UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

May 9, 2005

John Berry, Forest Supervisor
Eldorado National Forest
100 Forni Road
Placerville, CA 95667

Subject: Draft Environmental Impact Statement (DEIS) for the Freds Fire Restoration Project, El Dorado County, California (CEQ #20050110)

Dear Mr. Berry:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act.

The DEIS documents the analysis of five alternatives for the removal of fire-killed trees, road construction, road reconstruction, and associated restoration of the area burned by the Freds Fire of 2004 in the Eldorado National Forest. Based on our review, we have rated the DEIS as Environmental Concerns - Insufficient Information (EC-2). We have concerns about impacts to drinking water supplies and air quality, and the use of herbicides. We also request additional information on Clean Air Act requirements, consultation with tribal governments, and the analysis of environmental justice issues. Please see the enclosed Detailed Comments for a description of these concerns and our recommendations. A *Summary of EPA Rating Definitions* is also enclosed.

EPA appreciates the need to act quickly to address fire-related erosion problems and capture economic value from fire-killed trees. It is clear from the scoping record that public controversy exists about the short-term and long-term impacts of restoration activities. We commend the Forest Service's efforts to be responsive to public comments made during the scoping process, both in terms of developing alternatives and providing direct responses to issues of concern.

We appreciate the opportunity to review this DEIS. When the Final EIS is released for public review, please send two copies to the address above (mail code: CED-2). If you have any questions, please contact me or David P. Schmidt, the lead reviewer for this project. David can be reached at 415-972-3792 or schmidt.davidp@epa.gov.

Sincerely,

/s/

Laura Fujii, Acting Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures:
EPA's Detailed Comments
Summary of EPA Rating Definitions

cc: Laura Hierholzer, IDT Leader

Impacts to Drinking Water Supplies

The DEIS states that the South Fork American River and its tributaries provide a source of drinking water for numerous small water systems (Table 3-31). These water supplies may have elevated levels of suspended sediment and turbidity during and immediately after large rainfall events and periods of rapid snowmelt for the next several years. The document also states that water systems and other downstream beneficial uses of water could be affected as a result of cumulative impacts in the Freds Fire area (p. 111). The DEIS does not project the extent of these impacts, nor the potential risk to public health resulting from water systems that may have inadequate facilities to treat the high turbidity levels.

Recommendation:

The final EIS (FEIS) should provide additional information on potentially affected water systems downstream of the project area, as well as the magnitude of the cumulative impacts that may result. The additional information should include a list of water systems (distinguishing between public water systems regulated under the *Safe Drinking Water Act* [SDWA] and private water systems), distance from the project area, source(s) of water, type of water treatment applied, and population served. For public water systems, the impact analysis should include an evaluation of the ability of the systems' treatment technology to produce water that meets the SDWA standard for turbidity when anticipated turbidity levels are at their highest value.

Use of Herbicides

The DEIS indicates that control treatments for weed invasion are planned for known infestations in the western edge of the fire area. There are several statements that noxious weeds will be controlled "by hand" (pp. 139 and 156), with no reference to the use of herbicides. However, the document also states that infestations will be treated as described in the Burn Area Emergency Response (BAER) report[1]. The BAER report states that the Freds Fire re-burned part of the Cleveland Fire which threatens to undo efforts to address the Star Thistle infestation in that area. Accordingly, the report indicates that land treatment will consist of spraying herbicides on the projected expansions of currently documented weed infestations. As this use of herbicides will occur in the Freds Fire area and is a direct result of the burn, the impact of herbicide use should be evaluated in FEIS.

[1] The BAER report is available on-line at http://www.fs.fed.us/r5/eldorado/incident/fred/baer.html.

Recommendation:

The FEIS should clarify the intended use of herbicides in the project area, and included a summary of the BAER Report recommendations. A description of the specific herbicides, their EPA Registration Numbers, list of use restrictions, and number of acres to be treated under each alternative should be provided. Potential impacts, if any, to aquatic wildlife and populations using surface water as a potable water supply should also be described.

Cumulative Impacts to Air Quality

The DEIS provides estimates of air emissions from Freds Fire timber operations and prescribed burns. Emissions are provided for volatile organic compounds (VOCs), nitrogen oxides (NOx), and PM10 (particulates less than 10 micrometers in diameter) for each of the four years during which the restoration will occur. In addition, approximately 2,889 acres of privately owned lands within the fire area (representing 38 percent of the total fire area) are expected to be machine piled and burned. The DEIS states (p. 65), "The predicted emissions from the privately owned land operations are unknown but are assumed to be in compliance with the state and federal rules and regulations pertaining to air quality." The DEIS adds that the Power Fire Restoration Project is expected to be implemented during the same time frame as the proposed alternative. It does not provide emission estimates for the Power Fire.

The DEIS does not clearly delineate the air shed that will be affected by project operations, and does not provide a cumulative impacts analysis for all air emissions from activities related to the two restoration projects and private land owner activities. The DEIS states that while cumulative effects to air quality are likely to occur, the regulations limit emissions on a project-by-project basis regardless of cumulative effects (p. 65). While conformity determinations under the Clean Air Act may be evaluated on a project-by-project basis, the National Environmental Policy Act (NEPA) regulations clearly specify that cumulative impacts should be considered in the environmental analysis (see 40 CFR 1508.7).

Recommendation:

The FEIS should provide a substantive discussion of, and quantify where possible, the cumulative effects of the project when considered with other past, present, or reasonable foreseeable projects, regardless of what agency or person undertakes those actions (see 40 CFR 1508.7). The document should also propose mitigation for all cumulative impacts, and clearly state the lead agency's mitigation responsibilities and the mitigation responsibilities of other entities. In addition, the boundaries of the affect air shed(s) should be clearly defined.

Clean Air Act Requirements

National Ambient Air Quality Standards (NAAQS)

The DEIS states that El Dorado County is currently in Federal non-attainment status for ozone (p.63). Although this is partially correct (the entire county is not designated as non-attainment), the DEIS lacks background information on the NAAQS for ozone, and does not distinguish between one-hour and eight-hour non-attainment designations. The document also does not discuss the new fine particulates NAAQS. Fine particulates are those less than 2.5 micrometers in diameter and are referred to as PM2.5.

The NAAQS for ozone was revised on July 18, 1997 (62 FR 38856) when EPA promulgated an ozone standard of 0.08 parts per million as measured over an 8-hour period. EPA's final rule designating non-attainment areas under the 8-hour NAAQS was published in the Federal Register on April 30, 2004. On that date, EPA announced the designation of part of El Dorado County, California, as a Subpart 2 "Serious" non-attainment area for the new ozone standard, effective June 15, 2004. EPA intends to revoke the 1-hour ozone standard on June 15, 2005. If a project is approved by a Federal agency before June 15, 2005, and the action commences before that date, then the project will need to meet the conformity requirements for the 1-hour ozone standard at 40 CFR Part 93.150-160.

The fine particulates NAAQS was established on July 18, 1997 (62 FR 38652). The standards include an annual standard set at 15 micrograms per cubic meter (based on the 3-year average of annual mean PM2.5 concentrations) and a 24-hour standard of 65 micrograms per cubic meter (based on the 3-year average of the 98th percentile of 24-hour concentrations). All of El Dorado County is considered unclassifiable/attainment for both PM2.5 and PM10.

Recommendation:

The FEIS should provide information on the existing 1-hour and new 8-hour ozone NAAQS, and it should discuss the transition from the 1-hour ozone standard to the 8-hour ozone standard, including revocation of the 1-hour NAAQS. It should specify which ozone standard the project will comply with for the purpose of meeting conformity requirements. The FEIS should also provide information on the NAAQS for PM2.5. A good source of current information on non-attainment areas can be found at the following EPA web site: http://www.epa.gov/air/oaqps/greenbk/.

Conformity Determinations

Because the Freds Fire restoration is located in a serious non-attainment area for ozone, a conformity determination must be made. The DEIS indicates that the *de minimis* level that triggers a conformity determination for a Federal action is 25 tons per year (tpy) of VOCs or NOx. This appears to contradict the rates listed in EPA's general conformity regulations finalized on November 30, 1993 (58 FR 63214), which specifies that the rate of 50 tpy of VOCs or NOx applies in serious non-attainment areas.

Recommendation:

VOC and NOx *de minimis* levels for conformity determinations should be verified and corrected, if necessary. The readability of the air quality section would be improved if the *de minimis* levels were incorporated into the criteria pollutant tables (Tables 3-20 and 3-24), as appropriate, to provide a clear comparison of projected emissions to the regulatory *de minimis* levels.

Consultation and Coordination with Indian Tribal Governments

The DEIS states that 24 cultural resource sites have been surveyed in the burn area, 14 of them prehistoric Native American sites, and that the Fred's Fire considerably affected the integrity of these sites (p. 130). Implementation of this project, while not expected to have any direct effects on known archaeological sites, may result in ground-disturbing activities that have the potential to disturb or destroy heritage resources. While the DEIS states that tribal communities will continue to be consulted for any concerns regarding this project, it does not indicate how previous consultations took place, which tribes were consulted, and the extent of those discussions.

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes.

Recommendation:

The FEIS should describe the process and outcome of government-to-government consultation with the tribes in accordance with Executive Order 13175.

Environmental Justice

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), directs Federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process.

The DEIS states that although low-income and minority populations live in the vicinity, activities proposed for the Freds Fire Restoration project would not discriminate against these groups (p. 238). The DEIS does not provide additional information to document this analysis or support this conclusion. Guidance by the Council of Environmental Quality (CEQ) clarifies the terms low-income and minority population (which includes American Indians) and describes the factors to consider when evaluating disproportionately high and adverse human health effects (*Guidance for Federal Agencies on Key Terms in Executive Order 12898*, December 1997).

Recommendation:

The FEIS should provide additional information to support the conclusion of no impacts to environmental justice communities. The FEIS should describe where low-income and minority populations are located, the ethnic make-up of the minority populations, and the sources from which that information was obtained. Assessment of the project's impact on minority and low-income populations should be described in more detail, and should reflect coordination with those affected populations.