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11 STATE OF CALIFORNIA, ex rel. BILL LOCKYER,
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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14 SACRAMENTO DIVISION

16 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
17 **rel. BILL LOCKYER, ATTORNEY GENERAL**

18 Plaintiff,

19 v.

20 **UNITED STATES DEPARTMENT OF**
21 **AGRICULTURE; MIKE JOHANNNS, Secretary of**
22 **the Department of Agriculture; MARK REY, Under**
23 **Secretary of the Department of Agriculture;**
24 **UNITED STATES FOREST SERVICE; DALE**
BOSWORTH, Chief, United States Forest Service;
and JACK BLACKWELL, Regional Forester,
Pacific Southwest Region, United States Forest
Service,

25 Defendants.

Case No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

(Administrative Procedure Act, 5
U.S.C. § 701 *et seq*; National
Environmental Policy Act, 42
U.S.C. §§ 4321 *et seq*.)

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INTRODUCTION

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2 1. In January 2001, after over a decade of scientific study, meetings, discussions,
3 planning sessions, public comments, and drafting and redrafting, the United States Forest
4 Service ("Forest Service") issued the final Sierra Nevada Forest Plan Amendment ("2001
5 Framework"), governing management of eleven national forests in the Sierra Nevada and
6 millions of acres of some of the most scenic and environmentally important land in California.
7 The process, which required all participants to make difficult choices and significant
8 concessions, yielded a landmark management plan. The new plan took a region-wide approach
9 to forest planning, superseding the existing patchwork, forest-by-forest management approach,
10 and struck a reasoned balance of competing uses for the national forests while still conserving
11 old growth forests, preserving the area's unique and sensitive wildlife and ecosystems, and
12 protecting Californians from wildfire.

13 2. The 2001 Framework did not, however, survive the change in administration. In
14 November of 2001, the new Chief of the Forest Service affirmed the January 2001 Framework.
15 But the Forest Service's apparent commitment to the 2001 Framework was short-lived. In
16 December 2001, the newly-appointed Regional Forester for the Pacific Southwest Region began
17 an extensive "review" of the 2001 Framework: the plan, a decade in the making, was then less
18 than one year old and had not yet been implemented.

19 3. Little more than two years after the Forest Service announced its review, without any
20 meaningful period for implementation of the 2001 Framework, the Forest Service issued a
21 superseding Framework and Final Supplemental Environmental Impact Statement ("FSEIS")
22 ("2004 Framework"). Rather than merely making minor changes to the 2001 Framework, the
23 Forest Service, in effect, revoked it, removing its most significant resource-protective Standards
24 and Guidelines and increasing green timber harvesting by more than four-fold.

25 4. The result of the agency's "review" of the 2001 Framework on the change of
26 administration was predetermined – the Forest Service intended from the outset to allow
27 significantly more timber harvesting, and harvesting of larger trees. The Forest Service
28 informed the public that the national forests must be cut to prevent their destruction by fire,

1 implying that only trees that pose a fire hazard would be harvested. In reality, as the Forest
2 Service has acknowledged, many of the large trees that will now be cut pose absolutely no fire
3 danger. These large trees will be cut only because they will generate funds for the agency.

4 5. In dismantling the 2001 Framework, the Forest Service acted without the new
5 information it stated justified its review, without scientific study or insight gained from
6 implementation, and without any meaningful evaluation of alternatives and impacts. In short,
7 the Forest Service acted arbitrarily and capriciously in jettisoning the 2001 Framework, in
8 violation of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 706 *et seq.*, and failed to
9 take an objective, "hard look" at the consequences of its decision as required by the National
10 Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.* The Court therefore should
11 invalidate the 2004 Framework and reinstate the 2001 Framework.

12 **JURISDICTION AND VENUE**

13 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws
14 of the United States) and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

15 7. An actual controversy exists between the parties within the meaning of 28 U.S.C.
16 § 2201(a). The Court may grant declaratory relief, injunctive relief, and any additional relief
17 pursuant to 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706.

18 8. In approving the 2004 Framework and upholding it on administrative appeal, the
19 Forest Service has made a final administrative determination that is subject to review under the
20 APA. 5 U.S.C. § 702. The People of California, who have an interest in the use and enjoyment
21 of the national forests in the Sierra, and an interest in preserving and protecting the natural
22 resources of those forests, have suffered legal wrong because of the Forest Service's action and
23 have been adversely affected or aggrieved by the Forest Service's action within the meaning of
24 the APA and NEPA.

25 9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because all
26 parties have offices within this district and therefore reside in this district, because a substantial
27 part of the events or omissions giving rise to the claims occurred in this district, and/or a
28 substantial part of the property that is the subject of the action is situated in this district.

1 Moreover, other cases that relate to the provisions of the 2001 Framework have been filed in this
2 judicial district. Intradistrict venue in the Sacramento Division is proper pursuant to Civil Local
3 Rule 3-120 because a number of the national forests affected by the Forest Service's decision are
4 located in the relevant counties.

5 PARTIES

6 10. Plaintiff, the PEOPLE OF THE STATE OF CALIFORNIA, brings this action by and
7 through Attorney General Bill Lockyer ("People"). Attorney General Bill Lockyer is the chief
8 law enforcement officer of the State and has the authority to file civil actions in order to protect
9 public rights and interests and the environment. Cal. Gov. Code §§ 12600–12612; Cal. Const.,
10 art V, § 13. This challenge is brought pursuant to the Attorney General's independent
11 constitutional, common law, and statutory authority to represent the public interest.

12 11. Defendant UNITED STATES DEPARTMENT OF AGRICULTURE is the federal
13 agency responsible for the activities of Defendant United States Forest Service.

14 12. Defendant UNITED STATES FOREST SERVICE ("Forest Service") is the federal
15 agency responsible for the actions and documents that are challenged by the People in the action.

16 13. Defendant MIKE JOHANNNS, the Secretary of the United States Department of
17 Agriculture, is responsible for the Department of Agriculture's activities and is sued in his
18 official capacity.

19 14. Defendant MARK REY, the Under Secretary of the United States Department of
20 Agriculture, is responsible for the Department of Agriculture's activities and is sued in his
21 official capacity.

22 15. Defendant DALE BOSWORTH, the Chief of the United States Forest Service, is
23 responsible for the that agency's activities and is sued in his official capacity.

24 16. Defendant JACK BLACKWELL, Regional Forester for the Pacific Southwest
25 Region, is responsible for the Region's activities and is sued in his official capacity.

26 SUMMARY OF LAW

27 17. The Forest Service manages the national forests pursuant to the National Forest
28 Management Act ("NFMA"), 16 U.S.C. §§ 1600-1687, and must comply with its mandates.

1 NFMA requires the Forest Service to develop a land and resource management plan for every
2 forest it manages. 16 U.S.C. § 1604. Such plans must provide for multiple uses of the forest,
3 including not only timber production, but also recreation, wildlife habitat, and wilderness. 16
4 U.S.C. § 1604(e)(1). Land and resource plans must ensure the continued diversity of plant and
5 animal communities and the continued viability of wildlife. 16 U.S.C. § 1604(g)(3)(B); 36
6 C.F.R. § 219.10(b). The 2001 Framework was, and the 2004 Framework is, an amendment to
7 the individual land and resource plans for the eleven national forests in the Sierra Nevada. It is
8 the Forest Service's decision to replace the 2001 Framework with the 2004 Framework that is at
9 issue in this action.

10 18. The APA governs agency decision making. In general, a court must set aside an
11 agency's "action, findings, and conclusions" if it finds them to be "arbitrary, capricious, an abuse
12 of discretion, or otherwise not in accordance with law" or taken "without observance of
13 procedure required by law[.]" 5 U.S.C. § 706(2)(A), (D). Under Supreme Court precedent,
14 where an agency reverses course, it must supply a reasoned analysis for the change.

15 19. Review of an agency's compliance with NEPA is governed by the APA. NEPA is the
16 "basic national charter for protection of the environment." 40 C.F.R. §1500.1(a). NEPA ensures
17 that "public officials make decisions that are based on understanding of environmental
18 consequences" and "that environmental information is available to public officials and citizens
19 before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b), (c). Under
20 controlling case law, the reviewing court must satisfy itself that the agency took a
21 comprehensive "hard look" at potential environmental impacts and examined alternatives to the
22 proposed action.

23 **PROCEDURAL AND FACTUAL BACKGROUND**

24 **The Forest Service Takes a Region-Wide, Ecosystem-Based Approach to Forest** 25 **Management in the 2001 Framework**

26 20. The 2001 Framework had its origins in the early 1990s as concerns about the
27 continued survival of the California spotted owl mounted, and as interest in more
28 comprehensive, ecosystem-based forest management grew. The 2001 Framework's ecosystem-

1 based approach was a result of the Forest Service's 1993 interim California Spotted Owl
2 ("CASPO") guidelines and the revision process that followed. It sprang also from the 1996
3 report by the congressionally-authorized Sierra Nevada Ecosystem Project ("SNEP Report").
4 The SNEP Report analyzed existing information about the Sierra's forests and examined
5 proposed alternative, ecosystem-based management strategies. The SNEP Report noted that
6 "[o]ne problem is irreversible loss of species and loss of distinct populations of species. . . .
7 Options exist now for charting the course toward restoration. Failure to use these options
8 increases the chance of irreversible loss and reduces the range of options available over time."
9 *Status of the Sierra Nevada, Summary of the Sierra Nevada Ecosystem Project Report* (June
10 1996) at p. 22.

11 21. In response to this growing recognition of the importance of ecosystem-based
12 approaches and of the need to change longstanding forest management practices, the Forest
13 Service began the process that ultimately resulted in a new, comprehensive management
14 strategy, the 2001 Framework. On November 20, 1998, the Forest Service gave notice that it
15 intended to prepare an EIS for the Sierra Nevada Forest Plan Amendment, which would amend
16 the individual forest plans for the eleven national forests in the Sierra. 63 Fed. Reg. 64,452
17 (1998). After public input and scientific review, on May 5, 2000, the Forest Service made its
18 multi-volume Draft EIS ("DEIS") available to the public. 65 Fed. Reg. 26,198 (2000). The
19 document presented and compared eight different alternatives for stewardship of the Sierra's
20 national forests. The alternatives were evaluated for their ability to "sustain the desired
21 conditions of old forest ecosystems; protect and restore aquatic, riparian, and meadow
22 ecosystems; improve fire and fuels management; combat noxious weeds; and sustain desired
23 conditions of lower westside hardwood ecosystems in the affected national forests." DEIS,
24 Summary at p. 1.

25 22. After close of the public comment period and further review, on January 12, 2001, the
26 Regional Foresters for the Pacific Southwest and Intermountain Regions issued a Final EIS
27 ("FEIS") and Record of Decision ("ROD") for the Sierra Nevada Forest Plan Amendments
28 ("2001 Framework"). 66 Fed. Reg. 2,903 (2001). The 2001 Framework was the culmination of

1 more than ten years of study, review, planning and public participation and represented a
2 significant, positive change in federal land use management toward protecting important non-
3 consumptive forest values of the Sierra, including old growth and riparian ecosystems.

4 The Regional Foresters selected "Modified Alternative 8," described in the ROD as follows:

5
6 "[U]ncertainty about the possible effects of management activities on wildlife habitat is a
7 dominant concern in Modified Alternative 8. Management direction is designed to address
8 uncertainty and increase confidence that management actions will not adversely affect
9 wildlife habitat. . . . Modified Alternative 8 provides for species conservation while
10 addressing fire and fuels management. Modified Alternative 8 recognizes the need to
11 reduce the threat of fire to human communities; it provides for more intensive fuel
12 treatments in urban wildland intermix zones. Outside of these zones, direction for treating
13 forest fuels is cautious, ensuring that treatments do not degrade habitat.

14 2001 Framework ROD at p. 21.

15 **The Chief of the Forest Service Upholds the 2001 Framework on Appeal**

16 23. The timber industry, ranchers, and other interests vested in the consumptive use of
17 forest resources administratively challenged the 2001 Framework.^{1/} On November 16, 2001, the
18 Chief of the Forest Service, who had been appointed by the new administration, rejected the
19 arguments made by the appellants, and affirmed the decision to adopt the 2001 Framework. In
20 affirming the plan, the Chief instructed the Regional Foresters to conduct additional review and
21 analysis in certain limited areas, including whether there could be additional "flexibility" in fuels
22 treatment while still protecting wildlife in the short and long term.

23 **The Forest Service Immediately Begins a "Broad Review" of the 2001 Framework**

24 24. On the change of administration, the Forest Service's apparent commitment to the
25 2001 Framework was short-lived. On December 31, 2001, the newly-appointed Regional
26 Forester for the Pacific Southwest Region, Jack Blackwell, announced by letter the
27 commencement of "a broad review of the elements of and basis for the Sierra Nevada Forest
28 Plan Amendment and associated Final Environmental Impact Statement." The Forest Service
commenced this "broad review" even though it had not attempted to implement the 2001

1. The California Attorney General intervened in opposition to the administrative
appeals and in support of the 2001 Framework.

1 Framework.

2 25. At the same time that the Forest Service was engaging in an ostensibly objective
3 review of the 2001 Framework, it paid a consultant to create public relations material designed to
4 promote the agency's predetermined decision to dismantle the 2001 Framework. The result was
5 the Forest Service's "Forests with a Future" campaign, which played to the public's fears
6 concerning wildfire, falsely minimized potential impacts to wildlife and habitat from increased
7 timber harvesting, and advocated more active management and removal of large trees. While the
8 Forest Service's "review" of the 2001 Framework was underway, the agency mailed a glossy
9 "Forests with a Future" brochure to persons and entities that had participated in the process that
10 led to the 2001 Framework.

11 **In an About Face, the Forest Service Jettisons the 2001 Framework and Issues the 2004**
12 **Framework Allowing for Increased Timber Harvesting**

13 26. On April 7, 2003, the Forest Service stated its intent to prepare an SEIS for its
14 proposal to "revise" the 2001 Framework. 68 Fed. Reg. 16,758 (2003). The notice stated:
15 "Specifically, the proposed action responds to changed circumstances and new information
16 identified during a year-long review of the [2001 Framework]." *Id.* The Forest Service
17 announced availability of its Draft SEIS ("DSEIS") on June 13, 2003. 68 Fed. Reg. 35,406
18 (2003). Though the Forest Service stated that it was merely "adjust[ing] existing management
19 direction to better achieve the goals" of the 2001 Framework (DSEIS, Summary at p. 2), in fact,
20 the DSEIS proposed a massive overhaul of the Framework's provisions, including, but not
21 limited to, rejecting the 2001 Framework's conservative approach to habitat and wildlife
22 protection and allowing significantly more logging in the Sierra's national forests.

23 **The Forest Service's Justifications for its Abrupt Change in Course are Not Supported by**
24 **the Evidence**

25 27. The Forest Service's stated justifications for rejection of the 2001 Framework are not
26 supported by the evidence. While the Forest Service stated that the 2001 Framework was
27 unworkable, it expended virtually no effort to implement the 2001 Framework. And while the
28 Forest Service stated that there were changed circumstances and new information that required

1 the revision, each example cited by the agency either was fully considered in the original
2 decision to adopt the 2001 Framework or does not support rejection of the 2001 Framework. For
3 example, the Forest Service justified rejection of the 2001 Framework's cautious approach in the
4 face of uncertainty regarding California spotted owl populations on the ground that there was
5 new information about owl populations. The "new" population information, however, actually is
6 the result of applying a new analytical method to already existing data. As the Forest Service
7 itself concedes in the FSEIS, the new analysis "still identifies a great deal of uncertainty
8 regarding rangewide [owl] population trends" and therefore does not supply a reasoned basis for
9 reversing course by increasing logging.

10 28. Additional examples of the Forest Service's unsupported justifications are
11 summarized below:

- 12 • The U.S. Fish and Wildlife Service's decision not to list the California spotted owl as a
13 threatened species is not "new information" justifying rejection of the 2001 Framework
14 because the decision expressly was based on the protections for the owl set forth in the
15 2001 Framework;
- 16 • Owl reproduction data from 2002 are not "new information" justifying the agency's
17 action because the Forest Service's own analysis acknowledges that a single year of
18 reproduction data is insufficient to allow any conclusions about population trends;
- 19 • The risk of habitat loss from fire was recognized and addressed in the 2001
20 Framework, and thus there is no "new evidence" on this topic;
- 21 • The impacts of the 2001 Framework's restrictions on grazing were known, analyzed,
22 and considered at the time the 2001 Framework was adopted and, therefore, potential
23 impacts to grazing permit holders do not constitute a "changed circumstance";
- 24 • Any new information about the population status and distribution of the Yosemite toad
25 and the willow flycatcher are consistent with these species' continued decline and,
26 thus, does not support a finding that the 2001 Framework's protective Standards and
27 Guidelines should be eliminated;
- 28 • The Forest Service found the 2001 Framework consistent with the National Fire Plan
and therefore there are no "changed circumstances" concerning adoption and
implementation of the National Fire Plan; and
- The Forest Service disclosed that the 2001 Framework would reduce timber harvesting
in the Sierra in general and in the Quincy Library Project area in particular and fully
analyzed these impacts, and, therefore, there is no "new information" relating to these
topics.

29. On September 9, 2003, the California Attorney General's Office, along with
numerous other individuals and entities, submitted detailed comments on the DSEIS, pointing

1 out the significant defects in the agency's proposal to jettison the 2001 Framework. Those
2 comments noted that the Forest Service's stated reasons for rejecting the 2001 Framework were
3 not supported by the evidence and that the DSEIS was deficient under NEPA.

4 30. The DSEIS's substantial deficiencies under NEPA included the following: tables in
5 the DSEIS that purported to compare the 2001 Framework to the proposed action were confusing
6 and misleading; the stated "purpose and need" for the revision was disingenuous; the DSEIS
7 failed to evaluate any alternatives to the complete rejection of the 2001 Framework, even though
8 alternatives were available and brought to the agency's attention; the DSEIS purported to rely on
9 the FEIS for the 2001 Framework, even though the analyses contained in that document did not
10 address the current project; and the DSEIS failed to evaluate the incremental and cumulative
11 impacts of the Forest Service's abrupt change in direction (*e.g.*, the impacts of rejecting a
12 cautious management approach and substantially increasing timber harvesting).

13 31. Notwithstanding these comments, the Forest Service made no significant changes to
14 its proposal or its supporting environmental documents from the DEIS to the Final SEIS
15 ("FSEIS"). Accordingly, substantial deficiencies in the agency's decision and FSEIS remain,
16 including, but not limited to, those outlined above.

17 32. In January 2004, the Forest Service issued the FSEIS and ROD for the 2004
18 Framework. 69 Fed. Reg. 4,512 (2004). On November 18, 2004, the Chief denied all
19 administrative appeals of the 2004 Framework, including the one filed by the California
20 Attorney General, and upheld the Regional Foresters' decision to replace the 2001 Framework
21 with the 2004 Framework. *See*
22 http://www.fs.fed.us/emc/applit/includes/2004snfpa_decision.pdf. On December 29, 2004,
23 Under Secretary of Agriculture Mark Rey announced that he would exercise discretionary
24 review authority of the Chief's decision to deny the appeals of the 2004 Framework. The Forest
25 Service stated that the Under Secretary had until January 28, 2005, to make a decision. *See*
26 <http://www.fs.fed.us/r5/>; *see also* 36 C.F.R. § 217.17. The Under Secretary did not issue a
27 decision by the end of the 30-day review period, as required by Forest Service regulations. *See*
28 36 C.F.R. § 217.17(g). Appellants and intervenors are therefore deemed to have exhausted their

1 administrative remedies for purposes of judicial review. *Id.*

2 33. The Forest Service led the public to believe that the changes from the 2001
3 Framework to the 2004 Framework were minor. In fact, however, the 2004 Framework is
4 opposed to the 2001 Framework in virtually every material respect related to the protection of
5 wildlife and habitat and the approach to scientific uncertainty, and reflects the agency's new
6 willingness to risk long term, irretrievable losses in exchange for short term economic gains.

7
8 **FIRST CAUSE OF ACTION**

9 **(Failure to supply a reasoned analysis to justify the rejection of the 2001 Framework in
10 violation of the APA)**

11 34. Plaintiff hereby realleges and incorporates each and every paragraph above.

12 35. Pursuant to 5 U.S.C. § 706 and controlling case law, an agency is obligated to supply
13 a reasoned analysis for a change in course. An agency's failure to supply a reasoned analysis for
14 its change in course renders the agency's action arbitrary and capricious and, therefore, invalid.

15 36. The Forest Service rejected the 2001 Framework, the culmination of more than ten
16 years of study, planning and public participation, and replaced it with the 2004 Framework. The
17 Forest Service claimed that this abrupt and dramatic change in course was necessary (1) because
18 the 2001 Framework was unworkable and (2) to address changed circumstances and new
19 information.

20 37. The Forest Service's asserted justifications are not supported. The Forest Service
21 made virtually no attempt to implement the 2001 Framework and, therefore, had no evidence
22 that it was unworkable.

23 38. In addition, each example of a "changed circumstance" or of "new information" used
24 by the Forest Service to justify rejecting the 2001 Framework's cautious approach in favor of the
25 2004 Framework's emphasis on increased timber harvesting either is unsupported by the
26 evidence or does not support a decision to reject the 2001 Framework in favor of the 2004
27 Framework.

28 39. The Forest Service's decision to reject the 2001 Framework and replace it with the
2004 Framework therefore is arbitrary and capricious.

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SECOND CAUSE OF ACTION

(Failure to conduct an objective, good faith examination of the potential impacts of the 2004 Framework in violation of NEPA and the APA)

40. Plaintiff hereby realleges and incorporates each and every paragraph above.

41. An agency contemplating a course of action subject to NEPA is required to take a "hard look" at the potential impacts of its actions. The examination must be undertaken objectively and in good faith, not as a mere exercise to justify a predetermined outcome. "Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made." 40 C.F.R. § 1502.2(g).

42. The Forest Service's decision to jettison the 2001 Framework and replace it with a new management plan allowing for increased timber harvesting and other extractive and consumptive uses was predetermined, as shown by, among other things, the absence of any reasoned analysis in the FSEIS or the record for the change in course; pre-decision statements by agency officials favoring increased timber harvesting and grazing; and the agency's preparation and distribution of public relations materials during the NEPA process that appeared to be designed to raise public fears of wildfire danger, downplay the impacts of increased timber harvesting, and chill public participation in the environmental review process.

43. The process that led to the 2004 Framework was neither objective nor undertaken in good faith, but was designed to rationalize a decision already made. Accordingly, the Forest Service, in rejecting the 2001 Framework and replacing it with the 2004 Framework, failed to take the "hard look" required by NEPA.

44. The Forest Service's failure to comply with NEPA constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

THIRD CAUSE OF ACTION

(Failure adequately to discuss the environmental consequences of replacing the 2001 Framework with the 2004 Framework in violation of NEPA and the APA)

1 45. Plaintiff hereby realleges and incorporates each and every paragraph above.

2 46. An agency in an EIS is required to discuss the project's environmental consequences.

3 The environmental consequences section "forms the scientific and analytic basis" for comparing
4 the alternatives. 40 C.F.R. § 1502.16. The EIS must examine

5 the environmental impacts of the alternatives including the proposed action, any adverse
6 environmental effects which cannot be avoided should the proposal be implemented, the
relationship between short-term uses of man's environment and the maintenance and

7 enhancement of long-term productivity, and any irreversible or irretrievable commitments
of resources which would be involved in the proposal should it be implemented.

8 40 C.F.R. § 1502.16. The environmental consequences section must also discuss, among other
9 things, "[n]atural or depletable resource requirements and conservation potential of various
10 alternatives and mitigation measures" and "[m]eans to mitigate adverse environmental impacts
11" 40 C.F.R. § 1502.16(f), (h).

12 47. The FSEIS's discussion of the environmental consequences of rejecting the 2001
13 Framework is inadequate because, among other things, it (1) fails adequately to describe the
14 project; (2) minimizes the differences between the 2001 Framework and the 2004 Framework
15 and therefore misleads the reader and chills public comment; (3) does not allow the reader to
16 compare the 2004 Framework to the 2001 Framework, or to any of the alternatives examined in
17 the FEIS; (4) does not examine the impacts of the Forest Service's change in addressing risk and
18 uncertainty; (5) does not analyze the impacts of increasing local control over timber harvesting
19 and grazing; and, (6) in general, fails adequately to address the incremental and cumulative
20 impacts of rejecting the 2001 Framework and replacing it with the 2004 Framework. In addition,
21 the FSEIS does not discuss means to mitigate the incremental and cumulative impacts of
22 rejecting the 2001 Framework and replacing it with the 2004 Framework.

23 48. The Forest Service's failure to comply with NEPA constitutes arbitrary and capricious
24 agency action, is an abuse of discretion, and is contrary to law and to procedures required by
25 law. 5 U.S.C. § 706(2)(A), (D).

26
27 **FOURTH CAUSE OF ACTION**

28 **(Failure to evaluate alternatives to the complete rejection of the 2001 Framework in**

1 **violation of NEPA and the APA)**

2 49. Plaintiff hereby realleges and incorporates each and every paragraph above.

3 50. NEPA requires that federal agencies consider all reasonable alternatives to a
4 proposed action. 42 U.S.C. § 4332(E); 40 C.F.R. §§ 1501.2(c), 1507.2. Agencies must "[s]tudy,
5 develop and describe appropriate alternatives to recommended courses of action in any proposal
6 which involves unresolved conflicts concerning alternative uses of available resources" 40
7 C.F.R. § 1507.2(d). In an EIS, the agency must "[r]igorously explore and objectively evaluate
8 all reasonable alternatives" 40 C.F.R. § 1502.14(a). Even reasonable alternatives not
9 within the jurisdiction of the lead agency must be considered. 40 C.F.R. § 1502.14(c). The
10 alternatives section is the "heart of the environmental impact statement." 40 C.F.R. § 1502.14.

11 51. In the FSEIS, the Forest Service, in effect, considers only one alternative, the
12 complete rejection of the 2001 Framework and replacement by the 2004 Framework to allow for
13 increased consumptive and extractive uses, including timber harvesting. While the Forest
14 Service emphasizes the importance of timber harvesting to continued agency funding, it has
15 completely failed to consider any other reasonable alternative for generating funds. Other
16 reasonable alternatives are available to the agency and were brought to the agency's attention by
17 the Attorney General and others. The agency's failure to consider other reasonable alternatives
18 violates NEPA.

19 52. The Forest Service's failure to comply with NEPA and its supporting regulations
20 constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to
21 law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

22 **FIFTH CAUSE OF ACTION**

23 **(Failure adequately to address incomplete or unavailable information in violation of NEPA**
24 **and the APA)**

25 53. Plaintiff hereby realleges and incorporates each and every paragraph above.

26 54. NEPA requires that an agency address incomplete or unavailable information in the
27 EIS. 40 C.F.R. § 1502.22. "If the incomplete information . . . is essential to a reasoned choice
28 among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall

1 include the information in the environmental impact statement." 40 C.F.R. § 1502.22(a). If,
2 however, the information cannot be obtained, the agency must include in the EIS:

- 3 (1) A statement that such information is incomplete or unavailable;
- 4 (2) a statement of the relevance of the incomplete or unavailable information to evaluating
reasonably foreseeable significant adverse impacts on the human environment;
- 5 (3) a summary of existing credible scientific evidence which is relevant to evaluating the
reasonably foreseeable significant adverse impacts on the human environment, and
- 6 (4) the agency's evaluation of such impacts based upon theoretical approaches or research
methods generally accepted in the scientific community.

7 40 C.F.R. § 1502.22(b). "For the purposes of this section, 'reasonably foreseeable' includes
8 impacts which have catastrophic consequences, even if their probability of occurrence is low,
9 provided that the analysis of the impacts is supported by credible scientific evidence, is not based
10 on pure conjecture, and is within the rule of reason." 40 C.F.R. § 1502.22(b)(1).

11 55. The 2001 Framework took a cautious approach to forest management in the Sierra,
12 recognizing that there are gaps in knowledge about the potential impacts of timber harvesting
13 and grazing to the area sensitive species, such as the California stopped owl, Yosemite toad and
14 willow flycatcher. The 2004 Framework, in contrast, authorizes substantially more harvesting
15 and imposes less control over grazing. The Forest Service's decision to replace the 2001
16 Framework with the 2004 Framework was taken without complete information about the status
17 of, and potential impacts to, sensitive species such as the California stopped owl, Yosemite toad
18 and willow flycatcher. This information is essential to a reasoned choice among alternatives.

19 56. The Forest Service did not include complete information about the status of, and
20 potential impacts to, the Sierra's sensitive species in the FSEIS. The Forest Service made no
21 finding that the cost of obtaining this information (*e.g.*, through application of adaptive
22 management) would be exorbitant before rejecting the 2001 Framework. Further, the 2004
23 Framework contains no strategy designed to protect Nevada's sensitive species while additional
24 information is gathered. And the Forest Service minimized, rather than evaluated, the potential
25 "catastrophic consequences" that proceeding on the 2004 Framework may have to sensitive
26 species such as the California stopped owl, Yosemite toad and willow flycatcher, as required by
27 NEPA.

28 57. The Forest Service's failure to comply with NEPA and its supporting regulations

1 constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to
2 law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

3 **RELIEF REQUESTED**

4 The People request that this Court:

5 1. Issue a declaratory judgment that defendants violated the APA by arbitrarily and
6 capriciously by replacing the 2001 Framework with the 2004 Framework without a reasoned and
7 supported analysis for this action.

8 2. Issue a declaratory judgment that defendants violated NEPA and the APA by failing to
9 analyze the impacts of, or alternative to, replacing the 2001 Framework with the 2004
10 Framework;

11 3. Issue a mandatory injunction compelling defendants to set aside its decision to replace
12 the 2001 Framework with the 2004 Framework;

13 4. Award the People costs, expenses and reasonable attorney fees pursuant to the Equal
14 Access of Justice Act, 28 U.S.C. § 2412 or other authority; and

15 5. Award such other relief as this Court deems just and proper.
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1 Dated: February 1, 2005

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Respectfully submitted,

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