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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

<p>PACIFIC RIVERS COUNCIL</p> <p>Plaintiff,</p> <p>vs.</p> <p>UNITED STATES FOREST SERVICE; MARK REY, in his official capacity as Under Secretary of Agriculture, DALE BOSWORTH, in his capacity as Chief of the United States Forest Service, JACK BLACKWELL, in his official capacity as Regional Forester, Region 5, United States Forest Service</p> <p>Defendants.</p>	<p>Case No.</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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I. INTRODUCTION

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2 1. The Sierra Nevada mountain range, which forms California’s eastern boundary, has
3 long been recognized as containing some of the most breath-taking scenery in the world. This land
4 is noted for its monumental peaks, tall trees, pristine waters and an abundance of native wildlife
5 and fish. The beauty and grandeur of the Sierra Nevada mountain range has resulted in Congress
6 designating eleven (11) separate National Forests (“the Sierra Nevada national forests”) spanning
7 the Sierra Nevada from the Modoc Plateau south to the giant sequoia groves and east into Nevada.
8 The streams, rivers, lakes, riparian areas and wetlands of this mountain range, and the Sierra
9 Nevada national forests, include habitat for at least three imperiled amphibian species, including
10 the mountain yellow-legged frog, the Yosemite toad and the California red-legged frog.

11 2. In 2001, as the result of a decade-long planning effort, the United States Forest
12 Service (“Forest Service”) adopted the Sierra Nevada Forest Plan Amendment, also referred to as
13 the Sierra Nevada Framework (“2001 Framework”). The 2001 Framework amended the
14 management plans for all eleven Sierra Nevada national forests.
15

16 3. The Forest Service, however, never permitted the 2001 Framework to be
17 implemented. Instead, without adequate environmental review or planning, the Forest Service
18 adopted a superseding framework for the Sierra Nevada national forests (“the 2004 Framework”)
19 eliminating the protective standards that had emerged from the decade-long planning effort and
20 drastically increasing the amount of logging, roads and resource extraction conducted on the Sierra
21 Nevada national forests.
22

23 4. The 2004 Framework clearly poses a significant and immediate threat to the Sierra
24 Nevada national forests’ imperiled native species and the watersheds that support them by
25 significantly increasing the amount and rate of logging; the number and use of log landings, skid
26 trails, and roads; and livestock grazing and other resource extraction activities.
27

28 5. Defendants, in their haste to approve the 2004 Framework, violated the National

1 Environmental Policy Act (“NEPA”) by failing to adequately consider the direct, reasonably
2 foreseeable indirect and cumulative impacts from the 2004 Framework activities, particularly the
3 irreparable impacts to aquatic, riparian, and meadow ecosystems of the Sierra Nevada national
4 forests (hereinafter “aquatic ecosystems”) and sensitive aquatic and amphibian species (hereinafter
5 “associated species”) resulting from logging-related use and construction of roads and log landings.

6
7 6. Because Plaintiff, Pacific Rivers Council (“PRC”) has exhausted its administrative
8 remedies and has no adequate remedy at law, and because of the immediate and irreparable harm
9 from Defendants’ approval and implementation of the 2004 Framework, Plaintiff seeks preliminary
10 and permanent injunctive relief from this Court until such time as Defendants modify the 2004
11 Framework and its related environmental review documents to come into compliance with the
12 National Environmental Policy Act and the National Forest Management Act.

13 **II. JURISDICTION AND VENUE**

14
15 7. The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (action
16 arising under the laws of the United States) and 5 U.S.C. § 702 (Administrative Procedures Act).

17 8. As more fully explained below, PRC has exhausted all of its administrative
18 remedies.

19 9. Defendants’ violations of NEPA, 42 U.S.C. § 4321, et seq., are subject to judicial
20 review under the Administrative Procedures Act (“APA”), 5 U.S.C. § 702.

21 10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because a
22 substantial part of the events or omissions giving rise to PRC’s claims occurred in this district and
23 also because most of the national forests affected by the 2004 Framework have offices here.
24 Moreover, other cases related to Defendants’ violation of, *inter alia*, NEPA and the APA in
25 approving the 2004 Framework have been filed in this district.

26
27 11. Assignment to the Sacramento Division of this judicial district is proper by virtue of
28

1 Local Rule 3-120, because the headquarters of several of the National forests affected by the 2004
2 Framework are located in relevant counties.

3 **III. THE PARTIES**

4 12. Plaintiff Pacific Rivers Council (“PRC”) is a non-profit conservation group based in
5 Eugene, Oregon, whose mission is to protect and restore rivers, their watersheds, and native aquatic
6 species. PRC has worked extensively to protect and restore aquatic species and habitats in the
7 Sierra Nevada, including the Sierra Nevada national forests at issue here. Since 1988 PRC has
8 been involved in federal lands management planning and implementation. In addition to the Sierra
9 Framework, PRC has worked extensively on planning efforts such as the Northwest Forest Plan,
10 the Interior Columbia Basin Ecosystem Management Project, individual forest plan revisions, and
11 site specific projects. PRC has over 700 members, many of whom live in California, near and/or
12 downstream from the Sierra Nevada national forests.
13

14 13. Members of PRC use and recreate in the Sierra Nevada national forests affected by
15 the 2004 Framework. PRC members use the Sierra Nevada national forests for a variety of
16 purposes, including, but not limited to, hiking, backpacking, photography, scientific study, wildlife
17 observation, spiritual nourishment, hunting and fishing. These members intend to continue to use
18 the Sierra Nevada national forests in the same manner for the foreseeable future. These members
19 derive recreational, professional, spiritual, aesthetic and other benefits and enjoyments from these
20 activities in the Sierra Nevada national forests.
21

22 14. PRC and its members have been and will continue to be actively involved in the
23 efforts to protect, conserve, and restore the Sierra Nevada national forests. As detailed below, PRC
24 has been actively involved with the Sierra Nevada regional planning effort from the early 1990s
25 through the present.
26

27 15. Defendants’ adoption and implementation of the 2004 Framework (including but not
28

1 limited to approval of the 2004 Framework Final Supplemental EIS and Record of Decision) in
2 violation of NEPA and the APA, as explained fully below, has harmed and injured and will
3 continue to harm and injure the above-described interests of PRC and its members by causing
4 irreversible harmful effects to the Sierra Nevada national forests and the imperiled species and
5 sensitive natural communities that depend on these forests and their watersheds. Defendants'
6 approvals and implementation actions deprive PRC and its members of the recreational,
7 professional, spiritual, aesthetic and other benefits and enjoyment they presently derive from the
8 Sierra Nevada national forests. Moreover, Defendants' decisions have deprived PRC and its
9 members of the right to have the laws of the United States implemented and enforced, and the
10 satisfaction and peace of mind associated with witnessing the enforcement of this Nation's
11 protection laws.
12

13
14 16. As a result of Defendants' approval and implementation actions, PRC and its
15 members have in the past and will continue to be adversely affected and irreparably harmed. These
16 injuries are actual and concrete and are capable of being redressed by the relief sought by PRC.
17 PRC has no adequate remedy at law.

18 17. Defendant UNITED STATES FOREST SERVICE is the agency responsible for the
19 approval and implementation of the 2004 Framework, including the 2004 Framework Final
20 Supplemental EIS and 2004 Framework ROD challenged by PRC in this action.
21

22 18. Defendant JACK BLACKWELL is the Regional Forester for Region 5 of the Forest
23 Service, which encompasses the eleven Sierra Nevada national forests affected by the 2004
24 Framework. On January 21, 2004, he approved the 2004 Framework Final Supplemental EIS and
25 the 2004 Framework ROD. He is sued in his official capacity.
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1 19. Defendant DALE BOSWORTH is the Chief of the Forest Service. On November
2 18, 2004, he denied PRC's appeal of the Regional Forester's approval of the 2004 Framework and
3 2004 Framework Final Supplemental EIS. He is sued in his official capacity.

4 20. Defendant MARK REY is the Under Secretary of Agriculture for Environment and
5 Natural Resources, with jurisdiction over the United States Forest Service. On March 21, 2005,
6 Defendant Rey upheld the Chief's appeal decision. He is sued in his official capacity.
7

8 IV. STATEMENT OF FACTS

9 Aquatic Species of the Sierra Nevada

10 21. The eleven National forests in the Sierra Nevada mountain range contain some of
11 this nation's most treasured and spectacular public lands.

12 22. The watersheds of the Sierra Nevada support forty native fishes and thirty native
13 amphibian taxa.

14 23. Of these, six fishes and two amphibians are listed under the federal Endangered
15 Species Act ("ESA") as threatened or endangered: the winter- and spring-run chinook salmon
16 (*Oncorhynchus tshawytscha*), Central Valley Steelhead (*O. mykiss irideus*), Little Kern golden
17 trout (*O. m. whitei*), Lahontan cutthroat trout (*O. clarki henshawi*), Paiute cutthroat trout (*O. c.*
18 *seleneris*), the California red-legged frog (*Rana aurora draytonii*), and the California tiger
19 salamander (*Ambystoma californiense*). Three additional amphibians that are candidates for listing
20 under the ESA, the spotted frog (*R. pretiosa*), mountain yellow-legged frog (*R. muscosa*), and the
21 Yosemite toad (*Bufo canorus*), also are located in the Sierra Nevada.
22

23 24. PRC has submitted petitions to list the mountain yellow-legged frog and the
24 Yosemite toad as endangered species pursuant to the Endangered Species Act ("ESA"), 16 U.S.C.
25 § 1531, et seq. PRC also has sued to compel designation of ESA critical habitat for the threatened
26 California red-legged frog.
27

28 25. In the Draft Environmental Impact Statement for the 2001 Framework ("2001

1 Framework Draft EIS”), the Forest Service identified thirty-five aquatic and riparian dependent
2 species of special concern.

3 26. The U.S. Fish and Wildlife Service has identified nine endangered or threatened
4 aquatic species and fifty-eight species of concern potentially affected by the 2004 Framework,
5 twenty seven of which overlap with the Forest Service species of special concern category.

6
7 Threats Facing Sierra Nevada Aquatic Species

8 27. The Sierra Nevada Ecosystem Project Report (“SNEP Report”) was a
9 congressionally sponsored project marking the first attempt to document the status of human and
10 natural systems across the breadth of the greater Sierra Nevada ecoregion. The report's authors--
11 experts from a variety of fields and disciplines--came to many important conclusions about the
12 status of these systems.

13
14 28. The SNEP Report concluded that “[t]he decline and loss of habitat types...is one of
15 the principal reasons that so many species of invertebrate, fish, and amphibians in the Sierra
16 Nevada are in decline,” and that aquatic and riparian systems are "the most altered and impaired
17 habitats of the Sierra."

18 29. The SNEP Report found that over half of the native amphibians in the Sierra Nevada
19 are in decline or warrant some type of formal protection. Loss of habitat, cumulative watershed
20 disturbance, and population fragmentation from logging, livestock grazing, road building and other
21 Forest Service activities all are factors in these declines.

22
23 30. Another finding of the SNEP Report is that less than half of the native fish species
24 in the Sierra Nevada have secure populations. The record before Defendants at the time of their
25 approval of the 2004 Framework and 2004 Framework Final Supplemental EIS included scientists’
26 reports concluding that declines in Sierra Nevada fish species are the result, *inter alia*, of (1)
27 exclusion from most of their historical habitat on the west side of the Sierra Nevada mountain
28

1 range and (2) fragmentation of their aquatic communities.

2 31. Livestock grazing of national forest lands in the Sierra Nevada has extensively
3 altered and damaged aquatic, meadow and riparian ecosystems to the detriment of native fish and
4 amphibians.

5 32. A number of Sierra fish species likely will become extinct within the next 50 years
6 unless present downward trends are reversed.

7 33. The SNEP Report concluded “excessive sediment yield into streams remains a
8 widespread water-quality problem in the Sierra Nevada.”

9
10 The 2004 Framework and its Impacts to Aquatic Species

11 34. The 2004 Framework is a significant forest plan amendment that completely
12 supplants the 2001 Framework, triples logging allowed throughout the Sierra Nevada national
13 forests, allows larger trees to be logged and eliminates 2001 Framework binding standards and
14 guidelines.

15 35. The Sierra Nevada national forests currently contain at least 96,000 road crossings.
16 Additionally, there are currently nearly 25,000 miles of Forest Service system roads within the
17 Sierra Nevada national forests, plus additional miles of uninventoried, user-created roads and trails.

18 36. A sizable road system is needed to achieve the 2004 Framework’s salvage logging
19 and green tree logging targets.

20 37. In the first decade alone, the 2004 Framework will triple salvage logging to 90
21 million board feet (“mmbf”) per year.

22 38. In the first decade alone, the 2004 Framework will double green-tree logging to 358
23 mmbf per year.

24 39. The initial logging and subsequent maintenance of such a volume of timber will
25 require intensive use of the existing road system as well as retaining or increasing its current
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27
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1 expansive size.

2 40. Roads on federal lands cause or contribute to significant adverse direct and
3 cumulative effects on watersheds and aquatic resources. New permanent or temporary road, log
4 landing, and skidtrail construction and reconstruction cause or contribute to significant
5 environmental impacts on watershed and/or aquatic resources.

6
7 41. Logging and associated road construction, reconstruction, and use conducted under
8 the 2004 Framework will cause and contribute to excessive sediment yield to the detriment of
9 Sierra Nevada aquatic species and their habitats.

10 42. The 2004 Framework allows environmentally damaging livestock grazing in highly
11 sensitive aquatic species habitat of the Sierra Nevada national forests. The 2004 Framework
12 increases the acreage grazed above what was to be allowed under the 2001 Framework. Mandatory
13 standards, guidelines and mitigations contemplated and adopted in the 2001 Framework and its
14 environmental review documents were reduced, eliminated or left to the discretion of the grazing
15 permit operators and Forest Service personnel under the 2004 Framework.

16
17 43. Defendants have and will continue to plan and implement site-specific projects
18 pursuant to the 2004 Framework to the detriment of aquatic ecosystems and associated species, and
19 to the detriment of Plaintiff and the public.

20
21 **V. PROCEDURAL BACKGROUND AND
22 PLAINTIFF'S EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 44. Growing public scrutiny of the plight of the California spotted owl and the over-all
24 health of the Sierra Nevada ecosystem lead to a 1992 Forest Service study which concluded that
25 intact old growth forests were in decline in the Sierra Nevada and recommended an interim
26 conservation approach pending further research and the formulation of a sustainable long-term
27 management strategy.

28 45. The resulting California Spotted Owl Technical Report lead to development of what

1 became known as the CASPO guidelines, which were adopted in early 1993. These CASPO
2 guidelines outlined significant protections for the California spotted owl and its habitat, which
3 resulted in additional protections for other species, including aquatic species. The Forest Service's
4 Regional Forester incorporated the CASPO guidelines into directives for Sierra Nevada national
5 forests.

6
7 46. Subsequently, the Forest Service initiated a Sierra Nevada-wide planning process to
8 address California spotted owl declines. The Forest Service projected this process would be
9 completed in less than two years and thus the CASPO guidelines would serve as short term
10 management direction for the Sierra Nevada national forests.

11 47. The Forest Service issued a California Spotted Owl Draft Environmental Impact
12 Statement ("CalOwl Draft EIS") in 1995 for regional management of the Sierra Nevada national
13 forests. As a result of its involvement with Sierra Nevada planning efforts from the early 1990s,
14 PRC submitted the first of many comprehensive comment letters to the Forest Service in April
15 1995 regarding the CalOwl Draft EIS and its proposed regional management of aquatic ecosystems
16 and associated species.

17
18 48. The Forest Service withdrew the CalOwl Draft EIS for further development after
19 receiving severe criticism from the scientific community and the public. The shortfalls were many,
20 but one consistent criticism from the scientific community was that the proposed regional
21 management plan failed to comprehensively address the Sierra Nevada ecosystem, including its
22 aquatic and watershed resources.

23 49. In September 1995, PRC published a report entitled "The Urgent Need for
24 Watershed Protection and Restoration in the Sierra Nevada: Native Fish and Streams at Risk in
25 California," outlining a watershed and aquatic conservation strategy for the entire Sierra Nevada
26 range, including the Sierra Nevada national forests.

27
28 50. A CalOwl Revised Draft EIS for regional management of the Sierra Nevada national

1 forests was finalized by the Forest Service in the summer of 1996, but not released to the public
2 due to the publication of the congressionally mandated SNEP Report, which contradicted
3 assessments and recommendations within the CalOwl Revised Draft EIS.

4 51. One SNEP Report conclusion was that "[t]he aquatic/riparian systems are the most
5 altered and impaired habitats of the Sierra."
6

7 52. Because of the aforementioned discrepancies, the Secretary of Agriculture withdrew
8 the CalOwl Revised Draft EIS and chartered a California Spotted Owl Advisory Committee
9 (“Advisory Committee”) to review the proposed Sierra Nevada national forest regional
10 management plan in light of the SNEP report and other available new information and to make a
11 recommendation on how the Forest Service should proceed with the Sierra Nevada regional
12 planning effort. The Advisory Committee held a series of public meetings, met with Forest Service
13 staff and scientists and heard testimony from non-agency scientists, logging industry
14 representatives and conservation community members, among others.
15

16 53. PRC was actively engaged in the Advisory Committee process, including attending
17 three public meetings held between July and September, 1997, presenting oral testimony at the
18 August 1997 meeting and submitting written comments to the Advisory Committee and Forest
19 Service officials.

20 54. In a report issued in late 1997, the Advisory Committee concluded that the CalOwl
21 Revised Draft EIS was insufficient for the management of the California spotted owl and the
22 broader Sierra Nevada ecosystem. The Advisory Committee concluded that among the CalOwl
23 Revised Draft EIS’ critical shortcomings was a failure to incorporate a comprehensive strategy for
24 aquatic/riparian protection, management and restoration.
25

26 55. The Advisory Committee noted that the lack of specific direction or standards and
27 guidelines made it difficult or impossible to determine what specific resource management actions
28 would occur, how the landscape would look or which measures would be used to determine the

1 consistency and quality of specific directions in the regional management plan. It further noted that
2 the CalOwl Revised Draft EIS did not critically evaluate the cumulative effect of habitat loss or the
3 effect of habitat fragmentation on species due to road building, including the effects on water
4 quality and riparian habitats, nor did the plan provide alternatives to reduce roads or decrease
5 impacts due to roads.

6
7 56. The Advisory Committee recommended that the Forest Service examine the road
8 databases utilized and ensure road density impacts and cumulative effects be appropriately
9 analyzed and described; develop a spatially explicit analysis at the appropriate scale of the potential
10 effects of road development associated with the alternatives on aquatic resources, hydrologic
11 connectivity, refugia, roadless areas, and other ecosystem values, as well as a cumulative effects
12 analysis in relation to the existing road network (including non-Forest Service roads); and develop
13 an alternative encompassing a reduction of roads or road-related impacts.

14
15 57. The Advisory Committee further recommended that the Forest Service reopen the
16 regional planning process and use as its foundation the SNEP Report, the valid existing information
17 contained within the CalOwl Revised Draft EIS and other information produced in collaboration
18 with the scientific community.

19
20 58. On Nov. 20, 1998, the United States Forest Service published a notice of intent to
21 prepare an Environmental Impact Statement for the following eleven Sierra Nevada national
22 forests: the Modoc, Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, Sequoia, Inyo,
23 Humboldt-Toiyabe, and the Lake Tahoe Basin Management Unit. To this end, the Forest Service
24 convened public meetings and workshops throughout California.

25
26 59. In 1998, PRC published a report entitled "Conservation of Aquatic Diversity in the
27 Sierra Nevada: Preliminary Identification of Aquatic Diversity Areas and Critical Refuges with
28 Recommendations on their Management" that provided maps and species accounts for the most
biologically important watersheds in the Sierra Nevada, the majority of which lie within the Sierra

1 Nevada national forests' boundaries. The report was the product of collaborative work between
2 PRC and top scientific experts on Sierra Nevada aquatic ecosystems. Subsequently, PRC met with
3 Forest Service staff who were developing portions of the 2001 Framework Draft EIS to discuss
4 incorporation of this new information from the PRC report into the planning process.

5 60. The 2001 Framework Draft EIS was published in April 2000, and focused on five
6 key problem areas, one of which was Aquatic, Riparian and Meadow Ecosystems.

7 61. On January 12, 2001, the Forest Service released its 2001 Framework Final EIS and
8 2001 Framework Record of Decision ("2001 Framework ROD").

9 62. PRC commented upon the draft and final Environmental Impact Statements for the
10 2001 Framework. PRC administratively appealed the 2001 Framework Final EIS and 2001
11 Framework ROD.

12 63. In response to these appeals, the Chief of the Forest Service recommended that the
13 2001 Framework be reviewed in light of recent fires and the perceived urgent need to manage
14 hazardous fuels. The Regional Forester was directed by the Chief of the Forest Service to conduct
15 an additional review of the 2001 Framework solely to address concerns raised by a select group of
16 appellants, including timber companies, livestock grazing permittees, ski resort operators, and off-
17 road vehicle associations.

18 64. The Forest Service permitted conservation groups and the general public to
19 comment solely on a narrow range of topics that mirrored those issues raised by the above select
20 group of appellants.

21 65. PRC and other conservation organizations raised additional issues for further
22 consideration by the Forest Service, yet these issues were cursorily dismissed and subsequently not
23 reviewed in the supplemental environmental analysis process.

24 66. PRC published another report in September 2002 entitled "Watershed Restoration in
25 the Sierra Nevada" which described in great detail an ecologically sound watershed restoration
26

1 approach for both public and private lands and which also addressed flaws in the 2001 Framework.
2 PRC provided a copy of this report to the Forest Service.

3 67. In March of 2003, the Regional Forester concluded his additional review of the 2001
4 Framework and recommended major changes to management of livestock grazing, some recreation
5 activities, and fuel treatments. These recommendations were incorporated into the 2004
6 Framework Draft Supplemental Environmental Impact Statement (“2004 Framework Draft
7 Supplemental EIS”).
8

9 68. Among other flaws, the 2004 Framework Draft Supplemental EIS proposed to
10 weaken protections for aquatic ecosystems and allowed for a significant increase in road building
11 without providing appropriate environmental analysis or scientific rationale.
12

13 69. Individual scientists, as well as members of the Forest Service-appointed Science
14 Consistency Review Team concluded that the 2004 Framework failed to maintain the viability of
15 imperiled species such as the mountain yellow-legged frog and Yosemite toad and identified the
16 need for the Forest Service to more thoroughly address the impacts of road building in the
17 forthcoming 2004 Framework Final Supplemental EIS. These concerns were not fully disclosed in
18 the summary of the Review Team’s Report in Appendix E of the 2004 Framework Final
19 Supplemental EIS.
20

21 70. PRC commented upon the 2004 Framework Draft Supplemental EIS, the 2004
22 Framework Final Supplemental EIS and appealed the 2004 Framework Final Supplemental EIS
23 and 2004 Framework ROD.
24

25 71. Over 6,200 appeals of the 2004 Framework Final Supplemental EIS and 2004
26 Framework ROD were submitted, 27 of which were unique letters.
27

28 72. Despite comments from the Science Consistency Review Team, PRC and others
identifying flaws in the Forest Service’s revised management plan, the 2004 Framework carried
forward the weakened protections.

1 73. In January 21, 2004, Defendant Blackwell approved the 2004 Framework Final
2 Supplemental EIS and signed the 2004 Framework ROD.

3 74. Defendant Bosworth denied PRC’s appeal from Defendant Blackwell’s approvals
4 on November 18, 2004.

5 75. Defendant Rey reviewed and upheld the Chief’s appeal decision on March 21, 2005.

6
7 **CLAIMS FOR RELIEF**

8 **FIRST CAUSE OF ACTION**
9 **Violations of NEPA & APA**
10 **For Failure to Adequately Analyze Direct and Indirect Impacts of the Whole Project**

11 76. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in
12 the preceding paragraphs.

13 77. Under NEPA, Defendants are required to prepare a “detailed” environmental impact
14 statement (“EIS”) discussing the environmental impacts of, and reasonable alternatives to, major
15 federal actions significantly affecting the quality of the human environment, such as approval and
16 implementation of the 2004 Framework.

17 78. The purpose of an EIS is to help public officials make decisions based on
18 understanding of the environmental consequences and to “insure that environmental information is
19 available to public officials and citizens before decisions are made and before actions are taken.”
20 40 C.F.R. § 1500.1(b)-(c).

21 79. An EIS must analyze “direct effects,” which are caused by the action and occur at
22 the same time and place, as well as “indirect effects” which occur later in time or farther removed
23 in distance but are still reasonably foreseeable. 40 C.F.R. § 1508.8. Under NEPA regulations, an
24 EIS must “provide full and fair discussion of significant environmental impacts.” 40 C.F.R. §
25 1502.1.

26 80. The 2004 Framework Final Supplemental EIS does not adequately disclose or
27 analyze the direct and reasonably foreseeable indirect impacts to aquatic ecosystems and associated
28

1 species resulting from the 2004 Framework's substantial increase in the use of the existing road
2 system within the Sierra Nevada national forests.

3 81. The 2004 Framework Final Supplemental EIS does not adequately disclose or
4 analyze the direct and reasonably foreseeable indirect impacts to aquatic ecosystems and associated
5 species resulting from the 2004 Framework's increase in road construction and use, road
6 reconstruction and use, log landing construction and use, and skidtrail construction and use.

7 82. The 2004 Framework Final Supplemental EIS fails to analyze watershed impacts, in
8 particular impacts to soil productivity, soil erosion rates and disruption of hydrologic processes
9 from the sizable road system needed to achieve thinning and salvage and green tree logging targets
10 under the 2004 Framework.

11 83. The 2004 Framework Final Supplemental EIS does not adequately disclose or
12 analyze the direct and reasonably foreseeable indirect impacts to aquatic ecosystems and associated
13 species resulting from the 2004 Framework's increase in the levels of logging, including, *inter alia*,
14 fuels management logging and post fire salvage logging.

15 84. The 2004 Framework Final Supplemental EIS violated NEPA by utilizing a model
16 which failed to adequately consider the existing road system or the 2004 Framework's proposed
17 road-building, reconstruction, log-landings, skid trails and livestock grazing; this, in turn, lead to
18 the failure of the Forest Service to adequately analyze the effects of the 2004 Framework on the
19 aquatic ecosystem and associated species.

20 85. The 2004 Framework Final Supplemental EIS does not analyze the direct and
21 reasonably foreseeable indirect impacts of the project on fish species.

22 86. The 2004 Framework Final Supplemental EIS does not analyze the direct and
23 reasonably foreseeable indirect impacts of the project on fish feeding, breeding, rearing and/or
24 migration habitat.

25 87. The 2004 Framework Final Supplemental EIS violated NEPA by utilizing a model
26 which arbitrarily substituted amphibians for all aquatic species, and by so doing so failed to include
27
28

1 analysis of the impacts of the 2004 Framework on the myriad of fish species that will be adversely
2 affected by its implementation.

3 88. The 2004 Framework Final Supplemental EIS arbitrarily and capriciously
4 categorizes salvage logging as a “restoration strategy” and, in so doing, failed to properly analyze
5 the direct and reasonably foreseeable indirect impacts of 2004 Framework management activity on
6 aquatic ecosystems and associated species.
7

8 89. The 2004 Framework Final Supplemental EIS also does not adequately analyze the
9 significant adverse effects on aquatic ecosystems and associated species from the 2004
10 Framework’s increase of logging within Riparian Conservation Areas or streamside riparian
11 buffers.

12 90. The 2004 Framework Final Supplemental EIS failed to analyze the whole of the
13 2004 Framework by impermissibly deferring such required analysis to future, speculative
14 environmental review.
15

16 91. The 2004 Framework Final Supplemental EIS failed to analyze the direct and
17 indirect impacts of the whole road system permitted under the 2004 Framework.

18 92. Defendants’ failure to adequately consider and evaluate the direct and reasonably
19 foreseeable indirect impacts of the 2004 Framework violates NEPA, 42 U.S.C. § 4332(2)(C), and
20 NEPA’s implementing regulations, and was also arbitrary, capricious, an abuse of discretion, not in
21 accordance with law and without observance of procedure required by law within the meaning of
22 the APA, 5 U.S.C. § 706(2).
23

24 **SECOND CAUSE OF ACTION**

Violation of NEPA & APA

For Failure to Adequately Analyze Cumulative Impacts of the Whole Project

25
26 93. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in
27 the preceding paragraphs.

28 94. A cumulative impact is “the impact on the environment which results from the

1 incremental impact of the action when added to other past, present, and reasonably foreseeable
2 future actions regardless of what agency (Federal or non-Federal) or person undertakes such other
3 actions. Cumulative impacts can result from individually minor but collectively significant actions
4 taking place over a period of time.” 40 C.F.R § 1508.7. An environmental impact statement must
5 evaluate environmental consequences that may occur due to cumulative actions which “when
6 viewed with other proposed actions have cumulatively significant impacts and should therefore be
7 discussed in the same impact statement.” 40 C.F.R § 1508.25 (a) (2).

8 95. Within the eleven Sierra Nevada national forests, the existing road system by itself,
9 and in combination with expanded use for new logging activities permitted by the 2004 Framework
10 (in the present and foreseeable future), causes cumulative impacts to watersheds and aquatic
11 ecosystems.

12 96. The cumulative impacts of the 2004 Framework’s road use and construction include,
13 *inter alia*, increases in sediment yield, disruption of the hydrologic regime, increased risk of
14 landslides and widespread and persistent fragmentation of aquatic ecosystems.

15 97. The 2004 Framework Final Supplemental EIS violates NEPA by failing to
16 adequately assess and disclose the potential cumulative impacts of the 2004 Framework to aquatic
17 ecosystems and associated species.

18 98. The 2004 Framework Final Supplemental EIS violates NEPA by failing to analyze
19 cumulative impacts to aquatic ecosystems and associated species from 2004 Framework permitted
20 activities across the whole of the project area of the Sierra Nevada national forests.

21 99. The 2004 Framework Final Supplemental EIS does not adequately analyze the
22 cumulative impacts on aquatic ecosystems and associated species from increased logging and
23 livestock grazing within the 2004 Framework’s designated Riparian Conservation Areas.

24 100. The 2004 Framework Final Supplemental EIS fails to adequately disclose and
25 evaluate the cumulative impacts of the 2004 Framework’s permitted roads, salvage logging, fuels
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1 management, livestock grazing, mining, herbicides and recreational use on aquatic ecosystems and
2 associated species.

3 101. The 2004 Framework Final Supplemental EIS fails to disclose and analyze the
4 cumulative effects of utilizing the current road system to implement the 2004 Framework,
5 including, *inter alia*, both upslope and cumulative watershed impacts.

6 102. The 2004 Framework Final Supplemental EIS arbitrarily and capriciously
7 categorizes salvage logging as a “restoration strategy,” and in so doing, fails to properly analyze
8 the cumulative impacts of this 2004 Framework management activity on aquatic ecosystems and
9 associated species.

10 103. Defendants’ failure to adequately consider and evaluate the cumulative impacts of
11 the 2004 Framework violates NEPA, 42 U.S.C. § 4332(2)(C), and NEPA’s implementing
12 regulations, and is also arbitrary, capricious, an abuse of discretion, not in accordance with law and
13 without observance of procedure required by law within the meaning of the APA, 5 U.S.C. §
14 706(2).
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16
17 **THIRD CAUSE OF ACTION**
18 **Violations of NEPA & APA**

19 **Failure to Analyze the Whole of the Project**

20 104. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in
21 the preceding paragraphs.

22 105. The 2004 Framework covers approximately 11.4 million acres across the Sierra
23 Nevada national forests.

24 106. The 2004 Framework Final Supplemental EIS violates NEPA by failing to analyze
25 the entire road system and all road management actions proposed under the 2004 Framework.

26 107. The 2004 Framework Final Supplemental EIS arbitrarily relies on the 2001
27 Framework Final EIS and Herger-Feinstein Quincy Library Group (“QLG”) Final EIS, in lieu of
28

1 conducting a new and adequate road impact analysis of the road system and road management
2 actions proposed under the 2004 Framework.

3 108. The QLG Final EIS project area covers only approximately 13% of the 2004
4 Framework plan area.

5 109. The 2004 Framework Final Supplemental EIS reveals that there will be an increase
6 in miles of road and an increase in road management, including construction and reconstruction,
7 from that considered in the 2001 Framework Final EIS and QLG Final EIS, but fails to analyze the
8 environmental impacts of this increase.

9 110. The environmental effects of the 2004 Framework Final Supplemental EIS proposal
10 are different from and cover a much larger planning area than those analyzed in the 2001
11 Framework Final EIS and/or the QLG Final EIS.

12 111. The direct, reasonably foreseeable indirect and cumulative effects of the road system
13 and road management actions undertaken pursuant to the 2004 Framework will exceed those
14 undertaken pursuant to the 2001 Framework Final EIS and/or the QLG Final FEIS, and therefore
15 the Forest Service failed to adequately analyze the direct, reasonably foreseeable indirect and
16 cumulative effects from roads and road management permitted under the 2004 Framework.

17 112. Defendants' failure to analyze the whole of the project violates NEPA and NEPA's
18 implementing regulations and was also arbitrary, capricious, an abuse of discretion, not in
19 accordance with law and without observance of procedure required by law within the meaning of
20 the APA, 5 U.S.C. § 706(2).
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22
23 **FOURTH CAUSE OF ACTION**
24 **Violations of NEPA & APA**

25 **Failure to Analyze Mitigations for all Significant Adverse Environmental Impacts**

26 113. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in
27 the preceding paragraphs.
28

1 114. While concluding that significant adverse impacts will occur from livestock grazing
2 permitted by the 2004 Framework, the 2004 Framework Final Supplemental EIS fails to analyze
3 mitigations for these significant adverse impacts, removes the mitigation measures proposed in the
4 2001 Framework Final EIS and impermissibly defers analysis of such mitigations into the future.

5 115. The 2004 Framework Final Supplemental EIS fails to analyze the adequacy or
6 feasibility of designating specific watersheds as Critical Aquatic Refuges in lieu of developing
7 mitigation measures to substantially reduce the impacts to aquatic ecosystems and associated
8 species.
9

10 116. To the extent that the Forest Service intends its standards, guidelines and direction
11 for the 2004 Framework road system to act as mitigations for significant project impacts, the Forest
12 Service impermissibly deferred the required analysis of such mitigations.

13 117. Defendants' failure to properly analyze mitigations violates NEPA and NEPA's
14 implementing regulations, and was also arbitrary, capricious, an abuse of discretion, not in
15 accordance with law, and without observance of procedure required by law within the meaning of
16 the APA, 5 U.S.C. § 706(2).
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18 **FIFTH CAUSE OF ACTION**
19 **Violations OF APA**

20 118. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in
21 the preceding paragraphs.

22 119. Defendants must supply a reasoned analysis for a change in course. An agency's
23 failure to supply a reasoned analysis for its change in course renders the agency's action arbitrary
24 and capricious and, therefore, invalid.

25 120. Defendants rejected the 2001 Framework, the culmination of more than ten years of
26 study, planning and public participation, and replaced it with the 2004 Framework. Defendants
27 claimed that this abrupt and dramatic change in course was necessary (1) because the 2001
28 Framework was unworkable and (2) to address changed circumstances and new information.

1 121. Defendants' asserted justifications are not supported by substantial evidence or
2 findings or reasoned analysis. Defendants made virtually no attempt to implement the 2001
3 Framework and, therefore, had no evidence that it was or was not workable.

4 122. Also, every example of a "changed circumstance" or of "new information" used by
5 Defendants to justify rejecting the 2001 Framework's ecosystem protections in favor of the 2004
6 Framework's emphasis on increased timber harvesting either is unsupported by the evidence or
7 does not support a decision to reject the 2001 Framework in favor of the 2004 Framework.

8 123. Defendants' decision to reject the 2001 Framework and replace it with the 2004
9 Framework therefore is arbitrary and capricious and in violation of the APA.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of
12 Plaintiff and grant the following relief:

13 1. Issue a declaratory judgment that:

14 A. The 2004 Framework Final Supplemental EIS fails to comply with the
15 National Environmental Policy Act and its implementing regulations;

16 B. Defendants' approval of the 2004 Framework Final Supplemental EIS and
17 2004 Framework ROD was arbitrary, capricious, an abuse of discretion, or otherwise not in
18 accordance with law and was without observance of procedure required by law in violation of the
19 APA;

20 C. Defendants' approval of the 2004 Framework, the 2004 Framework Final
21 Supplemental EIS and 2004 Framework ROD were unsupported by substantial evidence, in
22 violation of the APA;

23 2. Hold unlawful and set aside the 2004 Framework and enjoin its implementation
24 including, but not limited to, all site specific projects and any other specific actions taken pursuant
25 to the 2004 Framework until and unless Defendants fully comply with NEPA and the APA;

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3. Order Defendants to fully comply with NEPA and the APA for any and all federal agency actions on all eleven Sierra Nevada national forests;

4. Award plaintiffs their costs and expenses, including reasonable attorney, expert witness and consultant fees; and

5. Award plaintiffs such further relief as the Court deems appropriate.

DATED: May 13, 2005

Respectfully submitted,

/s/ Babak Naficy
Babak Naficy

/s/ Brian Gaffney
Brian Gaffney

/s/ Deanna Spooner
Deanna Spooner

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Pacific Rivers Council