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Re: Notice of Intent to Sue for Violations of the Endangered Species Act Regarding Yosemite Toad and Sierra Nevada Yellow-Legged Frog and Their Designated Critical Habitats within the Dinkey, Patterson, Collins, Iron Creek, Mono, and Kaiser Allotments.

To Whom It May Concern:

In accordance with the 60-day notice requirement of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g), the Center for Biological Diversity hereby provides notice of intent to sue for violations of the ESA relating to management of the Dinkey, Patterson, Collins, Iron Creek, Mono, and Kaiser grazing allotments on the Sierra National Forest, which contain Yosemite toad and Sierra Nevada yellow-legged frog and their critical habitats.

The Forest Service and U.S. Fish and Wildlife Service (“FWS”) have violated and continue to violate the ESA by failing to reinitiate and complete consultation regarding impacts of grazing management on listed amphibians and their habitats.

The FWS issued “not likely to jeopardize” and “not likely to destroy or adversely modify designated critical habitat” findings¹ for these allotments based on application of Standard and Guidelines (S&Gs), Best Management Practices (BMPs), site-specific management plans, regional monitoring, and other conservation requirements. However, the assumptions underlying the FWS’s determinations have proven inaccurate due to widespread S&G violations, and the failure to perform required monitoring. These changed circumstances warrant reinitiation of consultation for each allotment.

FACTUAL BACKGROUND

Allotments & Species

The Sierra National Forest manages the Dinkey, Patterson, Collins, Iron Creek, Mono, and Kaiser grazing allotments. These allotments contain Sierra Nevada yellow-legged frogs and Yosemite toads and their critical habitats. They are native Sierra Nevada amphibians that occur in montane and foothill aquatic ecosystems of California’s Sierra Nevada region, especially streams, meadows, wetlands, lakes, and riparian habitats.²

Both amphibians are struggling. The Sierra Nevada yellow-legged frog has experienced an estimated 90-95% decline from historic population levels across the Sierra Nevada.³ The

¹ See February 17, 2015, and April 2, 2018, Biological Opinions (Attachments 1 and 2 to this letter). These are the most recent Biological Opinions that we are aware of as to the allotments at issue in this letter.

² National Park Service, *Amphibians*, Yosemite National Park, <https://www.nps.gov/yose/learn/nature/amphibians.htm> (last updated Nov. 19, 2024); California Department of Fish and Wildlife, Amphibian Conservation – Yosemite Toad, <https://wildlife.ca.gov/Regions/6/Amphibians/Yosemite-Toad> (last visited July 28, 2026).

³ National Park Service, *Sierra Nevada Yellow-Legged Frog*, Yosemite National Park, <https://www.nps.gov/yose/learn/nature/snylfrog.htm> (last updated Nov. 19, 2024) (last visited July 28, 2026).

Yosemite toad has declined by roughly 50% or more from historic populations/range occupancy across the Sierra Nevada.⁴

Critical Habitat & Grazing Impacts

The Dinkey, Patterson, Collins, Iron Creek, Mono, and Kaiser grazing allotments contain streams, or segments of streams, meadows, and riparian areas that are designated critical habitat for these amphibians because of their importance to the species' survival and recovery.⁵ Critical habitats within the allotments consist primarily of high-elevation aquatic and riparian ecosystems in the Sierra Nevada and adjacent watersheds that contain the physical and biological features essential to the species' conservation and recovery.⁶ This includes alpine and subalpine lakes, ponds, tarns, streams, and meadow complexes, permanent or near-permanent water bodies necessary for breeding and overwintering, aquatic habitat, hydrologically connected stream and meadow networks that allow dispersal between breeding sites, and adjacent upland habitat used for sheltering, foraging, and movement.⁷

Grazing in wet meadows and headwater streams directly overlaps with breeding habitat for listed frogs and toads.⁸ Cattle trampling, bank erosion, fecal contamination, and destruction of riparian vegetation impair recovery of these species.⁹ Grazing can harm amphibians directly, when livestock trample eggs, tadpoles, and habitat, with cattle and sheep often congregating around streams, ponds and pond margins, springs, and wetlands, where amphibians breed.¹⁰ Their hooves can crush egg masses, tadpoles, juvenile amphibians, collapse streambanks and undercut shelters, destroy shallow breeding pools, and compact soils, reducing water retention.¹¹ This is especially damaging for species like Yosemite toad, which breeds in ephemeral meadow pools.¹²

⁴ Davidson, C., and Fellers, G.M. 2005. *Bufo canorus* Camp 1916, Yosemite Toad. In: Lannoo, M. (ed.), *Amphibian Declines: The Conservation Status of United States Species*, Vol. 2. University of California Press. See also Gilkeson, J. (2020, October 8). *Building roads to save Yosemite toads*. U.S. Fish & Wildlife Service. <https://www.fws.gov/story/building-roads-save-yosemite-toads>.

⁵ Rangeland Cattle Grazing Allotment Critical Habitat Assessment, USDA Forest Service, Sierra National Forest, High Sierra Ranger District, Fresno and Madera Counties, California (Sept. 25, 2017).

⁶ Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern DPS of the Mountain Yellow-Legged Frog, and the Yosemite Toad (81 Fed. Reg. 59046, 59086–59110 (Aug. 26, 2016). See also U.S. Fish and Wildlife Service. (2016, August 25). *Critical habitat designated for three Sierra amphibians*. <https://www.fws.gov/press-release/2016-08/critical-habitat-designated-three-sierra-amphibians>.

⁷ *Id.*

⁸ *Id.*

⁹ U.S. Fish and Wildlife Service. (2014, April 29). *Endangered and threatened wildlife and plants; Endangered species status for Sierra Nevada yellow-legged frog and northern distinct population segment of the mountain yellow-legged frog, and threatened species status for Yosemite toad* (79 Fed. Reg. 24256).

¹⁰ Howell, H.J., Mothes, C.C., Clements, S.L., Catania, S.V., Rothermel, B.B., & Searcy, C.A. (2019). Amphibian responses to livestock use of wetlands: new empirical data and a global review. *Ecological Applications* 29(8): e01976.

¹¹ *Id.*

¹² “Given that meadow wetness was the major determinant of toad occupancy and grazing intensity was not directly correlated to toad meadow occupancy, simultaneous management/conservation attention needs to be given to factors likely directly impacting meadow wetness (i.e., meadow hydrologic restoration, climate and fire regime changes, and conifer encroachment in meadows).” McIlroy, S. et al. (2010). Determining the Effects of Livestock Grazing on Yosemite Toads (*Bufo canorus*) and Their Habitat: An Adaptive Management Study. *PLOS One* 8(11):e79263.

Livestock also remove vegetation and destabilize banks, increasing erosion.¹³ Fine sediment then fills pools and covers rocky substrates used by amphibians for breeding and refuge.¹⁴ Sedimentation can smother eggs, reduce oxygen levels, alter aquatic insect communities that amphibians feed on, and eliminate deep pools needed for drought refuge.¹⁵ Livestock also consume and trample sedges, willows, and other riparian plants that amphibians rely on for shade, temperature regulation, cover from predators, and insect production.¹⁶ Loss of vegetation increases solar exposure and water temperature, while reducing humidity needed by amphibians with permeable skin.¹⁷

Grazing can fundamentally alter how Sierra Nevada meadows hold water. Compacted soils and damaged vegetation reduce infiltration and groundwater storage, causing drying of breeding pools, reduced summer streamflow, and warmer water temperatures.¹⁸ These hydrologic changes are particularly harmful because many Sierra Nevada amphibians require cold, persistent water for multi-year tadpole development.¹⁹

Grazing also brings water quality degradation.²⁰ Livestock feces and urine introduce nutrients and pathogens into streams and ponds.²¹ Grazing can increase nitrogen and phosphorus loading,

¹³ Rice, A. R., Cassidy, R., Jordan, P., Rogers, D., & Arnscheidt, J. (2021). *Fine-scale quantification of stream bank geomorphic volume loss caused by cattle access*. *Science of the Total Environment*, 769, 144468. <https://doi.org/10.1016/j.scitotenv.2020.144468>.

¹⁴ Krall, M., & Roni, P. (2023). Effects of livestock exclusion on stream habitat and aquatic biota: A review and recommendations for implementation and monitoring. *North American Journal of Fisheries Management*, 43(2), 476–504. <https://doi.org/10.1002/nafm.10863>.

¹⁵ Fleischner, T. L. (1994). *Ecological costs of livestock grazing in western North America*. *Ecological Applications*, 4(3), 629–644; Smalling, K. L., Rowe, J. C., Pearl, C. A., et al. (2021). *Monitoring wetland water quality related to livestock grazing in amphibian habitats*. *Environmental Monitoring and Assessment*, 193:58. <https://doi.org/10.1007/s10661-020-08838-6>; Knutson, M. G., Richardson, W. B., Reineke, D. M., Gray, B. R., Parmelee, J. R., & Weick, S. E. (2004). *Agricultural ponds support amphibian populations*. *Ecological Applications*, 14(3), 669–684. <https://doi.org/10.1890/02-5305>; Kolodziej, E. P., & Sedlak, D. L. (2007). *Rangeland grazing as a source of steroid hormones to surface waters*. *Environmental Science & Technology*, 41(10), 3514–3520. <https://doi.org/10.1021/es063050y>.

¹⁶ Kauffman & Krueger (1984). Livestock Impacts on Riparian Ecosystems and Streamside Management Implications. A Review. *Journal of Range Management* 37(5):430; Nusslé et al. (2015). Mediating Water Temperature Increases Due to Livestock and Global Change in High Elevation Meadow Streams of the Holden Trout Wilderness. *PLoS One*. 2015 Nov 13;10(11):e0142426. doi: 10.1371/journal.pone.0142426.

¹⁷ Spranger et. al. (2024). Canopy coverage, light, and moisture affect thermoregulatory trade-offs in an amphibian breeding habitat. *Journal of Thermal Biology* 122 (2024) 103864.

¹⁸ Wolf, E.C. (1998). *Ecosystem Function, Degradation, and Restoration in Wetlands of the Sierra Nevada, California*. Meadows UC Davis. Available at <https://meadows.ucdavis.edu/resources/91>.

¹⁹ Halstead, B. et. al. (2025). Climatological effects on survival, recruitment, and possible extirpation of a Sierra Nevada anuran. *Climate Change Ecology*, 10.1016/j.ecochg.2025.100099.

²⁰ Hubbard, R.K. et. al. (2004). Water Quality and the Grazing Animal. *J. Anim. Sci.* 2004. 82(E. Suppl.):E255–E263.

²¹ Oluwadara Oluwaseun Alegbeleye et. al. (2020). Manure-borne pathogens as an important source of water contamination: An update on the dynamics of pathogen survival/transport as well as practical risk mitigation strategies. *International Journal of Hygiene and Environmental Health*, 10.1016/j.ijheh.2020.113524.

algal growth, bacterial contamination, and turbidity,²² and amphibians are especially sensitive because their skin readily absorbs contaminants.²³

Programmatic Biological Opinions for Nine Forest Programs in Sierra Nevada, California & Standards and Guidelines Applicable to Sierra Nevada Livestock Grazing

The FWS and the Forest Service originally consulted, programmatically, in 2014 regarding ESA-listed amphibians, resulting in the *Programmatic Biological Opinion on Nine Forest Programs in the Sierra Nevada of California for the Endangered Sierra Nevada Yellow-legged Frog, Endangered Northern Distinct Population Segment of the Mountain Yellow-legged Frog and Threatened Yosemite Toad* (2014 PBO), dated June 16, 2014. The Forest Service requested reinitiation of consultation in 2017 to address critical habitat that had recently been designated for the Sierra Nevada yellow-legged frog, northern distinct population segment of the mountain yellow-legged frog, and Yosemite toad, resulting in the 2017 Amendment of the PBO. The PBO was then amended again in 2023 in order to address (i) Best Management Practices (BMPs) revisions; (ii) Protocols, Reporting, and Monitoring; (iii) the newly listed North Feather DPS and South Sierra DPS of the foothill yellow-legged frog; and (iv) application of chemicals (e.g., herbicide, pesticide, fungicide, etc.). The 2023 Amendment also incorporated the Revised Forest Plans that had been completed for four of the nine national forests covered by the PBO—the Lake Tahoe Basin (2016 Revised Plan), Inyo (2019 Revised Plan), Sierra (2023 Revised Plan) and Sequoia (2023 Revised Plan).

In the 2014 PBO, the Service concluded that the nine Forest programs consist of a wide variety of activities, including livestock grazing, that will adversely affect the Sierra Nevada yellow-legged frog, Northern DPS of the mountain yellow-legged frog, and Yosemite toad, and their habitats.²⁴ The Service found that “S&Gs and BMPs . . . coupled with site-specific conservation measures” would minimize impacts to the frogs and toad, and concluded that the Forest Service activities covered under this PBO would not likely jeopardize the continued existence of the Sierra Nevada yellow-legged frog, Northern DPS of the mountain yellow-legged frog, and Yosemite toad.²⁵ The Service reached this conclusion because for any project relying on this PBO, the Forest Service will fully implement the “appropriate Conservation Measures.”²⁶

In the 2017 PBO Amendment, the Service concluded that the Nine Forest Programs on Nine National Forests in the Sierra Nevada, including livestock grazing, were not likely to destroy or adversely modify designated critical habitat for the Sierra Nevada yellow-legged frog, Northern DPS of the mountain yellow-legged frog, and Yosemite toad.²⁷ The Service reached this

²² Schwarte, K. et. al. (2011). Grazing Management Effects on Sediment, Phosphorus, and Pathogen Loading of Streams in Cool-Season Grass Pastures. *J Environ Qual.* 2011 Jul 1;40(4):1303–1313. doi: 10.2134/jeq2010.0524.

²³ Kaufmann, K., Dohmen, P. Adaption of a dermal in vitro method to investigate the uptake of chemicals across amphibian skin. *Environ Sci Eur* 28, 10 (2016). <https://doi.org/10.1186/s12302-016-0080-y>.

²⁴ 2014 PBO at 47.

²⁵ *Id.* at 60 & 66.

²⁶ *Id.* at 66; *see also id.* at 2 (“The conservation measures in this biological opinion are the Standard and Guides (S&Gs) in the 2004 Sierra Nevada Forest Plan Amendment Record of Decision and the Region 5 Best Management Practices (BMPs).”)

²⁷ 2017 PBO at 58.

conclusion because for any project relying on this PBO, the Forest Service “will fully implement the appropriate Conservation Measures.”²⁸

The PBO and its Amendments rely on S&Gs and BMPs that, when properly implemented, and coupled with site-specific conservation measures in the above-mentioned allotments, are intended to minimize the adverse effects to ESA-listed amphibian species resulting from the Forest Service’s Range Management Program.²⁹ These S&Gs and BMPs are not only “an essential component of [the PBO],” they “are treated as minimums.”³⁰

There are two overarching categories of S&Gs for the nine national forests covered by the PBO—the S&Gs in the 2004 Sierra Nevada Forest Plan Amendment (“SNFPA”) and the S&Gs found in the recently revised forest plans for the Lake Tahoe Basin, Inyo, Sierra and Sequoia National Forests. However, the extent to which the S&Gs in the 2023 Sierra National Forest revised forest plan have been applied to allotments on the Sierra National Forest remains unclear because, as discussed in this letter, the most recent Biological Opinion (“BiOp”) for the allotments is dated April 2, 2018, and thus predates the 2023 revised Forest Plan, meaning that the allotments at issue in this NOI continue to rely on the S&Gs in the 2004 SNFPA with respect to ESA compliance. As stated in the April 2, 2018, BiOp: “The project description in the 2017 BA contains the S&Gs in the 2004 Sierra Nevada Forest Plan Amendment Record of Decision and the Region 5 Best Management Practices (BMPs) (also provided in Appendices A and B of the 2017 Programmatic Biological Opinion) that the Forest Service committed to implementing when carrying out specific activities under the nine forest programs.”³¹

The 2004 SNFPA, S&G 120, states that for meadows in early seral status, livestock utilization of grass and grass-like plants must be limited to 30 percent (or minimum 6-inch stubble height),³² and for meadows in late seral status, this utilization must be limited to a maximum of 40 percent (or minimum 4-inch stubble height).³³ Degraded meadows require total rest from grazing until they have recovered and moved to mid- or late-seral status, and if meadow ecological status is determined to be moving in a downward trend, grazing must be modified or suspended.³⁴

The 2004 SNFPA also contains S&Gs 53 and 54, which seek to conserve Yosemite toads and their habitat via exclusion of cows from wet areas in a grazing allotment.³⁵ S&Gs 53 and 54 state as follows:

²⁸ *Id.*; *see also id.* at 2 (“The conservation measures in this biological opinion are the Standard and Guides (S&Gs) in the 2004 Sierra Nevada Forest Plan Amendment Record of Decision and the Region 5 Best Management Practices (BMPs).”)

²⁹ 2014 PBO at 60; 2017 PBO at 48

³⁰ 2017 PBO at 14; *see also* September 27, 2023, Amendment of the Programmatic Biological Opinion at 15, 16.

³¹ 2018 BiOp at 4.

³² Sierra Nevada Forest Plan Amendment–Record of Decision (ROD), at 65 (Jan. 21, 2004) (S&G 120). *See also* Rangeland Cattle Grazing Allotment, Critical Habitat Assessment, USDA Forest Service, Sierra National Forest, High Sierra Ranger District, Fresno and Madera Counties, California, September 25, 2017, at 5, 19.

³³ Rangeland Cattle Grazing Allotment, Critical Habitat Assessment, USDA Forest Service, Sierra National Forest, High Sierra Ranger District, Fresno and Madera Counties, California, September 25, 2017, at 19

³⁴ *Id.*

³⁵ Sierra Nevada Forest Plan Amendment ROD, at 56 (Jan. 21, 2004) (S&Gs 53, 54).

53. Exclude livestock from standing water and saturated soils in wet meadows and associated streams and springs occupied by Yosemite toads or identified as “essential habitat” in the conservation assessment for the Yosemite toad during the breeding and rearing season (through metamorphosis). Wet meadow habitat for Yosemite toads is defined as relatively open meadows with low to moderate amounts of woody vegetation that have standing water on June 1 or for more than 2 weeks following snow melt. Specific breeding and rearing season dates will be determined locally. If physical exclusion of livestock is impractical, then exclude grazing from the entire meadow. This standard does not apply to pack and saddle stock.

54. Exclusions in standard and guideline #53 above may be waived if an interdisciplinary team has developed a site-specific management plan to minimize impacts to the Yosemite toad and its habitat by managing the movement of stock around wet areas. Such plans are to include a requirement for systematically monitoring a sample of occupied Yosemite toad sites within the meadow to: (1) assess habitat conditions and (2) assess Yosemite toad occupancy and population dynamics. Every 3 years from the date of the plan, evaluate monitoring data. Modify or suspend grazing if Yosemite toad conservation is not being accomplished. Plans must be approved by the authorized officer and incorporated into all allotment plans and/or special use permits governing use within the occupied habitat.

S&Gs 53 and 54 dictate that livestock must be kept out of wet areas but do not specifically provide for *how* permittees will ensure that cattle will remain out of these areas.³⁶ The data collected for compliance with S&G 54 is intended to help determine whether livestock are entering areas occupied by, or essential to, Yosemite toads.

In addition to S&Gs and BMPs, the 2014 PBO also relies on specific monitoring actions that must occur with respect to livestock grazing at several different levels.³⁷ It is not limited to checking utilization at the end of the grazing season. Instead, it establishes a framework requiring the Forest Service to monitor livestock location, compliance with conservation measures, habitat condition, species occupancy, and the biological effectiveness of grazing management. The PBO also expressly states that the grazing program should include a scientifically and statistically valid monitoring program focused on grazing effects to Yosemite toads and the listed frogs.³⁸

³⁶ Topic for discussion for implementation of Standard and Guide 54, Stephanie Barnes, District Fish/Aquatic Biologist, 1-31-2011.

³⁷ 2014 PBO at 25-28.

³⁸ *Id.* at 14-15 & 26-29.

Site-Specific Management Plans & Violations

Dinkey

Sierra Nevada yellow-legged frogs and Yosemite toads occupy parts of this allotment, and designated critical habitat for the toad exists on 47% of the allotment's acres.³⁹ Documentation from the Sierra National Forest shows that this allotment uses a site-specific plan pursuant to SNFPA S&G 54, titled "Dinkey Allotment Adaptive Management Plan for Yosemite toad occupied meadows."⁴⁰ This Plan seeks to conserve Yosemite toads "by minimizing impacts to individuals and their habitat via managing movement of stock around wet areas."⁴¹ The hydrologic function of the meadows in the allotment must provide a sufficient amount and duration of surface water suitable for toad breeding and rearing, i.e. shallow warm water that persists for a sufficient period of time during the season for tadpoles to metamorphose.⁴² The Adaptive Management Plan dictates that cattle must avoid standing in water during breeding and rearing, and grazing cannot disturb habitat, where "disturbance" is defined as "evidence of the current season's hoof prints and evidence of past disturbance," and disturbance metrics include the presence of cattle signs within a breeding area and the percent of a breeding area with signs of cattle.⁴³ Permittees are required to avoid riding and trailing cattle through the breeding habitat and delay the timing that livestock are trailed or allowed to drive into portions of the allotment that have occupied habitat. Furthermore, S&G 54 dictates that grazing must be modified or suspended if Yosemite toad conservation is not being accomplished.⁴⁴ This requires collecting monitoring data to guide adjustments to livestock management, as necessary, to protect toad habitat.

In the years following consultation, including during the 2024-2025 surveys conducted by the Center, it does not appear that monitoring has occurred as envisioned (by S&G 54 or the 2014 PBO), grazing standards were often not met, and livestock frequently trespassed into closed areas, where cattle were present in toad breeding habitat (i.e. wet meadows), which provide high quality habitat for Yosemite toad reproduction, cover, and feeding. For example, meadows that are required to be fenced, but were not, include Bear Paw⁴⁵ and Exchequer Meadow.⁴⁶ This is in direct violation of S&G 54, and the associated allotment-specific Adaptive Management Plan, which dictate that livestock must be excluded from "wet areas."

Forest Service utilization monitoring summaries have previously documented that several livestock grazing areas exceeded established allowable use standards, indicating that vegetation utilization and/or grazing impacts were occurring at levels inconsistent with applicable grazing management objectives. Specifically, monitoring records identified Cabin Meadow, Eastern Bear

³⁹ USDA Forest Service, Sierra National Forest, High Sierra Ranger District. *Rangeland Cattle Grazing Allotment, Critical Habitat Assessment*. Fresno and Madera Counties, California. September 25, 2017, at 12.

⁴⁰ Dinkey Allotment Adaptive Management Plan for Yosemite toad occupied meadows (S&G 54), undated.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 37.072° N, -119.087° W (documented August 2024).

⁴⁶ 37.07294° N, 119.11331° W (documented August 2024).

Nelson Area, and Upper Cutts as areas where allowable use standards were not being met.⁴⁷ Cabin Meadow is particularly significant because it contains habitat used as a breeding area for sensitive aquatic species, including federally listed Sierra Nevada amphibians where suitable meadow hydrology, herbaceous vegetation, streambank stability, and shallow aquatic habitats are essential for reproduction and recruitment. Despite these documented exceedances, the available monitoring summaries do not indicate that the Forest Service issued formal compliance notices, required corrective actions, modified grazing terms and conditions, reduced authorized livestock numbers, adjusted grazing timing, or suspended grazing authorization in response to the failures to meet allowable use standards. The absence of documented enforcement or adaptive management measures raises concerns regarding whether the Forest Service implemented the monitoring, enforcement, and corrective-action requirements necessary to prevent continued degradation of sensitive habitats. This violates SNFPA S&Gs 120 and S&G 54, as well as the monitoring requirements of the 2014 PBO.



Dinkey allotment. Ground disturbance within a meadow/riparian area, including exposed bare soil, trampling damage, loss of vegetative cover, and localized bank erosion adjacent to a drainage feature. Lat 37; 9; 13.4899999999. Long 119; 11; 6.1099999.

⁴⁷ See Draft Utilization Monitoring Summary for Standard and Guideline 54; FS date inspected 9/24/2014 for Cabin Meadow, 7/29/2014 for Upper Cutts, and 9/24/2014 for East Bear Nelson.



Dinkey allotment. Streambank with extensive bare, disturbed sediment containing numerous large hoof impressions. Riparian vegetation has been removed or heavily reduced across the central portion of the bank, leaving exposed soil. The streambank exhibits erosion and bank destabilization.

Lat 37; 9; 134.60999999. Long 119; 11; 5.8300000.

Patterson

Sierra Nevada yellow-legged frogs and Yosemite toads occupy parts of this allotment, and there are approximately 25,049 acres of designated critical habitat for the toad, comprising 45% of the allotment's acres.⁴⁸ Like Dinkey, documentation from the Sierra National Forest shows that the Patterson Mountain allotment uses a site-specific plan pursuant to SNFPA S&G 54, titled "Patterson Mountain Adaptive Management Plan (AMP) for Yosemite toad occupied meadows," that seeks to conserve Yosemite toads "by minimizing impacts to individuals and their habitat via managing movement of stock around wet areas."⁴⁹ The AMP dictates that the permittee must avoid riding and trailing cattle through breeding habitat.

Similar violations occurred on the Patterson allotment. The Forest Service is currently failing to conduct required monitoring, as evidenced by a lack of monitoring reports provided to the Center since 2014. Center surveys showed pervasive violations of grazing standards, for example, in the Hall Pasture,⁵⁰ including in Ahart Meadow,⁵¹ as well as East Fork Deer Creek⁵² and Bull

⁴⁸ U.S. Department of Agriculture, Forest Service. (2017, September 25). *Rangeland cattle grazing allotment: Critical habitat assessment*. Sierra National Forest, High Sierra Ranger District, Fresno and Madera Counties, California, p. 11.

⁴⁹ Patterson Mountain Adaptive Management Plan for Yosemite toad occupied meadows (S&G 54), undated.

⁵⁰ 37.00° N, -119.06° W, surveyed by the Center August – September 2024.

⁵¹ 37.02174° N, 119.04205° W, surveyed by the Center August – September 2024.

⁵² 37.00467° N, -119.06400° W, surveyed by the Center August – September 2024.

Creek.⁵³ These Meadows also exhibited pervasive streambank degradation, with trailing leading to shearing and removal of a portion of the streambank.⁵⁴ Fences required to exclude sensitive breeding habitat from the wettest parts of the Meadows were also down and in need of repair, including in Cabin Meadow/Bull Creek and Mono meadow.⁵⁵ These are violations of the AMP and S&G 120, as well as the monitoring requirements of S&G 54 and the 2014 PBO.



Patterson allotment. A heavily trampled wet meadow/stream channel with livestock hoof prints, exposed and churned mud, loss of riparian vegetation, bank sloughing, and direct disturbance of saturated soils adjacent to surface water. Vegetation is largely absent from the channel margins, and exposed sediment extends directly into the stream. Bank destabilization, soil compaction, vegetation removal, and increased potential for sediment delivery to aquatic habitat. Lat 37; 1; 31.4800000. Long 119; 5; 10.280000000.

⁵³ 36.983° N, 118.873° W, surveyed by the Center August – September 2024. The Forest Service previously documented utilization standards failing to be met in Bull Creek. *See* Draft Utilization Monitoring Summary for Standard and Guideline 54; Forest Service inspection date 9/25/2014.

⁵⁴ Surveyed by the Center August – September 2024.

⁵⁵ Surveyed by the Center August – September 2024.



Fences down in Ahart Meadow; Approx 37.02174° N, 119.04205° W.



Patterson allotment. Streambank erosion, vertical bank cutting, exposed soils, loss of bank-stabilizing vegetation, and reduced riparian integrity. Lat 37; 0; 28.6499999. Long 119; 2; 50.9899999.

Collins

Sierra Nevada yellow-legged frogs and Yosemite toads occupy this allotment, and critical habitat for the Yosemite toad is located in the eastern half of the allotment, comprising 57% of the total allotment acres.⁵⁶ The Collins allotment is managed under [SNFPA] S&G 53 with respect to meadows used by Yosemite toads. A 2010 Biological Evaluation and Assessment for Continued Livestock Grazing Authorization on Collins and Morgan Springs North Allotment was also completed and emphasizes implementing adaptive management triggers if resource conditions on the allotment decline.⁵⁷ Mitigation measures discussed in the Biological Evaluation and Assessment include riparian exclusion fencing or seasonal fencing in sensitive areas, adjusting turn-out dates to protect wet meadows during spring saturation, reduced utilization thresholds, and utilizing rest or reduction if thresholds are exceeded.

In addition to the Forest Service failing to conduct required monitoring pursuant to the 2014 PBO, in the Smith Meadow Pasture,⁵⁸ Rancheria Creek,⁵⁹ and Garlic Meadow,⁶⁰ surveyors documented violations of SNFPA S&G 120, including significant damage to meadows in early seral status, with livestock utilization of grass and grass-like plants exceeding utilization standards and a failure to maintain even 2-inch stubble height.⁶¹ These areas were also indicative of violations of S&G 53, with evidence of livestock in standing water and saturated soils in wet meadows and associated streams either occupied by Yosemite toads or identified as essential habitat in the conservation assessment, including evidence of trampling, damaged wet meadow plant communities, eroded banks, physical damage to soils, decreased abundance of shallow- and deep-standing water, and hoof puncturing and compaction. If physical exclusion of livestock is impractical, grazing must be excluded from the entire meadow.

⁵⁶ U.S. Forest Service. *Rangeland Cattle Grazing Allotment, Critical Habitat Assessment*. Sierra National Forest, High Sierra Ranger District, Fresno and Madera Counties, California. September 25, 2017, at 13.

⁵⁷ U.S. Department of Agriculture, Forest Service. (2010, August 24). *Biological Evaluation and Assessment for Continued Livestock Grazing Authorization on Collins/Morgan Springs North Allotment*.

⁵⁸ 36.93332° N, -118.97142° W (documented on 9/1/2024).

⁵⁹ ~37.256° N, ~119.160° W (documented on 9/1/2024).

⁶⁰ 36.92106° N, -118.92511° W (documented on 9/1/2024).

⁶¹ Surveyed and documented on 9/1/24 at the above-listed GPS coordinates.



Collins allotment. Hoof trampling, soil compaction, loss of herbaceous cover, and degradation of shallow wet habitat. Lat 36; 56; 42.17999999. Long 118; 57; 46.67999999.

Iron Creek

Critical habitat for the Yosemite toad is located in the eastern portion of the Iron Creek allotment, comprising 43% of the total allotment acres.⁶² As of 2017, there were six (44 acres) occupied Yosemite toad meadows and 331 (326 acres) suitable habitat meadows within the allotment.⁶³ Upland/terrestrial habitat accounts for approximately 4,862 acres of known occupied and 15,377 acres of suitable terrestrial habitat. The Iron Creek allotment is managed under S&G 53 with respect to toad meadows.⁶⁴ In addition, the 2010 Aquatic Species Biological Assessment/Evaluation Report for the Chiquito and Beasore Grazing Allotments includes portions of the Iron Creek allotment and emphasizes riparian protection, exclusion of livestock

⁶² U.S. Forest Service, Sierra National Forest, High Sierra Ranger District, *Rangeland Cattle Grazing Allotment, Critical Habitat Assessment*, Fresno and Madera Counties, California, at 17 (Sept. 25, 2017).

⁶³ *Id.*

⁶⁴ U.S. Department of Agriculture, Forest Service, Sierra National Forest, High Sierra Ranger District. (2017, September 25). *Rangeland cattle grazing allotment: Critical habitat assessment* (p. 17). Fresno and Madera Counties, California.

from wet meadows during Yosemite toad breeding, forage utilization limits, fencing, and monitoring to maintain riparian habitat and aquatic species viability.⁶⁵

The Center's 2024-2025 surveys and previous Forest Service reports indicate cows in wet meadows in the Grizzly Creek⁶⁶ and North Fork Willow Creek⁶⁷ breeding habitats and fencing down and in need of repair in meadows identified as breeding areas, including Salt Log Meadow⁶⁸ and Iron Creek Meadow.⁶⁹ The Forest Service also failed to conduct required monitoring or issue notices of noncompliance.⁷⁰ These represent violations of S&G 120 and S&G 53, as well as the monitoring requirements of the 2014 PBO.



Iron Creek. Deeply incised channel with exposed banks, sparse riparian vegetation, extensive areas of bare soil, and closely cropped herbaceous vegetation throughout the meadow.

Lat 37; 29; 52.4200000. Long 119; 28; 18.98999999.

⁶⁵ U.S. Department of Agriculture, Forest Service. (2010, June 24). *Aquatic Species Biological Assessment/Evaluation Report for the Chiquito and Beasore Grazing Allotments*. U.S. Forest Service, Sierra National Forest.

⁶⁶ 36.8031° N, -118.7431° W (documented on 11/4/2024).

⁶⁷ 37.21384° N, -119.49764° W (documented on 11/4/2024).

⁶⁸ 36.68596° N, -118.62975° W (documented on 11/4/2024).

⁶⁹ 37.6169° N, -119.1704° W (documented on 11/4/2024).

⁷⁰ This allotment contains designated Yosemite toad (*Anaxyrus canorus*) critical habitat, occupied meadows, and suitable habitat. The Forest Service must monitor whether grazing is affecting the physical and biological features necessary for the species' survival and recovery. This should include occupancy surveys, meadow condition monitoring, vegetation monitoring and measurements, hydrologic monitoring, livestock use monitoring, compliance inspections during grazing season, riparian and streambank monitoring, and fence and infrastructure monitoring. Because Yosemite toad is federally listed, the Forest Service must ensure its actions—including authorization of grazing—do not jeopardize the species or destroy/adversely modify critical habitat. Monitoring is an essential part of ensuring compliance with the terms and conditions of any biological opinion or consultation requirements. Endangered Species Act § 7(a)(2), 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.16(a)(2); 36 C.F.R. § 222.2; 36 C.F.R. § 222.7; 36 C.F.R. § 219.19; 50 C.F.R. § 402.14(i); 50 C.F.R. § 402.14(l). *See also* U.S. Fish and Wildlife Service. "Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, Northern DPS of the Mountain Yellow-Legged Frog, and Yosemite Toad." Federal Register 79 Fed. Reg. 1800–1819 (January 10, 2014).



Iron Creek. Extensive trampling, substantial loss of vegetation, exposed and compacted soils, bank degradation, and likely sedimentation into shallow aquatic habitat. Lat 37; 29; 48.1600000. Long 119; 28; 15.03000000.

Mono

The Mono allotment is occupied by the Yosemite toad and Sierra Nevada yellow-legged frog.⁷¹ There are also approximately 16,478 acres of designated critical habitat for the Yosemite toad within the allotment, and 3,546 acres of critical habitat for the Sierra Nevada yellow-legged frog.⁷² Critical habitat for the Yosemite toad is located in the north half of the allotment, comprising 44% of the total allotment acres, and critical habitat for the Sierra Nevada yellow-legged frog is located in the eastern quarter of the allotment, comprising 10% of the total allotment acres.⁷³ The Mono allotment is managed under S&G 53 with respect to toad meadows.⁷⁴ These occupied meadows that require but lacked active fencing and exclusion of livestock from wet meadows/Yosemite Toad breeding areas⁷⁵ included Twin Meadows⁷⁶ and Graveyard Meadow.⁷⁷ Graveyard and Twin Meadows were particularly affected, with both areas exhibiting pervasive ground cover disturbance and streambank degradation, with trailing leading

⁷¹ U.S. Department of Agriculture, Forest Service. *Rangeland Cattle Grazing Allotment, Critical Habitat Assessment*. Sierra National Forest, High Sierra Ranger District, Fresno and Madera Counties, California. September 25, 2017, at 10.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ S&G 53 requires the FS to protect occupied breeding habitat and prevent livestock from entering standing water and saturated soils used for breeding to meet conservation objectives.

⁷⁶ 37.409136° N, -118.963847° W (documented 9/2 – 9/3/2024).

⁷⁷ 37° 24' 32.89" N, 118° 57' 49.85" W (documented 9/2 – 9/3/2024).

to shearing and removal of portions of the streambank leaving vertical surfaces.⁷⁸ The stream in Graveyard Meadow was especially incised, with many trampled areas and chutes adjacent to the incised bank, indicating cattle impacts.⁷⁹ The Forest Service also appears to have failed to conduct required monitoring⁸⁰ and issue notices of noncompliance.



Mono allotment. Bank collapse, vegetation loss, soil compaction, and sediment input into the aquatic habitat. Lat 37; 24; 32.89000000. Long 118; 57; 49.8499999.

⁷⁸ Documented in Center surveys 9/2 – 9/3/2024).

⁷⁹ *Id.*

⁸⁰ The Forest Service's monitoring obligations arise from several overlapping authorities, including the Endangered Species Act (ESA), the Sierra National Forest Land Management Plan, project-specific Biological Assessments (BAs) and Biological Opinions (BiOps), annual grazing operating instructions, and the 2016 critical habitat designation for the Sierra Nevada yellow-legged frog and Yosemite toad. This includes but is not limited to annual occupancy and breeding surveys, meadow utilization monitoring, streambank alteration monitoring, breeding pool condition, water quality monitoring, riparian vegetation monitoring, soil disturbance monitoring, fence condition monitoring, population trend monitoring, monitoring for unauthorized livestock presence, and critical habitat monitoring. Endangered Species Act § 7(a)(1), 16 U.S.C. § 1536(a)(1)-(2); 50 C.F.R. § 402.14(i); 50 C.F.R. § 17.95(d); 50 C.F.R. § 17.95(d); 36 C.F.R. Part 222; 36 C.F.R. § 222.2; 36 C.F.R. § 222.3. *See also* U.S. Department of Agriculture, Forest Service. Sierra National Forest Land Management Plan, Final Environmental Impact Statement and Record of Decision (2023). *See also* U.S. Fish and Wildlife Service. 2016. “Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern DPS of the Mountain Yellow-Legged Frog, and the Yosemite Toad.” 81 Fed. Reg. 59046 (Aug. 26, 2016). *See also* USDA Forest Service, FSH 2209.13 – Grazing Permit Administration Handbook.

Kaiser

This allotment contains Yosemite toad occupied habitat, and approximately 21,209 acres of toad critical habitat, comprising 55% of the total allotment acres.⁸¹ The Kaiser allotment is managed by S&G 54, which mandates developing site-specific management plans to minimize impacts of livestock grazing on Yosemite toads in occupied meadows through monitoring and adaptive management. There are approximately 30 such meadows in the Kaiser Allotment.

In 2012, an Aquatic Species Biological Assessment and Biological Evaluation was also completed for the Kaiser range grazing allotment. The purpose of the document was to determine if continuing grazing with some adjustments or if stopping grazing altogether was necessary. The proposal suggested reducing grazing slightly from 605 to 543 animal unit months and managing it carefully, including imposing specific seasonal restrictions to protect Yosemite toad habitats, including complete avoidance of occupied habitats until metamorphosis is complete, as well as building corrals and stabilizing streams to help minimize impacts.⁸²

The Center's 2024-2025 surveys and the Forest Service documents indicate that the following occupied meadows require active fencing and do not currently have that: Cleveland Meadow⁸³ and Mary's Meadow.⁸⁴ Mary's Meadow in particular had significant grazing impacts, with hoof punches persistently present throughout the surveyed area, which was still very wet.⁸⁵ There were also multiple examples of bank shears and hoof punches along soft riparian banks and evidence of grazing impacts along entire streams.⁸⁶ Cows were also documented in wet meadows in Home Camp Creek.⁸⁷ The Forest Service also failed to conduct required monitoring⁸⁸ and issue notices of noncompliance. These represent violations of S&G 54 as well as the monitoring requirements of the 2014 PBO.

⁸¹ *Id.* at 7.

⁸² U.S. Forest Service (USFS). (2012). *Aquatic Species Biological Assessment and Biological Evaluation for the Kaiser Range Grazing Allotment*. High Sierra Ranger District, Sierra National Forest, Fresno County, California. U.S. Department of Agriculture, Forest Service, Pacific Southwest Region.

⁸³ 37.264° N, -119.220° W (documented 11/4/2024).

⁸⁴ 37.263278° N, 119.222345° W (documented 11/4/2024).

⁸⁵ Center surveys, 11/4/2024.

⁸⁶ *Id.*

⁸⁷ 37.2637° N, -119.2215° W (documented 11/4/2024).

⁸⁸ Forest Service's monitoring responsibilities arise from several overlapping legal authorities: The Sierra Nevada Forest Plan Amendment (Standards and Guidelines 53–55); ESA section 7 obligations to ensure grazing does not jeopardize the species or adversely modify critical habitat; Programmatic biological opinions issued by the U.S. Fish and Wildlife Service; Site-specific grazing permits and allotment management plans. This must include monitoring livestock exclusion from breeding habitat, habitat condition monitoring, Yosemite toad population monitoring, meadow utilization monitoring, annual pre- and post-grazing monitoring, compliance monitoring, critical habitat monitoring, and adaptive management (as required in S&G 54). U.S. Department of Agriculture, Forest Service. 2004. *Sierra Nevada Forest Plan Amendment Record of Decision*. Pacific Southwest Region. Standards and Guidelines for Grazing Management, pages 57–58 (S&Gs 53–55). 16 U.S.C. § 1536(a)(2). 50 C.F.R. § 402.14(a). 50 C.F.R. § 402.14(i)(1)(i)–(iv). 36 C.F.R. § 222.2 & § 222.3; 50 C.F.R. § 402.02. *See also* U.S. Fish and Wildlife Service. 2014. “Designation of Critical Habitat for the Yosemite Toad.” 79 Fed. Reg. 18031 (March 31, 2014). *See also* U.S. Department of Agriculture, Forest Service. 2005. *Rangeland Management: Principles and Practices*. *See also* U.S. Fish and Wildlife Service. 2014. Yosemite Toad (*Anaxyrus canorus*) Species Account and Recovery Planning Materials.



Kaiser allotment. Fresh hoof pugging in saturated soil, substantial soil disturbance, and damage to wetland vegetation in a sensitive meadow habitat. Lat 37; 14; 35.8699999. Long 119; 14; 32.499999.



Kaiser allotment. Hoof-induced soil disturbance, trampling, and abundant manure deposition. Lat 37; 15; 45.8500000. Long 119; 13; 14.9000000.

For each of these allotments, even though the requirements that formed the basis for the BiOps are not being met, the Forest Service continues to allow grazing. Uncertainties also exist concerning the threshold for allowable livestock use of occupied wet area habitats and how monitoring data will be analyzed to assess impacts and guide actions under the ESA. Without a current management plan for S&G 54, or a process to collect the necessary data and the needed oversight to ensure the data is meaningful to address population dynamics, the Forest Service is unable to meet conservation requirements.

Despite repeated violations of livestock use standards, trespass into unauthorized areas, and noncompliance with monitoring requirements, which have continued up to the present and resulted in adverse impacts to habitat for listed amphibians on these allotments, the Forest Service has not reinitiated consultation with FWS.

By failing to follow the conservation requirements, monitoring protocols, adaptive management measures, and reporting obligations contained in the PBOs, there is no true understanding of habitat fragmentation, repeated disturbance, long-term habitat trends, or the effects of the grazing program over time on these listed species. The Service thus lacks sufficient information to analyze the effects of grazing activities on the survival and recovery of Yosemite toads and Sierra Nevada yellow-legged frogs. The PBOs rely on monitoring and analysis of site-specific actions to protect listed species, and that monitoring and analysis is lacking.

In sum, the following violations occur on each of the six allotments:

- The no jeopardy determination depends upon the implementation of conservation measures that are not being implemented, including the following that have been described above: following the monitoring requirements of S&G 54 (e.g., engaging in regular surveys for listed species, monitoring egg masses and tadpoles, engaging in meadow condition monitoring, engaging in adaptive management if populations decline); meeting the grazing utilization standards of S&G 120; keeping livestock out of closed areas (such as occupied breeding habitat in wet meadows, no-grazing zones around occupied breeding sites, buffer areas surrounding breeding pools, and entire meadows closed to livestock where important populations occur); preventing congregation of livestock in wet meadows; protecting meadow hydrology by preventing excessive soil compaction and limiting streambank damage; reducing livestock numbers; suspending grazing in occupied habitat; increasing rest periods once monitoring detects problems; and engaging in meadow restoration.⁸⁹
- Required monitoring and reporting, as specified in the 2014 PBO, is missing for these allotments.⁹⁰

⁸⁹ 2014 PBO at 66.

⁹⁰ 2014 PBO at 25-28, 67.

- Reinitiation of consultation is required if incidental take limits are exceeded,⁹¹ but it is impossible to determine if incidental take limits have been exceeded if monitoring is not occurring.
- Conservation programs (BMPs, S&Gs) and monitoring plans are required to minimize adverse effects, but as we have described above, there is a lack of compliance with the established BMPs and S&Gs.
- Non-discretionary reasonable and prudent measures provided in the 2014 PBO and its 2017 amendment include implementing conservation measures and restoring affected habitat areas,⁹² neither of which is occurring.
- The 2014 PBO requires annual compliance reports to be submitted to the Service,⁹³ which appear to be absent.

LEGAL BACKGROUND

Section 7 of the ESA imposes a substantive obligation on federal agencies to “insure that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of” habitat that has been designated as critical for such species. See 16 U.S.C. § 1536(a)(2); *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, 524 F.3d 917, 924 (9th Cir. 2008). Jeopardy results where an action reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. 50 C.F.R. § 402.02. Destruction or adverse modification of critical habitat occurs where there is a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. *Id.* The ESA also prohibits “take” of a species—take is defined to include harassing, harming, wounding, killing, trapping, capturing or collecting a listed species. 16 U.S.C. §§ 1538(a)(1), 1532(19).

To fulfill the substantive mandates of section 7 of the ESA, federal agencies must consult with an expert agency—FWS or NMFS, depending on the species at issue. The ESA’s implementing regulations allow an agency to enter into informal consultation with the relevant expert agency to determine whether its actions “may affect” threatened or endangered species or their critical habitats. See 50 C.F.R. § 402.13. Usually this is done by completing a biological assessment and submitting it for the expert agency’s concurrence. *Id.* § 402.12(j), (k). If the agency determines that the action is “not likely to adversely affect” listed species and their habitats, and the expert agency concurs, no further action is necessary. *Id.* §§ 402.13, 402.14(b). If, through the informal consultation process or otherwise, the agency determines that its action is “may affect” listed species or their critical habitats, formal consultation is required that results in a biological

⁹¹ 2017 PBO at 72.

⁹² *Id.* at 70.

⁹³ *Id.* at 71.

opinion. *Id.* § 402.14(a). In carrying out the consultation process, “each agency shall use the best scientific . . . data available.” 16 U.S.C. § 1536(a)(2).

After consultation is completed, federal agencies have a continuing duty under section 7 of the ESA to ensure that their actions will not jeopardize the continued existence of listed species or adversely modify designated critical habitat. An agency must re-initiate consultation whenever “new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;” if the action is subsequently modified in a manner that causes an effect to the species or critical habitat in a way not considered in the consultation; or if new critical habitat is designated that may be affected by the proposed action. 50 C.F.R. § 402.16(b), (c), (d). The duty to reinitiate consultation lies with the action agency and the consulting agency. 50 C.F.R. § 402.16; *Envtl. Protection Info. Ctr. v. Simpson Timber Co.*, 255 F.3d 1073, 1076 (9th Cir. 2001).

In addition, once a consultation under 16 U.S.C. § 1536(a)(2) has been initiated, the action agency must not make any irreversible or irretrievable commitment of resources that would foreclose implementation of any reasonable and prudent alternative measures. 16 U.S.C. § 1536(d).

VIOLATIONS OF LAW

I. The agencies are violating the ESA by failing to reinitiate and complete consultation ensuring grazing does not jeopardize species or modify habitat on the Dinkey, Patterson, Collins, Iron Creek, Mono, and Kaiser allotments.

The Forest Service and FWS have a duty to reinitiate and complete consultation when new information shows that an action’s effects may affect a listed species or its critical habitat in a way or to an extent not previously considered, and when an action is subsequently modified in a manner that causes effects to listed species or critical habitat that was not considered in the biological opinion.

The Forest Service and FWS found that grazing impacts were not likely to jeopardize the continued existence or adversely modify the critical habitat of the Yosemite toad and Sierra Nevada yellow-legged frog based on the assumption that Standard and Guidelines (S&Gs), Best Management Practices (BMPs), site-specific management plans, monitoring, and other conservation requirements – all of which detail grazing restrictions and closures, use standards, and monitoring requirements – would be followed. However, rangeland standards have routinely been violated, grazing has regularly occurred in wet meadows that are supposed to be excluded, and monitoring data is lacking for the allotments. The standards violations, livestock trespass, and other failures to follow basic requirements show that the assumptions underlying the BiOps’ findings are no longer valid and have not protected listed amphibians and critical habitat as expected.

In light of this information, the Forest Service and FWS have an obligation to reinitiate and complete consultation to ensure that grazing on the Dinkey, Patterson, Collins, Iron Creek,

Mono, and Kaiser allotments is not causing jeopardy or take of listed amphibians or adverse modification of critical habitat. Until the agencies reinitiate and complete consultation, they are in violation of the ESA section 7 and 50 C.F.R. § 402.16.

II. The Forest Service must cease allowing grazing on the Dinkey, Patterson, Collins, Iron Creek, Mono, and Kaiser allotments until adequate consultations have been completed.

Once the necessary consultations have been initiated, the Forest Service must remove all livestock from the allotments to ensure that no irreversible or irretrievable commitment of resources that would foreclose implementation of reasonable and prudent alternative measures occurs. 16 U.S.C. § 1536(d). In light of the above-identified violations, authorizing further grazing on these allotments risks an irreversible and irretrievable commitment of resources by harming listed amphibians, damaging their critical habitats, and causing additional resource damage that may take a very long time to recover, in violation of ESA sections 7(a)(2) and 7(d). *Id.* § 1536(a)(2), (d). Accordingly, the Forest Service must cease allowing grazing on the subject allotments until new consultations have been completed, to comply with the ESA.

CONCLUSION

As set forth above, the Center intends to pursue litigation in federal court for these ESA violations following sixty days after this notice and will seek injunctive, declaratory and other relief, including an award of attorneys' fees, expert witness fees, and other expenses incurred in investigating and prosecuting this action. If you have any questions, wish to discuss this matter further, or believe this notice is in error, please feel free to contact me at tzuardo@biologicaldiversity.org or 415-419-4210.

Respectfully,

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