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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA
15 SACRAMENTO DIVISION

17 CALIFORNIA FORESTRY ASSOCIATION)
and AMERICAN FOREST & PAPER)
18 ASSOCIATION,)
19 Plaintiffs,)
20 v.)
21 DALE BOSWORTH, Chief, United States)
Forest Service; MIKE JOHANNNS, Secretary of)
22 Agriculture; and JACK A. BLACKWELL,)
Regional Forester, Pacific Southwest Region,)
23 United States Forest Service,)
24 Federal Defendants.)

Case No. 2:05-CV-00905-MCE-DAD
**FEDERAL DEFENDANTS’
NOTICE OF RELATED CASES**

1 Counsel for Federal Defendants in the above-captioned case hereby gives notice that it
2 appears that the following three cases are related within the meaning of LR 83-123(a): Sierra
3 Nevada Forest Protection Campaign v. Rey, No. CIV-S-05-0205-MCE-GGH (filed Jan. 31,
4 2005) (“SNFPC v. Rey”); Calif. ex rel. Lockyer v. U.S. Dep’t of Agric., No. CIV-S-05-0211-
5 MCE-GGH (filed Feb. 1, 2005); and Calif. Forestry Ass’n v. Bosworth, Case No. 2:05-CV-
6 00905-MCE-DAD (filed Dec. 10, 2004 in D.D.C.; transferred April 5, 2005; docketed May 9,
7 2005 in E.D. Cal.). All three of these cases involve direct challenges to the 2004 Sierra Nevada
8 Forest Plan Amendment (“2004 Framework”), a decision by the United States Forest Service that
9 amends forest plans and provides management direction for eleven national forests within the
10 Sierra Nevada province.^{1/}

11 All three cases involve claims brought under the National Environmental Policy Act of
12 1969 (“NEPA”), 42 U.S.C. § 4321 *et seq.*, challenging the adequacy of the analysis in the final
13 supplemental environmental impact statement (“FSEIS”) that accompanies the 2004 Framework.
14 In Lockyer, the California Attorney General alleges four claims under NEPA: (1) that the
15 process accompanying the 2004 Framework was designed to rationalize a decision already made,
16 id., Compl. ¶¶ 40-44; (2) that the FSEIS for the 2004 Framework failed to analyze environmental
17 impacts adequately, id. ¶¶ 45-48; (3) that the FSEIS failed to consider alternatives to the adoption
18 of the 2004 Framework, id. ¶¶ 49-52; and (4) that the FSEIS failed to provide complete
19 information about the status and effects of various wildlife species, including the California
20 spotted owl, Yosemite toad, and willow flycatcher. Id. ¶¶ 53-57.

21 In SNFPC v. Rey, environmental organizations raise four challenges to the 2004
22 Framework^{2/} under NEPA, alleging: (1) that the FSEIS failed to analyze adequately the effects
23 to several wildlife species (California spotted owl, Pacific fisher, American marten), id., Am.

24
25 ^{1/} This District Court has already issued an order finding that Lockyer and SNFPC v. Rey are
26 related. The third case, California Forestry, was initially filed in the District Court for the
27 District of Columbia and was ordered to be transferred to this judicial district on April 5, 2005.
28 On May 9, 2005, the case was docketed in the Eastern District of California.

^{2/} The plaintiffs in SNFPC v. Rey also are challenging the Basin Project, a forest management
project on the Plumas National Forest that is not challenged in the other cases.

1 Compl. ¶¶ 107-115; (2) that cumulative impacts of timber harvest were not adequately analyzed,
2 id., ¶¶ 116-119; (3) that the FSEIS failed to analyze a reasonable range of alternatives, id., ¶¶
3 120-126; and (4) that the Forest Service violated NEPA by failing to conduct scoping for the
4 FSEIS. Id. ¶¶ 127-131. In California Forestry, forest industry associations allege that the FSEIS
5 violated NEPA by failing to evaluate an alternative of managing the national forests under pre-
6 Framework forest plans, and by failing to address changes in timber harvest levels that would
7 result from the 2004 Framework and the prior management direction in the 2001 Sierra Nevada
8 Forest Plan Amendment (“2001 Framework”). Id., Am. Compl. ¶¶ 30, 32.

9 All three cases also include an independent claim that the 2004 Framework violates the
10 Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.* In Lockyer, the California
11 Attorney General alleges that the Forest Service failed to provide a “reasoned analysis for its
12 change in course” when it decided to adopt the 2004 Framework, which replaces prior
13 management direction in the 2001 Framework. Id., Compl. ¶¶ 34-39. In SNFPC v. Rey, the
14 environmental organizations allege that the 2004 Framework violates the APA because there is
15 not any new scientific information regarding the impacts to wildlife species since the adoption of
16 the 2001 Framework that justifies the changes made in the 2004 Framework. Id., Am. Compl. ¶¶
17 102-106. Finally, in California Forestry, the forest industry associations allege that both the
18 2004 Framework and the 2001 Framework violate the APA because they would not sufficiently
19 reduce fire risk, because they attempt to maintain a high percent of the forest in old growth
20 conditions, and because they set a diameter limit which is allegedly unnecessary for species
21 viability. Id., Am. Compl. ¶¶ 36-38.

22 Finally, two of the cases allege that the 2004 Framework violates the National Forest
23 Management Act (“NFMA”), 16 U.S.C. § 1604. The environmental organizations in SNFPC v.
24 Rey allege that the Forest Service has violated NFMA by: (1) failing to maintain viability of
25 certain wildlife species (California spotted owl, Pacific fisher, and American marten), id., Am.
26 Compl. ¶¶ 66-82; (2) failing to monitor and obtain inventories of populations of wildlife species
27 designated as “management indicator species,” id. ¶¶ 93-97; and (3) failing to comply with
28 certain procedural requirements under NFMA for forest plan development. Id. ¶¶ 98-101.

1 The forestry associations in California Forestry allege that the 2004 Framework exceeds
2 the Forest Service’s authority to provide for wildlife diversity and that the Forest Service violates
3 NFMA and other statutes^{3/} by failing to manage the national forests in the Sierra Nevada for the
4 purpose of maintaining a continuous supply of timber. See id., Am. Compl. ¶¶ 22(a), 22(b),
5 22(c), 22(d). The forestry associations also challenge the legality of the regulations under which
6 the environmental organizations in SNFPC v. Rey bring their claims. See id. ¶ 22(d) (alleging
7 that the Framework decisions and the “now-rescinded 36 C.F.R. § 219.19 (1999) also unlawfully
8 reverse the priorities set by the NFMA diversity provision”). Finally, the forestry associations
9 also allege that the 2004 Framework violates certain procedural requirements under NFMA for
10 forest plan development. Calif. Forestry Assoc., Am. Compl. ¶¶ 22(d), 25(e), 25(g), 26(d).

11 All three cases involve challenges to the same agency decision, the 2004 Framework,
12 which provides management direction for eleven national forests in the Sierra Nevada.^{4/} See LR
13 83-123(a)(2) (cases are related if they “involve the same property, transaction or event”). All
14 three cases involve claims under NEPA that the FSEIS for the 2004 Framework should have
15 considered additional alternatives. Two of the cases also include claims under NFMA where a
16 consistent result should follow: the plaintiffs in SNFPC v. Rey allege that the 2004 Framework
17 does not adequately maintain viability of wildlife species, while the plaintiffs in California
18 Forestry allege that the 2004 Framework exceeds the Forest Service’s authority to provide for
19 such species. See LR 83-123(a)(3). Additionally, the cases involve review of the same extensive
20 administrative record for the 2004 Framework and 2001 Framework, including factual details
21 regarding of management of eleven national forests across approximately 11.5 million acres.^{5/}

22
23 ^{3/} The forestry associations raise additional claims under two statutes not directly involved in the
24 other cases, the Organic Administration Act of 1897 (“Organic Act”), 16 U.S.C. § 473 *et seq.*;
and the Multiple-Use Sustained-Yield Act of 1960 (“MUSYA”).

25 ^{4/} As noted above, SNFPC v. Rey also includes a challenge to the Basin Project. The California
26 Forestry case also includes a direct challenge to the 2001 Framework.

27 ^{5/} Although the administrative records for each case may contain additional documents not
28 included in the other, for example the administrative record for the Basin Project in SNFPC v.
Rey, they will all share an eight-volume administrative record for the Framework decisions. See
SNFPC v. Rey, Fed. Defs.’ Not. of Lodging of Admin. R. (May 2, 2005); id., Fed. Defs.’ Am.

1 See LR 83-123(a)(4) (cases are related if they would entail substantial duplication of labor if
2 heard by different judges). It therefore appears to the undersigned counsel that the three cases
3 are related under LR 83-123(a).

4 Respectfully submitted this 10th day of May 2005.

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28 Decl. of Cathleen J. Thompson (May 3, 2005).

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 10, 2005, I electronically filed the foregoing Federal
3 Defendants' NOTICE OF RELATED CASES with the Clerk of the Court in the following cases:
4 (1) *Calif. ex rel. Lockyer v. U.S. Dep't of Agric.*, No. CIV-S-05-0211-MCE-GGH; (2) *Sierra*
5 *Nevada Forest Protection Campaign v. Rey*, No. CIV-S-05-0205-MCE-GGH; and (3) *Calif.*
6 *Forestry Ass'n v. Bosworth*, Case No. 2:05-CV-00905-MCE-DAD. Such filing used the
7 CM/ECF system, which caused a copy to be served upon the following individuals:

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5 Dated: May 10, 2005

6 /s Brian C. Toth
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