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

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

17 Plaintiff,

18 v.

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

24 Defendants.

25 **- and related cases -**  
26

Case No.  
CIV-S-05-0211 MCE/GGH

**PEOPLE'S MEMORANDUM  
OF POINTS AND  
AUTHORITIES IN  
OPPOSITION TO FEDERAL  
DEFENDANTS' MOTION TO  
DISMISS**

Date: June 20, 2005  
Time: 9:00 a.m.  
Location: 15<sup>th</sup> Floor  
Courtroom: No. 3  
Judge: Hon. Morrison C.  
England, Jr.

Case Nos.  
CIV-S-05-0205 MCE/GGH;  
CIV-S-05-0905 MCE/GGH; and  
CIV-S-05-0532 MCE/GGH

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1 Plaintiff the People of the State of California, ex rel. Bill Lockyer, Attorney General ("People")  
2 submit this Memorandum of Points and Authorities in opposition to the motion to dismiss filed by  
3 Defendants the United States Department of Agriculture; Secretary of Agriculture Mike Johanns;  
4 Under Secretary of Agriculture Mark Rey; the United States Forest Service ("Forest Service"); Chief  
5 of the United States Forest Service Dale Bosworth; and Regional Forester Jack Blackwell  
6 (collectively, "Federal Defendants").

7 **I. INTRODUCTION**

8 The Sierra Nevada Forest Plan Amendment, issued in January 2001 ("2001 Framework"), was  
9 designed to meet a set of specifically defined objectives for the eleven national forests of the Sierra  
10 Nevada.<sup>1/</sup> These objectives included protecting and restoring old growth forest and riparian  
11 ecosystems and their species,<sup>2/</sup> and, in addition, reintroducing fire into these ecosystems while still  
12 protecting the Sierra's residents and communities.<sup>3/</sup> The 2001 Framework was ecologically  
13 conservative, requiring a "cautious" approach to forest management in old growth and riparian  
14 habitat.<sup>4/</sup> As the Regional Forester stated in explaining his decision in 2001, "I could have selected  
15 an alternative that would produce higher levels of measurable goods and service, but these options  
16 pose greater uncertainties and higher risks to ecosystem sustainability and species viability."<sup>5/</sup>

17 After the change in administration, however, the Forest Service abruptly decided that it was  
18 willing to risk the continued survival of the Sierra's unique ecosystems and species in exchange for  
19 the dollars and perceived political advantage that increased timber harvesting and other resource  
20 extraction would produce. By issuing the superseding 2004 Framework, the Forest Service

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21  
22 1. 2001 Record of Decision ("ROD") at p. 1 (AR Vol. 1, SNFPA 00229).

23 2. The Forest Service noted in 2001 that the following Sierra species are "at greatest  
24 risk": California spotted owl, northern goshawk, willow flycatcher, Sierra Nevada red fox,  
25 marten, wolverine, fisher, yellow-legged frog, Yosemite toad, cascade frog and northern leopard  
frog. *Id.* at pp. 25-27 (AR Vol. 1, SNFPA 00253-00255).

26 3. *Id.* at p. 29 (AR Vol. 1, SNFPA 00257).

27 4. *Id.* at p. 21 (AR Vol. 1, SNFPA 00249).

28 5. *Id.* at p. 29 (AR Vol. 1, SNFPA 00257).

1 jettisoned the 2001 Framework's detailed and protective Standards and Guidelines for forest  
2 management and substantially increased timber harvesting under the guise of necessary fire  
3 suppression.<sup>6/</sup>

4 By their motion, Federal Defendants contend that the People have no concrete interest in how  
5 the Forest Service manages the national forests of the Sierra Nevada and, therefore, no standing to  
6 bring this action. The People will restate defendants' position, because, stated plainly, it is fairly  
7 shocking. Again, the Federal Defendants contend that the Attorney General of the State of  
8 California, acting on behalf of the People of this State, has no right to challenge or even question  
9 what the Forest Services chooses to do with over 11.5 million acres of forested land in the heart of  
10 this State.

11 Federal Defendants' motion is grounded in a mischaracterization of the People's complaint as  
12 stating only *parens patriae* interests. Contrary to the Federal Defendant's arguments, while the  
13 People do seek to advance the public interest, the California Attorney General has not brought this  
14 challenge merely to protect a generalized notion of the welfare of California's citizens.<sup>7/</sup> Rather, the  
15 People seek to protect specific resources of this State – such as wildlife, fish, and water – that are  
16 held in trust by the State for the People, and to protect the People's property interests in the Sierra  
17 Nevada.

18 If it is allowed to stand, the 2004 Framework promises to degrade wildlife habitat and fragment  
19 wildlife corridors, adversely affecting the Sierra's sensitive species, and to impact water availability  
20 and water quality by increased timber harvesting and grazing. California's resource-related interests  
21 thus are adversely affected by the Forest Service's arbitrary, capricious and unsupported decision  
22 to replace the 2001 Framework with the 2004 Framework, made in violation of the National

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23  
24 6. The 2004 Framework contemplates substantially increased timber harvesting – an  
25 increase of 4.7-fold over projected 2001 Framework levels in the first decade and 6.4-fold in the  
26 second decade, comparing annual green timber harvest volume. FSEIS, vol. 1, ch. 4, pt. 4.4.1 at  
p. 319, Table 4.1.1b (AR Vol. 6, SNFPA 03389).

27 7. That a plaintiff may have particularized interests does not prevent that plaintiff from  
28 seeking to advance other, more generalized interests. "A plaintiff who establishes standing in his  
own right may then argue the public interest as well." *City of Davis v. Coleman*, 521 F.2d 661,  
672, fn. 14 (9<sup>th</sup> Cir. 1975).

1 Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA"). In addition,  
2 actions taken by the Forest Service under its new management direction may have impacts on nearby  
3 lands, some of which are owned by the State, or held in trust by the State for the People. The People  
4 bring this action to protect these lands as well.

5 The State has a legally recognized interest in protecting its natural resources, as established by  
6 the People's allegations and the documents supporting the People's complaint. Because the People's  
7 interests are not solely in *parens patriae*, Federal Defendants' motion must fail. If, however, the  
8 Court requires more particularized or additional allegations setting forth the People's interests related  
9 to national forest management in the Sierra Nevada, as discussed below, the People are prepared to  
10 make such allegations and would request leave to amend their complaint.<sup>8/</sup>

## 11 **II. LEGAL STANDARD**

### 12 **A. Motion to Dismiss**

13 A motion to dismiss for lack of standing pertains to a federal court's subject matter jurisdiction  
14 and therefore is governed by Rule 12(b)(1). *White v. Lee*, 227 F.3d 1214, 1242 (9<sup>th</sup> Cir. 2000); Fed.  
15 R. Civ. P. 12(b). Rule 12(b)(1) jurisdictional attacks can be either factual or facial. *White*, 227 F.3d  
16 at 1242. Here, Federal Defendants do not dispute the accuracy of the People's allegations, but rather  
17 challenge their adequacy, characterizing the People's interests as purely *parens patriae*. Federal  
18 Defendants' Mem. of Ps & As at pp. 2:12-21, 10:6-23. The motion therefore is a facial challenge.

19 Responding to a facial challenge, a plaintiff is not required to provide evidence outside the  
20 pleadings, but may rely on the allegations of the complaint. *Wolfe v. Strankman*, 392 F.3d 358, 361  
21 (9<sup>th</sup> Cir. 2004). The court must assume that the plaintiff's allegations are true and draw all

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23 8. The purpose of Federal Defendants' motion is unclear. Removing the People's claims  
24 will not streamline the litigation over the 2004 Framework, as the plaintiffs in *Sierra Nevada*  
25 *Forest Protection Campaign v. Rey* (No. CIV-S-05-0205-MCE-GGH) also have NEPA claims.  
26 Moreover, Federal Defendants have not challenged the standing of any other plaintiff in the  
27 related 2004 Framework cases, and on May 24, 2005, moved to consolidate all of the related  
28 cases. If the Court grants Federal Defendants' motion to consolidate, their motion to dismiss for  
lack of standing may be moot: Where legal issues are raised by one plaintiff who has standing,  
the court need not consider the standing of the other plaintiffs. *Planned Parenthood of Idaho,*  
*Inc. v. Wasden*, 376 F.3d 908, 918 (9<sup>th</sup> Cir. 2004), *cert. denied*, \_\_\_ U.S. \_\_\_, 125 S.Ct. 1694  
(2005).

1 reasonable inferences in the plaintiff's favor. *Id.* at 362. At the pleading stage, "general factual  
2 allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss  
3 we presume that general allegations embrace those specific facts that are necessary to support the  
4 claim." *Bennett v. Spear*, 520 U.S. 154, 168 (1997) (internal quotation omitted). In a facial  
5 challenge to standing, a court "may also look to documents supporting the complaint . . . ." *Tyler*  
6 *v. Cuomo*, 236 F.3d 1124, 1132 (9<sup>th</sup> Cir. 2000). In this case, such documents include the 2001  
7 Framework and Record of Decision ("ROD"), and the 2004 Framework and ROD.

8 **B. Standing Under National Environmental Policy Act**

9 With respect to "procedural" injuries such as occur when a federal agency violates NEPA, the  
10 Ninth Circuit has held that to satisfy Article III, a plaintiff must allege that (1) the agency violated  
11 certain procedural rules; (2) these rules protect a plaintiff's concrete interests; and (3) it is reasonably  
12 probable that the challenged action will threaten those concrete interests. *City of Sausalito v.*  
13 *O'Neill*, 386 F.3d 1186, 1197 (9<sup>th</sup> Cir. 2004) (citing *Citizens for Better Forestry v. U.S. Dep't of*  
14 *Agric.*, 341 F.3d 961, 969-70 (9<sup>th</sup> Cir. 2003)). In their Motion to Dismiss, Federal Defendants  
15 challenge only the sufficiency of the People's allegation of interest, contending that the sole interest  
16 the People have alleged is a *parens patriae* interest in the general well-being of the citizens of  
17 California, rather than a concrete interest as required by Article III.

18 As discussed below, Federal Defendants' characterization of the People's interest is in error.  
19 As set forth in the complaint and the documents supporting the complaint, the People have a  
20 concrete interest the Sierra Nevada's wildlife and in the continued production of high-quality and  
21 abundant water, and concrete property interests related to the State and public trust lands that are  
22 located throughout the Sierra Nevada region.

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1 **III. BACKGROUND**

2 **A. The People's interest in protecting the natural resources of the Sierra Nevada and**  
3 **their interests related to State lands in the region are adversely affected by the**  
4 **Federal Defendants' actions.**

5 **1. The Attorney General has a legally recognized role as protector of California's**  
6 **natural resources, including wildlife, water, and State lands.**

7 As the People alleged, the Attorney General is authorized to act to protect the State's natural  
8 resources. Complaint ¶ 10. "[I]n the absence of any legislative restriction, [the Attorney General]  
9 has the power to file any civil action or proceeding directly involving the *rights and interests of the*  
10 *state*, or which he deems necessary for the . . . protection of public rights and interest." *D'Amico*  
11 *v. Board of Medical Examiners*, 11 Cal.3d 1, 14 (1974) (emphasis added) (Appendix of State  
12 Authorities, Ex. A); *see also* Cal. Gov. Code § 12607 ("The Attorney General may maintain an  
13 action for equitable relief in the name of the people of the State of California against any person for  
14 the protection of the natural resources of the state from pollution, impairment, or destruction")  
15 (Appendix of State Authorities, Ex. B.) The Attorney General, acting in the name of the People,  
16 believes strongly that the Federal Defendants' arbitrary, capricious and unsupported decision to  
17 reject the conservative approach of the 2001 Framework in favor of a management directive that  
18 emphasizes resource extraction puts the People's resources, including wildlife, water, and state lands,  
19 at substantial risk.

20 **2. The Forest Service's rejection of the cautious approach of the 2001 Framework**  
21 **will impact the State's wildlife.**

22 The State of California holds title to wildlife in public trust for the benefit of the People of this  
23 State. *Betchart v. California Department of Fish and Game*, 158 Cal.App.3d 1104, 1106 (1984)  
24 (Appendix of State Authorities, Ex. C); *California Trout, Inc. v. State Water Resources Control Bd.*,  
25 207 Cal.App.3d 585, 630 (1989) (Appendix of State Authorities, Ex. D); Cal. Fish & Game Code  
26 § 1801 (Appendix of State Authorities, Ex. E). As the Supreme Court has noted, "[u]nquestionably  
27 the States have broad trustee and police powers over wild animals within their jurisdictions." *Kleppe*  
28 *v. New Mexico*, 426 U.S. 529, 545 (1976); *see also* 16 U.S.C. § 528 ("Nothing herein shall be  
construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife

1 and fish on the national forests.")

2 The survival of the unique and sensitive wildlife of the Sierra Nevada depends on the continued  
3 existence of numerous types of distinct habitat in the national forests, as well as on adjacent non-  
4 forest service lands. FEIS, Vol. 3, pt. 4.2 at p. 5, Table 4.2.1a (AR, CD #6); *id.* at pp. 17-22, Table  
5 4.2.1e (AR, CD #6). Different management strategies affect the quantity and quality of such habitat.  
6 FEIS, Vol. 3, pt. 4 (AR, CD #6); *see, e.g., id.* at pp. 34-38, Table 4.2.3.1c (Consequences of  
7 Alternatives on Birds) (AR, CD #6); FEIS, Vol. 1, Ch. 2, pp. 189-193 (discussion of focal species)  
8 (AR, CD #6). The Forest Service's rejection of the cautious approach to protection and restoration  
9 established in the 2001 Framework, in favor of increased resource extraction contemplated by the  
10 2004 Framework, will adversely affect this important State resource by destroying and degrading  
11 habitat.

12 **3. The Forest Service's decision to authorize substantially more resource**  
13 **extraction will adversely impact the quality and quantity of the State's water**  
14 **supply.**

14 All water within the State of California is the property of the People, and the People have a  
15 "primary interest in the correction and prevention of irreparable damage to, or impaired use of, the  
16 ground water basins of this State caused by overdraft, depletion, salt water intrusion or degraded  
17 water quality." Cal. Water Code § 102 (Appendix of State Authorities, Ex. F); *see also Selma*  
18 *Pressure Treating Company, Inc. v. Osmose Wood Preserving Company*, 221 Cal.App.3d 1601,  
19 1616 (1990) (Appendix of State Authorities, Ex. G).

20 As the Forest Service has stated, "[w]ater is one of the most important and valuable resources  
21 originating in the Sierra Nevada. Water accounts for over 60 percent of the \$2.2 billion worth of  
22 commodities and services produced annually by Sierra Nevada ecosystems." FEIS, Vol.2, Ch. 3,  
23 pt. 3.4, p. 195 (AR, CD #6). The Sierra Nevada watersheds supplies, on average, 70.8 million  
24 unimpaired acre feet of water per, suppling California's Central Valley, San Francisco Bay Area and  
25 Southern California water consumers. FEIS, Vol.2, Ch. 3, pt. 3.4 at pp. 195-196 and Table 3.4a  
26 (AR, CD #6). Individual watersheds do not follow national forest boundaries; most extend beyond  
27 national forest lands. FEIS, Vol. 4, Appendix I-2 – I-3, Figures I-1.1 and I-1.2 (AR, CD #6); FEIS,  
28 Vol. 4, Appendix I-14 – I-23, Table I.1 (AR, CD #6); FEIS, Vol. 4, Appendix T-8, Table T.1 (AR,

1 CD # 6).

2 The Sierra Nevada provides not only large quantities of water for the State, but water of the  
3 highest quality. "The Sierra Nevada region generally produces surface waters of excellent quality,  
4 suitable for almost any use." FEIS, Vol. 2, Ch. 3, pt. 3.4, p. 197 (AR, CD #6). "High quality water  
5 is necessary to provide for beneficial uses such as municipal water supplies, agriculture, recreation,  
6 hydroelectric power, and to provide instream flows for aquatic and riparian ecosystems. . . . The  
7 robust functioning of riparian and upland ecosystems links directly to satisfactory water quality."

8 *Id.*

9 Land management on national forests can affect the State's water quality. "Logging operations,  
10 grazing and other activities that disturb the forest floor and compact soil can contribute to the  
11 delivery of suspended sediment to stream channels." FEIS, Vol. 2, Ch. 3, pt. 3.4 at p. 203 (AR, CD  
12 #6); *see also id.* at pp. 206-207 (discussing timber harvesting and roads) (AR, CD #6). The Forest  
13 Service's decision to reject the 2001 Standards and Guidelines that were designed to protect aquatic  
14 resources, and its decision in 2004 to increase substantially activities such as timber harvesting and  
15 grazing, promises to adversely impact both the quantity and the quality of the State's water supply.

16 **4. The Forest Service's abrupt change in management direction may adversely**  
17 **impact State lands in the Sierra.**

18 The State of California holds title to the beds of California's naturally-navigable rivers, lakes  
19 and streams. 42 U.S.C. § 1311(a); *State of California ex rel. State Lands Comm'n v. United States*,  
20 805 F.2d 857, 859 (9<sup>th</sup> Cir. 1986). The State also holds title to the navigable waterways themselves.  
21 *See Graf v. San Diego Unified Port Dist.*, 7 Cal.App.4th 1224, 1228 (1992) (Appendix of State  
22 Authorities, Ex. H). There are 45 major river basins and 150 major watersheds in the area subject  
23 to the Forest Service's planning. Major watersheds are defined by the Feather, Yuba, American,  
24 Cosumnes, Mokelumne, Stanislaus, Tuolumne, Merced, San Joaquin, Kings, Kaweah, Kern,  
25 Truckee, Carson, Walker and Owens Rivers. FEIS, Vol. 2, Ch. 3, pt. 2, p. 34 (AR, CD #6); FEIS,  
26 Vol. 1, Ch. 2, p. 36 (AR, CD #6); *see also* DEIS, Sierra Nevada Vicinity Map (AR, CD #5). Within  
27 the Forest Service's planning area, there are numerous lakes, rivers and navigable streams. *See, e.g.*,  
28 FEIS, Vol. 2, Ch. 3, pt. 2, p. 34 ("the high Sierra contains more than 4,000 lakes") (AR, CD #6);



1 FEIS, Vol. 4, Appendix I-14 – I-23 (watersheds named by relevant rivers and creeks (AR, CD #6);  
2 *id.* at Appendix I-49 – I-51 (list of Water Quality Limited lakes, rivers and streams) (AR, CD #6).  
3 Notable examples include the Clear Lake Reservoir (encircled by the Modoc National Forest),  
4 Goose Lake (adjacent to the Modoc National Forest); Eagle Lake (adjacent to the Lassen National  
5 Forest); Lake Oroville (downstream from the Plumas National Forest); Lake Tahoe (adjacent to the  
6 Eldorado and Humbolt-Toiyabe National Forests); and Mono Lake (encircled by the Inyo National  
7 Forest). DEIS, Sierra Nevada Vicinity Map (AR, CD #5).

8 In addition to public trust lands, the state also owns tracts of land in the Sierra Nevada which,  
9 according to the Forest Service, comprise approximately 1% of the land in the Sierra Nevada. FEIS,  
10 Vol. 2, Ch. 3, pt. 1.3, p. 12 (AR, CD #6). This land includes state parks, two state forests (Mountain  
11 Home and LaTour), and University of California forested land used for research. FEIS, Vol. 2., Ch.  
12 3, pt. 1.3, p. 15 (AR, CD #6).

13 Federal Defendants cannot reasonably dispute that management activities undertaken in  
14 national forests have effects on adjacent lands or inholdings. To take but two examples, neither fire  
15 nor wildlife recognize such artificial boundaries. The Forest Service's abrupt change in management  
16 direction from the 2001 Framework to the 2004 Framework will adversely affect State-owned lands  
17 and public trust lands in the region. Using the previously cited examples, the Forest Service's  
18 decision to jettison the goal of reintroducing fire into the region's ecosystem means that this goal  
19 likely cannot be achieved by other land holders in the region, including the State. And the Forest  
20 Service's abandonment of its previous commitment to protecting wildlife corridors will likely affect  
21 wildlife movement over large areas, including areas owned or held in trust by the State, and may  
22 even cause existing habitat on State land to become inaccessible to the State's wildlife.

23 **B. As the allegations of the complaint make clear, the People filed this action against the**  
24 **Federal Defendants to protect the State's natural resources, not merely to protect**  
***parens patriae* interests.**

25 Citing one paragraph of the People's 16-page complaint (¶10), Federal Defendants summarily  
26 contend that "Plaintiff did not bring this action to represent any sovereign or proprietary state  
27 interest, but rather has brought a *parens patriae* action based on Plaintiff's interest in the well-being  
28 of its citizens." Federal Defendants' Mem. of Ps & As at p. 2:15-17.

1 Federal Defendants' summary of the People's complaint substantially misrepresents the People's  
2 allegations relating to their interests and to standing. A summary follows.

3 The People allege that they have an interest in the resources of the Sierra Nevada (Complaint  
4 at ¶ 8). Specific resource-related interests that the People note in their complaint include:

- 5 • Old growth forests (Complaint ¶ 1).
- 6 • Wildlife (Complaint ¶¶ 1, 25, 27, 33, 56), including the California spotted owl (Complaint  
7 ¶¶ 20, 27, 28, 55-56), Yosemite toad (Complaint ¶¶ 28, 55-56) and willow flycatcher  
8 (Complaint ¶¶ 28, 55-56).
- 9 • Wildlife habitat (Complaint ¶¶ 22, 25, 27, 28, 33).
- 10 • The Sierra Nevada's ecosystems, including riparian ecosystems (Complaint ¶¶ 1, 20-22).  
11 Protection from wildfire (Complaint ¶¶ 1, 22).

12 The People allege that their interest in protecting and preserving the natural resources of the  
13 Sierra Nevada has been injured by Federal Defendants' action. For example:

- 14 • The People of California, who have an interest in the use and enjoyment of the national  
15 forests in the Sierra, and an interest in preserving and protecting the natural resources of  
16 those forests, have suffered legal wrong because of the Forest Service's action and have  
17 been adversely affected or aggrieved by the Forest Service's action within the meaning of  
18 the APA and NEPA (Complaint ¶ 8.).
- 19 • 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  
21 a superseding Framework and Final Supplemental Environmental Impact Statement  
22 ("FSEIS") ("2004 Framework"). Rather than merely making minor changes to the 2001  
23 Framework, the Forest Service, in effect, revoked it, *removing its most significant*  
24 *resource-protective Standards and Guidelines and increasing green timber harvesting by*  
25 *more than four-fold* (Complaint ¶ 3 (emphasis added)).
- 26 • [T]he DSEIS failed to evaluate the incremental and cumulative impacts of the Forest  
27 Service's abrupt change in direction (*e.g.*, the impacts of rejecting a cautious management  
28 approach and substantially increasing timber harvesting) (Complaint ¶ 30).
- The Forest Service led the public to believe that the changes from the 2001 Framework  
to the 2004 Framework were minor. In fact, however, the 2004 Framework is opposed  
to the 2001 Framework in virtually every material respect related to the protection of  
wildlife and habitat and the approach to scientific uncertainty, and reflects the agency's  
new willingness to risk long term, irretrievable losses in exchange for short term  
economic gains (Complaint ¶ 33).
- [T]he Forest Service minimized, rather than evaluated, the potential "catastrophic  
consequences" that proceeding on the 2004 Framework may have to sensitive species such  
as the California stopped owl, Yosemite toad and willow flycatcher, as required by NEPA  
(Complaint ¶ 57).

1 Further, the relief the People request would redress the specific injuries they allege. The People  
2 request that the Court, among other things:

- 3 • Issue a declaratory judgment that defendants violated NEPA and the APA by failing to  
4 analyze the impacts of, or alternative to, replacing the 2001 Framework with the 2004  
5 Framework (Complaint, Prayer ¶ 3).
- 6 • Issue a mandatory injunction compelling defendants to set aside its decision to replace the  
7 2001 Framework with the 2004 Framework ( Complaint, Prayer ¶4).

8 Federal Defendants' characterization of the People's interest as purely *parens patriae*, based on  
9 citation only to one paragraph of the People's complaint, therefore is misleading.

#### 10 **IV. ANALYSIS**

##### 11 **A. Introduction**

12 Federal Defendants' motion relies on a mischaracterization of the People's pleadings. As  
13 discussed above, while the People's allegations relating to standing are not lengthy or highly  
14 detailed, they are sufficient to establish the State's clear interests related to California's resources and  
15 lands. Given the federal notice pleading standard<sup>9/</sup> and the rule that the general allegations embrace  
16 those specific facts that are necessary to support the claim, and in light of the fact that the Court may  
17 also consider documents supporting the complaint, including the 2001 Framework and the 2004  
18 Framework, the People's allegations are sufficient to support standing.

19 If, however, this Court requires more specific allegations to support standing, the People fully  
20 are prepared to amend their complaint to plead the State's previously stated interests in its resources  
21 and lands with greater particularity and to plead additional concrete interests, *e.g.*, interests related  
22 to increased costs to the State resulting from the Federal Defendants' shirking of their resource  
23 protection responsibilities in the Sierra Nevada.

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9. *See* Fed. Rule Civ. P. 8(a).

1       **B. It is well-established that governments may have proprietary and sovereign interests,**  
2       **including interests in protecting natural resources, and that such interests support**  
3       **Article III standing in actions against the federal government.**

4       Federal Defendants' motion is grounded in *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S.  
5       592 (1982).<sup>10/</sup> In *Snapp*, the Commonwealth of Puerto Rico brought suit against individual and  
6       private companies in the Virginia apple industry, alleging that their practices violated certain federal  
7       labor laws. *Snapp*, 458 U.S. at 594-595. The Court defined a *parens patriae* action as one in which  
8       the state expresses a quasi-sovereign "interest in the health and well-being – both physical and  
9       economic – of its residents in general" or "in not being denied its rightful status within the federal  
10      system." *Id.* at 607. The Court held that Puerto Rico had *parens patriae* standing to maintain its  
11      suit. *Id.* at 608-610. In dictum, the Court noted that "[a] State does not have standing as *parens*  
12      *patriae* to bring an action against the Federal Government." *Snapp*, 482 U.S. at 610, fn. 16.<sup>11/</sup>

13      It is well-established, however, that a state or local governmental entity may have other  
14      interests not sounding in *parens patriae* that allow it to proceed against the federal government. For  
15      example, in *City of Sausalito*, the Ninth Circuit held that a city had standing to challenge the  
16      National Park Service's plan and supporting Environmental Impact Statement for development at  
17      Fort Baker pursuant to NEPA and other resource-related federal statutes such as the Endangered

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18           10. Federal Defendants reach the relevant law addressing *parens patriae* standing on  
19      page 8 of their brief. Their entire analysis is contained in the two paragraphs at page 10, lines 6-  
20      23.

21           11. In support of its broad statement about *parens patriae* standing, the *Snapp* opinion  
22      cites *Massachusetts v. Mellon*, 262 U.S. 447, 485-486 (1923). The holding of *Mellon* was,  
23      however, limited. In *Mellon*, the Court held that it had no original jurisdiction over a state's  
24      challenge to the constitutionality of a federal statute. "It cannot be conceded that a state, as  
25      *parens patriae*, may institute judicial proceedings to protect citizens of the United States from the  
26      operation of the statutes thereof." *Id.* at 485. Post-*Snapp*, some courts have held that a state may  
27      sue the federal government *parens patriae* to require the federal government to follow federal  
28      law. See, e.g., *City of New York v. Heckler*, 578 F.Supp. 1109, 1122-1123 (S.D.N.Y. 1984). The  
29      Ninth Circuit recently allowed *parens patriae*-based standing against a federal agency to enforce  
30      a federal law, citing *Snapp*. See *American Rivers v. FERC*, 201 F.3d 1186, 1205 (9<sup>th</sup> Cir. 2000).  
31      The Court in *American Rivers* did not, however, overrule *State of Nevada v. Burford*, 918 F.2d  
32      854 (9<sup>th</sup> Cir. 1990), which holds that *parens patriae* standing is not available against the federal  
33      government. Since in this case, the People have resource and property-related interests and do  
34      not rely solely on their *parens patriae* interests, the Court need not resolve the issue of whether  
35      *parens patriae* interests alone would be sufficient to support standing.

1 Species Act and the Coastal Zone Management Act. *City of Sausalito*, 386 F.3d at 1194. The Court  
2 held that Sausalito had sufficient concrete interests to support standing due to "a detrimental increase  
3 in traffic and crowds in Downtown Sausalito, affecting City-owned streets as well as municipal  
4 management and public safety functions"; an "aesthetic injury" due to congestion that "'will destroy  
5 the City's quiet, beauty, serenity and quaint and historic village character and attributes"; and "injury  
6 to Sausalito's natural resources" due to an increase in noise and trash, degraded air quality, and harm  
7 to the marina, parks and shoreline. *Id.* at 1198-1199. The holding of *City of Sausalito* – that a  
8 government's proprietary and resource-related interests can support standing against the federal  
9 government – is consistent with the law of other circuits. *See, e.g., Hodges v. Abraham*, 300 F.3d  
10 432, 444-445 (4<sup>th</sup> Cir. 2002), *cert. denied*, 537 U.S. 1105 (2003) (holding that in NEPA claim  
11 challenging Record of Decision relating to transfer of plutonium, Governor of South Carolina had  
12 concrete interest deriving from his propriety interest over land and natural resources owned by State  
13 and from his official responsibility to preserve and protect public drinking water); *Wyoming v.*  
14 *United States Department of Agriculture*, 277 F.Supp.2d 1197, 1215 (D. Wyoming 2003) (holding  
15 that "Wyoming has standing because it was adversely aggrieved by the Forest Service's failure to  
16 follow mandatory NEPA procedures when it promulgated the Roadless Rule, which necessarily  
17 increased the environmental risks to state and federal forests within Wyoming"); *State of Idaho v.*  
18 *Interstate Commerce Commission*, 35 F.3d 585, 591 (D.C. Cir. 1994) (holding that State of Idaho  
19 had standing to pursue NEPA claim related to abandonment of branch rail line because line "passes  
20 through land owned by the State of Idaho . . . and the State has alleged that any salvage activities  
21 [by the rail company] will pollute the areas surrounding the [b]ranch").

22  
23 **C. The State's interests in protecting the Sierra's wildlife and water and State lands are  
sufficient to support Article III standing.**

24 In this case, the State of California possesses an interest in the wildlife of the Sierra Nevada,  
25 which inhabit and pass through the area's national forests. As stated, the substantial increase in  
26 timber harvesting authorized by the 2004 Framework promises to degrade wildlife habitat and  
27 fragment wildlife corridors, adversely affecting the Sierra's sensitive species. Waters of the State  
28 run through and emanate from watersheds in the Sierra's national forests. Increased timber

1 harvesting and grazing will likely impact water availability and water quality. The State owns land  
2 adjacent to and in, and holds public trust lands adjacent to and in, national forests. Management of  
3 national forests thus will have effects on non-Forest Service lands that are part of this larger system.  
4 California's resource-related and property interests thus are adversely affected by the Forest  
5 Service's arbitrary, capricious and unsupported decision to replace the conservative, resource-  
6 protective 2001 Framework with the 2004 Framework, which emphasizes timber harvesting and  
7 resource extraction to the detriment of the Sierra Nevada's wildlife, watersheds and ecosystems.  
8 This injury is not conjectural, as the 2004 Framework is the operative regional management plan,  
9 effecting amendment to the land and resource management plans for the Sierra's eleven national  
10 forests. The relief requested seeks to redress this injury by voiding the 2004 Framework, allowing  
11 forest management pursuant to the 2001 Framework to resume.

12       The case of *State of Nevada v. Burford*, 918 F.2d 854 (1990), cited by Federal Defendants, is  
13 distinguishable. In *Burford*, the State of Nevada brought suit against the Bureau of Land  
14 Management ("BLM"), challenging BLM's grant of a right-of-way to the Department of Energy to  
15 conduct site characterization studies at Yucca Mountain. *Id.* at 855. Nevada brought its challenge  
16 pursuant to NEPA and the Land Act, contending that the grant "rendered meaningless Nevada's  
17 political right to object to its selection as a waste depository site." *Id.* at 856.

18       In contrast to the People's claim, Nevada's complaint was "silent as to how these alleged  
19 violations have resulted in injury to Nevada" and articulated only a "generalized grievance" that  
20 BLM was not acting in according with Nevada's view of the federal laws. *Id.* at 856-857. Unlike  
21 the People's claims in this case, Nevada did not allege that it used the land surrounding Yucca  
22 Mountain for any purpose. *See id.* at 857-858. The Court also noted, in discussing Nevada's  
23 asserted "political" injury, that the action challenged was the mere characterization of the site; "the  
24 decision of whether to construct the repository at Yucca Mountain is many years and numerous  
25 procedural hurdles away." *Id.* at 857. Here, in contrast, the 2004 Framework is the currently  
26 operative and controlling regional management plan for the 11.5 acres of Sierra Nevada's national  
27 forests. The injury in this case is not a speculative future injury, but a present one.

28 ///

1                   **D. If the Court requires more particularized allegations of the State's interest, or**  
2                   **allegations of additional interests, the People request leave to amend their complaint.**

3                   Where a court determines that the allegations of a complaint are insufficient to establish  
4 standing, "it is within the trial court's power to allow or require the plaintiff to supply, by  
5 amendment to the complaint or by affidavits, further particularized allegations of fact deemed  
6 supportive of plaintiff's standing." *Warth v. Seldin*, 422 U.S. 490, 501 (1975). Since, as discussed  
7 above, the People's case is not grounded solely in *parens patriae* interests, the Federal Defendants'  
8 motion must fail. If however, the Court finds that more a particularized pleading is required, the  
9 People request leave to amend their complaint.

10                  If required, the People are prepared to amend their complaint to more fully articulate the  
11 resource and property-related interests stated above and to state additional concrete interests that are  
12 affected by the Federal Defendants' decision and will submit affidavits if required by the Court. In  
13 the latter category, the People are prepared to allege that the Federal Defendants' shirking of their  
14 environmental responsibilities in the Sierra Nevada's national forests will shift regulatory costs to  
15 the State. For instance, California has an independent obligation to protect and restore the many  
16 species of the Sierra Nevada that are considered sensitive, threatened or endangered under State  
17 and/or federal law. The less protection and habitat that the Federal Defendants provide in national  
18 forests, the greater are the costs and obligations placed on the State in protecting these species on  
19 its own land, and in regulating private activity on private lands within the Sierra Nevada. Similarly,  
20 increases in logging will likely cause increased sedimentation of the Sierra Nevada's water, which  
21 California must then address through its own laws and regulations, *e.g.*, by promulgation and  
22 enforcement of total daily maximum loads ("TMDLs") for the water bodies of the Sierra Nevada.  
23 These shifts in regulatory costs from the federal government to the State constitute additional  
24 impacts to California's economic and regulatory interests.

25 ///  
26 ///  
27 ///  
28 ///

1 **V. CONCLUSION**

2 The Sierra Nevada, with its unique wildlife, old growth forests, wild rivers, and clear mountain  
3 lakes, is not the sole property of the federal government. It is not a Forest Service-run plantation,  
4 the fruits of which the federal government may consume as it sees fit. Rather, the Sierra Nevada is  
5 set of interlocking ecosystems comprised of federal, state and private lands, containing resources  
6 that are held in trust by the State for the benefit of the People of California. The People have a clear  
7 and legally recognized interest in protecting the unique and irreplaceable resources of the Sierra  
8 Nevada. As the People have alleged, the Sierra's resources have been placed in jeopardy by the  
9 Federal Defendants' arbitrary and capricious rejection of a cautious approach to forest management  
10 in favor of increased resource extraction. The Attorney General of the State of California therefore  
11 has the right under Article III – and a responsibility to the People of this State – to seek redress in  
12 this Court.

13 Dated: June 2, 2005

14 Respectfully submitted,

15  
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