonable use. It is the platform for balancing beneficial uses with the preservation and enhancement of the many special natural resources within the forest boundaries. However, this DEIS and the Forest Management Plans seem willing to settle for merely holding the line against the forces that are limiting the value of the forest, rather than provide a vision for better management. The Forest Management Plans appear willing to accept the status quo even if it permits harmful uses such as excessive off-road vehicle use. It is our view that the Forest Service has, in its choice of alternatives, settled for what it thinks it can accomplish with limited resources, rather than produce Forest Management Plans that are truly visionary about how the Southern California forests can be better managed.

The preferred alternatives, 2 and 4, place an emphasis on certain recreational uses and provide less emphasis for restoration of sensitive species and damaged habitats than other alternatives and recommend much less acreage for wilderness designation.<sup>2</sup> (DEIS, Executive Summary, at 3-5 to 3-10.) In addition, they permit much more motorized use of the back country. (DEIS, Table 305.) The DEIS states that the Forest Service will carry out its mission of protecting against adverse impacts to the forests by more intensive management. (DEIS at 2-8.) At a time when the Forest Service concedes that it is facing multiple demands on its enforcement and management responsibilities in the face of an expanding visitor population, this seems like a remote possibility, yet it is one upon which the preferred alternatives rely. There are no details provided as to how it can more intensely manage the forests while its staff will be called upon to provide an ever increasing list of other services amid diminishing budgets. (DEIS, Executive Summary at 2-4.) Failure to provide sufficient information about how intensive management

---

<sup>2</sup>Alternative 5, which is something of a strawman, is the least environmentally protective and appears to exist primarily to provide an extreme contrast to the other alternatives.

will be accomplished is not consistent with 36 C.F.R. section 219.11(a), which requires that a plan contain a practicable, effective, and efficient monitoring strategy, nor does it meet the requirements to provide sufficient information for decision makers, as required by NEPA.

### Vehicle Use

The Forest Management Plans will allow much more use of roads in areas currently closed to motorized traffic. This will be accomplished in two ways. First, many more miles of trails for off-road vehicle use will be made available by the Forest Service. Second, currently commissioned forest roads that have not been maintained and have fallen into disrepair will be rehabilitated at taxpayer expense. The DEIS provides insufficient analysis to justify opening up so much land to motorized vehicles. Interestingly, the Forest Service's limited analysis of this issue shows that off-road vehicle use did not even make it on to the lists of most popular activity in any of the four forests. (DEIS, Table 423.)

The DEIS describes the many effects of vehicle use in the forests, stating that it "adversely affects species at risk by trampling plants and their habitat, killing or injuring small animals, harassing animals, initiating erosion features, accelerating erosion rates, increasing soil compaction, crushing burrows, damaging soil microbiotic crusts, introducing invasive nonnative plants and interrupting plant reproduction through the destruction of flowers and pollinator habitat." (DEIS at 3-81.) The Forest Service says it can't adequately enforce existing regulations. Despite the admitted adverse impacts and inadequate enforcement of current restrictions, the preferred alternatives would allow much more. (DEIS at 2-6; 2-8.) The preferred alternatives in the DEIS envision expanding the area available for motorized vehicle use, allowing thousands of more acres to be available for this noisy and biologically harmful recreational use. (DEIS, Table 249.)

The Forest Service suggests, without any studies to support its premise, that increasing the amount of trails available for motorized use will cut down on off-roading outside designated areas.<sup>3</sup> Instead, increasing off-road trails is more likely to allow for entry into additional, adjacent non-authorized areas. Further, increasing the areas legally available for off-road vehicle use will only exacerbate the enforcement problem. The already overextended law enforcement staff of the Forest Service will be stretched that much further trying to enforce rules over a much greater acreage. Indeed, the draft Forest Management Plans actually provide that motorized trails that have been illegally carved out of the forests in defiance of present restrictions may become

---

<sup>3</sup>Handing over broad swaths of the forest to off-road vehicle use so that it will cut down on unlawful off-roading may be a little bit like raising the speed limit to reduce the number of speeding violations.

legitimate trails, thereby rewarding illegal conduct. To date, having legal off-road vehicle trails in the forests has certainly not reduced the creation of illegal trails in the same or adjacent areas. The Forest Service provides no basis for its prediction that designating more trails will encourage off-road vehicle users to stick to designated areas and leave other areas alone. (DEIS 3-253.) The summary conclusions of the DEIS on increasing motorized trails do not comply with the NEPA's requirement of full public disclosure.

The assumption in the DEIS that the opening of new off-road vehicle trails and that the repair of currently non-maintained roads will aid fire suppression is based on flawed logic. The DEIS rejects alternative 6 in part because it would allow for fewer roads and thus make fire fighting more difficult.<sup>4</sup> (DEIS, Executive Summary at 3-17.) Yet the DEIS admits that most fires start near roads. (DEIS at 3-99.) It seems reasonable to assume that more roads will lead to more fires, and thus to increased need for fire suppression in those areas where fires may be destructive to a healthy forest or nearby communities. The DEIS does not provide the analysis to explain the logical inconsistency.

A DEIS must permit those who do not participate in its preparation to understand and consider meaningfully the reasoning, premises, and data relied upon, and to permit a reasoned choice among different courses of action. (*Friends of the River v. FERC*, 720 F.2d. 93, 120 (D.C. Cir. 1983).) NEPA requires that decisions undertaken by federal agencies be fully informed and well-considered. (*Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978).) Fire prevention and fire suppression are central themes of the DEIS and the Forest Management Plans. The failure to completely analyze the trade-off between roads as they benefit fire suppression versus the fact that the presence of roads and the starting of fires are closely associated, does not meet this well considered standard.

#### Failure to Provide a Full Range of Alternatives

NEPA requires agencies to the fullest extent possible to study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. (42 U.S.C. § 4332(2)(E).) An agency must look at every reasonable alternative, within the range dictated by the nature and scope of the proposed action. (*Idaho Conservation League v. Mumma*, 956 F.2d at 1520 (*supra*).) NEPA requires that the analysis will identify and assess reasonable alternatives to proposed actions in order to avoid or minimize adverse impacts on the environment. (40 C.F.R. § 1500.2(e).)

---

<sup>4</sup>All of the options provide for letting some fires burn to reinvigorate the forest, as long as they do not endanger the "wildland-urban interface."

The Forest Service has not complied with NEPA in that it fails to provide a reasonable range of alternatives. The DEIS includes two alternatives that contain provisions that ensure they would have no likelihood of serious consideration by the Forest Service. Alternatives 5 and 6 are essentially extremes that are assured never to be implemented. Alternative 5 incorporates such an huge increase in the availability of motorized access, that it would be safe to assume that the Forest Service could never implement the plan and maintain its obligations to maintain or restore ecological sustainability of the national forest required by the planning guidelines contained at 36 C.F.R. section 219.2(a). Alternative 6, on the other hand, purports to incorporate the wishes of those who would like to see increased protection and conservation of resources, however, the Forest Service's Alternative 6 is also unacceptable because it would call for closing so many roads that "fire suppression effectiveness and firefighter access to roads and fuel breaks are decreased" in the alternative.<sup>5</sup> (DEIS at 2-19). There is no reason why there could not have been an alternative combining the best features of Alternatives 4 and 6, allowing for recreational use and fire suppression, as well as a proactive approach to protecting forest resources.

This is the basic flaw of the DEIS. The Forest Service has created Alternative 6, which calls for the most protective and proactive management of the forest and the natural resources, and then loads it up with unnecessary attributes. This alternative does not need to be constructed that way. The alternative could have been structured to prevent the expansion of illegal off-road vehicle trails, and to prevent reopening of unnecessary and non-maintained roads, while at the same time providing for sufficient roads to assist fire suppression. The Forest Service seems to have saddled the most environmentally friendly alternative, Alternative 6, with aspects that will make it unacceptable from a fire-fighting point of view so it will not need to choose it. Instead, the DEIS could have just as easily drafted the alternative to allow roads necessary for fire protection. Its failure to do so violates the NEPA requirement that an EIS consider a full range of alternatives. While an agency is not required to analyze alternatives that do not meet its proposed goal, an agency cannot narrowly define its purpose in order to exclude reasonable alternatives. (*Border Power Plant Working Group v. Department of Energy*, 260 F.Supp.2d 997, 1030 (S.D. Cal. 2003).)

### Special Areas and Species

The preferred alternatives include a recommended wilderness designation for only a tiny proportion of the area that has been discussed at public meetings. Data was presented to the Forest Service that indicated an additional one million acres were appropriate for wilderness status. The DEIS does not adequately defend the rationale underlying the choice to not include the appropriate additional acreage that was suggested other than expressing its emphasis on the

---

<sup>5</sup>67% of the existing roads would be closed. (DEIS, Executive Summary at 3-9.)

forests for recreational use. (DEIS at 2-12; 3-253 to 3-254.) NEPA requires the EIS to contain a reasonably thorough discussion of the significant aspects of the probable consequences of an action. (*Oregon Natural Resources Council v. Lowe*, 109 F.3d 521, 526 (9<sup>th</sup> Cir. 1997).) We do not believe this DEIS adequately discusses the justification for such a small recommendation of lands eligible for wilderness designation. The lack of information about the reasons for not choosing more wilderness acreage leaves the decision makers without the basic tools they need to decide the fate of the forests.

While the DEIS determines that a few streams in the Los Padres National Forest are suitable for wild and scenic river status, it does not make any suitability determinations for streams in the other three forests and it gives no reason for its failure to complete suitability studies in the other forests. (DEIS at 2-14; Appendices at 69.) In excluding these areas, the Forest Service has not carried out its responsibilities under the Wild and Scenic Rivers Act. The Act, at 16 U.S.C. section 1283(a), requires federal agencies to consider the potential for wild and scenic rivers in their planning processes. The forest planning effort is not complete until the role of these water bodies in the future of the forest has been determined. The public has been done a disservice by the lack of meaningful information on the other streams that might be eligible under the Act.

The DEIS is also deficient in its analysis relating to the California Condor. As the Forest Service is well-aware, it is only through the superhuman efforts of the U.S. Fish and Wildlife's captive breeding program that it may be possible to bring this species back from the brink of extinction. The Forest Service, cursorily in one sentence, recognizes that power lines supporting new proposed developments may pose a problem. (Los Padres National Forest (LPNF) Strategy - 41; 65.) Having briefly identified part of the impact, however, the Forest Service fails to complete its obligations under NEPA by first, failing to fully analyze all possible impacts to the California Condor from anticipated developments in the forest, and then by failing to appropriately identify and analyze measures to mitigate the impacts. The need for public education at condor areas and prohibiting off-road vehicle use near condor sites is discussed as possible mitigation. However, these are listed only in sentence fragments rather than in an integrated, thoughtful analysis. (LPNF Strategy - 44; 57.) Such an analysis is required by both law and by the need to respect both the species and the efforts of the federal government and others that have already gone into bringing the California Condor back from the edge of extinction.

### Conclusion

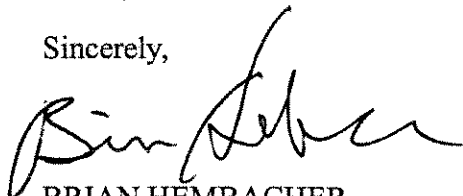
The DEIS states that these plans do not serve as the basis for site specific projects. (DEIS at 1-6.) This does not excuse addressing with some degree of depth the impacts that can be

readily ascertained. It is of course true that predicting the future of the southern California forests requires some prognostication, and an EIS necessarily involves some degree of forecasting. However, if discussion of environmental consequences can be deferred based on a promise to perform a comparable analysis in connection with some later site-specific projects, no environmental consequences would ever need to be addressed in an EIS. (*Kern v. United States BLM*, 284 F.3d 1062, 1072 (9th Cir. 2002).) The Ninth Circuit has made it clear that where impacts are reasonably foreseeable, it is not appropriate to defer analysis to a future date. (*Neighbors of Cudahy Mountain v. U.S. Forest Service*, 137 F.3d. 1372, 1380 (9<sup>th</sup> Cir. 1998).) This is true even where, as here, the EIS at issue is the first tier environmental document of a multi-stage process. The standards set forth in *State of California v. Block*, 690 F.2d. 753 (9th Cir. 1982) are applicable here. There, plaintiffs challenged a decision to designate 36 million acres of national forest land as "nonwilderness" on the grounds that the EIS did not contain enough site-specific data to support the designation. (*Id.* at 760.) The Forest Service argued that, since the EIS described only the first step of a multi-step national project, a generalized discussion of environmental impact was sufficient. (*Id.* at 761-2.) The court disagreed, on the basis that the decision to commit the areas to nonwilderness status would make an irreversible and irretrievable commitment of resources that required environmental scrutiny at the time the decision is made to constrain future choices. (*Id.* at 762-3.)

The DEIS is deficient in that it does not fully explain the rationale nor describe the impacts resulting in its choice of the preferred alternatives that call for less wilderness and more off-road vehicle use. Presently, there is insufficient detail to make an informed decision about the long term strategies the forests should adopt. We believe that the EIS should be revised to thoroughly discuss all these issues. We would suggest that once it has properly considered the information required by NEPA, the Forest Service should reconsider its choice as to preferred alternatives to ensure that it complies with its regulatory obligation to protect forest ecology.

If you or your staff have questions regarding these comments, please contact Deputy Attorneys General Kathryn Egolf at 213-897-0628, or Brian Hembacher at 213-897-2638.

Sincerely,



BRIAN HEMBACHER  
Deputy Attorney General

For BILL LOCKYER  
Attorney General



Southern California Forest Plan Revisions  
August 11, 2004  
Page 9

cc Matt Rodriguez  
Mary Hackenbracht  
Ken Alex  
Craig Thompson  
Theodora Berger  
Ron Rempel